



REVISED AGENDA
(ADDED CONTINUED ITEMS FROM JULY 23, 2024)
BERKELEY CITY COUNCIL MEETING
Tuesday, July 30, 2024
6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

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*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1611538218>. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 153 8218**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.*

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Preliminary Matters

Roll Call:

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

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

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar – Continued Business

A. Municipal Code Amendments for Measure KK Compliance and Updated Settlement Authority *(Continued from July 23, 2024)*

From: City Attorney

Recommendation: Adopt second reading of Ordinance No. 7,929-N.S. amending Chapter 2.56 and Sections 2.36.040, 4.04.100, 4.04.110, and 7.12.020 of the Municipal Code to conform to Section 113 of the City Charter (Measure KK), and to increase the City Attorney's authority to settle claims up to \$50,000.

First Reading Vote: All Ayes.

Financial Implications: None

Contact: Farimah Brown, City Attorney, (510) 981-6950

B. Lease Agreement: Youth Musical Theater Company for the properties at 2925 and 2945 Bolivar Drive, Aquatic Park *(Continued from July 23, 2024)*

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,930-N.S. authorizing the City Manager to execute a lease agreement with Youth Musical Theater Company (YMTC) for the use and management of the City's properties at 2925 and 2945 Bolivar Drive in Aquatic Park for a term of ten years, anticipated to begin September 1, 2024 and ending August 31, 2034, with one five-year option.

First Reading Vote: All Ayes.

Financial Implications: See report

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

C. Lease for Office Space for the Office of the Director of Police Accountability (ODPA) at 1900 Addison Street *(Continued from July 23, 2024)*

From: Director of Police Accountability

Recommendation: Adopt second reading of Ordinance No. 7,931-N.S. authorizing the City Manager to execute a ten-year lease agreement with The Shamszad Family Living Trust for the property located at 1900 Addison Street, Suites 300 and 350, with a lease term beginning on September 1, 2024.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

Consent Calendar

1. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of June 3, 2024 (closed), June 4, 2024 (regular), June 14, 2024 (special), June 24, 2024 (closed), and June 25, 2024 (specials and regular).

Financial Implications: None

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

2. Contract No. 32400082 Amendment: The Wright Institute for Mental Health Counseling for Older Adults

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32400082 with The Wright Institute increasing the contract by \$200,000 for the provision of mental health counseling services to older adults in the Berkeley community, in a total amount not to exceed \$500,000. The new contract end date will be June 30, 2026.

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

3. Filling Human Welfare and Community Action Commission Public Sector Vacancies

From: City Manager

Recommendation:

1. Adopt a Resolution confirming the appointments of up to three public sector commissioners to the Human Welfare and Community Action Commission (HWCAC), having been approved by the Health, Life Enrichment, Equity & Community Policy Committee at their July meeting.

2. Adopt a Resolution appointing Catherine Huchting, Mary Behm-Steinberg, and George Lippman to the HWCAC as private sector representatives.

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

4. Establish Classification and Salary – Public Health Investigator

From: City Manager

Recommendation: Establish the job class specification and salary of Public Health Investigator with an hourly salary range of \$35.5512 - \$43.2127.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

5. Establish Classification and Salary – Assistant Fire Inspector

From: City Manager

Recommendation: Establish the job class specification and salary of Assistant Fire Inspector with an hourly salary range of \$36.8038 - \$44.7352.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Consent Calendar

6. Establish Classification and Salary – Veterinarian

From: City Manager

Recommendation: Establish the job class specification and salary of Veterinarian with an hourly salary range of \$71.5295 - \$86.9445.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

7. Contract 10549C Amendment: Tyler Technologies Enterprise Resource Planning System for Ongoing Software Licensing, Maintenance Services, Implementation and Consulting Services, and Disaster Recovery Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10549C with Tyler Technologies for software licensing, maintenance services, implementation, consulting services, and disaster recovery services for the online Enterprise Resource Planning (ERP) system for the amount not to exceed \$1,000,000 and a total contract value not to exceed \$5,705,342.68 from April 1, 2017 to June 30, 2027.

Financial Implications: IT Cost Allocation Fund - \$1,000,000

Contact: Kevin Fong, Information Technology, (510) 981-6500

8. Contract 31900042 Amendment: CivicPlus On-Line Recreation Reservation System

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900042 with CivicPlus, Inc. for on-line recreation reservation system services to increase the contract amount by \$37,000, for a total not-to-exceed contract amount of \$153,756.

Financial Implications: Genereal Fund - \$37,000

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

9. Lot Line Adjustments at 1401 Carleton Street and 1423 Ward Street

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute lot line adjustments with 1401 Carleton Street and 1423 Ward Street to resolve main dwelling encroachments at the City's Santa Fe Trackbed to Park Conversion Project Site.

Financial Implications: See report

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

Consent Calendar

- 10. Lease Agreement: Youth Musical Theater Company for the Live Oak Theater at 1301 Shattuck Ave**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Youth Musical Theater Company (YMTC) for the use and management of the City's Live Oak Theater at 1301 Shattuck Avenue for a term of three years, anticipated to begin September 1, 2024 and ending August 31, 2027, with one five-year option.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 11. Revenue Grant: Cannabis Tax Fund Grant Program (CTFGP) Acceptance**
From: City Manager
Recommendation: Adopt a Resolution authorizing the Chief of Police to accept the CTFGP grant and enter into the resultant grant agreement and any amendments, with the California Highway Patrol. This grant is for \$111,716.80 for the period of July 1, 2024 through June 30, 2025.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
- 12. Purchase Order: National Auto Fleet Group for Prisoner Transport Vehicle Body Assembly Upgrade**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcewell bid procedures and authorize the City Manager to execute a purchase order for one Prisoner Transport Vehicle Body Assembly Upgrade with National Auto Fleet Group in an amount not to exceed \$340,000.
Financial Implications: Various Funds - \$340,000
Contact: Terrance Davis, Public Works, (510) 981-6300
- 13. Purchase Order: Turf Star, Inc. for Go-4 Parking Enforcement Vehicles**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcewell bid procedures and authorize the City Manager to execute a purchase order for Go-4 Parking Enforcement Vehicles with Turf Star, Inc. in an amount not to exceed \$400,000.
Financial Implications: See report.
Contact: Terrance Davis, Public Works, (510) 981-6300

Consent Calendar

- 14. Referral to Develop Curb Management Plan** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee)*
From: Environment and Climate Commission
Recommendation: Refer to the City Manager to fund and develop a Curb Management Plan.
Policy Committee Recommendation: To send the item to Council with a positive recommendation, and that the item be taken up when additional funding for streets and infrastructure is approved and/or during the next budget process.
Financial Implications: See report
Contact: Sarah Moore, Commission Secretary, (510) 981-7400

Council Consent Items

- 15. Referral to City Manager: Ashby BART Area Enhanced Infrastructure Finance District (EIFD) Analysis**
From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor)
Recommendation: Refer to the City Manager and City Attorney to return to Council with an analysis and recommended actions to initiate an Enhanced Infrastructure Finance District (EIFD) encompassing the Ashby BART station area, and consider:
1. Earmarked provisions of an EIFD to finance specific infrastructure and community development investments in an effort to actualize improvements to a Southern Plaza and greater Adeline Corridor adjacent to the West Lot, including benefits supporting impacted communities;
2. A preliminary analysis on additional, non-contiguous EIFD catchment areas that extend beyond the BART development sites; and
3. An EIFD Financial Plan that determines the funding potential of such a district or districts, including the total amount of tax revenue that could be generated through property taxes, transfer taxes, sales taxes, and other revenue, for associated infrastructure and public works improvements. These improvements may include, but are not limited to a Black Arts and Cultural District and associated facilities, and Berkeley Flea Market facilities.
Refer to the November 2024 AAO1 process up to \$100,000 for a) engaging a consultant to collaborate with the City Attorney, Planning and Finance Departments to prepare an EIFD Financial Plan, b) to initiate and conduct a community engagement process, and c) to establish an ad-hoc steering committee to guide this work consisting of residents, community-based organizations, the Planning Department, the Office of Economic Development, Civic Arts, and leaders involved in Equitable Black Berkeley work and the development of the Black Arts and Cultural District.
Financial Implications: General Fund - \$100,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

16. **Supporting the “Renewing Immigration Provisions of the Immigration Act of 1929 or “Registry Bill” (HR 1511 & SB2606)**
From: Councilmember Lunaparra (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution Supporting the “Renewing Immigration Provisions of the Immigration Act of 1929 or “Registry Bill” (HR 1511 & SB2606) and endorsing the Northern California Coalition for Just Immigration Reform’s “Three-Day Walk for a Path to Citizenship” from San Jose to San Francisco on August 17-19, 2024.
Financial Implications: None
Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170
17. **Berkeley Student Cooperative (BSC): Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Lunaparra (Author), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Lunaparra’s discretionary fund and funds from any other Councilmembers who would like to contribute, to the Berkeley Student Cooperative (BSC) for the repair of the glass skylights above Casa Zimbabwe (CZ) with funds relinquished to the City’s general fund for this purpose.
Financial Implications: Councilmember’s Discretionary Funds - \$500
Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170

Action Calendar

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

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

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

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

Action Calendar – Scheduled Public Comment Period

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

Action Calendar – New Business

18. **Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets**

From: Auditor

Recommendation: We recommend City Council request that the City Manager report back by January 2025 and at least annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Environmental Health Division. Recommendations include developing a plan to improve inspection coverage and response to alleged foodborne illness complaints, tracking program spending, taking steps to address staffing needs, and implementing placarding once the Division stabilizes. The Division agreed or partially agreed to our findings and recommendations. Please see our report for their complete response and the auditor's response.

Financial Implications: See report

Contact: Jenny Wong, Auditor, (510) 981-6750

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.

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

When applicable, 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.

Action Calendar – Public Hearings

19. ZAB Appeal: 2600 Tenth Street, Administrative Use Permit ZP2023-0031 From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion, adopt a Resolution either:

A. Upholding the appeal and reversing the Zoning Adjustment Board (ZAB) decision, thereby approving Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot;

-OR-

B. Denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision, thereby denying Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot.

Financial Implications: None

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

Information Reports

20. City Auditor Fiscal Year 2025 Audit Plan

From: Auditor

Contact: Jenny Wong, Auditor, (510) 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at:

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

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

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

the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

Agendas and agenda reports may be accessed via the Internet at:
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>
and may be read at reference desks at the following locations:

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

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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 July 25, 2024.***

A handwritten signature in black ink, appearing to read 'Mark Numainville', written in a cursive style.

Mark Numainville, City Clerk

## Communications

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

**Item #18: Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets**

1. David Lerman
2. Eric
3. Riti
4. Esther Brass-Chorin

**City Senior Services to Councilmember Newsletters**

5. Darlene Bronson on behalf of Margot Smith, Chair, Commission on Aging

**Golden Gate Fields**

6. Carole Marasovic, Chair, Commission on the Status of Women

**UA Theater**

7. Laura Linden
8. Lynn Sherrell
9. 29 Similarly worded form letters

**Shipping Containers at 2556 Haste St.**

10. 4 Similarly worded form letters

**Aurora Theater**

11. Olga Paredes
12. Eliron Hamburger

**Harrison St. Concerns**

13. Craig Nagasawa

**Vandalism**

14. Negeene Mosaed

**A Request for When Making Statements**

15. Josh

**Lorin Commercial District**

16. Teresa Clarke

**Cal Sailing Club**

17. Debbie Perkins

**Notice of Street Closure**

18. Ted Burton

**Rise Gallery Walk at BCC**

19. Adriana Betti



**Wage Concern**

20. Eric Cavallari

**UC Anti-Labor Actions**

21. Rafael Jaime on behalf of 48,000 UAW academic workers of the University of California

**Storm Water**

22. Maxwell Davis on behalf of the Sierra Club

**Visit Berkeley**

23. Jeffrey Church

**Towing Concern**

24. Charles Race

**Terra Outdoor Proposal**

25. Chantal Pearson

**Newsletter**

26. Vivian Warkentin

**Middle East Conflict**

27. Erwan Illian

**URLs**

28. Russbumper (9)

29. Erwan Illian (2)

**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. 7,929-N.S.

## AMENDMENTS TO CONFORM TO CHARTER ARTICLE XVI, SECTION 113.

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

Section 1. That Berkeley Municipal Code Chapter 2.56 is amended to read as follows:

**2.56.010 City Attorney's Office.**

A City Attorney's Office is created which shall be under the direction and administrative control of the City Attorney, subject to the general direction of the City Council, and shall consist of the City Attorney and such other employees as the City Attorney may hire into the department.

**2.56.020 City Attorney--Duties.**

The City Attorney shall be the chief administrative officer of the City Attorney's Office, and shall prosecute and defend for the City of Berkeley, all actions at law or in equity, and all special proceedings for or against the City, except in the case of the Berkeley Housing Authority, the Board of Education, the Rent Stabilization Board and any other boards whose members are elective officers pursuant to the City Charter. The City Attorney shall commence any legal proceedings when directed to do so by the City Council, and shall give legal advice verbally or in writing to the Mayor, the City Council, the City Manager, chief officials, departments, boards and commissions, when requested to do so by them, upon questions of law arising in their official capacities, involving the rights and liabilities of the City, or take an appeal to any appellate court, unless ordered not to do so by the City Council.

**2.56.030 City Attorney--Document drafting responsibilities--Council meeting attendance.**

The City Attorney shall draw such ordinances, resolutions and contracts, or other instruments, as shall be requested by the City Council, and shall attend the meetings of the City Council when requested to do so by the Mayor or members of the council, or where necessary to carry out the duties detailed in Section 2.56.020.

**2.56.040 City Attorney – Sole Legal Advisor; Exclusive Contracting Authority.**

The City Attorney shall be the sole legal advisor to the City of Berkeley. Whenever the interests of the City require it, in the sole professional judgment of the City Attorney, exercised in accordance with the California Rules of Professional Conduct, outside legal counsel may be employed at the expense of the City. Neither the City Manager, nor any other officials, departments, boards or commissions may enter into a contract with a licensed attorney except with the express authorization of the City Attorney, and only where the scope of the contract expressly excludes legal services. All contracts whose scope includes legal services to be rendered to the City must be made by the City

Attorney or their authorized designee. Contracts entered into in violation of this provision are void and unenforceable.

**2.56.050 City Attorney--Recordkeeping and delivery of documents to successor required.**

The City Attorney shall keep on file in their office all written communications and opinions, briefs and papers used in cases wherein they appear, subject to reasonable records retention policies. The City Attorney shall deliver all books, records, papers, documents and property of every description, belonging to the City, to their successor in office.

**2.56.060 City Attorney--Action as ex officio prosecuting attorney.**

The City Attorney shall be ex officio prosecuting attorney and shall prosecute all criminal violations of the provisions of the Charter or any City ordinance.

**2.56.070 Persons authorized to act when City Attorney absent or disabled.**

In the absence or disability of the City Attorney, the Assistant City Attorney shall perform the duties and exercise the powers of the City Attorney. In case of the absence or disability of both the City Attorney and the Assistant City Attorney, the Mayor shall appoint a Deputy City Attorney as Acting City Attorney who shall perform the duties and exercise the duties and powers of the City Attorney until such time as the City Attorney or Assistant City Attorney is able to return or the City Council approves the appointment of a new City Attorney.

**2.56.080 City Attorney's Office--Funding**

A. In order to ensure that the legal needs of the City are met, the Charter states that upon presentation of a proposed budget by the City Attorney, the City Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department, subject to available resources.

B. The City Attorney's Office shall be exempt from any City Manager or City Council policy to require City departments to save a portion of their budget as targeted savings, except where Council determines otherwise. The City Attorney shall be authorized to transfer budgeted funds between personnel and non-personnel line items, to the extent that those resources are needed to perform the duties of the City Attorney, and remains within the budget adopted by the City Council.

C. Funds allocated to the City Attorney's Office shall not be returned to the General Fund for other purposes except at the express direction of the City Council.

Section 2. That Berkeley Municipal Code 2.36.040 is amended to read as follows:

**2.36.040 City Manager--Jurisdiction--Exemptions.**

All officers and employees of the City shall be under the general administrative direction of the City Manager, with the exception of the Auditor, the employees of the Auditor's

Office, the City Attorney, the employees of the City Attorney's Office, the Office of the Director of Police Accountability, the Rent Stabilization Board, the five library trustees, and the employees of the public libraries..

Section 3. That Berkeley Municipal Code 4.04.100 is amended to read as follows:

**4.04.100 City Manager--Powers generally.**

In addition to the City Manager's powers under the Charter, and except in the case of the Auditor, the City Attorney's Office, the Rent Stabilization Board, and the Office of the Director of Police Accountability, the City Manager shall make transfers, promotions, demotions, reinstatements, layoffs, and shall hire, suspend or dismiss employees, subject to the provisions of this chapter, the personnel rules and applicable memorandum agreements, it being the intent to provide a fair and just approach to municipal employment in order that City employees may be selected and promoted on a merit basis, but in no sense impair the efficiency of a public service.

Section 3. That Berkeley Municipal Code 4.04.110 is amended to read as follows:

**4.04.110 City Manager--Duties and responsibilities designated.**

The City Manager shall administer the City personnel system and may delegate any of the powers and duties set forth in this chapter to a personnel director or any other officer or employee except as otherwise prohibited by the Charter of the City. Subject to the limited exemptions articulated below, the City Manager shall:

- A. Act as the appointing authority for the City;
- B. Attend all meetings of the Personnel Board;
- C. Administer all provisions of the personnel ordinance and of the personnel rules not specifically reserved to the Personnel Board;
- D. Prepare the personnel rules and revisions and amendments to such rules for the Personnel Board's consideration, and after consideration by the board, submit the rules, revisions and amendments, together with the recommendations of the board and their own recommendations, to the City Council for consideration and adoption by the council;
- E. Prepare a position class plan, including class specifications and revisions of the plan for the Personnel Board's consideration, and after consideration by the board, submit a position class plan and revisions, together with the recommendations of the board and their own recommendations, to the City Council for consideration and adoption by the council;
- F. Prepare a salary and wage plan and revisions and amendments to the plan for consideration by the Personnel Board, and after consideration by the board, submit the

salary and wage plan and revisions and amendments, together with the recommendation of the board and their own recommendation, to the City Council for consideration and adoption.

The City Attorney, City Auditor, Director of Police Accountability and Executive Director of the Rent Stabilization Board, shall act as the appointing authority for those personnel over whom they have administrative control, and shall have the ability to make recommendations directly to the Personnel Board (regarding rules, positions, class specifications, wages, etc.) specifically applicable to those personnel.

Section 4. That Berkeley Municipal Code 7.12.020 is amended to read as follows:

**7.12.020 Expenditures authorized when.**

Expenditures from the public liability fund shall be made solely for the purposes of paying public liability claims investigation and adjustment costs, legal defense costs, costs for legal advice obtained to prevent lawsuits, costs to file lawsuits, and payment of any settled public liability claim or judgment. Such payments are hereby authorized to be made without further authorization from the City Council, except that payment of any settled public liability claim, the amount of which is more than fifty thousand dollars, shall be authorized by the City Council.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on July 23, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, Wengraf, and Arreguin.

Noes: None.

Absent: None.

## ORDINANCE NO. 7,930–N.S.

LEASE AGREEMENT WITH YOUTH MUSICAL THEATER COMPANY FOR THE USE  
AND MANAGEMENT OF 2925 AND 2945 BOLIVAR DRIVE AT AQUATIC PARK

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

Section 1. The City Manager, or designee, is hereby authorized to execute a ten-year lease agreement with one five-year option and any amendments thereto with Youth Musical Theater Company for the use and management of 2925 and 2945 Bolivar Drive at Aquatic Park in Berkeley, CA. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be \$1000 per year, escalating by \$100 per year. In exchange for favorable rent, Youth Musical Theater Company will take over the responsibility for the building maintenance, utility costs, and janitorial costs of the building from the City. In addition, Youth Musical Theater Company will perform a list of capital improvements to the property as described in Exhibit B of the lease.

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.

At a regular meeting of the Council of the City of Berkeley held on July 23, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, Wengraf, and Arreguin.

Noes: None.

Absent: None.

**CITY OF BERKELEY**  
**IMPROVED PROPERTY LEASE**

Between

THE CITY OF BERKELEY, A CHARTER CITY  
ORGANIZED AND EXISTING UNDER THE LAWS  
OF THE STATE OF CALIFORNIA

as Landlord,

and

YOUTH MUSICAL THEATER COMPANY

as Tenant.

For the Properties at  
2925 and 2945 Bolivar Drive  
Berkeley, CA



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**PROPERTY LEASE****BASIC LEASE INFORMATION**

|     |                           |                                                                                                                                                                                                                              |
|-----|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | <b>Landlord:</b>          | City of Berkeley, a California municipal corporation<br>2180 Milvia Street<br>Berkeley, CA 94704<br><br>Attention: Director, Parks, Recreation & Waterfront<br>Telephone: (510) 981-6706<br>Email: parks@cityofberkeley.info |
| 2.  | <b>Tenant:</b>            | Youth Musical Theater Company (YMTC)                                                                                                                                                                                         |
| 3.  | <b>Tenant Trade Name:</b> | Youth Musical Theater Company                                                                                                                                                                                                |
| 4.  | <b>Effective Date:</b>    | September 1, 2024                                                                                                                                                                                                            |
| 5.  | <b>Premises:</b>          | Two buildings (as depicted in Exhibit "A") located at 2925 and 2945 Bolivar Drive (approx. 1,400 sq ft and 900 sq ft.) and outdoor space between the buildings.                                                              |
| 6.  | <b>Permitted Uses:</b>    | The Premises shall be used by Tenant for the purpose for youth programming (workshops, classes, rehearsals), set building, and outdoor rehearsals and programs.                                                              |
| 7.  | <b>Initial Term:</b>      | Ten (10) year(s), commencing as of September 1, 2024 ("Commencement Date").                                                                                                                                                  |
| 8.  | <b>Option Period:</b>     | Five (5) years.                                                                                                                                                                                                              |
| 9.  | <b>Base Rent:</b>         | \$1,000 per year, with \$100 increase annually.                                                                                                                                                                              |
| 10. | <b>Improvements</b>       | Tenant will invest approx. \$129,500 in capital improvements. This includes HVAC system with air filtration, new entry gate, new porch and ADA landing drainage improvements and sump pump, new floors, and painting.        |
| 11. | <b>Maintenance</b>        | Tenant will be responsible for all expenses associated with the construction, maintenance, improvement and operation of the premises to maintain the property in good condition.                                             |
| 12. | <b>Services</b>           | Tenant shall make all arrangements for and pay for all utilities and services, including electric, gas, water, sewer, garbage and telephone, and all fees and periodic charges related thereto.                              |

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

JB

## LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and YOUTH MUSICAL THEATER COMPANY, a non-profit organization doing business at 1000 42nd Street Oakland, CA 94608 ("Tenant").

### WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

## 1. DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

- A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.
- B. "Building" shall mean the building(s) on the Premises as shown on Exhibit A.
- C. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.
- D. "Aquatic Park" shall mean the Aquatic Park as defined in Chapter 6.04 of the Berkeley Municipal Code ("B.M.C.") (attached hereto as Exhibit "C"), as amended or succeeded, and any buildings and other improvements constructed or to be constructed therein. Without limiting the provisions of Section 36 of this Lease, Tenant acknowledges it is not relying on any representations or warranties made by Landlord, Landlord's agents or anyone else in regard to the size or configuration of Aquatic Park or in regard to the nature, location, or appearance of any buildings, improvements, or unimproved property therein.
- E. "Main Lagoon" or "Aquatic Park Lake" shall mean that body of water lying between West Bolivar Drive on the west, Addison Street on the north, the Southern Pacific railroad tracks on the east, and the service road on the south.
- F. "Premises" shall mean the Buildings, and the fenced-in yard between and around them, located at 2925 and 2945 Bolivar Drive, Berkeley CA, as further depicted in Exhibit "A."

## 2. TERM

- A. Initial Term and Term of Renewal. The initial term is for a period of ten years. Tenant has the option, under certain terms and conditions as described below, to renew this lease for an additional five-year term. This Lease shall take effect once duly approved by the Berkeley

City Council and executed by both Landlord and Tenant (“the Effective Date”). The Initial Lease Term will expire at midnight August 31, 2034 (“the Termination Date”).

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. If Landlord, in its sole discretion, determines that Tenant has complied with all terms and conditions of the Lease, at least sixty (60) days prior to expiration of the Lease, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant or increase in rent for a single five-year Renewal Term and shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the additional improvements and increase in rent, if any, at least thirty (30) days prior to the expiration of the Initial Term.

C. If, after Landlord's initial determination that Tenant has complied with the terms and conditions of the Lease but prior to its actual expiration, Landlord determines, at its sole discretion, that Tenant has failed to comply with any term or condition of the Lease, Landlord may revoke the granting of the additional term and seek applicable remedies under the Lease, including, but not limited to Section 20.

D. At the expiration of the term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the premises and its appurtenances to Landlord in good order and condition. Tenant agrees to reimburse the Landlord for any damage done to the property caused by Tenant's occupation or tenancy excepting reasonable wear and tear and damage by the elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord's designated agent.

### 3. RENT

A. Minimum Rent. Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **ONE THOUSAND DOLLARS (\$1,000)** for the first year of the Lease. For purposes of determining Minimum Rent, the first year of the Lease is the period up to August 31, 2034 and will be pro-rated for a partial year. In each subsequent Lease Year during the Initial Term and any Renewal Term, the Minimum Rent shall increase by **ONE HUNDRED DOLLARS (\$100)** per year.

B. Percentage of Gross Income from Concessions and Special Events.

1. In the event that Tenant operates a concession or a revenue-generating special event on the Premises or on the Main Lagoon, then Tenant agrees to pay Landlord, in addition to any fees levied by the City, an amount equal to FIVE PERCENT (5%) of the gross income realized by each such concession or special event during the term of the Lease. A special event is defined as any event in which the participants (groups or individuals) pay an entry fee to the Tenant. Tenant shall make this payment to the Landlord within thirty (30) calendar days from the last day of each special event, together with a financial statement of the gross income from said event. Tenant shall keep true and accurate books and records of each special event. Said books and records shall be retained for at least two (2) years after occurrence of the events

to which they relate. Landlord, and/or its designee, shall have the right at reasonable periods and at all reasonable times, and upon at least five (5) days' advance notice to Tenant to inspect such books and records. Income from special events does not include any grants or donations Tenant receives.

2. If any special event is likely to preclude some or all users of Aquatic Park from exercising a different use, and/or is a regatta, race, or pageant in Aquatic Park and/or on the Main Lagoon, Tenant shall first obtain a permit from the City, as required by Resolution No. 58,644-N.S. and Section 6.04.060 of the Berkeley Municipal Code. The fees for such permits shall be set by the City Council. Water use permits (by definition, for an event lasting no more than two weeks), may be issued by the Parks Recreation and Waterfront Department. Tenant understands that this Lease does not guarantee that the City, in its regulatory capacity, will grant any particular request for a permit. Tenant understands that the City may grant or deny such permit in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

C. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

D. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

E. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subsection D.1. No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other

remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

#### 4. **PROPERTY AND OTHER TAXES**

A. **Possessory Interest Taxes.** The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Property by reason of its use or occupancy thereof or otherwise.

B. **City of Berkeley Assessments.** Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Property by the City. Tenant acknowledges that City has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. The City reserves the right to create additional districts and to terminate any such district(s). Tenant shall be billed for each such assessment in the same manner as other property owners and lessees in the City.

C. **Personal Property and Other Taxes.** In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Property, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Property, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Property.

D. **Tenant's Right to Contest.** Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that



Landlord shall not be required to join in any proceeding or contest brought by Tenant.

**5. USE OF PROPERTY AND THE AQUATIC PARK MAIN LAGOON**

A. The Premises shall be used by Tenant to create a vibrant community space that draws young people, families, working artists, and other members of the public, to Aquatic Park to promote public access to the arts and arts training, enjoyment of live music and singing, and teaching in the performing arts. Tenant may use the Premises to hold workshops, classes, meetings, set and prop design and development, and other community events and activities related to its mission to produce live musical theatre for East Bay audiences.

B. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

C. Tenant understands the Main Lagoon may be used at Aquatic Park, if at all, only from May 1st through September 30th of each Lease Year on a schedule to be approved by the City of Berkeley's Director of Parks, Recreation, and Waterfront. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises and the Main Lagoon. Tenant must comply with all applicable regulations governing the use of the Main Lagoon and Aquatic Park. Tenant may not use any portion of the Main Lagoon from October 1<sup>st</sup> through April 30th, due to the fact that environmental studies show use during those months would impact migratory birds. Any use of the Main from May 1 through September 30 is subject to approval of the City Council and any other affected regulatory agency, and use of the Lagoon during this timeframe may be prohibited if environmental factors warrant it.

D. Prior to entering and using the Main Lagoon, tenant and all other persons must be covered by the insurance provisions of this Agreement. In addition, Tenant, or any other person entering and using the Main Lagoon shall sign a waiver and release form to be provided by the Tenant that holds the City of Berkeley harmless in case of any accidents or loss of any type. Such release shall include, but not be limited to, the following:

"Participant releases and forever discharges the City of Berkeley, its divisions, subsidiaries, affiliates, officers, agents, employees, and the heirs, executors or assigns of any of the foregoing, from any and all claims, demands, and causes of action of every kind, known or unknown, whether based in tort, contract, breach of warranty, strict liability, negligence or any other legal theory of recovery, and whether for general, special, compensatory or punitive damages, arising out of or in any way related to use of the Main Lagoon at Aquatic Park."

In the event Tenant fails to obtain a signed waiver and release form from any participant who uses the Main Lagoon or is in way connected to the use of the Main Lagoon, Tenant at all times will still be bound by Section 14 of this Agreement.

E. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants are properly supervised to prevent injury to participants and others. Tenant will provide adequate supervision of the participants at all times while using the Premises and/or Main Lagoon.



F. Landlord shall have no responsibility for Tenant's equipment that may be lost, stolen, or damaged.

G. No items will be allowed to be stored in the exterior Premises without written approval by Landlord, but in no circumstances shall items not related to the Tenant's programs be allowed to be stored on the Premises, either inside or outside.

H. Tenant agrees to require its employees and participants who use the Premises and/or Main Lagoon to respect other Aquatic Park lessees, licensees and visitors and to abide by standards of behavior common to the sport of rowing, bike riding, and general park use.

I. Business may be conducted with the public on the Premises at any time on any day that Aquatic Park is open, provided that Tenant shall have obtained all required permits and provided Tenant shall comply with all rules applicable to Aquatic Park.

J. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held on the Property.

K. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises or within Aquatic Park any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;
2. place or permit the use in or on the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks or other coin operated devices (excepting pay telephones).
3. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;
4. store, display or sell goods or merchandise on the Property or place or permit portable signs or other devices to be stored or to remain on the Property;
5. use or permit any portion of the Premises to be used as living or sleeping quarters; and
6. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of Aquatic Park.

L. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering Aquatic Park or the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon

Aquatic Park or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises or the Aquatic Park which increases the existing rate of such insurance upon Aquatic Park or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of Aquatic Park, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

M. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

N. Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises or the Building; (iv) impair or interfere with the proper operation and maintenance of the Premises and/or Aquatic Park; or (v) violate any of Tenant's other obligations under this Lease.

O. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

P. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of Aquatic Park or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

## **6. USE OF AQUATIC PARK PROPERTY**

A. The parties acknowledge that Tenant has, as a member of the general public, the non-exclusive right, in common with others duly authorized by Landlord, and subject to all generally applicable laws and regulations, to use Aquatic Park, including the Main Lagoon.

B. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or

cause to be undertaken any development or redevelopment of the Property or Aquatic Park, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to Aquatic Park (other than to the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning Aquatic Park, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

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

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's members, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of those using the Premises and/or the Main Lagoon pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for Aquatic Park or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant 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 illegal acts. Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Tenant or any other person or entity.

F. Tenant will use its best efforts to maintain effective relations with other users of Aquatic Park and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the sensitive environment of Aquatic Park. Landlord has the right at any time to revise the traffic flow on Bolivar Drive, provided Tenant continues to have vehicular access to the Premises.

G. Tenant shall not interfere with the free and unobstructed access by the public to Aquatic Park. Tenant shall not preclude other users of Aquatic Park from exercising a different use without first obtaining any and all appropriate permits. Tenant shall be obligated to permit such access to Aquatic Park as required for consistency with applicable laws of the State of

California, the Grant, and/or City's plans adopted from time to time; however, this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across, in or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

## **7. SERVICES**

A. Tenant shall make all arrangements for and pay for all utilities and services, including electric, gas, water, sewer, garbage and telephone, and all fees and periodic charges related thereto.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Property or Aquatic Park; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

## **8. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY**

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

## **9. ALTERATIONS AND IMPROVEMENTS**

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's

proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Property and the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Upon the execution of this Lease, Landlord approves and requires the improvements to the Premises listed on Exhibit "B" that shall be completed by Tenant. Tenant shall complete the improvements within the timeframe as stated in Exhibit "B" (Tenant's work). Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent except for the improvements listed in Exhibit "B". All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's work involves the Building structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiber glass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's work shall require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("BCDC") and/or any other governmental agency, Tenant shall not perform any of Tenant's work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Tenant acknowledges that a jet fuel line runs under the property, and any Tenant digging or excavation of any kind on the property must be approved in advance by Landlord and Parks Superintendent.

D. Except as otherwise expressly provided in this Lease, Tenant shall not repair, replace or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

E. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings or docks, or construction of any new buildings or docks, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of Exhibit "B") and

all improvements (including Exhibit "B" Improvements) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

F. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures (other than Exhibit "B" Improvements) that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

G. Except for Exhibit "B" Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000, including any applicable Exhibit "B" Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property at the termination of this Lease, except that Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Premises.

H. 1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Property. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's work covered by this subsection H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section



1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subsection, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subsection H.

#### **10. LIENS**

Tenant shall keep the Premises, the Building, and Aquatic Park free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

#### **11. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS**

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Building(s) on the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building(s), whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof or building structure.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within Aquatic Park as may be designated by Landlord for pick-up and disposal by the Landlord.

E. In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

G. Nothing in this Section 11 shall be deemed to affect or impair Landlord's rights under Section 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Landlord has made no representations respecting the condition of the Building, the Premises, or Aquatic Park, except as specifically set forth in this Lease.

## **12. ENVIRONMENTAL**

A. Tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Tenant shall minimize waste and recycle and compost, as per Recycling and Composting Guidelines for City Buildings. Guidelines for creating a recycling program are attached as Exhibit "D". Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Solid Waste Management Division.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City's Solid Waste Management Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.
7. Tenant shall conserve energy.

## **13. DAMAGE OR DESTRUCTION**

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Section 13) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its equipment and leasehold improvements.

B. Anything in subsection A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Premises or Buildings, as the case may be. If the



responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

#### **14. INDEMNIFICATION**

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, 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 Lease. 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 Tenant'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 Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant 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 Tenant from its separate and distinct obligation to defend Landlord. 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 Tenant 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, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease 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 Tenant or any of the Tenant'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 Tenant or its subcontractors, the Tenant 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.

## 15. INSURANCE

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, the Building, Aquatic Park or the Main Lagoon, with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises or Aquatic Park.

2. Special Form Property insurance for cost of damage to the Premises, including, without limitation, during any term of construction of Tenant's work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Section 35 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant,

within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Section 15 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

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

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's

Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord 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 Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant shall forward all insurance documents to:

Parks, Recreation & Waterfront Department  
City of Berkeley  
2180 Milvia St., 3<sup>rd</sup> Floor  
Berkeley, CA 94704

## 16. COMPLIANCE WITH LAWS

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises, including but not limited to the Bay Conservation and Development Commission. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for items listed on Exhibit "B". All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory

Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

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

## **17. ASSIGNMENT AND SUBLEASE**

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

## **18. INSPECTION**

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building or Aquatic Park; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

## **19. DEFAULT**

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

- A. Failure to Use Premises. Failure to use the Premises as specified in Sections 5 and 6.
- B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.
- C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.
- D. General Assignment. A general assignment by Tenant for the benefit of creditors.
- E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the



filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises and/or Aquatic Park by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of Aquatic Park and/or the Main Lagoon caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with lease term. Failure to perform any of the obligations and improvements listed on Exhibit "B", such failure continuing for 30 days after notice from the landlord of said default.

## **20. REMEDIES UPON DEFAULT**

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove

Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation After Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subsection A above. In such case, Landlord may enforce all its rights and remedies under this Lease, 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 Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages Upon Termination. Should Landlord terminate this Lease pursuant to subsection A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (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 Tenant 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 Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease 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 Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord 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 subsection C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

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. Landlord's waiver of any breach of a covenant or condition hereof, or



Landlord'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 Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant 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 Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

## 21. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored, treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the 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 Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Section 14 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or Aquatic Park by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for

the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or Aquatic Park, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this Section 21.C. shall survive the expiration or termination of this Lease.

## **22. LANDLORD'S RIGHT TO CURE**

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Section 19, Landlord, without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

## **23. EMINENT DOMAIN**

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary

repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

#### **24. SUBORDINATION**

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Aquatic Park, all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

#### **25. NO MERGER**

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

#### **26. TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of Aquatic Park shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

#### **27. ESTOPPEL CERTIFICATES**

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date

and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

## **28. HOLDING OVER**

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

## **29. CHANGES BY LANDLORD**

A. The description of the Premises and the location of any Premises utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of Aquatic Park, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

## **30. GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

## **31. SECURITY DEPOSIT**

As security for the full and faithful performance by Tenant of each and every term, provision,

covenant, and condition of this Lease, Tenant shall deposit with Landlord in an amount of **THREE HUNDRED DOLLARS (\$300)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

### **32. SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Section 32. If Tenant fails to do so, Landlord may enter upon the Premises and

remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in Aquatic Park.

**33. NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

**34. NO WAIVER**

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

**35. NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:** Youth Musical Theater Company  
1000 42nd Street  
Oakland, CA 94608

**To Landlord:** Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**With copy to:** City Manager  
City of Berkeley  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

Notices to Landlord regarding Hazardous Substances required by Section 21 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and



notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises

**36. COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

**37. REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

**38. INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

**39. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

**40. AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

**41. UNAVOIDABLE DELAYS**

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Section 41 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

**42. TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

**43. BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

**44. CITY NON-DISCRIMINATION ORDINANCE**

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

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

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

B. Tenant understands that this Lease is governed by City Council Resolution No.



58,664 – N.S.. This resolution, as may be amended from time, stipulates that Tenant's memberships policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

**45. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

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

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

**46. CONFLICT OF INTEREST PROHIBITED**

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

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

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

**47. NUCLEAR FREE BERKELEY**

Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as

amended from time to time.

**48. OPPRESSIVE STATES**

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

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

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

C. Tenant's failure to comply with this paragraph shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Section 19. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

**49. BERKELEY LIVING WAGE ORDINANCE (LWO)**

A. 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 mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this 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 Section 19 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance

with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

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

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 19.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**50. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)**

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

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Section 19 of this lease.

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

Tenant's failure to comply with this section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 20.

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.

**51. REQUIRED ACCESSIBILITY DISCLOSURE**

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

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

**52. AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**53. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

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

**54. SURVIVAL**

The provisions of this Lease and obligations of Tenant, that by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

**55. EXHIBITS**

Exhibits A, B, and C, and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.



**IN WITNESS WHEREOF**, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

**LANDLORD:**

**CITY OF BERKELEY**  
A municipal corporation

By: \_\_\_\_\_  
City Manager Date

Approved as to form:

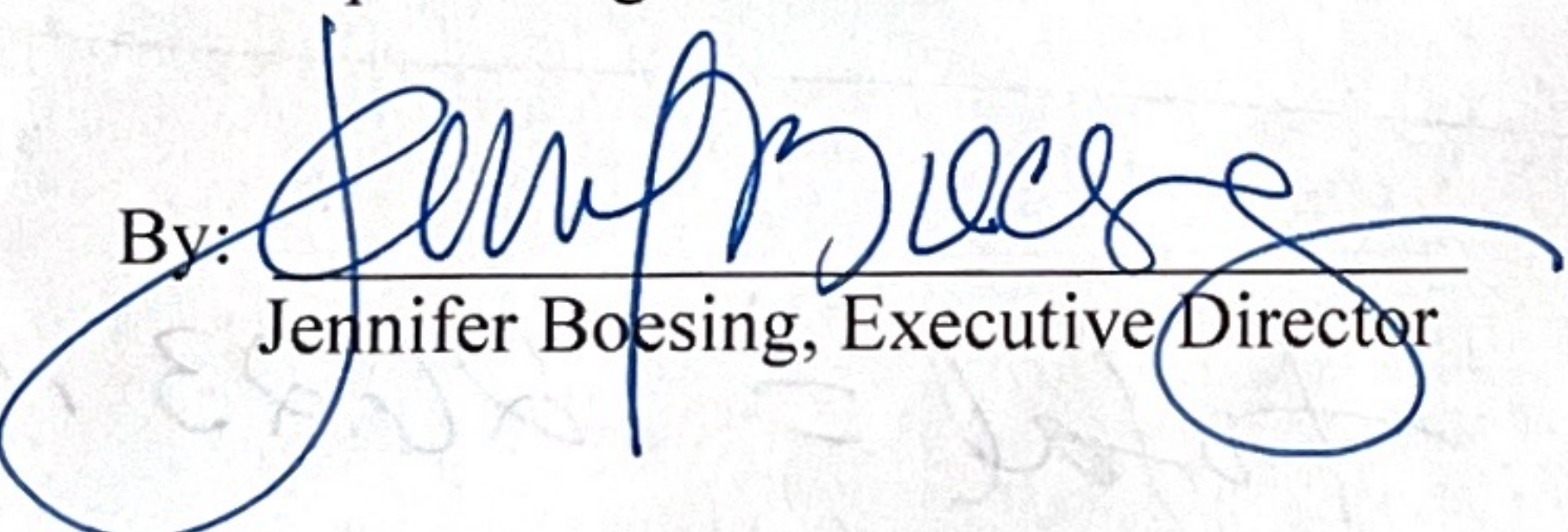
Registered by:

\_\_\_\_\_  
City Attorney Date City Auditor Date

Attest:

\_\_\_\_\_  
City Clerk Date

**TENANT:**  
**YOUTH MUSICAL THEATRE COMPANY**  
A non-profit organization

By:   
Jennifer Boesing, Executive Director

1/10/2024  
Date

**TENANT INFORMATION**

Tax Identification No.

Incorporated: Yes No

Certified Woman Business Enterprise: Yes No X

Certified Minority Business Enterprise: Yes No X

Certified Disadvantaged Business Enterprise: Yes No

City Business License No. 051951, or Exempt pursuant to B.M.C. Section \_\_\_\_\_



**Exhibit “A”: Leased Premises**

The Premises are located within Aquatic Park in the City of Berkeley, CA. The Premises consist of two wood-frame buildings, whose addresses are 2925 and 2945 Bolivar Drive. The Property includes the fenced-in yard around and between the two buildings. The Property does not include the 13’ x 9’ Tool Lock-Up Area within a fenced enclosure located 56 feet north of the NW corner of the building at 2925 Bolivar Drive. The Premises does not include any portion of the lagoon, or any docks or other appurtenances that extend into the lagoon. It does not include exclusive use of any of the surrounding Aquatic Park land beyond that mentioned above.

**Leased Premises:** ☒ Lease buildings  
☐ Leased exterior areas



## Exhibit "B" Schedule of Improvements

### Youth Musical Theater Company

| Year         | What/Location              | Description                                                       | Estimated Cost       |
|--------------|----------------------------|-------------------------------------------------------------------|----------------------|
| 2022         | Exterior                   | Create a new porch/ ADA landing space at front door of Building A | \$ 10,000            |
| 2022         | Exterior                   | Metal gate and framed re-entry                                    | \$ 9,000             |
| 2022         | Heating and cooling system | HVAC system (A/C plus air filtration system)                      | \$ 10,500            |
| 2024         | Landscaping                | Weeding and Planters near Building A                              | \$ 10,000            |
| 2025         | Heating and cooling system | Drainage and sump pump                                            | \$ 5,000             |
| 2026         | Painting                   | Rebuild/ Restoration of exterior paint                            | \$ 5,000             |
| 2027         | Flooring                   | New (sprung) floors in Building A                                 | \$ 18,000            |
| 2029         | Windows                    | New windows in Building A                                         | \$ 12,000            |
| 2030         | Heating and cooling system | Add heating system in Building B                                  | \$ 5,000             |
| 2033         | Door                       | Barn door off Building A                                          | \$ 45,000            |
| <b>TOTAL</b> |                            |                                                                   | <b>\$ 129,500.00</b> |

**Exhibit "C": Berkeley Municipal Code, Chapter 6.04**

Section 6.04.010 Definitions.

Chapter 6.04 BERKELEY AQUATIC PARK\*

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**Section 6.04.010 Definitions.**

For the purpose of this chapter certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that a different meaning is intended.

A. "Berkeley Aquatic Park" means that area owned or controlled by the City of Berkeley, bounded by the Eastshore Highway on the west, Third Street on the east, University Avenue on the north and Ashby Avenue on the south, which is used as an aquatic park.

B. "Concessionaire" means the lessee of the boating and other facilities at the Berkeley Aquatic Park.

C. "Lake" means the Berkeley Aquatic Park lake.

D. "Motorboat" means any and all types of motor-driven craft. (Ord. 3650-NS §§ 1, 1.1, 1.2, 1.3, 1.4, 1958)



## ORDINANCE NO. 7,931-N.S.

AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT FOR OFFICE SPACE FOR THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY AT 1900 ADDISON STREET

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

Section 1. FINDINGS

The City Manager, or their designee, is hereby authorized to execute a lease agreement with The Shamszad Family Living Trust for the property located at 1900 Addison Street with a lease term beginning on September 1, 2024 with an initial term of ten (10) years. The lease shall be on substantially the terms set forth in Exhibit A.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 1900 ADDISON STREET

The City Manager is hereby authorized to enter into a 10-year lease agreement with the option for a 10-year extension with The Shamszad Family Living Trust for real property located at 1900 Addison Street. Such lease shall be on substantially the terms set forth in Exhibit A.

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

At a regular meeting of the Council of the City of Berkeley held on July 23, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, Wengraf, and Arreguin.

Noes: None.

Absent: None.

## Exhibit A: Lease Terms and Conditions

## Exhibit B: Floor Plans

## Exhibit A: Lease Terms and Conditions

**LEASE**

**By and Between**

THE SHAMSZAD FAMILY LIVING TRUST  
("Landlord")

**and**

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

Dated: September 1, 2024





LEASE**BASIC LEASE INFORMATION**

1. Landlord: The Shamszad Family Living Trust  
2105 Martin Luther King Jr. Way, 2<sup>nd</sup> Floor  
Berkeley, CA 94704  
Attn: SG Real Estate, Inc.  
Telephone: 510-704-1240  
Email Address: Support@sgrealestateco.com
2. Tenant: City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704  
  
Tenant Contact: Public Works Department – Real Property  
1947 Center Street, 5<sup>th</sup> Floor, Suite 521  
Berkeley, CA 94704  
Phone: 510-981-6453  
Email Address: real\_property@berkeleyca.gov and  
DEarly@berkeleyca.gov
3. Effective Date: September 1, 2024
4. Premises: Approximately 5,150 rentable square feet of office space consisting of Suites 300 and 350 located on the third floor of the building commonly known and referred to as 1900 Addison Street, Berkeley, California 94704 (the “**Premises**”).
5. Permitted Uses: General office, administration, classrooms, and training functions including but not limited to the Police Accountability Board and the Office of the Director of Police Accountability. Any other associated or related legal uses shall be permitted.
6. Initial Term: Ten (10) year(s), commencing on the "**Effective Date.**"
7. Base Rent: Monthly Base Rent due during the Term shall be as per the following schedule:

| <u>Months</u> | <u>Monthly Rent</u> |
|---------------|---------------------|
| 01            | \$-0-               |
| 02 – 12       | \$13,647.50         |
| 13 – 24       | \$13,920.45         |

|           |             |
|-----------|-------------|
| 25 – 36   | \$14,198.86 |
| 37 – 48   | \$14,482.84 |
| 49 – 60   | \$14,772.49 |
| 61 – 72   | \$15,067.94 |
| 73 – 84   | \$15,369.30 |
| 85 – 96   | \$15,676.69 |
| 97 – 108  | \$15,990.22 |
| 109 – 120 | \$16,310.03 |

8. Interim Space: From June 1, 2024 through September 1, 2024 or when improvements to the Premises are complete and deemed occupiable, whichever comes first, the landlord agrees to provide alternative office space at 2020 Milvia Street, Berkeley, CA for the Tenant's use at no cost to the Tenant.

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 SS

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

## LEASE

This Lease Agreement ("**Lease**") is made and entered into as of the effective date specified in Section 3 of the Basic Lease Information, above ("**Effective Date**"), by and between The Shamszad Family Living Trust ("**Landlord**"), and the City of Berkeley, a Charter City organized and existing under the laws of the State of California ("**Tenant**").

### 1. **PREMISES.**

1.1. **Premises.** Landlord is the owner of the land parcel(s) on which the Premises are located (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.** 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.**" Tenant shall also have non-exclusive use of three (3) parking stalls located on the Property.

### 2. **TERM.**

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

2.2. **Renewal Terms.** Tenant shall have one (1) option to renew this Lease for a term of ten (10) years (a "**Renewal Term**").

2.2.1 **Rent during Renewal Term.** The Base Rent during each Renewal Term shall increase by two percent (2%). The Base Rent for the first year of the Renewal Term shall be equal to the last month Base Rent of the Initial Term times the two percent (2%) increase.

2.2.2 **Notice.** Tenant will provide Landlord with written notice of its election to renew the Lease with no less than four (4) months and not more than six (6) months, prior to the end of the Initial Term. If Tenants fails to provide such notice, its right to renew the Lease will not expire until fifteen (15) working days after the Tenant's receipt of Landlord's written demand that the Tenant exercise or forfeit the option to renew.

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

2.2.4 **Interim Space.** From June 1, 2024 through September 1, 2024 or when improvements to the Premises are complete and deemed occupiable, whichever comes first, the landlord agrees to provide alternative office space at 2020 Milvia Street, Berkeley, CA for the Tenant's use at no cost to the Tenant.

### 3. **RENT**

3.1. **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 3. 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 7 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If 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 30-day month.

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

### 4. **UTILITIES.**

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

4.2. **Tenant's Responsibilities.** Tenant will be responsible and pay for any security, telephone service, and information technology (IT) brought into the Premises.

4.3. **Conservation and Use Policies.** Landlord shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term.

### 5. **TAXES.**

5.1. **Taxes.** As used in this Lease "**Taxes**" includes Property Taxes, Possessory Interest Taxes and Personal Taxes. Landlord shall be responsible for paying all Taxes under this Lease.

5.2. **Property Taxes.** "**Property Taxes**" means and includes all of the following: all real property taxes, public infrastructure improvement assessments or any other assessments, levies, fees, exactions or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in lieu" of any such tax or assessment) which are assessed, levied, charged, conferred or imposed by any public authority upon the Property. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate or inheritance tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord.



## 6. INSURANCE.

6.1. Landlord. Landlord shall maintain insurance or an insurance equivalent insuring the Premises (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 6.1 is referred to herein as "**Landlord's Insurance.**"

6.2. Tenant. Tenant 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 against bodily injury and property damage, personal injury, completed operations and products liability. Tenant shall add Landlord as additionally insured to its policy for any property damage. Tenant shall insure Tenant's personal property located on or in the Premises. All such insurance or insurance equivalent maintained by Tenant pursuant to this Section 6.2 is referred to herein as "**Tenant's Insurance.**"

## 7. INDEMNITY; LIABILITY EXEMPTION.

7.1. Indemnity. Except to the extent claims are caused by Tenant's sole negligence or willful misconduct, Landlord shall indemnify, protect, defend, and hold harmless Tenant 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 Landlord's part to be performed under the terms of this Lease; (ii) Landlord's use of the Premises, the conduct of Landlord's business or any activity, work or thing done, permitted or suffered by Landlord in or about the Premises or the Property; or (iii) any act, error or omission of Landlord in or about the Property or any portion thereof (collectively, the "**Indemnification**"). Landlord shall provide such Indemnification by and through counsel reasonably acceptable to Tenant. Without limiting Landlord's Indemnification obligations, Tenant shall be entitled to participate in the defense of any third-party claim that is reasonably likely to give rise to Indemnification claim under this Section 7.1. The obligations of Landlord under this Section 7.1 shall survive the

expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

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

## 8. REPAIRS AND MAINTENANCE

8.1. Roof and Exterior of Premises. Landlord shall keep the roof and exterior of the Premises in good order, condition, and repair, and shall maintain the structural integrity of the Building, including the exterior doors and their fixtures, closers and hinges, exterior windows, glass and glazing, used in the Building. Tenant shall maintain all locks and key systems used in the Premises.

8.2. Interior of Premises. Tenant shall keep and maintain the interior of the Premises in good order, condition and repair. Notwithstanding anything to the contrary, Landlord shall repair damage to the interior caused by its failure to maintain the exterior in good repair, including damage to the interior caused by roof leaks and/or interior and exterior wall leaks. Landlord shall maintain and replace any lighting in the interior of the Premises.

8.3. Utilities. Landlord shall maintain the electrical, replace any lighting in the Premises, water, and plumbing systems of the Premises in good order, condition, and repair.

8.4. HVAC. Landlord shall maintain the heating, ventilating, and air-conditioning ("HVAC") systems of the Premises in good order, condition, and repair.

8.5. Parking, Exterior Lighting, Landscaping. Landlord shall maintain the parking lot, exterior lighting system, and landscaping, in good order, condition, and repair.

8.6. Janitorial Services. Landlord shall provide janitorial services to the common areas of the property on a daily basis and shall be responsible any plumber services, if necessary. Tenant shall be responsible for any janitorial cleaning of the Premises.

8.7. Services by Landlord. If Tenant determines that the Premises require maintenance, construction, remodeling, or similar service that is beyond Landlord's responsibilities under this lease, at Tenant's request, Landlord shall perform such service at Tenant's expense. In performing the service, Landlord shall consult with Tenant and use either licensed insured contractors or employees of Landlord. Landlord shall obtain Tenant's prior written approval of the scope, terms, and cost of any contracts. Tenant may, by Tenant giving Landlord thirty (30) days prior written notice, change the level of service, terminate any or all service, or require that a service be performed by a different contractor. Landlord has agreed to provide information technology (IT) work inside the Premises for Tenant, based on specifications provided by Tenant to Landlord's contractor. In addition, Tenant shall pay to Landlord for the above IT work based on a final invoice from Landlord's contractor.

## 9. ALTERATIONS.

9.1. Alterations. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace an alarm, access control, or other building security system.

9.2. 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.

9.3. Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of alterations or other work performed by or on behalf of Tenant. Upon the expiration or other termination of this Lease, Tenant shall remove Tenant's trade fixtures and other improvements, alterations and additions and restore the Premises to their condition existing prior to the construction or installation of any such items and perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under 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 (including 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 or the Property whatsoever and in strict accordance with all applicable Laws.

9.4. 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.

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

## **10. USE; INSPECTION; QUIET ENJOYMENT.**

10.1. Usage. The Premises shall be used only for the permitted uses set forth in Section 5 of the Basic Lease Information and for no other purpose without the prior written

consent of Landlord. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, any Tenant Improvements, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing when 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 any permit or license required by any governmental agency permitting Tenant's use of the Premises.

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

10.3. Quiet Enjoyment. Tenant may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Building. For so long as Tenant is in compliance with the material terms of this Lease, Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Term.

## 11. ENVIRONMENTAL MATTERS.

11.1. Hazardous Materials Defined. As used in this lease, the term "**Hazardous Materials**" refers to any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous 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.

11.2. Warranty; Hold Harmless. Landlord warrants that Landlord has no knowledge of the presence of any Hazardous Materials or other contamination in or under the Building or Premises in violation of any 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 concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials. Landlord shall defend, save, protect and hold Tenant harmless from any loss arising out of the presence of any Hazardous Materials on the Premises that was not brought to the Premises by or at the request of Tenant, its agents,

contractors, invitees or employees. Landlord acknowledges and agrees that Tenant has no obligation to clean up or remediate, or contribute to the cost of clean-up or remediation, of any Hazardous Materials unless such Hazardous Materials are released, discharged or spilled on or about the Premises by Tenant or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Lease

## 12. **DAMAGE AND DESTRUCTION.**

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

12.2. **Casualty.** If, during the Term, the Premises are totally or partially destroyed or utility Services are cut off from any cause rendering the Premises totally or partially inaccessible or unusable (the "**Casualty**"), and if the restoration can be made under then existing Laws and can be completed within one hundred twenty (120) days after obtaining all necessary permits therefor, 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 12.2, 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 Casualty, there shall be an abatement or reduction of Rent, between the date of Casualty 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 interferes with Tenant's use of the Premises.

12.3. **Tenant's Fault.** If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of 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 12.2, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.



12.4. Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 6.2 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 12.2.

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

### 13. EMINENT DOMAIN.

13.1. Effect on Rights and Obligations. If 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 number of square feet in the Premises is taken. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within 30 days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than 30 days nor later than 90 days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the 30-day period, this Lease shall continue in full force and effect, except that the 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. No condemnation of any kind shall be construed to constitute an actual or constructive eviction of Tenant or a breach of any express or implied covenant of quiet enjoyment.

13.2. Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise ("**Award**") and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the "**bonus value**" of the Lease).

### 14. DEFAULT.

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

14.1.1 As to Tenant: (i) Tenant's failure to pay Rent within ten business days after receipt of a written notice of such failure from Landlord to Tenant; provided, however, that Tenant will have additional time if its failure to pay Rent is due to circumstances beyond its reasonable control, including, without limitation, failure of the Tenant's City Council to adopt a budget. In no event may such additional time exceed seventy five (75) days from receipt of a written notice; (ii) Tenant's failure to comply with any other material term or provision of this Lease if such failure is not remedied within thirty days after receipt of a written notice specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of Tenant's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety days (90), provided Tenant commences curing such default within thirty (30) days and thereafter diligently proceeds to cure such default.

14.1.2 As to Landlord: (i) Landlord's failure to complete the Tenant Improvements in accordance with the Work; (ii) Landlord's failure to perform any other obligation under this lease if such failure is not remedied within thirty days after receipt of a written notice from Tenant to Landlord specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of Landlord's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of ninety days, provided Tenant commences curing such breach within thirty days and thereafter diligently proceeds to cure such breach.;

#### 14.2. Remedies.

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

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

14.2.2 Tenant's Remedies. Upon the occurrence of a default by Landlord, Tenant may (i) terminate this Lease by giving thirty (30) days written notice to Landlord and quit the Premises without further cost or obligation to Tenant or (ii) proceed to repair or correct the failure and, at Tenant's option, either deduct the cost thereof from Rent due to Landlord, or

invoice Landlord for the cost of repair, which invoice Landlord shall pay in full promptly upon receipt

14.3. Cumulative. Each right and remedy of Landlord or Tenant 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.

**15. ASSIGNMENT AND SUBLETTING.**

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

**16. ESTOPPEL, ATTORNMENT AND SUBORDINATION.**

16.1. Estoppel. Within thirty (30) 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; and (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). Landlord and Tenant intend that any statement delivered pursuant to this Section 16 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises, the Property 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. Except to the extent caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify and hold Landlord harmless from and against any and all damages, penalties, fines, taxes, costs, liabilities, losses and expenses (including, without limitation, reasonable attorneys' fees and court costs) which Landlord may sustain or incur as a result of or in connection with Tenant's failure or delay in delivering such estoppel certificate. If any financier should require that

this Lease be amended (other than in the description of the Premises, the Term, the permitted uses, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within thirty (30) days after the receipt of Landlord's notice, execute and deliver to Landlord the tendered Lease supplement.

16.2. 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 affect 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 at any time Landlord has a mortgage, loan, or other security instrument that is secured by a lien of a mortgage or deed of trust encumbering the Building, Landlord shall cause the lender(s) holding such lien to execute and deliver to Tenant a subordination, recognition and non-disturbance agreement in recordable form and in a form that is in substantial conformity with **Exhibit B** attached hereto. If requested, Tenant shall execute and deliver to Landlord within thirty (30) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 16.2.

16.3. 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 3.3 of this Lease or by operation of Law.

17. **PARKING.** The Landlord shall provide three (3) parking spaces to Tenant for a monthly fee of zero Dollars (\$0.00) per month during the Initial Term and any Renewal Periods.

18. **MISCELLANEOUS.**

18.1. General.

18.1.1 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.

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

18.1.3 Attorneys' Fees. If any action is commenced which arises out of or related to this Lease, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenses in the action, in addition to costs and expenses otherwise allowed by Law. In all other situations, including any matter arising out of or relating to any bankruptcy or other voluntary or

involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, Tenant agrees to pay all of Landlord's costs and expenses, including attorneys' fees and expert fees, which may be incurred in enforcing or protecting Landlord's rights or interests.

18.1.4 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.

18.1.5 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.

18.1.6 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.

18.1.7 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.

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

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

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

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

18.1.12 Fixtures and Signs. Tenant may (i) make any lawful and proper minor alterations to the Premises; (ii) attach fixtures and interior signs in and on the Premises; and attach signage on the exterior of Building ("**Tenant Fixtures**"). Any Tenant Fixtures will remain the property of Tenant and may be removed from the Premises by Tenant at any time during the Term. All alterations and Tenant Fixtures are subject to Landlord's approval, which shall not be unreasonably withheld, and must comply with existing code requirements. All Tenant Fixtures

shall be at Tenant's sole cost and expense. Installations and removals of Tenant Fixtures shall be made in such manner as to avoid injury or defacement of the Premises, and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Tenant Fixtures. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within thirty (30) days after receipt of such invoice.

18.1.13 Prior Possession. Prior to the Commencement Date, Tenant has the right to (i) install fixtures, telephone outlets and cabling, telephones, security systems, furniture, and other items in the Premises, and (ii) store supplies and equipment in the Premises, provided such work and storage can be affected without unduly interfering with Landlord's completion of the Tenant Improvements.

18.2. 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.

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

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

18.5. Brokerage Commission. Tenant represents that they have not been represented by any broker in connection with this Lease. Landlord has been represented by SG Real Estate in connection with this Lease, and that a real estate broker's commission ("**Commission**") is due or payable under a separate agreement with Landlord.

18.6. 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.



18.7. 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 the 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 Initial Term or any Renewal Term, as the case may be, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Base Rent during the holdover period an amount equal to 95% of Fair Market Rent. 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.

18.8. Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant shall peaceably and quietly leave and surrender to Landlord the Premises, along with appurtenances and fixtures at the Premises (except Tenant Fixtures), all in good condition, ordinary wear and tear, damage by casualty, condemnation, acts of God, and Landlord's failure to make repairs required of Landlord excepted. Tenant is not responsible for painting or for repairing or replacing any floor coverings in the Premises upon the expiration or earlier termination of this lease

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

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

18.11. 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 11.1), earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required, or any of its contractors or other representatives.

18.12. Accessibility; Disability Laws. The Premises have not undergone an inspection by a Certified Access Specialist.

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

Since compliance with the ADA and other federal and state disability laws (collectively, "**Disability Laws**") is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with Disability Laws. In the event that Tenant's use of the Premises requires modifications or additions to the Premises in order to be in compliance with Disability Laws, Landlord agrees to make any such necessary modifications and/or additions at Landlord's sole cost and expense.

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

**19. ADDENDUM.**

19.1. Attached hereto is an addendum constitutes a part of this Lease.

***[SIGNATURES FOLLOW ON NEXT PAGE]***

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

**TENANT:**

CITY OF BERKELEY, a California municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**APPROVED AS TO INSURANCE  
REQUIREMENTS:**

\_\_\_\_\_  
City Risk Manager

**--AND--**

**LANDLORD:**

THE SHAMSZAD FAMILY LIVING TRUST

By: Sasha Shamszad

Print Name: \_\_\_\_\_

Its: Sasha Shamszad

DocuSigned by:  
*Sasha Shamszad*  
B29F772F3AF544A...

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT A-2**

**Depiction of Premises**



## BUILDING INFORMATION:

PROJECT ADDRESS: 1900 ADDISON STREET  
BERKELEY, CA 94704 3RD FLR.

OCCUPANCY GROUP: B, BUSINESS  
CONSTRUCTION TYPE: TYPE VB  
ZONE DISTRICT: C-DMU BUFFER  
NO. OF STORIES: 3 STORIES (EXISTING) 15,254SF

PROJECT DESCRIPTION: 3RD FLR. TENANT  
IMPROVEMENT INTERIOR  
OFFICE PARTITION WALLS  
ADDITIONS / MODIFICATIONS

## VICINITY MAP:

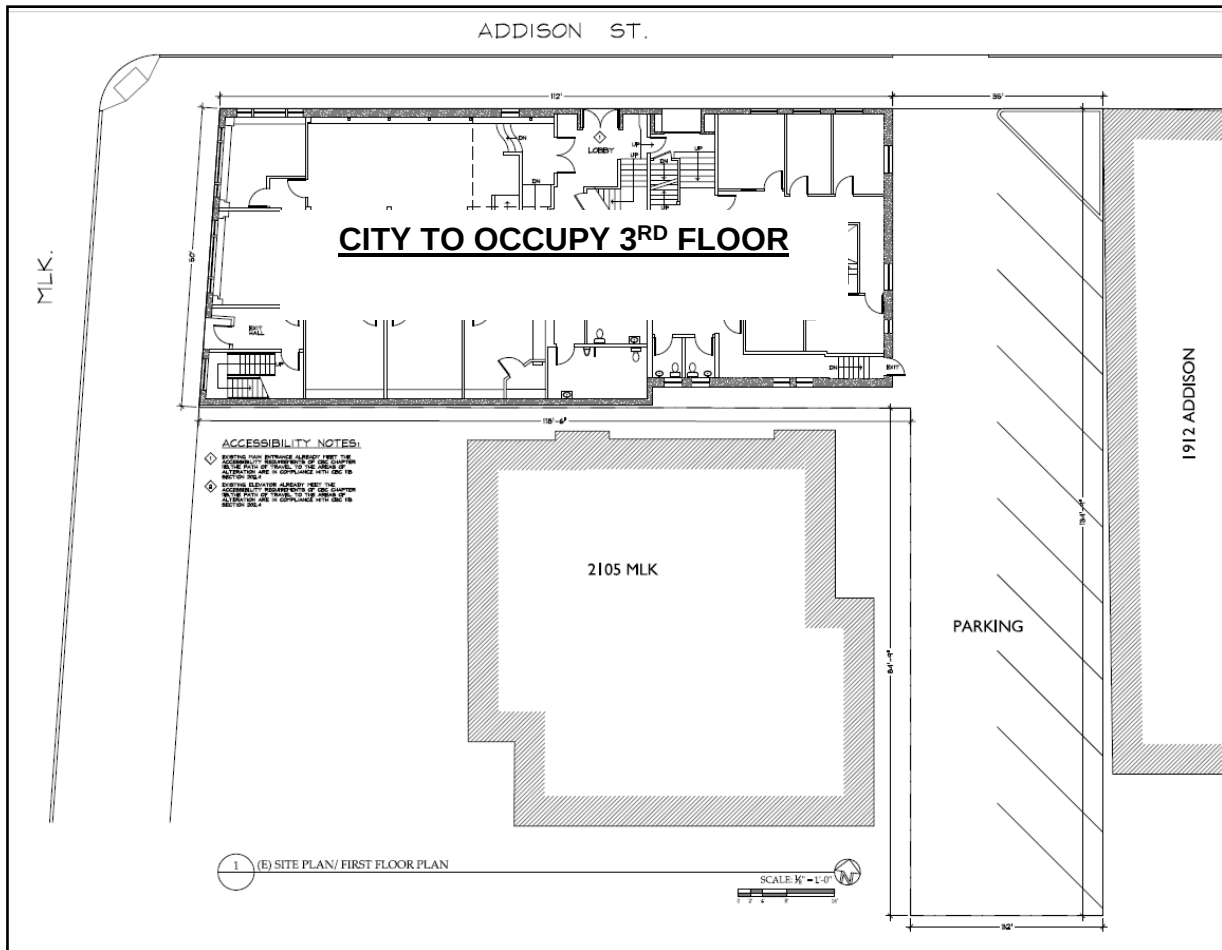
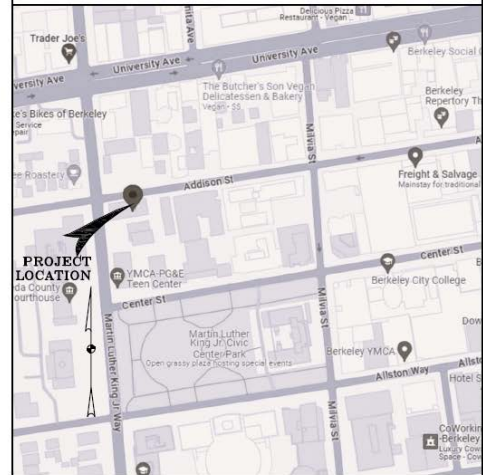


**EXHIBIT B**

Recorded at the request of:  
City of Berkeley

Return to:  
City of Berkeley  
Department of Public Works,  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704  
Assessor's Parcel No. 377-150-013

**Subordination, Non-Disturbance and Attornment Agreement**

This agreement is dated \_\_\_\_\_, 2024, and is between the City of Berkeley, a Charter City organized and existing under the laws of the State of California (the "Lessee"), \_\_\_\_\_, a \_\_\_\_\_, its successors and assigns (the "Lender"), having its principal place of business at \_\_\_\_\_.

**Recitals**

- A. Pursuant to a lease dated \_\_\_\_\_, 2024 (the "**Lease**") between the Lessee and The Shamszad Family Living Trust (the "Lessor"), Lessor is leasing to the Lessee certain space in the building located at 1900 Addison Street, Berkeley, CA, more fully described in Exhibit C attached hereto and made a part hereof (the "Property").
- B. Lender has previously made a loan (the "**Loan**") to Lessee that is secured, in part, by the lien of a mortgage or deed of trust executed and delivered by Lessee to Lender encumbering the Property (the "**Mortgage**") and an assignment of all leases of and rents from the Property
- C. This agreement is being executed by the parties in accordance with the requirements of Section 9 of the Lease.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Lessor hereby represents, acknowledges and agrees as follows:
  - (a) The term of the Lease commences on \_\_\_\_\_ and will terminate on \_\_\_\_\_.

- (c) The current monthly rent payment under the Lease is set forth in Section A.3 of the Lease. No advance rents have been prepaid.
- (d) In addition to monthly rent payments, the Lessor is responsible for a portion of the cost of improvements to the Premises.
- (e) The improvements described in the Lease have not been completed or accepted by Lessor.
- (f) Lessor has not sublet any portion of the leased premises or assigned any of its rights under the Lease.
- (g) Upon its execution, the Lease will be in full force and effect.
- (h) All rent payments will be paid as provided under the Lease until Lessor has been otherwise notified by Lender or its successors and assigns.
- (i) If Lender provides Lessor with Lender's address for notification purposes, Lessor will deliver to Lender a copy of all notices Lessor delivers to or receives from Lessee.
- (j) Lessor will not look to Lender or its successors or assigns for the return of the security deposit, if any, under the Lease, except to the extent that such funds are delivered to Lender.

2. If Lender elects to foreclose the Mortgage, Lender will not join Lessor in summary or foreclosure proceedings unless required by applicable law (and then only to the extent so required) as long as Lessor has not amended the Lease without Lender's prior written consent and is not in default under the Lease.

3. In the event that Lender succeeds to the interest of Lessee under the Lease and there exists no default by Lessor under the Lease and Lessor has not amended the Lease without Lender's prior written consent, Lender agrees not to disturb or otherwise interfere with Lessee's possession of the leased premises for the unexpired term of the Lease, provided that Lender is not:

- (a) Liable for any act or omission of Lessor or any prior Lessor under Lease;
- (b) Subject to any offsets or defenses that Lessor might have against Lessee or any prior lessor
- (c) Bound by any rent or additional rent that Lessee might have paid for more than the current month to Lessor;
- (d) Bound by any amendment or modification of the Lease made without Lender's prior written consent; or

- (e) Liable for any security deposit Lessee might have paid to Lessor, except to the extent Lender has actually received said security deposit.

4. Upon Lender's succeeding to Lessor's interest under the Lease, Lessee covenants and agrees to attorn to Lender or a purchaser at a foreclosure or trustee's sale, to recognize such successor landlord as Lessor's landlord under the Lease, and to be bound by and perform all of the obligations and conditions imposed on Lessor by the Lease. If requested by Lender or any subsequent owner, Lessee shall execute a new lease with Lender, for a term equal to the remaining term of the Lease and otherwise containing the same provisions and covenants of the Lease.

5. Prior to terminating the Lease due to a default by Lessee thereunder, Lessor agrees to notify Lender of such default and give Lender the opportunity to cure such default within thirty (30) days of Lender's receipt of such notice (or, if such default cannot reasonably be cured within such thirty (30) day period, Lender will have such longer time as may be necessary to cure the default provided that Lender commences the cure within such period and diligently pursues the cure thereafter).

6. This agreement binds and inures to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

7. This agreement may be modified only in a writing duly executed by both parties.

The parties are signing this agreement as of the date set forth in the introductory clause.

**LESSEE**

CITY OF BERKELEY, a  
Charter City organized and existing  
under the laws of the State of California

By \_\_\_\_\_

Public Works Director

**LENDER**

Name of Lender, a

\_\_\_\_\_

By \_\_\_\_\_

Name  
Title

By \_\_\_\_\_

Name  
Title

**[Attach Notary Forms]**

## **ADDENDUM TO LEASE**

### **(City of Berkeley Standard Contract Provisions)**

This Addendum is attached to and made part of that certain Lease dated \_\_\_\_\_, 2024, between The Shamszad Family Living Trust ("Lessor" or "**Landlord**"), and City of Berkeley ("**Lessee**" or "**City**"), a Charter City organized and existing under the laws of the State of California, as Tenant. Capitalized terms not otherwise defined in this Addendum shall have the meaning given them in the Lease. The provisions of this Addendum shall prevail over any inconsistent or conflicting provisions of the Lease.

1. **Business License.** Landlord certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Landlord claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.
2. **Non-Discrimination Against Persons with Disabilities.**
  - a. If Landlord provides any aid, service or benefit to others on the City's behalf, Landlord 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. Landlord shall further observe and comply with all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.
  - b. If Landlord is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Lessor 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 Landlord. All Landlord's activities must be in accordance with these laws, Ordinances, codes, and regulations, and Landlord shall be solely responsible for complying therewith.
3. **City Non-Discrimination Ordinance.** Landlord agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Lessor agrees as follows:
  - a. Landlord 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. Landlord shall permit the City access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Lessee, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the City to monitor these non-discrimination provisions.
- 4. Nuclear Free Berkeley. Landlord agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.
- 5. Oppressive States.
  - a. In accordance with Resolution No. 59,853-N.S., Landlord certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:
    - 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 its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
  - b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.
  - c. Landlord's failure to comply with this section shall constitute a default of this lease and Lessee may terminate this lease pursuant to Section 14 of the Lease. In the event that the City terminates this lease due to a default under this provision, City may deem Lessor a non-responsible bidder for five (5) years from the date this lease is terminated.
- 6. Berkeley Living Wage Ordinance.
  - a. Landlord agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Landlord employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Landlord will be required to provide all eligible employees with Landlord mandated minimum compensation during the term of this Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

- b. Landlord shall be required to maintain all reasonable records and documents that would establish whether Landlord is subject to the City's Living Wage Ordinance ("**LWO**"). If Landlord is subject to the LWO, as defined therein, Lessor shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Landlord for health benefits, if any, for each of its employees providing services under the Lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Section 14 of the Lease.
- c. If Landlord is subject to the LWO, Landlord shall include the requirements of the Ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Landlord enters with regard to the subject Premises. Sublessors shall be required to comply with this Ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.
- d. If Landlord fails to comply with the requirements of this the LWO and this Lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- e. Landlord's failure to comply with this Section shall constitute default of the Lease, upon which the City may terminate this Lease pursuant to Section 14.
- f. In addition to any other remedies available by law or under the Lease, at the City's sole discretion, Landlord 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 Lessor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Landlord's breach.

7. Berkeley Equal Benefits Ordinance.

- a. Landlord hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Landlord is currently subject to the Berkeley Equal Benefits Ordinance, Lessor will be required to provide all eligible employees with Lessee mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.
- b. If Landlord is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Lessor agrees to supply the City with any records the Lessee deems



necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Section 14 of the Lease.

- c. If Landlord fails to comply with the requirements of this Section, Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
  - d. Landlord's failure to comply with this Section shall constitute default of the Lease, upon which Lessee may terminate this lease pursuant to Section 14.
  - e. In addition to any other remedies available by law or under the Lease, at the City's sole discretion, Landlord 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 Landlord's failure to provide its employees with equal benefits will result in damages being sustained by Lessee; 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 Landlord's breach.
8. Sanctuary City Contracting Ordinance. Landlord hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Landlord 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:

The Lessee's computer-network health and performance tools;  
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.

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

***[SIGNATURES FOLLOW ON NEXT PAGE]***

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

**TENANT:**

CITY OF BERKELEY, a California municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**APPROVED AS TO INSURANCE  
REQUIREMENTS:**

\_\_\_\_\_  
City Risk Manager

**--AND--**

**LANDLORD:**

THE SHAMSZAD FAMILY LIVING TRUST

By: Sasha Shamszad

Print Name: \_\_\_\_\_

Its: sasha Shamszad

DocuSigned by:

*Sasha Shamszad*

B29F772F3AF544A...

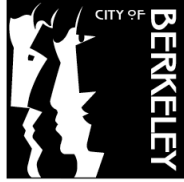
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

## Exhibit B: Floor Plans





## AGENDA

### BERKELEY CITY COUNCIL MEETING

**Tuesday, July 30, 2024**  
**6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – CECILIA LUNAPARRA  
DISTRICT 8 – MARK HUMBERT

*This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1611538218>. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 153 8218**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.*

*To submit a written communication for the City Council’s consideration and inclusion in the public record, email [council@berkeleyca.gov](mailto:council@berkeleyca.gov).*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.*

*Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.*

## Preliminary Matters

### Roll Call:

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

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

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

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

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

## Consent Calendar

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

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

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



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

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

## **Consent Calendar**

### **1. Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of June 3, 2024 (closed), June 4, 2024 (regular), June 14, 2024 (special), June 24, 2024 (closed), and June 25, 2024 (specials and regular).

**Financial Implications:** None

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

### **2. Contract No. 32400082 Amendment: The Wright Institute for Mental Health Counseling for Older Adults**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32400082 with The Wright Institute increasing the contract by \$200,000 for the provision of mental health counseling services to older adults in the Berkeley community, in a total amount not to exceed \$500,000. The new contract end date will be June 30, 2026.

**Financial Implications:** See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

### **3. Filling Human Welfare and Community Action Commission Public Sector Vacancies**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution confirming the appointments of up to three public sector commissioners to the Human Welfare and Community Action Commission (HWCAC), having been approved by the Health, Life Enrichment, Equity & Community Policy Committee at their July meeting.

2. Adopt a Resolution appointing Catherine Huchting, Mary Behm-Steinberg, and George Lippman to the HWCAC as private sector representatives.

**Financial Implications:** See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 4. Establish Classification and Salary – Public Health Investigator**  
**From: City Manager**  
**Recommendation:** Establish the job class specification and salary of Public Health Investigator with an hourly salary range of \$35.5512 - \$43.2127.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 5. Establish Classification and Salary – Assistant Fire Inspector**  
**From: City Manager**  
**Recommendation:** Establish the job class specification and salary of Assistant Fire Inspector with an hourly salary range of \$36.8038 - \$44.7352.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 6. Establish Classification and Salary – Veterinarian**  
**From: City Manager**  
**Recommendation:** Establish the job class specification and salary of Veterinarian with an hourly salary range of \$71.5295 - \$86.9445.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 7. Contract 10549C Amendment: Tyler Technologies Enterprise Resource Planning System for Ongoing Software Licensing, Maintenance Services, Implementation and Consulting Services, and Disaster Recovery Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10549C with Tyler Technologies for software licensing, maintenance services, implementation, consulting services, and disaster recovery services for the online Enterprise Resource Planning (ERP) system for the amount not to exceed \$1,000,000 and a total contract value not to exceed \$5,705,342.68 from April 1, 2017 to June 30, 2027.  
**Financial Implications:** IT Cost Allocation Fund - \$1,000,000  
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 8. Contract 31900042 Amendment: CivicPlus On-Line Recreation Reservation System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900042 with CivicPlus, Inc. for on-line recreation reservation system services to increase the contract amount by \$37,000, for a total not-to-exceed contract amount of \$153,756.  
**Financial Implications:** General Fund - \$37,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 9. Lot Line Adjustments at 1401 Carleton Street and 1423 Ward Street**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute lot line adjustments with 1401 Carleton Street and 1423 Ward Street to resolve main dwelling encroachments at the City's Santa Fe Trackbed to Park Conversion Project Site.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Lease Agreement: Youth Musical Theater Company for the Live Oak Theater at 1301 Shattuck Ave**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Youth Musical Theater Company (YMTC) for the use and management of the City's Live Oak Theater at 1301 Shattuck Avenue for a term of three years, anticipated to begin September 1, 2024 and ending August 31, 2027, with one five-year option.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 11. Revenue Grant: Cannabis Tax Fund Grant Program (CTFGP) Acceptance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the Chief of Police to accept the CTFGP grant and enter into the resultant grant agreement and any amendments, with the California Highway Patrol. This grant is for \$111,716.80 for the period of July 1, 2024 through June 30, 2025.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900
- 12. Purchase Order: National Auto Fleet Group for Prisoner Transport Vehicle Body Assembly Upgrade**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcwell bid procedures and authorize the City Manager to execute a purchase order for one Prisoner Transport Vehicle Body Assembly Upgrade with National Auto Fleet Group in an amount not to exceed \$340,000.  
**Financial Implications:** Various Funds - \$340,000  
Contact: Terrance Davis, Public Works, (510) 981-6300

## Consent Calendar

**13. Purchase Order: Turf Star, Inc. for Go-4 Parking Enforcement Vehicles**

**From: City Manager**

**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcwell bid procedures and authorize the City Manager to execute a purchase order for Go-4 Parking Enforcement Vehicles with Turf Star, Inc. in an amount not to exceed \$400,000.

**Financial Implications:** See report.

Contact: Terrance Davis, Public Works, (510) 981-6300

**14. Referral to Develop Curb Management Plan** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee)*

**From: Environment and Climate Commission**

**Recommendation:** Refer to the City Manager to fund and develop a Curb Management Plan.

*Policy Committee Recommendation: To send the item to Council with a positive recommendation, and that the item be taken up when additional funding for streets and infrastructure is approved and/or during the next budget process.*

**Financial Implications:** See report

Contact: Sarah Moore, Commission Secretary, (510) 981-7400

## Council Consent Items

**15. Referral to City Manager: Ashby BART Area Enhanced Infrastructure Finance District (EIFD) Analysis**

**From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor)**

**Recommendation:** Refer to the City Manager and City Attorney to return to Council with an analysis and recommended actions to initiate an Enhanced Infrastructure Finance District (EIFD) encompassing the Ashby BART station area, and consider:

1. Earmarked provisions of an EIFD to finance specific infrastructure and community development investments in an effort to actualize improvements to a Southern Plaza and greater Adeline Corridor adjacent to the West Lot, including benefits supporting impacted communities;
2. A preliminary analysis on additional, non-contiguous EIFD catchment areas that extend beyond the BART development sites; and
3. An EIFD Financial Plan that determines the funding potential of such a district or districts, including the total amount of tax revenue that could be generated through property taxes, transfer taxes, sales taxes, and other revenue, for associated infrastructure and public works improvements. These improvements may include, but are not limited to a Black Arts and Cultural District and associated facilities, and Berkeley Flea Market facilities.

Refer to the November 2024 AAO1 process up to \$100,000 for a) engaging a consultant to collaborate with the City Attorney, Planning and Finance Departments to prepare an EIFD Financial Plan, b) to initiate and conduct a community engagement process, and c) to establish an ad-hoc steering committee to guide this work consisting of residents, community-based organizations, the Planning Department, the Office of Economic Development, Civic Arts, and leaders involved in Equitable Black Berkeley work and the development of the Black Arts and Cultural District.

**Financial Implications:** General Fund - \$100,000

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

**16. Supporting the “Renewing Immigration Provisions of the Immigration Act of 1929 or “Registry Bill” (HR 1511 & SB2606)**

**From: Councilmember Lunaparra (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**

**Recommendation:** Adopt a Resolution Supporting the “Renewing Immigration Provisions of the Immigration Act of 1929 or “Registry Bill” (HR 1511 & SB2606) and endorsing the Northern California Coalition for Just Immigration Reform’s “Three-Day Walk for a Path to Citizenship” from San Jose to San Francisco on August 17-19, 2024.

**Financial Implications:** None

Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170

## Council Consent Items

### 17. **Berkeley Student Cooperative (BSC): Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**

**From: Councilmember Lunaparra (Author), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Lunaparra's discretionary fund and funds from any other Councilmembers who would like to contribute, to the Berkeley Student Cooperative (BSC) for the repair of the glass skylights above Casa Zimbabwe (CZ) with funds relinquished to the City's general fund for this purpose.

**Financial Implications:** Councilmember's Discretionary Funds - \$500

Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170

## Action Calendar

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

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

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

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

## Action Calendar – Scheduled Public Comment Period

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

## Action Calendar – New Business

### 18. **Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets**

**From: Auditor**

**Recommendation:** We recommend City Council request that the City Manager report back by January 2025 and at least annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Environmental Health Division. Recommendations include developing a plan to improve inspection coverage and response to alleged foodborne illness complaints, tracking program spending, taking steps to address staffing needs, and implementing placarding once the Division stabilizes. The Division agreed or partially agreed to our findings and recommendations. Please see our report for their complete response and the auditor's response.

**Financial Implications:** See report

Contact: Jenny Wong, Auditor, (510) 981-6750

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.*

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

*When applicable, 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.*



## Action Calendar – Public Hearings

### 19. ZAB Appeal: 2600 Tenth Street, Administrative Use Permit ZP2023-0031 From: City Manager

**Recommendation:** Conduct a public hearing, and upon conclusion, adopt a Resolution either:

A. Upholding the appeal and reversing the Zoning Adjustment Board (ZAB) decision, thereby approving Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot;

-OR-

B. Denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision, thereby denying Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot.

**Financial Implications:** None

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

## Information Reports

### 20. City Auditor Fiscal Year 2025 Audit Plan

**From:** Auditor

Contact: Jenny Wong, Auditor, (510) 981-6750

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

Archived indexed video streams are available at:

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

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

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

the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

Agendas and agenda reports may be accessed via the Internet at:  
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>  
and may be read at reference desks at the following locations:

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

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

#### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

~~~~~  
I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 18, 2024.

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

Mark Numainville, City Clerk

Communications

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

Item #18: Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets

1. David Lerman
2. Eric
3. Riti
4. Esther Brass-Chorin

City Senior Services to Councilmember Newsletters

5. Darlene Bronson on behalf of Margot Smith, Chair, Commission on Aging

Golden Gate Fields

6. Carole Marasovic, Chair, Commission on the Status of Women

UA Theater

7. Laura Linden
8. Lynn Sherrell
9. 29 Similarly worded form letters

Shipping Containers at 2556 Haste St.

10. 4 Similarly worded form letters

Aurora Theater

11. Olga Paredes
12. Eliron Hamburger

Harrison St. Concerns

13. Craig Nagasawa

Vandalism

14. Negeene Mosaed

A Request for When Making Statements

15. Josh

Lorin Commercial District

16. Teresa Clarke

Cal Sailing Club

17. Debbie Perkins

Notice of Street Closure

18. Ted Burton

Rise Gallery Walk at BCC

19. Adriana Betti

Wage Concern

20. Eric Cavallari

UC Anti-Labor Actions

21. Rafael Jaime on behalf of 48,000 UAW academic workers of the University of California

Storm Water

22. Maxwell Davis on behalf of the Sierra Club

Visit Berkeley

23. Jeffrey Church

Towing Concern

24. Charles Race

Terra Outdoor Proposal

25. Chantal Pearson

Newsletter

26. Vivian Warkentin

Middle East Conflict

27. Erwan Illian

URLs

28. Russbumper (9)

29. Erwan Illian (2)

Supplemental Communications and Reports

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

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



Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council
From: LaTanya Bellow, Interim City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of June 3, 2024 (closed), June 4, 2024 (regular), June 14, 2024 (special), June 24, 2024 (closed), and June 25, 2024 (specials and regular).

CONTACT PERSON

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

Attachments:

1. June 3, 2024-Special Closed City Council Meeting
2. June 4, 2024-Regular City Council Meeting
3. June 14, 2024-Special City Council Meeting
4. June 24, 2024-Special Closed City Council Meeting
5. June 25, 2024-Special 3:15 pm City Council Meeting
6. June 25, 2024-Special 3:30 pm City Council Meeting
7. June 25, 2024-Regular City Council Meeting

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, JUNE 3, 2024

3:00 P.M.

REDWOOD ROOM – 2180 MILVIA STREET, BERKELEY, CA 94704

TELECONFERENCE LOCATION – 1404 LE ROY AVE, BERKELEY, CA 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – VACANT

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1617883838>. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 788 3838**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.*

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Preliminary Matters

Roll Call: 3:10 p.m.

Present: Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: Kesarwani, Taplin, Bartlett

Public Comment - Limited to items on this agenda only – 3 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 SECTION 54956.9(d)(1) and (2)

a. Government Claim of Peter Wong

Action: M/S/C (Hahn/Humbert) to authorize the City Attorney to settle the claim of Peter Wong for property damage caused by a Zero Waste vehicle, in the amount of \$16,315.30.

Vote: Ayes – Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Taplin, Bartlett.

b. *Margaret Wotkyns v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 23CV031400

Action: No reportable action taken.

c. *Lisa Romero v. RI 1031 Gilman LLC, et al.*, Alameda County Superior Court Case No. RG21107163

Action: M/S/C (Arreguin/Lunaparra) to authorize the City Attorney to settle the case of *Lisa Romero v. RI 1031 Gilman LLC, et al.*, Alameda County Superior Court Case No. RG21107163 for \$25,000.00, in exchange for a release of all claims against the City.

Vote: Ayes – Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Taplin, Bartlett.

d. *Selamawit Tezare v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 23CV030502

Action: No reportable action taken.

e. *Scarlet Toor v. City of Berkeley et al.*, Alameda County Superior Court, Case No. RG21096521

Action: No reportable action taken.

2. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Anne Cardwell, Deputy City Manager, LaTanya Bellow, Deputy City Manager, Aram Kouyoumdjian, Human Resources Director, Jonathan Holtzman, Labor Negotiator, Dania Torres-Wong, Labor Negotiator, Burke Dunphy, Labor Negotiator

Employee Organizations: Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; Berkeley Police Association; SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Public Employee Union Local 1, Unrepresented Employees

Action: M/S/C (Hahn/Lunaparra) to approve amendments to Section 30.1 of the Memorandum of Understanding with Berkeley Fire Fighters Association and Section 4.2 of the Berkeley Chief Fire Officers Association, which have been accepted by those employee organizations.

Vote: Ayes – Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Taplin, Bartlett.

OPEN SESSION:

The City Council met in closed session on June 13, 2024 and took the following actions:

Authorized the City Attorney to settle the case of *Lisa Romero v. RI 1031 Gilman LLC, et al.*, Alameda County Superior Court Case No. RG21107163 for \$25,000.00, in exchange for a release of all claims against the City.

Authorized the City Attorney to settle the claim of Peter Wong for property damage caused by a Zero Waste vehicle, in the amount of \$16,315.30.

Approved amendments to Section 30.1 of the Memorandum of Understanding with Berkeley Fire Fighters Association and Section 4.2 of the Berkeley Chief Fire Officers Association, which have been accepted by those employee organizations.

Adjournment

Action: M/S/C (Arreguin/Hahn) to adjourn the meeting.

Vote: Ayes – Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Taplin, Bartlett.

Adjourned at 5:46 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on June 3, 2024.

Mark Numainville, City Clerk

MINUTES BERKELEY CITY COUNCIL MEETING

**Tuesday, June 4, 2024
6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – VACANT

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1607556641>. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter Meeting ID: **160 755 6641**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.*

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Preliminary Matters

Roll Call: 6:02 p.m.

Present: Taplin, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: Kesarwani, Bartlett

Councilmember Kesarwani present at 6:16 p.m.

Councilmember Bartlett present at 6:18 p.m.

Councilmember Bartlett participated in the meeting remotely under the just cause exception in the Brown Act as amended by AB 2449.

Report from Closed Session:

The City Council met in closed session on June 13, 2024 and took the following actions:

Authorized the City Attorney to settle the case of *Lisa Romero v. RI 1031 Gilman LLC, et al.*, Alameda County Superior Court Case No. RG21107163 for \$25,000.00, in exchange for a release of all claims against the City.

Authorized the City Attorney to settle the claim of Peter Wong for property damage caused by a Zero Waste vehicle, in the amount of \$16,315.30.

Approved amendments to Section 30.1 of the Memorandum of Understanding with Berkeley Fire Fighters Association and Section 4.2 of the Berkeley Chief Fire Officers Association, which have been accepted by those employee organizations.

The City Council met in closed session on May 13, 2024 and took the following action:

Approved settlement in the amount of \$60,952.92 to resolve FLSA and MOU claims by members of the Berkeley Fire Fighters Association regarding several add-on pays: Out of Class Pay, Hourly Differential Pay, Excess Sick Leave Payout, and cash-in-lieu of insurance pays.

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

Ceremonial Matters

1. Recognition of Berkeley Pride Day and the Pacific Center for Human Growth
2. Recognition of the Championship Winning Berkeley High School Speech and Debate Team

City Auditor Comments:

The City Auditor noted several items on the agenda including the Whistleblower Ordinance and the internal audit.

City Manager Comments: None

Public Comment on Non-Agenda Matters: 7 speakers.

Public Comment by Employee Unions: BFFA 1227; SEIU CSU/PTRLA; SEIU M&C

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 10 speakers.

Action: M/S/C (Arreguin/Wengraf) to add an urgent item to the agenda pursuant to Government Code Section 54954.2(b)(2) from the City Manager regarding an urgency ordinance for lease of property.

Vote: All Ayes.

Action: M/S/C (Hahn/Humbert) to add an urgent item to the agenda pursuant to Government Code Section 54954.2(b)(2) from Councilmember Hahn regarding parking permits for Berkeley High School employees.

Vote: All Ayes.

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

Vote: All Ayes.

Lease: Urgency Ordinance for leasing the real property at 1250-1288 9th Street, 1226 9th Street, 1249 8th Street, 1225 8th Street, 1223 8th Street, and 1221 8th Street

From: City Manager

Recommendation: Adopt an urgency Ordinance to enter into a lease for the real property located at: 1250-1288 9th Street beginning on 11/1/2024 for 240 months; 1226 9th Street beginning on 1/1/2027 for 214 months; 1249 8th Street beginning on 12/1/2024 for 239 months; 1225 8th Street beginning on 12/1/2024 for 239 months; 1223 8th Street beginning on 12/1/2024 for 239 months; 1221 8th Street beginning on 7/1/2025 for 232 months.

Financial Implications: See Report

Contact: David Sprague, Fire Chief, (510) 981-3473

Action: Adopted Ordinance 7,923-N.S. Effective immediately.

Consent Calendar

Clarification of City Policy on Implementation of Neighborhood Servicing Community Facilities (NSCF) Residential Preferential Parking (RPP) permits for Berkeley High School (BHS)

Recommendation: Adopt a Resolution re-approving the findings and direction provided by the City Council on January 16, 2024 and clarifying that, for purposes of Berkeley High School's Neighborhood Servicing Community Facilities RPP permits, the calculation of the number of permits to be issued shall be as follows: - Multiply the total number of Employees, as defined by Council action on January 16, 2024, by 0.6 to yield the *Maximum Permit Number*; - Subtract the number of parking spaces provided by BHS for Employees from the total number of Employees to yield the *Unparked BHS Employee Number*; - Issue permits for all BHS Employees for whom permits have been requested, up to the *Unparked BHS Employee Number* or *Maximum Permit Number*, whichever is lower/less.

Financial Implications: See Report

Contact: Councilmember Sophie Hahn (510) 981-7150

Action: Adopted Resolution No. 71,358-N.S.

1. Repeal of Berkeley Municipal Code Chapter 12.80

From: City Attorney

Recommendation: Adopt second reading of Ordinance No. 7,907-N.S. repealing Chapter 12.80 to the Berkeley Municipal Code (BMC), which bans natural gas infrastructure in new construction. In *California Restaurant Association v. City of Berkeley*, the 9th Circuit Court of Appeals found this ordinance unlawful. Repeal is required by the parties' settlement agreement and would resolve the litigation.

First Reading Vote: All Ayes.

Financial Implications: None

Contact: Farimah Brown, City Attorney, (510) 981-6950

Action: Adopted second reading of Ordinance No. 7,907–N.S.

2. Amendment: FY 2024 Annual Appropriations Ordinance

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,908-N.S. amending the FY 2024 Annual Appropriations Ordinance No. 7,892–N.S. for fiscal year 2024 based upon recommended re-appropriation of committed FY 2023 funding and other adjustments in the amount of \$64,638,405 (gross) and \$52,765,663 (net).

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Action: Adopted second reading of Ordinance No. 7,908–N.S.

Consent Calendar

3. **Revised Fees for Public Use of City-Owned Electric Vehicle Charging Ports; Amending Berkeley Municipal Code Section 6.24.137**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,909-N.S. amending Berkeley Municipal Code (BMC) Section 6.24.137, Designation of and Restrictions for Electric Vehicle Parking Spaces, to: -Establish a schedule of rates for electric vehicle charging stations, and -Authorize the City Manager or her Designee to adjust the rates in accordance with the California Public Utility Commission's electricity rate increases.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted second reading of Ordinance No. 7,909–N.S.
4. **Amendment to Commissioner Leave of Absence Process**
From: Mayor Arreguin (Author)
Recommendation: Adopt second reading of Ordinance No. 7,911-N.S. amending Berkeley Municipal Code (BMC) Section 3.02 to allow the Mayor to approve a Leave of Absence for a Commissioner appointed by the Council as a whole.
First Reading Vote: Ayes – Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Wengraf, Arreguin; Absent – Taplin.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted second reading of Ordinance No. 7,911–N.S.
5. **Contract: Amira Jackmon Attorney at Law, for Lorin and Gilman Parking Benefit District Formation Services**
From: City Attorney, City Manager
Recommendation: Adopt a Resolution authorizing the City Attorney, acting on behalf of the Office of Economic Development to execute a contract and any necessary amendments with Amira Jackmon, Attorney at Law, for an amount not to exceed \$70,000 for the development of parking benefit districts in the Lorin business district of South Berkeley and the Gilman district in West Berkeley.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950, Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 71,359–N.S.
6. **Assessments: Berkeley Tourism Business Improvement District**
From: City Manager
Recommendation: Adopt a Resolution approving the Annual Planning Report and preliminary budget for Fiscal Year 2025 (FY25) for the Berkeley Tourism Business Improvement District (BTBID) as recommended by the BTBID Owners' Association.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 71,360–N.S.

Consent Calendar

7. **Assessments: North Shattuck Property Based Business Improvement District**
From: City Manager
Recommendation: Adopt a Resolution approving the North Shattuck Property Based Business Improvement District (NSBID) Annual Report of Fiscal Year (FY) 2024 and proposed budget for FY 2025, and declaring Council's intention to levy an annual assessment for the NSBID for FY 2025.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 71,361–N.S.

8. **Assessments: Telegraph Property Based Business Improvement District**
From: City Manager
Recommendation: Adopt a Resolution approving the Telegraph Property Based Business Improvement District (TBID) Annual Report of Fiscal Year (FY) 2024 and proposed budget for FY 2025, and declaring Council's intention to levy an annual assessment for the TBID for FY 2025.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 71,362–N.S.

9. **Assessments: Downtown Berkeley Property Based Business Improvement District**
From: City Manager
Recommendation: Adopt a Resolution approving the Downtown Berkeley Property Based Business Improvement District (DPBID) Annual Report of Fiscal Year (FY) 2024 and proposed budget for FY 2025, and declaring Council's intention to levy an annual assessment for the DPBID for FY 2025.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 71,363–N.S.

10. **Contracts: Fine Art Services Providers for the Public Art Collection**
From: City Manager
Recommendation: Adopt three Resolutions authorizing the City Manager to execute three contracts and any associated amendments with the following companies for on-call fine art services for the City of Berkeley's Public Art Collection, for a contract period through June 30, 2026.
-Gizmo Art Production, Inc., for an amount not to exceed \$200,000.
-ARG Conservation Services for an amount not to exceed \$150,000.
-Modify the existing Atthowe Fine Art Service for amount not to exceed \$400,000 (thereby increasing Contract Number 32300137 by \$200,000).
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
Action: Adopted Resolution No. 71,364–N.S. (Gizmo); Resolution No. 71,365–N.S. (ARG); and Resolution No. 71,366–N.S. (Atthowe).

Consent Calendar

- 11. FY 2025 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0048%.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,912–N.S. Second reading scheduled for June 25, 2024.
- 12. FY 2025 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0064%.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,913–N.S. Second reading scheduled for June 25, 2024.
- 13. FY 2025 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0111%.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,914–N.S. Second reading scheduled for June 25, 2024.
- 14. FY 2025 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0136%.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,915–N.S. Second reading scheduled for June 25, 2024.

Consent Calendar

15. **FY 2025 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0250%.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,916–N.S. Second reading scheduled for June 25, 2024.

16. **FY 2025 Tax Rate: Business License Tax on Large Non-Profits**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for Business License Tax on large non-profits at \$0.8207 (82.07 cents) per square foot of improvements.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,917–N.S. Second reading scheduled for June 25, 2024.

17. **FY 2025 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.2210 (22.10 cents) per square foot of improvements.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,918–N.S. Second reading scheduled for June 25, 2024.

18. **FY 2025 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0468 (4.68 cents) per square foot of improvements.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,919–N.S. Second reading scheduled for June 25, 2024.

Consent Calendar

19. **FY 2025 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for funding the provision of emergency services for the disabled at \$0.02094 (2.094 cents) per square foot of improvements.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,920–N.S. Second reading scheduled for June 25, 2024.

20. **FY 2025 Tax Rate: Fund Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at the annual tax rate of \$0.1220 (12.20 cents) per square foot of improvements.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted first reading of Ordinance No. 7,921–N.S. Second reading scheduled for June 25, 2024.

21. **Temporary Appropriations FY 2025**
From: City Manager
Recommendation: Adopt a Resolution authorizing a temporary appropriation in the sum of \$50,000,000 to cover payroll and other expenses from July 1, 2024, until the effective date of the FY 2025 Annual Appropriations Ordinance.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted Resolution No. 71,367–N.S.

22. **Contract No. 32300165 Amendment: KLD Associates: Evacuation and Emergency Response Analysis**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend to Contract No. 32300165 with KLD Engineering, P.C. for evacuation and response time modeling to reassign to KLD Associates through June 30, 2026, and to provide an option to extend for an additional five (5) years and add \$200,000, making initial term plus extension NTE \$600,000 through June 30, 2031.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473
Action: Adopted Resolution No. 71,368–N.S.

Consent Calendar

- 23. Contract: Pinnacle for Pilot Fire Department Alternative Medical Response Unit**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Pinnacle Training Systems, LLC (Contractor) to provide nurse practitioner services for a pilot alternative medical response unit from June 17, 2024 to January 31, 2025 in an amount not to exceed \$510,000 with an option to extend for three additional one-year terms in a total not to exceed \$2,700,000.
Financial Implications: See report
 Contact: David Sprague, Fire, (510) 981-3473
Action: Adopted Resolution No. 71,369–N.S.
- 24. Contract: Tablet Command for Mobile CAD and Incident Command**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee(s) to enter into a contract and any amendments with Tablet Command for Mobile Computer Assisted Dispatch (Mobile CAD) and Incident Command by piggybacking on a contract with the Orange County Fire Authority (OCFA). The Berkeley contract will be effective July 1, 2024 and end on September 30, 2024 in an amount not to exceed \$77,250. Following an extension approved by the OCFA, the contract may be extended for up to four additional one-year renewal terms at a cost not to exceed an additional \$65,000 per year.
Financial Implications: See report
 Contact: David Sprague, Fire, (510) 981-3473
Action: Adopted Resolution No. 71,370–N.S.
- 25. Amending the Five-Year Plan and Submitting Application for Permanent Local Housing Allocation Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or the City Manager's designee to amend the five-year Permanent Local Housing Allocation plan and apply for and accept funds from the State of California's Permanent Local Housing Allocation Program, in an amount not to exceed \$3,321,617.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,371–N.S.

Consent Calendar

- 26. Contract No. 32300134 Amendment: Bonita House for Specialized Care Unit Provider**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 32300134 with Bonita House to add \$500,000 of funding from the American Rescue Plan Act grant for a total not-to-exceed contract amount of \$5,345,500.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,372–N.S.
- 27. Contract No. 32400236 Amendment: Creative Educational Consultants, Inc.**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend existing Contract No. 32400236 with Creative Educational Consultants, Inc., for the period beginning June 1, 2024, and ending June 30, 2025, as follows: 1) expand the scope to include additional positive youth development opportunities for African American/Black and Latinx Berkeley youth; 2) increase the contract limit by \$25,300 (from \$49,700 to \$75,000); and 3) extend the contract end date to June 30, 2025.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,373–N.S.
- 28. Contract No. 32300197 Amendment: Resource Development Associates for Results Based Accountability Consulting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32300197 for \$160,000 and any additional amendments or extensions, with Resource Development Associates (RDA) for Results Based Accountability consulting services. The contract amendment's not-to-exceed amount will be increased to a total of \$539,830 for the period July 1, 2023 through June 30, 2026.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,374–N.S.

Consent Calendar

29. Revenue Grant Agreements: Funding Support from Essential Access Health to Conduct Public Health Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit a grant application to Essential Access Health, to accept the grant, execute any resultant revenue agreement and amendment, and implement the projects and appropriation of funding for related expenses to conduct public health promotion, protection, and prevention services for the Essential Access Health revenue agreement in the projected amount of \$120,000 for April 1, 2024 to March 30, 2025. Grant funds will support clinical reproductive health services, as well as individual and community health education and outreach activities at the Berkeley High School Health Center and the Berkeley Technology Academy Health Center (the High School Health Centers).

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

Action: Adopted Resolution No. 71,375–N.S.

30. Shelter Plus Care Program Renewal Grants

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to receive up to the maximum grant award for the following Shelter Plus Care grants and to execute any resultant agreements and amendments. a. A Shelter Plus Care grant from U.S. Department of Housing and Urban Development (HUD) in the amount of \$2,327,914 for COACH Project (COACH) for the period of January 1, 2024 through December 31, 2024; and b. A federal Shelter Plus Care grant received via Alameda County in a not-to-exceed amount of \$927,164 to provide tenant-based rental assistance to individuals who are chronically homeless and disabled from March 1, 2024 through February 28, 2025; and c. Two Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD) that are estimated to be: 1. \$4,165,069 for Supportive Housing Collaborative Project (SHC) for the period June 1, 2024 through May 31, 2025; and 2. \$2,438,926 for COACH Project (COACH) for the period of January 1, 2025 through December 31, 2025.

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

Action: Adopted Resolution No. 71,376–N.S.

31. 2023 Police Equipment & Community Safety Ordinance Annual Report

From: City Manager

Recommendation: Adopt a Resolution approving the 2023 Equipment Ordinance Annual Report.

Financial Implications: See report

Contact: Jennifer Louis, Police, (510) 981-5900

Action: Adopted Resolution No. 71,377–N.S.

Consent Calendar

32. Active Transportation Program Cycle 7 Grant Funding Applications

From: City Manager

Recommendation: Adopt four Resolutions authorizing the City Manager to submit grant applications to the Caltrans Active Transportation Program (ATP) for the following projects: Southwest Berkeley Bike Boulevards for up to \$4 million; Adeline Street Quick-Build for up to \$1.05 million; accept the grants if awarded, and execute any resulting agreements and amendments. Two of these Resolutions are for applications to the Caltrans-administered ATP Statewide grant program, and two are applications to a regional sub-program, administered by the Metropolitan Transportation Commission (MTC).

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Adopted Resolution No. 71,378–N.S. (Bike Boulevards); Resolution No. 71,379–N.S. (Quick-Build); Resolution No. 71,380–N.S. (Local Support); and Resolution No. 71,381–N.S. (Application for Funding).

33. Authorize Purchase Order with National Auto Fleet Group for Twenty Ford Police Interceptor Utility (K8A) AWD Vehicles

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 bid procedures and authorizing the City Manager to execute a purchase order for twenty (20) Ford Police Interceptor Utility (K8A) AWD vehicles with the National Auto Fleet Group in an amount not to exceed \$1,269,808.20.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Adopted Resolution No. 71,382–N.S.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Humbert, Arreguin; Noes – None; Abstain – Lunaparra.

34. Contract: Edgeworth Integration, LLC for Installation of Security Cameras at Council-Approved Intersections; and Authorizing Additional External Fixed Video Surveillance Cameras

From: City Manager

Recommendation:

1. Adopt a Resolution authorizing the City Manager to execute a contract with Edgeworth Integration, LLC for purchase and installation of External Fixed Video Surveillance Cameras at fifteen council-approved locations, for an amount not to exceed \$850,000.

2. Adopt a Resolution to authorize the installation of additional External Fixed Video Surveillance Cameras under this contract scope should they be approved by City Council, included in the Surveillance Policy and funding appropriated.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Item 34 continued to the June 25, 2024 meeting, including Supplemental Materials from the City Manager.

Consent Calendar

35. FY 2024/2025 Transportation Development Act Article 3 Fund Allocation

From: City Manager

Recommendation: Adopt two Resolutions:

1. Authorizing the City Manager to: submit an allocation request to the Metropolitan Transportation Commission (MTC) prior to the June 14, 2024 deadline for \$151,950 of FY 24/25 Transportation Development Act (TDA) Article 3 funding to complete the Berkeley Bicycle Plan update.
2. Declaring that: the City of Berkeley is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code; there is no pending or threatened litigation that might adversely affect the project or projects described in Attachment B to this resolution, or that might impair the ability of the City of Berkeley to carry out the project; the project has been reviewed and supported by the Transportation and Infrastructure Commission (TIC) of the City of Berkeley; the City of Berkeley attests to the accuracy of and approves the statements in Attachment A to this resolution; and a certified copy of this resolution and its attachments, and any accompanying supporting materials, shall be forwarded to the Congestion Management Agency, countywide transportation planning agency, or County Association of Governments, as the case may be, of Alameda County for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Adopted Resolution No. 71,383–N.S. (Allocation Request); and Resolution No. 71,384–N.S. (Declaration).

36. Reappointment of Monica Renee Jones to the Mental Health Commission

From: Mental Health Commission

Recommendation: Adopt a Resolution approving the reappointing of Monica Renee Jones to the Mental Health Commission, as a representative of the General Public Interest Category for a second 3-year term beginning June 4, 2024 and ending June 3, 2027. During her first term she was a member of the youth subcommittee and was the Chair for the last year.

Financial Implications: None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Action: Adopted Resolution No. 71,385–N.S.

37. Contract: GPP Analytics Inc. for Independent Third-Party Audit of Payroll Audit Division

From: Auditor

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders with GPP Analytics Inc. in an amount not to exceed \$120,000 to conduct an independent performance audit of the City Auditor's Office's Payroll Division activities.

Financial Implications: See report

Contact: Jenny Wong, Auditor, (510) 981-6750

Action: Adopted Resolution No. 71,386–N.S.

Consent Calendar

38. Amendments to Berkeley's Municipal Code Chapter 2.24 to Establish Whistleblower Program Authority

From: Auditor

Recommendation: Adopt first reading of an ordinance amending City Auditor's Office (BMC Chapter 2.24) authority and scope of work to formally establish the City Auditor's authority to receive and refer reports of fraud, waste, or abuse as well as investigate those reports and any reports of retaliation against whistleblowers.

Financial Implications: See report

Contact: Jenny Wong, Auditor, (510) 981-6750

Action: Adopted first reading of Ordinance No. 7,922–N.S. Second reading scheduled for June 25, 2024.

Council Consent Items

39. Appointment of Interim City Manager

From: Mayor Arreguin

Recommendation: Adopt a Resolution approving the appointment of LaTanya Bellow as the Interim City Manager to be effective July 11, 2024 to September 15, 2024 at a prorated rate of pay based upon an annualized salary of \$401,722.10 for the period of service in this role, in addition to employee benefits, and approving an employment agreement.

Financial Implications: See report

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

Action: Adopted Resolution No. 71,387–N.S.

40. Appointment of City Manager

From: Mayor Arreguin

Recommendation: Adopt a Resolution approving the appointment of Paul Buddenhagen as the City Manager of the City of Berkeley to be effective September 16, 2024 at an annual salary of \$401,722.10 and additional employee benefits, and approving an employment agreement.

Financial Implications: See report

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

Action: Adopted Resolution No. 71,388–N.S.

Consent Calendar

41. **Berkeley Humane: Bark (& Meow) Around the Block: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds From: Councilmember Taplin (Author)**
Recommendation: Adopt a Resolution approving the expenditure of council office budget funds, including \$500 from Councilmember Taplin, to support the Back (& Meow) Around the Block adoption event hosted by Berkeley Humane, with funds relinquished to the City's general fund.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Councilmembers Wengraf, Hahn, and Bartlett added as co-sponsors. Adopted Resolution No. 71,389–N.S. including contributions from the following Councilmembers up to the amounts listed: Vice-Mayor Wengraf - \$250; Councilmember Humbert - \$500; Councilmember Hahn - \$250.
42. **Support for H.R. 7849 (Thompson and LaMalfa)**
From: Councilmember Wengraf (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a letter of support for the Disaster Resiliency and Coverage Act of 2024 (H.R. 7849, Thompson and LaMalfa) and send it to Representatives Mike Thompson, Doug LaMalfa, Barbara Lee and Senators Alex Padilla and Laphonza Butler.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Approved recommendation.

Action Calendar – Public Hearings

43. Modification and Adoption of Berkeley Fire Code Local Amendments and Incorporation of California Intervening Code Adoption Cycle Amendments Based on the 2022 California Fire Code

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt the second reading of Ordinance No. 7,903-N.S. which proposes to amend certain portions of Section 19.48.020 of the Berkeley Municipal Code (“Amendments to the California Fire Code”).

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: David Sprague, Fire, (510) 981-3473

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

M/S/C (Arreguin/Wengraf) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Wengraf) to adopt second reading of Ordinance No. 7,903-N.S.

Vote: All Ayes.

44. Re-Adoption of the Berkeley Building Codes, including Local Amendments to the 2022 California Building Standards Code

From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion adopt the second reading of Ordinance No. 7,906-N.S. repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions.

First Reading Vote: All Ayes.

Financial Implications: See report

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

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

M/S/C (Arreguin/Wengraf) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Wengraf) to adopt second reading of Ordinance No. 7,906-N.S.

Vote: All Ayes.

Action Calendar – Public Hearings

45. ZAB Appeal: 2113-15 Kittredge Street, Use Permit #ZP2022-0144

From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2022-0144 to demolish the commercial building on a landmarked site (preserving the front façade), and construct an 18-story (203 feet, with 8-foot, 4-inch parapet), 160,734-square-foot, mixed-use building with 211 dwelling units (including 22 Very Low-Income Density Bonus qualifying units), and a 24,273-square-foot live theater space, and dismiss the appeal.

Financial Implications: None

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

Public Testimony: The Mayor opened the public hearing. 7 speakers. M/S/C (Humbert/Taplin) to close the public hearing.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Lunaparra (Recused – considered and voted on the project as a member of the Zoning Adjustments Board).

Action: M/S/C (Humbert/Kesarwani) to adopt Resolution No. 71,390–N.S. affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2022-0144 to demolish the commercial building on a landmarked site (preserving the front façade), and construct an 18-story (203 feet, with 8-foot, 4-inch parapet), 160,734-square-foot, mixed-use building with 211 dwelling units (including 22 Very Low-Income Density Bonus qualifying units), and a 24,273-square-foot live theater space, and dismiss the appeal, with amendments to modify Conditions 41 and 42 and authorize staff to work with the applicant to finalize the language for Condition 42.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Lunaparra (Recused – considered and voted on the project as a member of the Zoning Adjustments Board).

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

Vote: All Ayes.

Action Calendar – New Business

46. Fiscal Years 2025 and 2026 Proposed Budget and Fiscal Years 2025-2029 Capital Improvement Program

From: City Manager

Recommendation: Receive the Proposed Fiscal Years 2025-2029 Capital Improvement Program and provide comments on the Capital Improvement Program and the Fiscal Years 2025 and 2026 Proposed Biennial Operating Budget.

Financial Implications: See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

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

Vote: All Ayes.

Action: 40 speakers. Presentations made on Capital Improvement Program.

Council Action Items

47. Amend Berkeley Municipal Code Chapter 3.78 To Expand Eligibility Requirements for Representatives of The Poor to Serve on The Human Welfare and Community Action Commission *(Reviewed by the Agenda & Rules Committee)*

From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor)

Recommendation: Amend Berkeley Municipal Code Chapter 3.78 to expand eligibility requirements for Representatives of the Poor to serve on the Human Welfare and Community Action Commission, or any successor commission, to consider the current geographic formation of poverty in Berkeley.

Policy Committee Recommendation: To send the item to the City Council with a negative recommendation.

Financial Implications: None

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

Action: Moved to the Consent Calendar. No action taken.

Public Comment – Items Not Listed on the Agenda - 2 speakers.

Adjournment

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

Vote: Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Taplin.

Adjourned at 11:25 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on June 4, 2024.

Mark Numainville, City Clerk

Communications

Item #45: ZAB Appeal: 2113-15 Kittredge Street, Use Permit #ZP2022-0144

1. Law Offices of HansonBridgett

Utility Undergrounding District #48 Project (UUD48)

2. Richard Pettler, Attorney for Gary and Anita Ingram

Retaining Wall and Transformer Installation at 1407 Grizzly Peak

3. Law Offices of Richard Pettler, on behalf of clients Gary and Anita Ingram

Rent Board Offices Closed

4. Robert Hagedorn

Narrow and Crowded Streets

5. Janet Huseby

Parking Lot at University and San Pablo

6. Ryan and Karin

Traffic Deaths

7. Charlotte Daniels

3031 Adeline Street Proposed Building

8. Lynn Cooper

District 7 Website

9. Erik Bigglestone

Merchants Advisement of Street Closures

10. Erik Bigglestone, on behalf of Games of Berkeley
11. Wahid Amiri, Deputy Director of Public Works/Engineering and Transportation (2)

Bay City Paving No Parking Signs

12. Daniel Auten

Support Waterside Workshops

13. Amir Bahman

No International Resolutions

14. Todd Andrew
15. Councilmember Hahn

Solano Stroll Safety

16. Todd Andrew, Chair Solano Avenue Business Improvement District

Berkeley Bike Park

17. Dan Leaverton

Stop Sign and Traffic Light Visibility

18. Cecelia Mautner

Public Nuisance Abatement Complaint for Barkmont

19. Greenfire Law

2274 Shattuck Development

20. Mark Federico Moreno

21. Laura Fujii

Councilmember Assistance

22. Sally Torrez

Kala Art Institute Thank You

23. Ellen Lake

Soliciting on Fourth Street

24. Brian Donahue

Trouble with World Government

25. Vivian Warkentin

Excessive Solar Permit Fees

26. Mathew Hirsch

26-Story Apartment Tower

27. David Lerman

Youth Walkout at King Middle School

28. Sarah Lefton

Cesar Chavez Park Methane Control & Radioactivity

29. Virginia Browning (2)

30. Rain Sussman

Memorial to Irish Students – Graffiti

31. Moni Law

Yom Haatzmaut (Israeli Independence Day)

32. Jewish Coalition of Berkeley

2023 Bayer Annual Report

33. Jennifer Cogley, on behalf of Bayer

2024 Police Accountability Report

34. Office of the Director of Police Accountability

1701 Hopkins

35. Keith Bayne (4)

Middle East Conflict

36. Kyra Ginsburg

37. Sholeh Asgary

38. Jon Jackson

39. Angelina Chen

40. Dorothea Dorenz

41. Aaron Katler

42. Erwan Illian

43. Russel Bates (5)

Supplemental Communications and Reports 1

Item #34: Contract: Edgeworth Integration LLC for Installation of Security Cameras at Council-Approved Intersections; and Authorizing Additional External Fixed Video Surveillance Cameras

44. Revised material, submitted by Public Works

Item 41: Berkeley Humane: Bark (& Meow) Around the Block: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

45. Supplemental material, submitted by Councilmember Taplin

Item #43: Modification and Adoption of Berkeley Fire Code Local Amendments and Incorporation of California Intervening Code Adoption Cycle Amendments Based on the 2022 California Fire Code

46. Janice Thomas

Item #44: Re-Adoption of the Berkeley Building Codes, including Local Amendments to the 2022 California Building Standards Codes

47. Janice Thomas

Supplemental Communications and Reports 2

Item #32: Active Transportation Program Cycle 7 Grant Funding Applications

48. Charles Siegel

Item #43: Modification and Adoption of Berkeley Fire Code Local Amendments and Incorporation of California Intervening Code Adoption Cycle Amendments Based on the 2022 California Fire Code

49. Janice Thomas

50. Mike Kelly

Item #44: Re-Adoption of the Berkeley Building Codes, including Local Amendments to the 2022 California Building Standards Codes

51. Janice Thomas

52. Mike Kelly

Item #45: ZAB Appeal: 2113-15 Kittredge Street, Use Permit #ZP2022-0144

53. Hanon Bridgett Law Firm

54. California Housing Defense Fund

Item #46: Fiscal Years 2025 and 2026 Proposed Budget and Fiscal Years 2025-2029 Capital Improvement Program

55. Parks, Recreation and Waterfront Commission

56. Troy Martinez

57. Jeremy Weintraub

58. Miranda Weintraub

59. Ellen Wu, on behalf of Urban Habitat

60. Rahel Smith

61. Susan Bassein

62. Alfred Twu

63. Foresta Sieck-Hill

64. Carolyn McKenzie, on behalf of Healthy Black Families

65. Supplemental material, submitted by City Manager's Office

Urgent Item

Clarification of City Policy on Implementation of Neighborhood Servicing Community Facilities (NSCF) Residential Preferential Parking (RPP) permits for Berkeley High School (BHS)

66. Urgent item, submitted by Councilmember Hahn

Lease: Urgency Ordinance for leasing the real property at 1250-1288 9th Street, 1226 9th Street, 1249 8th Street, 1225 8th Street, 1223 8th Street, and 1221 8th Street

67. Urgent Items, submitted by Fire Chief Sprague

Supplemental Communications and Reports 3

Item #23: Contract: Pinnacle for Pilot Fire Department Alternative Medical Response Unit

68. Andrea Prichett

Item #39: Appointment of Interim City Manager

69. Ben Gerhardstein

Item #43: Modification and Adoption of Berkeley Fire Code Local Amendments and Incorporation of California Intervening Code Adoption Cycle Amendments Based on the 2022 California Fire Code

70. Chief David Sprague

71. Janice Thomas

Item #44: Re-Adoption of the Berkeley Building Codes, including Local Amendments to the 2022 California Building Standards Codes

72. Chief David Sprague

73. Janice Thomas

Item #45: ZAB Appeal: 2113-15 Kittredge Street, Use Permit #ZP2022-0144

74. Alisha Pember

75. Kelilah Federman

76. Dylan Casey and James M. Lloyd on behalf of, California Housing Defense Fund

77. Sean Marciniak on behalf of Hanson Bridgett (4)

Item #46: Fiscal Years 2025 and 2026 Proposed Budget and Fiscal Years 2025-2029 Capital Improvement Program

78. Presentation, submitted by Budget and Fiscal Management

79. Presentation, submitted by Information Technology

80. Presentation, submitted by Parks, Recreation & Waterfront

81. Presentation, submitted by Public Works

82. Samatha Kanosky

83. Sophia DeWitt

84. Ben Gerhardstein

85. Peter Waller

86. Gregory Kalkanis

87. Berkeley Grassroots Leader Support Program

88. Young Lives Matter Foundation & the Berkeley Junior Jackets

Urgent Items

Clarification of City Policy on Implementation of Neighborhood Servicing Community Facilities (NSCF) Residential Preferential Parking (RPP) permits for Berkeley High School (BHS)

89. Urgent item, submitted by Councilmember Hahn

Lease: Urgency Ordinance for leasing the real property at 1250-1288 9th Street, 1226 9th Street, 1249 8th Street, 1225 8th Street, 1223 8th Street, and 1221 8th Street

90. Urgent item, submitted by Fire Chief David Sprague

91. John Caner (2)

92. Chief Sprague

Miscellaneous Communications
93. Eid

MINUTES SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

Friday, June 14, 2024

2:00 PM

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

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY, CA 94708

TELECONFERENCE LOCATION - 1619 EDITH STREET, BERKELEY, CA 94703

JESSE ARREGUIN, MAYOR
Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – VACANT

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://cityofberkeley-info.zoomgov.com/j/1618252464>. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 825 2464**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Preliminary Matters

Roll Call: 2:16 p.m.

Present: Kesarwani, Bartlett, Hahn, Lunaparra, Humbert, Arreguin

Absent: Taplin, Wengraf

Councilmember Wengraf present at 3:12 p.m.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 4 speakers.

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

Vote: Ayes – Kesarwani, Bartlett, Hahn, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Taplin, Wengraf.

Consent Calendar

- 1. Elections Code Section 9212 Reports on Initiative Ordinances “Control of Infectious Aerosols in City Buildings” and “Large Buildings Fossil Fuel Emissions Tax”**
From: Mayor Arreguin (Author)
Recommendation: Refer to the City Manager to prepare reports under the provisions of California Elections Code Section 9212 on two proposed ordinances that will appear before Berkeley voters on the November 5 ballot: The “Control of Infectious Aerosols in City Buildings” and “Large Buildings Fossil Fuel Emissions Tax” measures. Include analysis of costs to the City and other potential costs, City staffing implications, potential economic impacts and benefits, if any, on local businesses and city tax revenues, and feasibility of implementing the proposed initiative ordinances.
In addition, the Council welcomes any other information and analysis of potential interest to the City or the public, as determined by the City Manager and identified during the review process.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Approved recommendation revised to include consideration of additional factors such as the social cost of carbon, safety risks, gas use trajectory, and potential benefits for the fossil fuel tax initiative.

Action Calendar

2. Community Survey Results and Direction on Potential November 2024 Ballot Measures

From: City Manager

Recommendation: Review the results of the community survey and direct staff to prepare final language for City Council approval on July 30, 2024 for the following November 2024 revenue measures:

1. An amendment to the existing Parks Tax that results in 20% increase.
2. An amendment to the existing tax (Measure P) for general government use on transfers of real property at 2.5% of a property's value for properties valued \$1.5M or higher that increases the rate from 2.5% to 3% for properties valued \$3M or higher, increases the rate from 2.5% to 3.5% for properties valued \$10M or higher and removes its January 1, 2029 expiration date.
3. An amendment to the existing Sugar Sweetened Beverage Product Distribution Tax that removes the current 10-year expiration date of January 1, 2027.
4. Provide direction regarding next steps and timing related to a potential new tax that would support and expand performing and cultural arts institutions and programs in Berkeley, performing arts education activities in Berkeley's public schools, culturally-diverse arts programs, festivals and street fairs, and capital projects for art spaces.

Financial Implications: None at this time

Contact: Anne Cardwell, City Manager's Office, (510) 981-7000; Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Action: 5 speakers. M/S/C (Hahn/Arreguin) to direct staff to prepare ballot measure materials for the November 2024 election as follows.

- Parks Maintenance Tax increase at the 20% level.
- Measure P renewal with added tiers, "top one-third" provisions, and remove the expiration clause.
- Sugar-Sweetened Beverage Tax extension that removes the expiration clause.
- Revenue Measure for Arts Support and Programs – authorize Mayor Arreguin to work with staff and Lake Research on questions for a survey; begin drafting the measure with possible funding mechanisms of 2% TOT increase, maximum allowable sales tax increase, and 4-cents per square foot parcel tax; return to Council for consideration of the options and the polling results.

Vote: Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Taplin.

Adjournment

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

Vote: Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Taplin.

Adjourned at 5:10 p.m.

I hereby certify that the foregoing is a true and correct record of the special meeting held on June 14, 2024.

Mark Numainville, City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #1: Elections Code Section 9212 Reports on Initiative Ordinances “Control of Infectious Aerosols in City Buildings” and “Large Buildings Fossil Fuel Emissions Tax”

1. Laura X
2. Phoebe Thomas
3. Janice Schroeder
4. Daniel Tahara
5. Brianna McGuire
6. 6 similarly-worded form letters

Item #2: Community Survey Results and Direction on Potential November 2024 Ballot Measures

7. Presentation, submitted by City Manager’s Office
8. Kiran Shenoy(2)
9. Carole Marasovic
10. Barbara Gilbert

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, JUNE 24, 2024

4:30 P.M.

REDWOOD ROOM – 2180 MILVIA STREET, BERKELEY, CA 94704

TELECONFERENCE LOCATION – 1404 LE ROY AVE, BERKELEY, CA 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – VACANT

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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Preliminary Matters

Roll Call: 4:38 p.m.

Present: Taplin, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: Kesarwani, Bartlett

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 – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

In Re: National Prescription Opiate Litigation, United States District Court, Northern District of Ohio, Eastern Division, MDL 2804, Case No. 1:17-md-2804. Discussion and direction whether to participate in a new settlement with new Settling Defendant, Kroger Co., as part of the ongoing, nationwide settlements that are proposed to resolve all opioids litigation brought by states and local political subdivisions against various pharmacy chains, pharmaceutical manufacturers, and distributors. <https://oag.ca.gov/opioids> and <https://nationalopioidsettlement.com/>

Action: M/S/C (Arreguin/Taplin) to authorize the City Attorney to execute an agreement to opt in to the national opioid litigation settlement with Kroger: *In Re: National Prescription Opiate Litigation*, United States District Court, Northern District of Ohio, Eastern Division, MDL 2804, Case No. 1:17-MD-2804.

Vote: Ayes – Taplin, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Bartlett.

2. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Anne Cardwell, Deputy City Manager, LaTanya Bellow, Deputy City Manager, Aram Kouyoumdjian, Human Resources Director, Jonathan Holtzman, Labor Negotiator, Dania Torres-Wong, Labor Negotiator, Burke Dunphy, Labor Negotiator

Employee Organizations: Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; Berkeley Police Association; SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Public Employee Union Local 1, Unrepresented Employees

Action: No reportable action taken.

OPEN SESSION:

For agenda item 1, the council voted unanimously to authorize the City Attorney to execute an agreement to opt in to the national opioid litigation settlement with Kroger: *In Re: National Prescription Opiate Litigation*, United States District Court, Northern District of Ohio, Eastern Division, MDL 2804, Case No. 1:17-MD-2804.

Adjournment

Action: M/S/C (Arreguin/Hahn) to adjourn the meeting.

Vote: Ayes – Taplin, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Bartlett, Wengraf.

Adjourned at 6:03 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on June 24, 2024.

Mark Numainville, City Clerk

MINUTES SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

**Tuesday, June 25, 2024
3:15 PM**

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

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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Preliminary Matters

Roll Call: 3:24 p.m.

Present: Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: None

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 1 speaker.

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

Vote: All Ayes.

Consent Calendar

- 1. Confirming the Results of the May 28, 2024, Special Municipal Election**
From: City Manager
Recommendation: Adopt a Resolution confirming the results of the May 28, 2024 Special Municipal Election for City Council District 4.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Adopted Resolution No. 71,391–N.S.

Council Consent Items

- 2. City Council Committee and Regional Body Appointments**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution approving appointments to City Council Policy Committees, Partnership Committees and Regional Bodies, to include Councilmember Tregub and make other changes.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 71,392–N.S.
- 3. Seating Arrangements for Councilmembers during City Council Meetings**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution rescinding Resolution No. 70,632–N.S and changing the seating placement of City Councilmembers on the dais to accommodate the newly-elected Councilmembers, as follows (From left to right, facing the dais): Tregub, Humbert, Kesarwani, Bartlett, Arreguin, Wengraf, Hahn, Taplin, Lunaparra.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 71,393–N.S.

Adjournment

Action: M/S/C (Arreguin/Hahn) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 3:30 p.m.

I hereby certify that the foregoing is a true and correct record of the special meeting held on June 25, 2024.

Mark Numainville, City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

- None

MINUTES SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

**Tuesday, June 25, 2024
3:30 PM**

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

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY, CA 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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Preliminary Matters

Roll Call: 3:30 p.m.

Present: Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: None

Action Calendar – Public Hearings

1. Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 Demolition and Dwelling Unit Controls

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance regarding amendments to Berkeley Municipal Code Chapter 23.326 Demolition and Dwelling Unit Control Ordinance.

Financial Implications: See report

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

Public Testimony: The Mayor opened the public hearing. 10 speakers.

M/S/C (Arreguin/Lunaparra) to close the public hearing.

Vote: All Ayes.

Action: M/S/Failed (Lunaparra/Hahn) to adopt first reading of Ordinance No. 7,924–N.S. as published in the agenda packet.

Vote: Ayes – Bartlett, Hahn, Lunaparra; Noes – Kesarwani, Taplin, Wengraf, Humbert; Abstain – Tregub, Arreguin.

Action: M/S/Carried (Arreguin/Taplin) to adopt first reading of Ordinance No. 7,924–N.S. amended to include the definition of “Comparable Unit” from the supplemental materials submitted by Councilmember Kesarwani, and the added language proposed by staff in 23.326.030.D.2. Second reading scheduled for July 9, 2024.

Vote: Ayes – Taplin, Bartlett, Tregub, Hahn, Lunaparra, Arreguin; Noes – Kesarwani, Wengraf, Humbert.

Adjournment

Action: M/S/C (Arreguin/Taplin) 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 meeting held on June 25, 2024.

Mark Numainville, City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 Demolition and Dwelling Unit Controls

1. Revised material, submitted by Councilmember Kesarwani
2. Norma J F Harrison
3. MaryAnn Furda
4. Alfred
5. Chris Harrelson
6. Cliff Moser
7. Gregory Lemieux
8. Connie Clausen
9. Gary Miguel
10. Eric Johnson
11. Tawny Reynolds
12. Bert Ayers
13. Sarah Bell
14. Theo Posselt
15. Mariana Almeida
16. Frances C. Moore
17. Christine Goldin
18. Sean Kenmore
19. Jessica Fain
20. Chris Lee-Egan
21. Alisa
22. Sandra Smith
23. Tess Fruge
24. Maya Karpinski
25. Sheila Goldmacher
26. Judy MacLean
27. Elana Sulakshana

Supplemental Communications and Reports 3

28. Presentation, submitted by Planning & Development Department
29. Michael R. Hegarty
30. Joe Liesner
31. Karin Wertheim
32. Shiven Sankalia
33. The Berkeley Tenants Union
34. Joshua Rose
35. Matthew Lewis
36. Barry Fike

37. Shelley Pitts

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, June 25, 2024
6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
 DISTRICT 2 – TERRY TAPLIN
 DISTRICT 3 – BEN BARTLETT
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Preliminary Matters

Roll Call: 6:15 p.m.

Present: Kesarwani, Taplin, Bartlett, Tregub, Hahn, Lunaparra, Humbert, Arreguin

Absent: Wengraf

Councilmember Wengraf at 6:41 p.m.

Report from Closed Session

The Council met in closed session on June 24, 2024 and voted to authorize the City Attorney to execute an agreement to opt in to the national opioid litigation settlement with Kroger: *In Re: National Prescription Opiate Litigation*, United States District Court, Northern District of Ohio, Eastern Division, MDL 2804, Case No. 1:17-MD-2804.

Ceremonial Matters

1. Swearing-In of Newly-Elected District 4 Councilmember Igor Tregub
2. Honoring City Manager Dee Williams-Ridley for Her Years of Service to Berkeley

City Manager Comments:

The City Manager recognized the employee members of Team Unity, an employee group tasked with finding new programs for employee recognition as part of the Employer of Choice Initiative.

Public Comment by Employee Unions

Recess 7:12 p.m. – 7:23 p.m.

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 38 speakers.

Action: M/S/C (Arreguin/Tregub) to accept an urgency item from the City Manager pursuant to Government Code Section 54954.2(b)(2) entitled Contract Amendment: California Lake Research Partners, Inc. for Community Survey.

Vote: All Ayes.

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

Vote: All Ayes.

Consent Calendar

Urgent Item: Contract Amendment: California Lake Research Partners, Inc. for Community Survey

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or designee to amend the contract with California Lake Research Partners to add \$40,000 for a total not-to-exceed contract amount of \$80,000.

Financial Implications: See report

Contact: Anne Cardwell, City Manager's Office, (510) 981-7000, Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Action: Adopted Resolution No. 71,394–N.S.

1. **FY 2025 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,912–N.S. setting the FY 2025 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0048%.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,912–N.S.
2. **FY 2025 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,913–N.S. setting the FY 2025 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0064%.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,913–N.S.
3. **FY 2025 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,914–N.S. setting the FY 2025 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0111%.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,914–N.S.

Consent Calendar

4. **FY 2025 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,915–N.S. setting the FY 2025 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0136%.
First Reading Vote: All Ayes.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,915–N.S.
5. **FY 2025 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,916–N.S setting the FY 2025 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0250%.
First Reading Vote: All Ayes.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,916–N.S.
6. **FY 2025 Tax Rate: Business License Tax on Large Non-Profits**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,917–N.S. setting the FY 2025 tax rate for Business License Tax on large non-profits at \$0.8207 (82.07 cents) per square foot of improvements.
First Reading Vote: All Ayes.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,917–N.S.
7. **FY 2025 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**
From: City Manager
Recommendation: Adopt second reading Ordinance No. 7,918–N.S setting the FY 2025 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.2210 (22.10 cents) per square foot of improvements.
First Reading Vote: All Ayes.
Financial Implications: See report
 Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,918–N.S.

Consent Calendar

8. **FY 2025 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,919–N.S. setting the FY 2025 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0468 (4.68 cents) per square foot of improvements.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,919–N.S.
9. **FY 2025 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,920–N.S. setting the FY 2025 tax rate for funding the provision of emergency services for the disabled at \$0.02094 (2.094 cents) per square foot of improvements.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,920–N.S.
10. **FY 2025 Tax Rate: Fund Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,921–N.S. setting the FY 2025 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at the annual tax rate of \$0.1220 (12.20 cents) per square foot of improvements.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted second reading of Ordinance No. 7,921–N.S.
11. **Amendments to Berkeley’s Municipal Code Chapter 2.24 to Establish Whistleblower Program Authority**
From: Auditor
Recommendation: Adopt second reading of ordinance No. 7,922–N.S amending City Auditor’s Office (BMC Chapter 2.24) authority and scope of work to formally establishing the City Auditor’s authority to receive and refer reports of fraud, waste, or abuse as well as investigate those reports and any reports of retaliation against whistleblowers.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jenny Wong, Auditor, (510) 981-6750
Action: Adopted second reading of Ordinance No. 7,922–N.S.

Consent Calendar

12. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of April 26, 2024 (closed), May 6, 2024 (closed), May 7, 2024 (special) (4 p.m. & 4:15 p.m.), May 7, 2024 (regular), May 10, 2024 (closed), May 13, 2024 (closed), May 14, 2024 (special), May 14, 2024 (regular), May 21, 2024 (closed), May 21, 2024 (special), May 21, 2024 (regular), May 24, 2024 (special)

Financial Implications: None

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

Action: Approved the minutes as submitted.

13. Contract: Live Free for Gun Violence Intervention and Prevention Program: Custom Notification and Street Outreach Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Live Free USA (Contractor) to design, implement, and assess the Custom Notification and Street Outreach Services component of the City of Berkeley's Gun Violence Intervention and Prevention Program for a two-year pilot, in an amount not to exceed \$2,000,000 (\$1,000,000 per fiscal year).

Financial Implications: See report

Contact: Carianna Arredondo, City Manager's Office, (510) 981-7000

Action: Adopted Resolution No. 71,395–N.S.

14. FY 2025 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)

From: City Manager

Recommendation: Adopt first reading of an Ordinance setting the FY 2025 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.0629 (6.29 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.09519 (9.519 cents) per square foot of improvements.

Financial Implications: See report

Contact: Henry Oyekanmi, Finance, (510) 981-7300; David Sprague, Fire, (510) 981-3473

Action: Adopt first reading of Ordinance No. 7,925–N.S. Second reading scheduled for July 9, 2024.

Consent Calendar

15. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 25, 2024

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: See report

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

Action: Approved recommendation.

16. Appropriations Limit for FY 2025

From: City Manager

Recommendation: Adopt a Resolution establishing the appropriations limit at \$353,538,057 for FY 2025 pursuant to Article XIIB of the Constitution of the State of California based on the calculations for the appropriations limit.

Financial Implications: See report

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

Action: Adopted Resolution No. 71,396–N.S.

17. FY 2025 Reaffirming the Investment Policy and Designation of Investment Authority

From: City Manager

Recommendation: Adopt a Resolution reaffirming the Investment Policy (no revisions are recommended) and to confirm the delegation of investment authority to the Director of Finance to make investments for FY 2025.

Financial Implications: See report

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

Action: Adopted Resolution No. 71,397–N.S.

18. Agreement: City of El Cerrito Fire and Emergency Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a memorandum of understanding with the City of El Cerrito to provide year-round automatic aid in each jurisdiction for fire, technical rescue, emergency medical, and other emergency response, rescinding Resolutions No. 68,820-N.S and 66,821-N.S. and maintaining the existing mutual response area agreement until the year-round fire and emergency services agreement is ratified.

Financial Implications: See report

Contact: David Sprague, Fire, (510) 981-3473

Action: Adopted Resolution No. 71,398–N.S.

Consent Calendar

19. **Contract: Vector Solutions for Fire Records Management Software**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a piggyback contract and any amendments with Vector Solutions using the National Purchasing Partners (NPP) contract No. PS21095 in an amount not to exceed \$200,000 for Fire Department Records Management from July 1, 2024 through March 24, 2027 with one (1), three (3) year option to extend.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473
Action: Adopted Resolution No. 71,399–N.S.
20. **Purchase Order: Wildfire Defense Mesh**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a Purchase Order with Wildfire Defense Mesh from June 1, 2024 until May 31, 2027 in an amount not to exceed \$400,000 with an option to extend for an additional three (3) years.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473
Action: Adopted Resolution No. 71,400–N.S.
21. **Prioritizing City-Owned Land for Affordable Housing and Noticing of Potential Disposition of City-Owned Land**
From: City Manager
Recommendation: Adopt a Resolution affirming the City's commitment to prioritize City-owned land for affordable housing and publicly notice the potential disposition of City-owned land consistent with the Surplus Lands Act.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,401–N.S.
22. **Approving the Revised Operating Budget for Golden Bear Homes**
From: City Manager
Recommendation: Adopt a Resolution approving the revised operating budget for Golden Bear Homes (1620 San Pablo Avenue), with the understanding that the increased cost of operating the Homekey project may necessitate a future reservation of approximately \$550,000 in City funds, if other operating sources are not identified for the project.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,402–N.S.

Consent Calendar

- 23. Additional Development Funding Reservation for 1740 San Pablo Avenue**
From: City Manager
Recommendation: Adopt a Resolution:
 1. Reserving an additional \$4,496,669 in Housing Trust Fund (HTF) program funds for the development loan agreement for BRIDGE Housing Corporation's (BRIDGE) affordable housing project located at 1740 San Pablo Avenue.
 2. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate this action.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,403–N.S.
- 24. Revenue Grant Agreement: Funding Support from the State of California to Conduct Public Health Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to the State of California, to accept grant funding, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the Maternal, Child and Adolescent Health (MCAH) Program in the projected amount of \$375,000 for FY 2025.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,404–N.S.
- 25. Revenue Grant Agreements: Funding Support from Alameda County to Conduct Public Health Services**
From: City Manager
Recommendation: Adopt three Resolutions authorizing the City Manager or her designee to submit grant agreements to Alameda County, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the following four revenue agreements:
 1. Berkeley High School and Berkeley Technology Academy Health Center Programs in the projected amount of \$183,918 for Fiscal Year 2025.
 2. School Linked Health Services Program (Measure A Funding) in the projected amount of \$200,011 for Fiscal Year 2025.
 3. Tobacco Prevention Program in the projected amount of \$81,329 for Fiscal Year 2025.
Financial Implications: See report
 Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,405–N.S. (Berkeley High), Resolution No. 71,406–N.S. (School Linked), Resolution No. 71,407–N.S. (Tobacco Prevention).

Consent Calendar

26. Memorandum of Understanding: SEIU Local 1021 Maintenance & Clerical Chapters

From: City Manager

Recommendation: Adopt a Resolution 1) approving a successor Memorandum of Understanding (hereafter referred to as “MOU”) with the Service Employees International Union Local 1021 Maintenance and Clerical Chapters (hereafter referred to as the “Union”) for a three-year term from June 27, 2024 to July 26, 2027 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU and to make non-substantive edits to the format and language of the MOU in alignment with the tentative agreement, and conforming to legal requirements; and 2) approving a new Classification and Salary table for SEIU Local 1021 Maintenance and Clerical Chapter classifications that implement the salary adjustments reflected in the new MOU and supersede prior salary resolutions.

The terms of the proposed 2024-2027 MOU are within the parameters of authority approved by Council in closed session.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 71,408–N.S. including materials submitted in Supplemental Communications Packet #2 from the City Manager.

27. Unrepresented Employee Group Salaries, Longevity Differential, and Vision Insurance

From: City Manager

Recommendation: Adopt a Resolution approving salary adjustments, modification of the longevity differential, and the addition of vision insurance coverage for specified units of employees in the Unrepresented Employee Group and authorizing the City Manager to make edits to the Unrepresented Employee Manual in alignment with the Resolution, and to execute and implement the terms and conditions of employment set forth in the new Unrepresented Employee Manual.

The terms of the proposed 2024-2027 changes are within the parameters of authority approved by Council in closed session

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 71,409–N.S. including materials submitted in Supplemental Communications Packet #2 from the City Manager.

Consent Calendar

28. Memorandum of Understanding: Berkeley EMS Professionals

From: City Manager

Recommendation: Adopt a Resolution 1) approving a new Memorandum of Understanding (MOU) with the Berkeley EMS Professionals (IAFF Local 1227) for a three-year term from July 1, 2023 through June 30, 2026 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new MOU; and 2) approving a new Classification and Salary table for EMS Professionals classifications that implements the salary adjustments reflected in the new MOU.

The terms of the proposed 2023-2026 MOU are consistent with those of the Berkeley Fire Fighters Association (BFFA) and within the parameters of authority approved by Council in closed session.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 71,410–N.S. including materials submitted in Supplemental Communications Packet #2 from the City Manager.

29. New Contract: Accela, Inc Software Upgrade and Maintenance

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into a new Contract with Accela, Inc., for software upgrade and maintenance to their modern platform for a total not to exceed \$1,324,193 from July 1, 2024 to June 30, 2027

Financial Implications: See report

Contact: Kevin Fong, Information Technology, (510) 981-6500

Action: Adopted Resolution No. 71,411–N.S.

30. AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of Varonis subscription software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$550,890 for a total amount not-to-exceed \$973,804.51 and the period beginning January 31, 2023 through September 28, 2025.

Financial Implications: See report

Contact: Kevin Fong, Information Technology, (510) 981-6500

Action: Adopted Resolution No. 71,412–N.S.

Consent Calendar

31. **FY 2025 Special Tax Rate: Fund the Provision of Library Services**
From: City Manager
Recommendation: Adopt the Resolution to recommend that the Berkeley City Council set the FY 2025 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2800 (28.00 cents) per square foot for dwelling units and \$0.4233 (42.33 cents) per square foot for industrial, commercial, and institutional buildings.
Financial Implications: See report
Contact: Tess Mayer, Library, (510) 981-6100; Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopt first reading of Ordinance No. 7,927–N.S. Second reading scheduled for July 23, 2024.

32. **Grant Application: California Fire Foundation-Camps Wildfire Response Equipment**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a California Fire Foundation grant application in the amount up to \$25,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 71,413–N.S.

33. **Audit Recommendation Status - Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities** *(Reviewed by the Budget & Finance Committee)*
From: City Manager
Recommendation: *Policy Committee Recommendation: No final action taken. Item is automatically returning to the Council agenda pursuant to the time limit for items referred to policy committees.*
Financial Implications: see report
Contact: Jennifer Louis, Police, (510) 981-5900
Action: Report received and filed.

34. **Approving Proposed Projects Anticipated to be paid for by the State's Road Maintenance and Rehabilitation Account Funds for FY 2024-25**
From: City Manager
Recommendation: Adopt a Resolution approving a proposed list of projects that will utilize funding from the State of California's Road Maintenance and Rehabilitation Account, and authorize the City Manager to submit the proposed list to the California Transportation Commission.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,414–N.S.

Consent Calendar

35. Purchase Order: WEX Fuel Card Program for Fueling of City Vehicles

From: City Manager

Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a multi-year purchase order for the WEX Fuel Card Program for fueling City vehicles in an amount not to exceed \$1,500,000 through June 30th, 2029.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Adopted Resolution No. 71,415–N.S.

36. Contract: Bay Construction Co. for the Second Street STAIR Center Site Improvements and Shelter Units Project

From: City Manager

Recommendation: Adopt a Resolution:

1. Approving plans and specifications for Second Street STAIR Center Site Improvements and Shelter Units Project, Specification No. 23-11603-C;
2. Accepting the bid of Bay Construction Co. as the lowest responsive and responsible bidder; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed \$1,069,200, which includes a contingency of \$97,200.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Adopted Resolution No. 71,416–N.S.

37. Accepting Grant Funds from the U.S. Environmental Protection Agency for West Berkeley Aquatic Park Stormwater Improvement Project

From: City Manager

Recommendation: Adopt a Resolution: Authorizing the City Manager to execute a \$1.5M grant agreement with the U.S. Environmental Protection Agency (EPA) to plan, design, and construct a bioretention garden for the Channing Way Micro-Watershed and the installation of two Hydrodynamic separators on the Bancroft Street culvert and Channing Way.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Action: Adopted Resolution No. 71,417–N.S.

Consent Calendar

- 38. Grant Acceptance: Alameda CTC CIP 2024 Adeline Corridor Transportation Improvements**
From: City Manager
Recommendation: Adopt a Resolution accepting funds from the Alameda County Transportation Commission (CTC) for the Adeline Street Transportation Improvements Project.
Financial Implications: See report
 Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,418–N.S.
- 39. Contract: B Brothers Construction, Inc. for the West Berkeley Service Center Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution:
 1. Approving plans and specifications for West Berkeley Service Center Improvements Project, Specification No. 21-11604-C;
 2. Accepting the bid of B Brothers Construction, Inc. as the lowest responsive and responsible bidder; and
 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed \$1,461,394, which includes a contingency of \$145,616.
Financial Implications: See report
 Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,419–N.S.
- 40. Contract: Edgeworth Integration, LLC for Installation of Security Cameras at Council-Approved Intersections; and Authorizing Additional External Fixed Video Surveillance Cameras** (*Continued from June 14, 2024*)
From: City Manager
Recommendation:
 1. Adopt a Resolution authorizing the City Manager to execute a contract with Edgeworth Integration, LLC for purchase and installation of External Fixed Video Surveillance Cameras at fifteen council-approved locations, for an amount not to exceed \$850,000.
 2. Adopt a Resolution authorizing the installation of additional External Fixed Video Surveillance Cameras under this contract scope should they be approved by City Council, included in the Surveillance Policy and funding appropriated.
Financial Implications: See report
 Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,420–N.S. as revised in Supplemental Communications Packet #1 by Public Works.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Tregub, Wengraf, Humbert, Arreguin; Noes – Lunaparra; Abstain – Hahn.

Consent Calendar

41. **Adopt a Resolution Supporting the Bay Area Housing Finance Authority's 2024 Regional Affordable Housing Bond**
From: Housing Advisory Commission
Recommendation: Adopt a Resolution supporting the Bay Area Housing Finance Authority's (BAHFA's) 2024 Regional Affordable Housing Bond.
Financial Implications: See report
Contact: Anna Cash, Commission Secretary, HHCS, (510) 981-5403
Action: Adopted Resolution No. 71,421–N.S.
42. **Appointment of Ajay Krishnan to Mental Health Commission for the City of Berkeley**
From: Mental Health Commission
Recommendation: Adopt a Resolution appointing: Ajay Krishnan as a representative of the General Public Interest Category to complete his first 3-year term beginning June 25, 2024 and ending June 24, 2027.
Financial Implications: See report
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400
Action: Adopted Resolution No. 71,422–N.S.
43. **Allocation of funds for a Nexus Study to develop a Parks Impact Fee for new developments**
From: Parks, Recreation and Waterfront Commission
Recommendation: To provide for the foreseeable new park and recreation needs generated by the City's assigned (RHNA) population growth, the Parks, Recreation and Waterfront Commission recommends that the City Council allocate \$100,000 to fund a Nexus Study, in the FY24/25 Budget, as a first step toward adopting a Parks Impact Fee for new developments.
Financial Implications: See report
Contact: Roger Miller, Commission Secretary, (510) 981-6700
Action: Approved recommendation.
Vote: Ayes – Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – Kesarwani; Abstain – Taplin.

Council Consent Items

44. **Front Row Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin to the Downtown Berkeley Association for their Front Row Festival with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 71,423–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$300; Councilmember Bartlett - \$200; Councilmember Humbert - \$500; Councilmember Taplin - \$500; Councilmember Tregub - \$300; Vice-Mayor Wengraf - \$500.
45. **Support for ACA 14 – The Basic Labor Standards at the University of California Act**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation: Adopt a Resolution in support of ACA 14 (Ortega) – The Basic Labor Standards at the University of California Act. Send copies of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Liz Ortega.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Councilmember Lunaparra added as a co-sponsor. Adopted Resolution No. 71,424–N.S.

Council Consent Items

- 46. Accepting grant funding of \$100,000 from San Francisco Foundation and engage Planet DMA (DBA DMA INK) in consulting work associated with the Equitable Black Berkeley (EBB) Initiative and execute a new contract with Gail McGuire to support EBB community engagement**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution authorizing the City Manager to:
 1. Receive \$100,000 of grant funds from the San Francisco Foundation (SFF) (see Attachment #2) for project support and implementation for the Equitable Black Berkeley (EBB) Initiative;
 2. Approve a PO with DMA INK (aka “DMA”) and the Mayor’s Office for services associated with supporting EBB for a total amount not to exceed \$45,000; and
 3. Execute a contract with the independent contractor between the Mayor’s Office and Gail McGuire to support EBB’s community engagement efforts at a weekly rate not to exceed \$2,000 for twelve weeks.
Financial Implications: See report
 Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Councilmember Bartlett added as a co-sponsor. Adopted Resolution No. 71,425–N.S.
- 47. Contract No. 32000196 Amendment: Szabo & Associates for Communications Consulting Services**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000196 with Szabo & Associates for communications consulting services for the Mayor’s Office, increasing the contract amount by \$32,500 for a new total not to exceed \$336,000, extending the contract to November 30, 2024.
Financial Implications: See report
 Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 71,426–N.S.
- 48. Downtown Berkeley Pride on the Plaza: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmember Taplin (Author), Mayor Arreguin (co-sponsor), Councilmember Lunaparra (co-sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from the author and co-sponsors, to support the Downtown Berkeley “Pride on the Plaza” event.
Financial Implications: See report
 Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Councilmember Kesarwani added as a co-sponsor. Adopted Resolution No. 71,427–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$500; Councilmember Bartlett - \$200; Councilmember Humbert - \$500; Councilmember Tregub - \$500; Councilmember Kesarwani - \$100; Vice-Mayor Wengraf - \$500.

Action Calendar

49. Reserving \$24.5 Million to Support the Development of Affordable Housing at the North Berkeley BART Site

From: City Manager

Recommendation: Adopt a Resolution:

1. Reserving \$24.5 Million for the following affordable housing developments at the North Berkeley BART (NBB) site: a) NBB BRIDGE Phase 1 Project (BRIDGE Housing Corporation) at \$10,657,975; b) NBB EBALDC Project (East Bay Asian Local Development Corporation) at \$5,473,534; and c) NBB BRIDGE Insight PSH Project (BRIDGE Housing Corporation and Insight Housing) at 8,368,491.
2. Waiving Section I.A.1 of the Housing Trust Fund Guidelines for Applicant Experience for Insight Housing.
3. Authorizing the City Manager or designee to disburse up to \$2M of the \$24.5M reservation for predevelopment, if the development is unsuccessful in securing predevelopment funding from the Metropolitan Transportation Commission's Priority Sites Program.
4. Authorizing the City Manager or designee to execute all original or amended documents or agreements to effectuate this action.

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

Action: Moved to Consent Calendar. Adopted Resolution No. 71,428–N.S. including revised material in Supplemental Communications Packet #1 from Health, Housing, and Community Services.

50. Approval of the North Berkeley BART Affordable Housing Compliance Plan

From: City Manager

Recommendation: Adopt a Resolution:

1. Approving the North Berkeley BART Affordable Housing Compliance Plan.
2. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate this action.

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

Action: Moved to Consent Calendar. Adopted Resolution No. 71,429–N.S.

Action Calendar – Public Hearings

51. Levy and Collection of Fiscal Year 2025 Street Lighting Assessments

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in Fiscal Year 2025.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Public Testimony: The Mayor opened the public hearing. 1 speaker.

M/S/C (Arreguin/Hahn) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to:

1. Adopt Resolution No. 71,430–N.S. (District No. 1982-1)

2. Adopt Resolution No. 71,431–N.S. (District 2018)

Vote: All Ayes.

52. Approval and Levy of 2018 Clean Stormwater Fee in FY 2025

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2025.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Public Testimony: The Mayor opened the public hearing. 2 speakers.

M/S/C (Arreguin/Hahn) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to adopt Resolution No. 71,432–N.S.

Vote: All Ayes.

Action Calendar – Public Hearings

53. Fiscal Years 2025 & 2026 Biennial Budget Adoption

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion:

1. Adopt the Fiscal Years 2025 & 2026 (“FY25 and FY26”) Biennial Budget as contained in the City Manager’s FY25 & FY26 Proposed Biennial Budget, and as amended by subsequent Council action.
2. Authorizing the City Manager to provide applicable advances to selected community agencies receiving City funds in FY25, as reflected in Attachment 2 to the report, and as amended by subsequent Council action.

Financial Implications: See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Action: M/S/C (Arreguin/Tregub) to accept supplemental material from the City Manager for Item 53.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Tregub, Hahn, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Wengraf.

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

Vote: All Ayes.

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

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 12:00 a.m.

Vote: All Ayes.

Public Testimony: The Mayor opened the public hearing. 34 speakers.

Action: M/S/C (Arreguin/Hahn) to 1) adopt Resolution No. 71,433–N.S. as proposed in the materials provided by the City Manager and accepted at the meeting by the Council, including additional allocations of \$200,000 in FY 2026 for food insecurity, \$670,240 in FY 2025 & 2026 for Legislative Aides funded at the top step; and adding \$150,000 for security cameras in District 8 and District 3; and 2) Refer to the City Manager to develop and require annual financial reports by community agencies receiving funds outside the RFP process, including itemized use of City funds; City staff may provide basic technical assistance if needed by the agencies.

For the requested allocations list, Market Match is removed, and the remaining unfunded elements of the CARE Program are carried forward to AAO#1.

Vote: All Ayes.

Action Calendar

54. FY 2025 Annual Appropriations Ordinance

From: City Manager

Recommendation: Adopt first reading of an Ordinance adopting the FY 2025 Annual Appropriations Ordinance (AAO) in the amount of \$776,943,545 (gross appropriations) and \$670,897,257 (net appropriations).

Financial Implications: See Report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Action: 0 speakers. M/S/C (Arreguin/Humbert) to adopt the first reading of Ordinance No. 7,926–N.S. with revised appropriations of \$793,319,711 in Gross Revenue Appropriated, and \$686,125,119 in Net Revenue Appropriated. Second reading scheduled for July 9, 2024.

Vote: All Ayes.

55. Borrowing of Funds and the Sale and Issuance of FY 2024-25 Tax and Revenue Anticipation Notes

From: City Manager

Recommendation: Adopt a Resolution approving the borrowing of \$36,000,000 and the sale and issuance of Fiscal Year 2024-25 Tax and Revenue Anticipation Notes.

Financial Implications: See report

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

Action: 2 speakers. M/S/C (Wengraf/Hahn) to adopt Resolution No. 71,434–N.S.

Vote: All Ayes.

56. Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Horses Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit *(Continued from January 16, 2024) (Reviewed by the Health, Life Enrichment, Equity, & Community Committee)*

From: Councilmember Harrison (Author)

Recommendation: Adopt an Ordinance Adding Chapter 12.75 to the Berkeley Municipal Code to Establish Protections Relating to Horses Held, Owned, Used, Exhibited, or Otherwise Kept for Racing or Other Sport, Entertainment or Profit.

Policy Committee Recommendation: Send the item to Council with a qualified positive recommendation to approve the Ordinance with substantial edits and as may be necessary for legal and administrative purposes.

Financial Implications: See report

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

Action: Moved to the Consent Calendar and take no action on the item.

Action Calendar

57. **Accept the Risk Analysis for Long-Term Debt (Bonding Capacity) Report provided by Government Finance Officers Association** *(Reviewed by the Budget & Finance Committee)*

From: City Manager

Recommendation: Accept the report titled 'Risk-Based Analysis and Stress Test of Long-Term Debt Affordability' as provided by the Government Finance Officers Association (GFOA). This report is based on their research and development of a risk-modeling tool to address issuing long-term debt related to City of Berkeley Vision 2050.

On April 26, 2022, the City Council referred this item to the City Manager and Budget & Finance Committee to return to Council with recommendations or analysis on as many of the following items as possible by October 2022, if feasible. 1)

Consideration of reserves policies for operational funds other than the General Fund; 2) Potential reduction of the maximum indebtedness rate from 15% of assessed property value down to 4-8% range; 3) A new policy to not incur indebtedness when interest rates go above 5% or a different specific threshold; 4) Tools for increased transparency for taxpayers; 5) Updated report and discussion of pension and healthcare costs; 6) Refer the full Report to the Budget & Finance Committee for consideration.

Policy Committee Recommendation: No final action taken. Item is automatically returning to the Council agenda pursuant to the time limit for items referred to policy committees.

Financial Implications: None

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

Action: Moved to Consent Calendar. Referred to the Budget & Finance Committee.

Action Calendar

- 58. Adopt an Ordinance Adding a New Chapter 12.01 to the Berkeley Municipal Code Establishing Emergency Greenhouse Gas Limits, Process for Updated Climate Action Plan, Monitoring, Evaluation, Reporting and Regional Collaboration** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation:
 1. Adopt an ordinance adding a new Chapter 12.01 to the Berkeley Municipal Code (BMC) establishing Emergency Greenhouse Gas Limits with an effective date of [], 2022.
 2. Refer to the FY23-24 Budget Process \$[] consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.
Policy Committee Recommendation: No final action taken. Item is automatically returning to the Council agenda pursuant to the time limit for items referred to policy committees.
Financial Implications: See report
 Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
Action: Moved to Consent Calendar and take no action on the item.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – Tregub.
- 59. Referral for Development of Request for Proposal (RFP) to Support Berkeley-Based Non-Profit Food Assistance Providers Serving Food Insecure Households** *(Reviewed by the Health, Life Enrichment, Equity, & Community Committee)*
From: Councilmember Kesarwani (Author), Councilmember Humbert (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)
Recommendation: Refer to the City Manager to develop and fund a Request for Proposal (RFP) process to support Berkeley-based non-profit food assistance providers serving food insecure households. Funds are intended for (but not limited to) the following needs:
 1. Expansion of capacity to serve more people experiencing food insecurity, such as one-time purchase of equipment;
 2. Hiring of additional staff to serve more people; and/or
 3. Other emerging needs to be determined.
 4. Refer \$200,000 annually in funding to the biennial FY 2024-25 to FY 2025-26 budget process to fund qualified proposals resulting from the RFP.
Policy Committee Recommendation: The item referred to City Council with a Qualified Positive recommendation with the amendment of referring the issue of food assistance to the Community Agency RFP process the next time the RFP is developed.
Financial Implications: See report
 Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
Action: Councilmember Bartlett added as a co-sponsor. Moved to Consent Calendar.

Information Reports

60. **Voluntary Time Off Program for Fiscal Year 2025**
From: City Manager
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000
Action: Received and filed.
61. **Status Report - Berkeley's Financial Condition (FY 2012 – FY 2021): Pension Liabilities and Infrastructure Need Attention**
From: City Manager
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000
Action: Received and filed.
62. **FY 2024 Second Quarter Investment Report: Ended December 31, 2023**
From: City Manager
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Received and filed.
63. **FY 2024 Third Quarter Investment Report: Ended March 31, 2024**
From: City Manager
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Received and filed.
64. **Zero Waste Commission Fiscal Year 2024-25 Work Plan**
From: City Manager
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Received and filed.

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

Adjournment

Action: M/S/C (Arreguin/Humbert) to suspend the rules and adjourn the meeting.
Vote: All Ayes.

Adjourned at 11:59 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on June 25, 2024.

Mark Numainville, City Clerk

Communications

Item 53. Fiscal Years 2025 & 2026 Biennial Budget Adoption

1. Parks, Recreation, and Waterfront Commission
2. Sibyl Chen

3. Courtney Pal on behalf of Dan Sawislak, Executive Director, Resources for Community Development
4. Ellen Lake
5. Daniel
6. Allison Foster
7. Maddie Emodi
8. Jane Diamond
9. Jake Teitelbaum
10. Cheryl Newbrough
11. Patrick Tool and Michelle Rostampour
12. Cheryl Brewster
13. Susan McKay

Middle East Conflict

14. Mohammed Harara
15. Sheela Jivan
16. Aylin Beyce
17. Erwan Illian (7)
18. russbumper (6)

Southside Complete Streets Project

19. L.
20. Hannah
21. Tom
22. D.
23. B.S. bikedelly
24. An angry resident
25. William Kan

2274 Shattuck Ave Project

26. Charlene M. Woodcock
27. LiHui Tsai
28. Anjali Rojas
29. Lynn Sherrell

People's Park

30. Meg Mav
31. Olivia Page
32. Aleena Karim

Hard Hats

33. Kelly Elena MacDonald on behalf of Andreas Cluver, Secretary-Treasurer of the Building & Construction Trades Council of Alameda County

Cameras

34. Simone Arpaio

Animal Care Services

35. Liz Dodge

Smoking

36. Anthony John DeMaria

Speed Bump

37. Sutapa Mallik

Crossing Sign

38. Octavio

Campaign Finance Complaint

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76. Jocelyn Goldsmith-De Sena

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Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Scott Gilman, Director, Health, Housing, and Community Services

Subject: Contract No. 32400082 Amendment: The Wright Institute for Mental Health Counseling for Older Adults

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32400082 with The Wright Institute increasing the contract by \$200,000 for the provision of mental health counseling services to older adults in the Berkeley community, in a total amount not to exceed \$500,000. The new contract end date will be June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

The total not-to-exceed amount of this contract will be \$500,000. Resources for the contract will be provided from the City of Berkeley's Mental Health Services Act (MHSA) Community Services and Supports (CSS) funding allocation. The funds are subject to the Annual Appropriations Ordinance in Fiscal Year 2025.

The State of California MHSA provides funding for local mental health services. City of Berkeley MHSA Three Year Program and Expenditure Plans (Three Year Plans), and Annual Updates detail the uses of local MHSA funds. Development of local MHSA Three Year Plans and Annual Updates require community program planning, writing a draft plan, providing a 30-day public review, and conducting a public hearing at the Mental Health Commission.

CURRENT SITUATION AND ITS EFFECTS

The Aging Services Division is dedicated to promoting a dignified, healthful quality of life for older adults in Berkeley by offering connections to services and resources to connect, learn, grow, and discover new ways to be actively engaged in living. Aging Services serves as a resource for recreation, increased food security, transportation assistance, health & wellness education, and other supportive services for adults who are 55 and older.

The mental health counseling program will continue to assist older adults in addressing mental health issues by offering one-on-one, short-term counseling in addition to group therapy and workshops geared toward increasing mental resiliency.

BACKGROUND

Nationwide, one in four older adults experience some mental disorder such as depression or anxiety and this number is expected to double to 15 million by 2030. Annually, about 6% of adults in California (roughly two million people) will experience a major depressive episode. Depression is associated with higher risk of suicide and cardiovascular death. In California, about two-thirds of adults with mental illness will not receive treatment. Common barriers to accessing services include lack of health insurance, lack of available treatment providers or programs, and inability to pay for treatment.¹ Through this mental health counseling program, Aging Services is working to reduce barriers to care on a local level with a focus on equity.

On July 25, 2023, via Resolution No. 70,990-N.S., City Council authorized the City Manager to approve the MHSA Fiscal Years 2024 thru 2026 Three Year Program Expenditure Plan which contained therein the provision of funding to the Health, Housing & Community Services (HHCS), Aging Services Division to provide mental health counseling services at Berkeley Senior Centers.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Adoption of this resolution will support the ability of the City to fill a need in the community by operating a counseling program targeted specifically towards older adults in Berkeley with a focus on equity, which provides a needed expansion of the system of care for individuals with mental health challenges in Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

The City could decide not to adopt this resolution which would reduce mental health care to a vulnerable community in Berkeley.

CONTACT PERSON

Tanya Bustamante, Aging Services Manager, HHCS, 510-981-5178

Attachments:

1: Resolution

¹ Source: <https://www.chcf.org/wp-content/uploads/2018/03/MentalHealthCalifornia2018.pdf>

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

CONTRACT NO. 32400082 AMENDMENT: THE WRIGHT INSTITUTE FOR MENTAL
HEALTH COUNSELING FOR OLDER ADULTS

WHEREAS, the City of Berkeley Aging Services Division is dedicated to promoting a dignified, healthful quality of life for older adults age 55 and over; and

WHEREAS, Aging Services strives to provide programs and services with the goal of improving the quality of life for the older adult community; and

WHEREAS, the administration of a mental health counseling program targeting older adults will alleviate barriers to the senior community needing mental health services; and

WHEREAS, funds are subject to the Annual Appropriations Ordinance in Fiscal Year 2025, from the City of Berkeley's Mental Health Services Act (MHSA) Community Services and Supports (CSS) funding allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to amend Contract No. 32400082 with The Wright Institute for the purpose of providing mental health counseling services for the older adult community, for a total not to exceed amount of \$500,000, and extend the contract to June 30, 2026.

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



Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Scott Gilman, Interim Director, Health, Housing, and Community Services

Subject: Filling Human Welfare and Community Action Commission Public Sector Vacancies

RECOMMENDATION

1. Adopt a Resolution confirming the appointments of up to three public sector commissioners to the Human Welfare and Community Action Commission (HWCAC), having been approved by the Health, Life Enrichment, Equity & Community Policy Committee at their July meeting.
2. Adopt a Resolution appointing Catherine Huchting, Mary Behm-Steinberg, and George Lippman to the HWCAC as private sector representatives.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with this recommendation.

CURRENT SITUATION AND ITS EFFECTS

The HWCAC advises Council on social welfare needs in the community. Failure to maintain full membership on the HWCAC, which also acts as the Board of the Berkeley Community Action Agency (CAA), could result in a loss of Community Services Block Grant (CSBG) funding. Vacancies on the Berkeley CAA Board were noted as a “finding” during the most recent desk review of this program conducted by the State Department of Community Services and Development.

At their June meeting, the HWCAC voted to recommend that Council appoint Catherine Huchting, Mary Behm-Steinberg, and George Lippman to the HWCAC as private sector representatives (M/S/C: Sol, Atkinson. Ayes – Sol, Atkinson; Noes – None; Abstain – None; Absent: None).

At their July meeting, the Health, Life Enrichment, Equity & Community Policy Committee (Committee) will vote to approve up to three public appointees to the HWCAC. These appointees will be named in the addendum to the report.

BACKGROUND

The HWCAC has a nine-seat, tripartite board structure with three low-income elected, three private sector, and three public sector representatives, which may include officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served. The three public sector representatives are appointed by Berkeley City Council as a whole per Berkeley Municipal Code (BMC) Section 3.78.020 (b); the low-income members are appointed through an election process per BMC Section 3.78.020 (c); and, the private-sector representatives are identified by existing HWCAC members for appointment by Council per BMC Section 3.78.020 (d).

City staff determined that the most equitable method of selecting the three public sector commissioners for consideration by Council would be an open application process with the Committee. The Committee evaluates and approves new commissioner applicants and recommends three of the applicants for appointment by Council. City staff coordinate community outreach to create a pool of candidates for the Committee's consideration.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no known environmental impacts associated with the recommendation of this report.

RATIONALE FOR RECOMMENDATION

Failure to maintain full membership on the HWCAC is in violation of the City's CSBG revenue contract and may jeopardize future funding.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mary-Claire Katz, HWCAC Commission Secretary, HHCS, (510) 981-5414

Attachments:

- 1: Resolution – Public Sector Commissioners
- 2: Resolution – Private Sector Commissioners

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

FILLING HUMAN WELFARE AND COMMUNITY ACTION COMMISSION
PUBLIC SECTOR VACANCIES

WHEREAS, Berkeley Municipal Code Section 3.78.020 (b) stipulates that three public sector representatives are appointed to the Human Welfare and Community Action Commission (HWCAC) by Berkeley City Council as a whole; and

WHEREAS, the Health, Life Enrichment, Equity & Community Policy Committee evaluates and approves new public sector representative commissioner applicants and recommends three of the applicants for appointment by Council; and

WHEREAS, at their July 2024 meeting, the Health, Life Enrichment, Equity & Community Policy Committee voted to recommend three public sector representative commissioners to fill three public sector vacancies on the HWCAC.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that up to three commissioners are appointed as public sector representatives serving on the Human Welfare and Community Action Commission.

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

FILLING HUMAN WELFARE AND COMMUNITY ACTION COMMISSION
PRIVATE SECTOR VACANCIES

WHEREAS, Berkeley Municipal Code Section 3.78.020 (d) stipulates that three of the HWCAC members shall be members or officials of business, industry, labor, religious, welfare, education, or major groups and interests in the community, and that these members should be identified and nominated for Council approval by the existing commissioners; and

WHEREAS, at their June meeting, the HWCAC voted to recommend that Council appoint Catherine Huchting, Mary Behm-Steinberg, and George Lippman to the HWCAC as qualified private sector representatives (M/S/C: Sol, Atkinson. Ayes – Sol, Atkinson; Noes – None; Abstain – None; Absent: None).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Catherine Huchting, Mary Behm-Steinberg, and George Lippman are appointed to the HWCAC as qualified private sector representatives.



Office of the City Manager

CONSENT CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Establish Classification and Salary – Public Health Investigator

RECOMMENDATION

Adopt a Resolution establishing the job class specification and salary of Public Health Investigator with an hourly salary range of \$35.5512 - \$43.2127.

FISCAL IMPACT

If staffed as a full-time career classification, the proposed hourly range of \$35.5512 - \$43.2127 (\$73,946.49 - \$89,882.42 annually) will have a fiscal impact of approximately \$129,066.20 - \$156,880.77 when full benefits are applied.

CURRENT SITUATION AND ITS EFFECTS

The Health, Housing and Community Services Department (Public Health Officer Unit) and the Human Resources Department identified the need for the new job class of Public Health Investigator to perform investigations for the identification and control of communicable and infectious diseases affecting the community. This class will work under the Communicable Disease and Prevention Unit of the Public Health Officer Unit (PHOU) and report to the Supervising Public Health Nurse.

BACKGROUND

Public Health departments in California are responsible for the reporting and control of communicable diseases under Title 17 of the California Code of Regulations. These health departments are usually managed by counties. The City of Berkeley is one of only three cities in California that operate an independent health department and are responsible for complying with the State-mandated requirements under Title 17. Over the years, the work involved in investigating and providing services related to the identification and control of communicable and infectious diseases has been performed by City nurses. Although nurses play an important role in public health services, the narrower focus of identifying and controlling the spread of reported diseases does not

require a nursing license and may be accomplished through public health investigators who specialize in this field.

Additionally, creating this class to perform public health investigations will help to free up time for nurses to do the broader scope of nursing work. Of key importance, the addition of this class will allow the City to better serve the community with investigators especially trained to perform work involving case investigation, intervention, and educational activities, and to comply with the State mandated requirements under Title 17.

The recommended hourly salary range of \$35.5512 - \$43.2127 is within the market mean and median of comparable classifications of counties in the Bay Area, as well as internal City classifications which are at a similar level of responsibility and complexity.

The new classification was approved by the Personnel Board at its meeting of July 8 by unanimous vote.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The classification is being created to perform investigations for the identification and control of communicable and infectious diseases affecting the community.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

ATTACHMENTS

1: Resolution

Exhibit A: Public Health Investigator – Job Class Specifications and Salary Range

RESOLUTION NO. xxxxx - N.S.

NEW JOB SPECIFICATIONS AND SALARY RANGE FOR PUBLIC HEALTH
INVESTIGATOR

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, job specifications are foundational components of the City's Classification and Compensation plan; and

WHEREAS, the Human Resources Department developed job specifications for the Public Health Investigator classification with an hourly salary range of \$35.5512 - \$43.2127 to perform investigations for the identification and control of communicable and infectious diseases affecting the community; and

WHEREAS, the Personnel Board recommended on July 8, 2024 to adopt the new job specifications and salary range for the Public Health Investigator class;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the classification for Public Health Investigator is established with a salary range and classification as shown in Exhibit A, effective July 30, 2024;

BE IT FURTHER RESOLVED that the Public Health Investigator classification have an hourly salary range of \$35.5512 to \$43.2127 over five (5) salary steps:

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
\$35.5512	\$37.3288	\$39.1952	\$41.1550	\$43.2127

Exhibit A:

Public Health Investigator – Job Class Specifications and Salary Range

EXHIBIT A

CITY OF BERKELEY PUBLIC HEALTH INVESTIGATOR

Class Code: XXXX
Bargaining Unit: Unrepresented Classification
Established Date: July XX, 2024

SALARY RANGE
\$35.5512 - \$43.2127 Hourly
\$2,844.10 - \$3,457.02 Biweekly
\$6,162.21 - \$7,490.20 Monthly
\$73,946.49 - \$89,882.42 Annually

Description

DEFINITION

Under general supervision, performs investigations for the identification and control of communicable and infectious diseases; conducts field investigations, interviews, contact tracing, interpretation of laboratory results, and data collection and analysis of reported cases; and provides testing and referral services to clients/patients to prevent the further transmission of diseases.

CLASS CHARACTERISTICS

This classification is assigned to the Public Health Officer Unit (PHOU), Communicable Disease and Prevention and is responsible for investigating existing or suspected cases of communicable diseases in the office, clinical, and field settings. Supervision and guidance are provided by the Supervising Public Health Nurse and lead direction may be received from higher-level staff. The incumbent is expected to work independently or as a team on case investigation, intervention, and educational activities. The Public Health Investigator is distinguished from the Public Health Nurse in that the latter requires a license to practice as a registered nurse and has broad responsibilities in public health and nursing services, including the prevention of disease, promotion of healthful behavior, and the identification and assessment of the physical, mental, and emotional problems of individuals, families, and special populations for treatment and referral plans.

Example of Duties

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, is similar or closely related to another duty statement, or a logical assignment to the classification.

1. Conducts investigations in the office, clinical, and field settings to identify infectious diseases and public health threats;
2. Locates, interviews, screens, and educates clients/patients and other individuals suspected to be the source of, or infected with, communicable diseases, including sexually transmitted diseases (STDs);
3. Elicits information from clients/patients who have a communicable disease about their contacts, location of potential disease transmission, and details about their personal behavior;
4. Refers individuals potentially exposed of a communicable disease to appropriate facility for medical examination and necessary treatment;

5. Reviews and records the medical history of patients and evaluates the need for further examination by a physician;
6. Interviews healthcare providers to obtain additional information;
7. Interprets laboratory results to determine the infectious status of individuals suspected of having a communicable disease and the classification of communicable disease cases;
8. Conducts follow-up with reported cases and contacts to ensure examination, appropriate treatment, and successful case closure;
9. Monitors and analyzes data related to communicable diseases, identifying trends and potential outbreaks;
10. Collaborates with healthcare providers, laboratories, and public health agencies to ensure timely and accurate reporting of communicable diseases;
11. Maintains accurate and up-to-date records, including confidential patient data, epidemiological records, and contacts related to communicable disease cases, interventions, and outcomes;
12. Responds promptly to outbreaks, coordinating with the appropriate individuals and agencies to implement effective control measures;
13. Provides timely and accurate information to the public as directed regarding health risks and preventive measures during outbreaks;

Knowledge, Skills, and Abilities

Note: The level and scope of the knowledge, skills and abilities listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Investigation, interviewing, and information gathering practices and techniques;
2. Public health laws, regulations, and practices relating to the control of communicable diseases;
3. Symptoms, methods of transmission, control procedures, diagnosis, and treatment of communicable and sexually transmitted diseases;
4. Diagnostic tests for communicable diseases;
5. Medical terminology and clinic operations;
6. Personal safety techniques; and
7. Common computer applications and equipment, including electronic data management systems.

Skill and Ability to:

1. Conduct investigations to identify infectious diseases and public health threats;
2. Conduct effective interviews of a highly personal and confidential nature, eliciting detailed and accurate information;
3. Perform contact tracing;
4. Compile, organize, and analyze data using electronic databases and reporting systems to streamline data collection and reporting;
5. Effectively organize and prioritize work;
6. Work independently or as part of a team;
7. Apply rules and regulations relative to communicable disease control;
8. Respond to public health emergencies;
9. Communicate effectively and tactfully with others, orally and in writing; and
10. Establish and maintain effective relationships with those contacted through the course of work, including peers, management, public health agency representatives, and the public.

Minimum Qualifications

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to the completion of two (2) years of college in public health, health science, biological science, behavioral science, or a closely related field and one (1) year of full-time paid experience in the public health investigation field or in a comparable capacity conducting field investigations, interviewing clients to obtain confidential or personal history information, assessing health risks, or collecting and analyzing epidemiological data. A bachelor's degree in public health or related field is desirable.

OTHER REQUIREMENTS

Must possess a valid California driver's license and have a satisfactory driving record to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities.

Positions may require bilingual skills.

CLASSIFICATION HISTORY

Classification Code: XXXX
Classification Established: July XX, 2024
FLSA Status: Non-Exempt
Representation Unit: Unrepresented
Probationary Period: 1 year
Workers' Comp Code: 8810



Office of the City Manager

CONSENT CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Establish Classification and Salary – Assistant Fire Inspector

RECOMMENDATION

Adopt a Resolution establishing the job class specification and salary of Assistant Fire Inspector with an hourly salary range of \$36.8038 - \$44.7352.

FISCAL IMPACT

If staffed as a full-time career classification, the proposed hourly range of \$36.8038 - \$44.7352 (\$76,551.82 - \$93,049.22 annually) will have a fiscal impact of approximately \$133,613.55 - \$162,408.10 when full benefits are applied.

CURRENT SITUATION AND ITS EFFECTS

The new job classification creates an entry-level opportunity to recruit individuals interested in entering the fire prevention field and will support succession planning in the Fire Prevention Division of the Berkeley Fire Department. The knowledge, skills, and abilities represent the current industry standards in fire prevention.

BACKGROUND

The Fire Prevention Division of the Berkeley Fire Department plans, organizes, and implements prevention and inspection programs, fire and arson investigations, vegetation management, hazard abatement, code enforcement, public fire safety education, plan checks, and development of codes and ordinances; the Wildland Urban Interface (WUI) Division addresses the wildland fire threat that faces the Berkeley community by performing vegetation management inspections, and delivering education to community groups.

To provide these services to the community, the divisions are currently staffed by one Fire Marshal, one Deputy Fire Marshal, and 8 sworn Fire Prevention Inspectors. The Department also offers internships that afford valuable exposure and career

opportunities to those new to the industry, and provide extensive training. Candidates who emerge from internship programs often do not have the requisite experience to become journey-level Fire Prevention Inspectors. An entry-level classification of Assistant Fire Inspector bridges the internship programs and journey-level classifications such as Fire Inspector. In addition, having the classification of Assistant Fire Inspector provides a layer of support to Fire Prevention Inspectors.

The salary range is internally aligned with the Assistant Inspector classification, which is the equivalent classification used in the City's Planning Department.

The new classification was approved by the Personnel Board at its meeting of July 8 by unanimous vote.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The entry-level classification of Assistant Fire Inspector serves as a bridge into journey-level classifications such as Fire Prevention Inspector and provides support to the Fire Prevention and WUI divisions of the Berkeley Fire Department.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

ATTACHMENTS

1: Resolution

Exhibit A: Assistant Fire Inspector – Job Class Specifications and Salary Range

RESOLUTION NO. xxxxx - N.S.

NEW JOB SPECIFICATIONS AND SALARY RANGE FOR ASSISTANT FIRE
INSPECTOR

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, job specifications are foundational components of the City's Classification and Compensation plan; and

WHEREAS, the Human Resources Department developed job specifications for the Assistant Fire Inspector classification with an hourly salary range of \$36.8038 - \$44.7352; and

WHEREAS, the entry-level classification of Assistant Fire Inspector serves as a bridge into journey-level classifications such as Fire Prevention Inspector and provides support to the Fire Prevention and Wildland Urban Interface (WUI) divisions of the Berkeley Fire Department; and

WHEREAS, the Personnel Board recommended on July 8, 2024 to adopt the new job specifications and salary range for the Assistant Fire Inspector class;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the classification for Assistant Fire Inspector is established with a salary range and classification as shown in Exhibit A, effective July 30, 2024;

BE IT FURTHER RESOLVED that the Assistant Fire Inspector classification have an hourly salary range of \$36.8038 to \$44.7352 over five (5) salary steps:

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
\$36.8038	\$38.6439	\$40.5761	\$42.6050	\$44.7352

Exhibit A:

Assistant Fire Inspector – Job Class Specifications and Salary Range

EXHIBIT A



CITY OF BERKELEY

Established Date: July XX, 2024

Assistant Fire Inspector

Bargaining Unit: Unrepresented Classification

Class Code:
XXXX**SALARY RANGE**

\$36.8038 - \$44.7352 Hourly
 \$2,944.30 - \$3,578.82 Biweekly
 \$6,379.32 - \$7,754.11 Monthly
 \$76,551.82 - \$93,049.26 Annually

DESCRIPTION:**DEFINITION**

Under general supervision of Fire Marshal or designee, the Assistant Inspector performs inspections of buildings and structures for compliance with local fire prevention ordinances; and assists in the investigation of existing fire hazards in commercial, residential and/or industrial properties. The incumbent is expected to make appropriate recommendations to correct evidences of fire hazards as well as perform inspections for violations of fire laws, codes and ordinances, and performs other work related to fire prevention and other related duties as required.

CLASS CHARACTERISTICS

This single position entry-level classification assists with fire inspection activities and is distinguished from Fire Prevention Inspector which is the journey-level classification. The classification Fire Prevention Inspector (Sworn) also requires Emergency Medical Technician I certification.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Assists with inspections of buildings and structures for fire hazards (i.e. accumulation of debris or flammable materials, blocked fire exits, inadequate fire extinguishing equipment, faulty wiring).
2. Assists with investigation and follow-up of fire hazard complaints.
3. Assists with the issuance of violation notices.
4. Participates in the investigation of premises after fires to ascertain cause and actual loss.
5. May inspect the installation of equipment to insure adherence to safety measures.

6. Prepares and maintains written reports of investigations.
7. Informs the public or private groups on fire prevention methods and regulations.
8. Uses computer applications such as spreadsheets, word processing, calendar, e-mail and database software in the performance of work assignments.
9. May assist with development and presentation of fire safety education programs.
10. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to the job duties as defined under Class Characteristics.

Knowledge of:

1. Principles and systems of fire safety and protection, including equipment and systems of extinguishment.
2. Laws, codes, and ordinances governing fire safety of buildings, hazardous materials, and land, including special license and permit applications.
3. Laws, codes, and ordinances governing fire safety of buildings, hazardous materials.
4. Principles, methods, and equipment used in investigation of origin and cause of fires.
5. Code enforcement procedures and authorities of involved jurisdictions.
6. Recordkeeping and reporting requirements for fire safety inspections, permits, and fire investigations.

Ability to:

1. Assist with the evaluation of fire safety compliance of structures, fire suppression systems and equipment, commercial and industrial operations, and special use permit applications.
2. Assist with the investigation and analysis of the origins and causes of fires.
3. Assist with preparation of clear and concise reports, correspondence, and other written materials.
4. Assist with operation of fire investigation tools and equipment.
5. Read, interpret, and apply fire safety codes, ordinances, and laws.
6. Read and interpret building plans, schematics, and diagrams.
7. Understand and carry out oral and written instructions; read, write, understand and communicate to perform the essential functions of the position.
8. Establish and maintain effective working relationships with those encountered in the course of the work.

Skill in:

1. Interpersonal communication, public speaking, and community outreach activities.
2. Facilitating meetings with community members.
3. Preparation of reports.
4. Operating an automobile.
5. Use of computer applications such as spreadsheets, word processing, calendar, e-mail and database software.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from high school and one year of experience in fire, building, or code enforcement inspections in a paid professional, internship, or volunteer capacity. Municipal experience desirable.

Other desirable qualifications include: Completion of California State Fire Marshal's Fire Prevention 1A, 1B, and 1C courses; Fire Inspector 1A, 1B, 1C, and 1D; or International Code Council (ICC) Fire Inspector I; Associate's degree in fire science, emergency management, fire protection engineering, environmental science, ecosystem management, public policy, public administration, or related field.

OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

CLASSIFICATION HISTORY:

Classification Code	XXXX
Classification Established	July XX, 2024
FLSA Status	Non-Exempt
Admin Leave / Overtime	Overtime
Representation Unit	Unrepresented
Probationary Period	6 months
Workers' Comp Code	9410



Office of the City Manager

CONSENT CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Establish Classification and Salary – Veterinarian

RECOMMENDATION

Adopt a Resolution establishing the job class specification and salary of Veterinarian with an hourly salary range of \$71.5295 - \$86.9445.

FISCAL IMPACT

If staffed as a full-time career classification, the proposed hourly range of \$71.5295 - \$86.9445 (\$148,781.27 - \$180,844.56 annually) will have a fiscal impact of approximately \$259,682.82 - \$315,646.10 when full benefits are applied.

CURRENT SITUATION AND ITS EFFECTS

The Neighborhood Services Division and the Human Resources Department identified the need for the new job class of Veterinarian to provide medical care and treatment of animals at the animal shelter, including the performance of in-house surgeries, and to serve as an expert on veterinary issues. This class will be assigned to the Animal Services Program and will report to the Animal Services Manager who has planning and administrative responsibilities for the entire Program.

BACKGROUND

The City's animal shelter houses domestic animals from the cities of Berkeley, Albany, Emeryville, and Piedmont, and provides adoption services, advice on animal-related topics, lost and found pet reports, and free or low-cost spay/neuter vouchers for Berkeley dogs and cats. Currently, the City's veterinary care and treatment services are provided by a contracted veterinarian, working 24 hours a week, three days a week. Surgeries are performed at the City's shelter and at contracted high volume spay/neuter clinics.

The addition of the Veterinarian classification that will be available to work five days a week will allow for the examination of all animals prior to their adoption or release, as well as the performance of more in-house surgeries, thereby reducing the need for outside clinics and veterinary hospitals which come at a higher cost.

The recommended hourly salary range of \$71.5295 - \$86.9445 is within the market mean and median of comparable veterinarian classifications of cities/counties in the Bay Area, as well as internal City classifications which are at a similar level of responsibility and complexity.

The new classification was approved by the Personnel Board at its meeting of July 8 by unanimous vote.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The new classification of Veterinarian will provide medical care and treatment of animals at the animal shelter to support the City's Animal Services Program.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

ATTACHMENTS

1: Resolution

Exhibit A: Veterinarian – Job Class Specifications and Salary Range

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

NEW JOB SPECIFICATIONS AND SALARY RANGE FOR VETERINARIAN

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, job specifications are foundational components of the City's Classification and Compensation plan; and

WHEREAS, the Human Resources Department developed job specifications for the Veterinarian classification with an hourly salary range of \$71.5295 to \$86.9445; and

WHEREAS, the Personnel Board recommended on July 8, 2024 to adopt the new job specifications and salary range for the Veterinarian class;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the classification for Veterinarian is established with a salary range and classification as shown in Exhibit A, effective July 30, 2024;

BE IT FURTHER RESOLVED that the Veterinarian classification have an hourly salary range of \$71.5295 to \$86.9445 over five (5) salary steps:

STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
\$71.5295	\$75.1059	\$78.8612	\$82.8043	\$86.9445

Exhibit A:

Veterinarian – Job Class Specifications and Salary Range

EXHIBIT A

CITY OF BERKELEY VETERINARIAN

Class Code: XXXX
Bargaining Unit: Unrepresented Classification
Established Date: July XX, 2024

SALARY RANGE
\$71.5295 - \$86.9445 Hourly
\$5,722.36 - \$6,955.56 Biweekly
\$12,398.44 - \$15,070.38 Monthly
\$148,781.27 - \$180,844.56 Annually

DESCRIPTION:

DEFINITION

Under general direction, provides medical care and treatment of animals at the animal shelter; examines, diagnoses, and performs routine and emergency treatment for impounded animals; performs in-house surgeries, including spay/neuter surgery on animals prior to adoption; oversees the vaccination program against contagious and infectious diseases of animals commonly found in shelters; and serves as an expert and provides advice to management, staff, and the public on veterinary issues.

CLASS CHARACTERISTICS

The Veterinarian provides a full range of professional veterinary medical services for animals at the shelter and advises/educates staff and the community on veterinary issues. It is distinguished from Registered Veterinary Technician in that the latter assists with providing paraprofessional medical care and treatment to animals in the shelter and does not have the level of education and medical training required to perform surgery, provide diagnosis and prognosis of animal diseases, or the ability to prescribe drugs. The Veterinarian reports to the Animal Services Manager who has program planning and administrative responsibilities for the entire Animal Services Program.

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, is similar or closely related to another duty statement, or a logical assignment to the classification.

1. Performs routine physical examinations and basic or emergency medical treatment including surgery of common and exotic impounded animals and abandoned/rescued wildlife;
2. Oversees vaccination program against rabies and other zoonotic diseases, distemper, parvo, upper respiratory infection, and diseases common to canines, felines, and other animals found in shelters;
3. Oversees the maintenance of documents and detailed records related to shelter animals, supplies, and drugs to ensure accurate medical recordkeeping and the use and inventory of drugs;

4. Provides direction and instruction on animal care and medical treatment of shelter animals to medical staff and volunteers at the shelter;
5. Supervises the work performed by the Registered Veterinary Technician or other assigned staff;
6. Oversees the maintenance, ordering, and use of supplies, equipment, and controlled substances;
7. Discusses specific medical cases with management and provides advice on animal-related topics that affect policies and procedures, animal health and public information programs, medical and disease prevention standards and procedures, and animal health care practices to maintain compliance;
8. Interacts with the public that visit the shelter for adoptions and medical procedures by explaining post-surgery care and possible complications;
9. Performs spay/neuter surgeries prior to adoption or as determined to comply with Berkeley Municipal Code and the control of animal overpopulation;
10. Performs non-spay/neuter surgeries that can be done in-house without a veterinary specialist for timely care of animals;
11. Conducts medical rounds and medical evaluations of animals in the shelter to determine the correct treatment plan for each animal;
12. Participates in animal welfare/cruelty and other animal-related police/control investigations by performing necropsies for evidence collection, documenting pathological findings, preparing written veterinary statements, or testifying in court/legal proceedings;
13. Performs humane euthanasia of animals that sustained life-threatening injuries or displayed insurmountable behavioral issues in accordance with established protocols;
14. Triage rescued and injured wildlife to determine treatment and next steps, including their release, rehabilitation, or euthanasia; and
15. Consults with outside veterinarians and public agencies regarding medical treatment of animals and the prevention and control of animal-related diseases and outbreaks.
16. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to the job duties as defined under Class Characteristics.

Knowledge of:

1. Current veterinary practices, treatment, prevention, control, surgical procedures and care for a wide range of animals;
2. High-quality spay and neuter techniques and veterinary forensics;
3. Fundamental principles and methods of clinical diagnosis;
4. Modern techniques for treating various animals for common diseases and injuries;
5. Physical and behavioral characteristics of domestic animals;
6. Methods, tools, equipment, and materials used in animal care;
7. Safety regulations and safe work practices;
8. Principles and practices of employee supervision and development;
9. Bacteriology, pathology, serology, and other veterinary lab processes; and
10. Federal, State, and municipal animal health laws and regulations governing the impounding, releasing, and euthanasia of animals.

Skill and Ability to:

1. Examine, diagnose, treat, and perform routine and emergency medical treatment of impounded and rescued animals;
2. Physically handle and examine a wide range of animals, including aggressive and feral animals;
3. Perform high quality animal surgeries;
4. Analyze situations and exercise good judgment to take appropriate action and reach sound conclusions;
5. Supervise, train, and evaluate assigned staff;
6. Communicate effectively and tactfully with others, orally and in writing;

Veterinarian – Job Class Specifications and Salary Range

Consent Calendar
July 30, 2024

7. Advise and guide others on animal health care practices and veterinary issues;
8. Establish and maintain effective relationships with others, including management, shelter employees, volunteers, and the public;
9. Operate medical equipment, surgical tools, and instruments, such as anesthesia machine, cauterizer, and autoclave to perform surgeries and provide routine care of animals; and
10. Operate office computers and equipment to maintain accurate recordkeeping and to write reports and correspondence.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to a Doctorate in Veterinary Medicine from an accredited college or university and one (1) year of experience in the diagnosis and treatment of animals in a clinical setting, private practice, or animal shelter, including the performance of surgery.

LICENSE:

Possession of a valid license to practice veterinary medicine issued by the State of California Veterinary Medical Board.

OTHER REQUIREMENTS

Possession of a valid Drug Enforcement Administration (DEA) license to dispense and administer controlled substances.

Possession of the California Veterinary Medical Board premise permit.

Must be able to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license and a satisfactory driving record.

Must be willing to respond to emergency animal services assignments during off-duty hours.

Must be medically fit to work with animals and be able to lift and carry up to 50 pounds.

Must be willing to work in an environment exposed to noise, animal waste, cleaning and disinfecting chemicals, heat, fumes, and other airborne irritants.

CLASSIFICATION HISTORY

Classification Code: XXXX

Classification Established: July XX, 2024

FLSA Status: Exempt

Representation Unit: Unrepresented

Probationary Period: 1 year

Workers' Comp Code: 8810



Office of the City Manager

CONSENT CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Kevin Fong, Director, Information Technology Department

Subject: Contract 10549C Amendment: Tyler Technologies Enterprise Resource Planning System for ongoing software licensing, maintenance services, implementation and consulting services, and disaster recovery services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10549C with Tyler Technologies for software licensing, maintenance services, implementation, consulting services, and disaster recovery services for the online Enterprise Resource Planning (ERP) system for the amount not to exceed \$1,000,000 and a total contract value not to exceed \$5,705,342.68 from April 1, 2017 to June 30, 2027.

FISCAL IMPACTS OF RECOMMENDATION

Funding for ongoing services related to software licensing, maintenance services, implementation consulting services, and disaster recovery services for the online Enterprise Resource Planning (ERP) system through FY 2027 will be available in IT Cost Allocation Budget Fund number 680, subject to Council's approval of the proposed citywide FY 2025-2026 Budget and Annual Appropriation Ordinances.

Fiscal Year	Item Description	Amount
FY 2025 and 2026	ARGB Implementation Costs	\$150,000
FY 2025	Upgrade Support Services	\$30,000
FY 2026 and 2027	Maintenance, Licensure, environments and Disaster Recovery	\$820,000
	TOTAL:	\$1,000,000

Contract 10549C Amendment:
Tyler Technologies Enterprise Resource Planning System

CONSENT
July 30, 2024

CURRENT SITUATION AND ITS EFFECTS

The City currently uses Tyler Technologies' Enterprise Resource Planning (ERP) software for core financials, accounts receivables, budget, and payroll, which requires funding to cover licenses, maintenance services, and disaster recovery services on an ongoing annual basis. Additionally, staff are planning to move all of Accounts Receivable and General Billing (ARGB) out of the legacy Fund\$ system and into Tyler ERP. Lastly, to stay compliant with end of year W2 and 1099 reporting, Tyler ERP requires a version update.

The Tyler Technologies ERP system aligns with the City's strategic plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

The City entered into contract with Tyler Technologies on May 11, 2017 to implement the City's new Enterprise Resource Planning (ERP) software. The initial agreement included a launch of Financials, Human Resources and Payroll modules. Licenses, maintenance services, disaster recovery services, consulting services for new modules and version updates (aka "Operations and Maintenance" or O&M), were not factored into the initial costs. Ongoing annual funding to cover the O&M for the City's Enterprise Resource Planning (ERP) is critical for the City's operational functions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The adoption and implementation of a modern ERP system reduces the amount of paper for processing the City's business activities. The new system also reduces the paperwork involved in timesheet processing for the City employees.

RATIONALE FOR RECOMMENDATION

Ongoing annual funding to cover the licenses, maintenance services and disaster recovery services for the City's Enterprise Resource Planning (ERP) is critical for the City's operational functions. Moving ARGB to the ERP will facilitate the deactivation of those modules in Fund\$. Upgrading to the current version of ERP will keep the system compliant for end of year W2 and 1099 reporting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Kevin Fong, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

Contract 10549C Amendment:
Tyler Technologies Enterprise Resource Planning System

CONSENT
July 30, 2024

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

CONTRACT NO. 10549C AMENDMENT: TYLER TECHNOLOGIES, INC FOR
ENTERPRISE RESOURCE PLANNING SYSTEM

WHEREAS, on May 11, 2017, the City entered into a contract with Tyler Technologies to implement the Munis Enterprise Resource Planning (ERP) System; and

WHEREAS, on July 28, 2020, by Resolution No. 69-518-N.S., the Berkeley City Council approved spending authority for Tyler Technologies, Inc. not-to-exceed \$3,952,663.

WHEREAS, on June 27, 2023, by Resolution No. 70,906-N.S., the Berkeley City Council approved spending authority for Tyler Technologies, Inc. not-to-exceed \$4,705,342.

WHEREAS, Licenses, maintenance services and disaster recovery services (aka "Operations and Maintenance" or O&M) were not factored into the initial costs, and invoices received were paid out of the FUND\$ replacement fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute an amendment to Contract No. 10549C with Tyler Technologies, Inc. for software licensing, maintenance services, implementation, consulting services, disaster recovery services for the online Enterprise Resource Planning (ERP) system for a total contract value not to exceed \$5,705,342.68 from April 1, 2017 to June 30, 2027.



Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: F. Scott Ferris, Director, Parks, Recreation, & Waterfront Department

Subject: Contract 31900042 Amendment: CivicPlus on-line recreation reservation system

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 31900042 with CivicPlus, Inc. for on-line recreation reservation system services to increase the contract amount by \$37,000, for a total not-to-exceed contract amount of \$153,756.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the \$37,000 contract amendment will be available in the FY 2025 General Fund (Fund 011) budget.

CURRENT SITUATION AND ITS EFFECTS

The City's Recreation Division currently uses the CivicPlus on-line recreation reservation system that allows the public to register for a variety of recreation programs and facilities. An additional \$37,000 in spending authority is needed in order to cover the license service and transaction fees charged by CivicPlus through the remainder of the contract term ending on November 25, 2025.

BACKGROUND

In November of 2018, the City executed contract no. 31900042 with CivicPlus, Inc. to provide on-line recreation reservation system. The City of Berkeley's Parks, Recreation and Waterfront Department (PRW) provides a wide range of recreation facilities, programs, classes, and events for Berkeley residents and non-resident community members. The City operates two swimming pools, four community centers, 11 sports fields, 54 parks, three remote residential camp sites, a skate park, a summer day camp program, and a wide variety of special events and activities at various locations throughout the City.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated with the recommendations in this report.

RATIONALE FOR RECOMMENDATION

CivicPlus, Inc.'s on-line reservation system has proven to be a valuable application that supports a wide array of the City's Recreation business processes, including program registrations and facility reservations.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, 510-981-6700

Stephanie Chu, Recreation and Youth Services manager, 510-981-6700

Justin Pitcher, Recreation Program Supervisor, 510-981-6700

Attachments:

1: Resolution

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

CONTRACT NO. 31900042 AMENDMENT: CIVICPLUS ON-LINE RECREATION
RESERVATION SYSTEM

WHEREAS, In November of 2018, the City executed contract no. 31900042 with CivicPlus, Inc. to provide on-line recreation reservation system; and

WHEREAS, an additional \$37,000 in spending authority is needed in order to cover the license service and transaction fees charged by CivicPlus through the remainder of the contract term ending on November 25, 2025; and

WHEREAS, funding for the \$37,000 contract amendment will be available in the FY 2025 General Fund (Fund 011) budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a contract amendment to Contract No. 31900042 with CivicPlus, Inc. to add \$37,000 to provide additional professional services for a not-to-exceed contract amount of \$153,756.



Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council
From: LaTanya Bellow, Interim City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Lot Line Adjustments at 1401 Carleton Street and 1423 Ward Street

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute lot line adjustments with 1401 Carleton Street and 1423 Ward Street to resolve main dwelling encroachments at the City's Santa Fe Trackbed to Park Conversion Project Site.

FINANCIAL IMPLICATIONS

The fees associated with these two lot line adjustments will be a \$1,743 filing fee and a refundable map deposit fee of \$588 for each application. Funding is available in the FY 2024 California Statewide Park Development and Community Revitalization Program (SPP), Proposition 68 grant budget (Fund 336).

CURRENT SITUATION AND ITS EFFECTS

1401 Carleton Street and 1423 Ward Street are both nonconforming lots that have portions of the main dwelling encroaching onto City property, APN No. 54-1794-28 and APN No. 54-1735-20, respectively, at the City's Santa Fe Trackbed to Park Conversion Project Site. Lot line adjustments are needed to resolve these encroachments. The lot line adjustments will revise these properties so that they have proper side setbacks and clearances per the current municipal code. All property owners will maintain real estate property portfolios and there will be no change in square footage.

BACKGROUND

On April 21, 2021, Council authorized staff to submit a Statewide Park Development and Community Revitalization Program grant application for the Santa Fe Railroad Trackbed to Park Conversion Project and execute the project upon securing the grant. In early 2022, the City was notified of its grant award and on March 14, 2022 the grant contract was executed and Project execution began. The Santa Fe Railroad Trackbed to Park Conversion Project is located at the former railroad parcels between Blake Street and Ward Street, along Acton Street. The Project will convert four vacant parcels

Lot Line Adjustments at
1401 Carleton Street and 1423 Ward Street

CONSENT CALENDAR
July 30, 2024

into a community garden, separate dog park, kids' playground and tot cycle track, and a teaching garden and outdoor classroom.

As part of the Project, the City contracted a professional land surveyor to conduct a boundary and topographic survey of the site and its surroundings. This survey revealed several encroachments, including the main dwelling encroachments at 1401 Carleton Street and 1423 Ward Street.

1401 Carleton is adjacent to the parcel planned to be a dog park and 1423 Ward is adjacent to the parcel planned to be a teaching garden and outdoor classroom. Without resolution, the encroachments would impact the City's usable open space and the neighbor's safety and setbacks. These lot line adjustments are necessary to resolve existing main dwelling encroachments onto City property that will be converted into a public park.

Department of Parks, Recreation & Waterfront Staff notified neighbors with encroachments via certified letters and met with the owners of 1401 Carleton Street and 1423 Ward Street to discuss their encroachments, listen to their concerns, and work with them on potential solutions. Staff is working together with the affected owners to resolve the encroachments via lot line adjustments.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The main dwellings located at 1401 Carleton Street and 1423 Ward Street currently encroach onto the Santa Fe Trackbed to Park Conversion Project Site. Adjusting the lot lines will allow the City to utilize the entirety of owned land for the future park and update the existing nonconforming lots at 1401 Carleton Street and 1423 Ward Street to conforming lots.

ALTERNATIVE ACTIONS CONSIDERED

City Council could direct staff to take legal action against 1401 Carleton Street and 1423 Ward Street to clear the encroachments, or enter into agreements with a condition that the encroachments be removed if any renovation is done on the properties.

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 510-981-6700
Evelyn Chan, Supervising Civil Engineer, Parks Recreation & Waterfront, 510-981-6430

Attachments:

1: Ordinance

Exhibit A: Lot Line Adjustment Applications

ORDINANCE NO. ##,###-N.S.

LOT LINE ADJUSTMENTS AT 1401 CARLETON STREET AND 1423 WARD STREET

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

Section 1. The Council finds as follows:

- a. On April 20, 2021, the City Council authorized staff to apply for grant funding and execute the Santa Fe Trackbed to Park Conversion Project should grant funds be awarded with Resolution No. 69,802-N.S.
- b. On March 14, 2022, the City accepted grant funding and executed a contract with the Statewide Park Development and Community Revitalization Grant Program.
- c. The boundary and topographic survey of the site and its surroundings done for the Project show 1401 Carleton Street and 1423 Ward Street have portions of the main dwelling encroaching onto City Property.
- d. The encroachments of 1401 Carleton Street and 1423 Ward Street need to be resolved as they impact the City's usable future open space and the neighbors' future safety and access.
- e. The City Council authorizes the City Manager or his/her designee to execute lot line adjustments with 1401 Carleton Street and 1423 Ward Street to resolve existing main dwelling encroachments onto the City's Santa Fe Trackbed to Park Conversion Project Site and update the existing nonconforming lots to conforming lots.

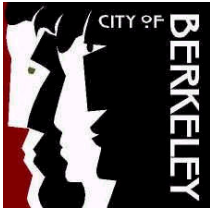
Section 2. AUTHORIZATION FOR CITY MANAGER TO EXECUTE LOT LINE ADJUSTMENTS AT 1401 Carleton Street and 1423 Ward Street.

The City Manager or his/her designee is hereby authorized to execute lot line adjustments with 1401 Carleton Street and 1423 Ward Street. The lot line adjustment applications shall be substantially in the form attached hereto as Exhibit "A."

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

Exhibits

A: Lot Line Adjustment Applications



Planning Department
Engineering Division

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT (CERTIFICATE OF COMPLIANCE)

This application is to be used for the submission of a **Tract Map** or a **Parcel Map** for the purpose of a subdivision of land, and for the submission of a **Lot Line Adjustment**, as defined in the **Subdivision Map Act** (current revision) and in the **City of Berkeley Municipal Code, Title 21**.

Please use the **APPLICATION FOR CONDOMINIUM** if the proposed project is a new condominium or a condominium conversion, as defined in **Section 783** of the **California Civil Code**.

INSTRUCTIONS:

Please answer the following questions, checking the appropriate boxes and/or supplying the requested information. Be as complete as possible, attaching additional sheets or supplemental data as required. Respond to all of the questions. If the question does not apply to your project, please mark **N/A** where an answer is requested.

Your attention is directed to the "NOTE" section at the end of this application. Incomplete applications will be returned to the applicant.

If you have any questions, it is suggested that you first consult the State of California's Subdivision Map Act (current revision) and the City of Berkeley's **Municipal Code, Title 21**. If you wish further information, please call the **Subdivision Engineer** at **(510) 981-6409**.

It is your responsibility as the applicant to make certain that your proposal conforms to all of the requirements (Zoning/Current Planning, Planning, Public Works, etc.) for land divisions and lot line adjustments in the City of Berkeley, or that the appropriate variances, waivers, use permits, etc., have been obtained/approved.

1. Please check and give the appropriate map number below if this application is for a:

☐ Tract Map No. _____ ☐ Vesting Tentative Map
☐ Parcel Map No. _____ ☒ Lot Line Adjustment ☐ Certificate of Compliance

2. This subdivision contains _____ parcels/lots.

3. Address of property: 1401 Carleton Street

4. Record Lot(s)/Block/Tract (or portions thereof – refer to the title report legal description, or deed)
Lot 28 in Block 23 of the Map of Mathews Tract, Berkeley, Oakland Township, Subdivide, 1888 filed August 7, 1888, in Book 10 of Maps at page 29, in the Office of the County Recorder of Alameda County.

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 2

5. Assessor's Parcel Number(s) 054-1794-015-00 and 054-1794-028-00
6. Name, Address, and Telephone Numbers of **Owner(s)**:
- A. City of Berkeley B. [REDACTED]
- 2180 Milvia Street [REDACTED]
- Berkeley, CA 94704 [REDACTED]
- Day: (510) 981 - 6738 Day: ([REDACTED]) [REDACTED]
- Evening () Evening ([REDACTED]) [REDACTED]
7. Name, Address, and Telephone Numbers of **Applicant** (letters from the City will be addressed to this person):
- Stacey Rutherford
- 1947 Center Street, Floor 5
- Berkeley, CA 94704
- Day: (510) 981 - 6738
- Evening ()
- 7a. Name, Address, and Telephone Number of **Engineer/Surveyor**, and Registration information:
- Christopher Vandrey 8783
- 201 N. Calle Cesar Chavez, Suite 300 Registration Number of Engineer/Surveyor
- Santa Barbara, CA 93103 12/31/24
- (805) 719 - 9818 Expiration Date of Registration
8. Describe the present use of the site: 1401 Carleton is a single family home. City property is currently vacant land that will be remediated and converted into a public park.
9. Briefly describe the purpose and intent of the proposed subdivision: To resolve encroachments onto City property.
10. Current zoning status of site: R-1
11. Total area of subdivision: square feet

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 3

12. Complete the following table, attach additional sheets as needed when applying for a Tract Map using the same format as shown below:

DESCRIPTION OF PROPOSED PARCELS AND IMPROVEMENTS

Parcel	A	B	C	D	E
Area (Sq. ft.)	3,386	14,169			
Proposed Use	Residential	public park			
Proposed Structures (Y/N)	N (existing)	N			
Proposed Access: Strips (Lineal ft.)	N (existing)	N/A			
R.O.W. Frontage: (Lineal ft.)	35.25	76.26			

13. Are there any easements in/on/over the site? If so, please describe:

No

14. Are there any utilities in an abutting public right-of-way(s) or easements?

Check all that apply and show on Tentative Map:

Gas X Electricity X Telephone X
 Water X Storm X Sanitary X

15. The nearest fire hydrant is 50 feet from the farthest parcel as measured along the public right-of-way and/or proposed access roads.

16. Is any utility construction proposed? Yes _____ No X

If yes, please describe: _____

17. Is any sanitary sewer construction proposed? Yes _____ No X

If yes, please describe: _____

18. Is any private sanitary sewer construction (main or lateral) proposed? Yes _____ No X

If yes, please describe: _____

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 4

19. Is any grading/excavation proposed? Yes X No

If yes, please describe: City will remediate the contaminants left behind from the site's historic
railroad use as part of the Santa Fe Trackbed to Park Conversion project.

20. Is any demolition proposed? Yes X No

If yes, please describe: City will remove the existing fence and construct a new one along the new, shared property line as part of the Santa Fe Trackbed to Park Conversion project.

21. Is "off-street" parking provided as required by the City's Zoning Ordinance? Yes X No

If no, please describe:

22. Describe any proposed construction of private access roads/strips. Will all passages or driveways (proposed or existing) be sufficient size so as to permit the entry of fire fighting equipment?

No proposed construction of private access roads/strips. This lot line adjustment will resolve existing encroachments onto City property and update 1401 Carleton into a conforming lot.

23. Briefly describe any other proposed improvements:

City will construct a new dog park after soil remediation.

24. Will any variances, waivers, use permits, etc., be required for this application? Yes ☐ No ☒

25. If so, have the variances, waivers, use permits, etc., been obtained?

Yes _____ No _____ Applied for _____

NOTE: If applying with a VESTING Tentative Map, written approval from the Board of Adjustments, in the form of APPROVED variances, permits, etc., is required PRIOR to applying for a land division.

If yes, please show the appropriate permit number _____ or date granted _____, and a description:

If applied for, city date, agency, application data, and a brief description:

NOTE: THIS IS NOT AN APPLICATION FOR SUCH VARIANCE, PERMITS, ETC., WHICH MUST BE MADE WITH THE APPROPRIATE DEPARTMENTS.

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 5

The acceptance of a completed application by the City of Berkeley does not constitute the approval of any application, nor does it guarantee that such application will be approved by the appropriate agency/agencies.

Once accepted by the City of Berkeley, all fees required for the submission of this application are non-refundable.

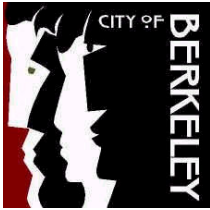
SIGNATURES OF APPLICANT AND ALL OWNERS OF RECORD (attach additional sheets, as needed):

_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ APPLICANT (PRINT NAME)	_____ APPLICANT'S SIGNATURE	_____ DATE

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Revised July 25, 2003

DO NOT WRITE BELOW THIS LINE

FILING DATE OF APPLICATION: _____



Planning Department
Engineering Division

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT (CERTIFICATE OF COMPLIANCE)

This application is to be used for the submission of a **Tract Map** or a **Parcel Map** for the purpose of a subdivision of land, and for the submission of a **Lot Line Adjustment**, as defined in the **Subdivision Map Act** (current revision) and in the **City of Berkeley Municipal Code, Title 21**.

Please use the **APPLICATION FOR CONDOMINIUM** if the proposed project is a new condominium or a condominium conversion, as defined in **Section 783** of the **California Civil Code**.

INSTRUCTIONS:

Please answer the following questions, checking the appropriate boxes and/or supplying the requested information. Be as complete as possible, attaching additional sheets or supplemental data as required. Respond to all of the questions. If the question does not apply to your project, please mark **N/A** where an answer is requested.

Your attention is directed to the "NOTE" section at the end of this application. Incomplete applications will be returned to the applicant.

If you have any questions, it is suggested that you first consult the State of California's Subdivision Map Act (current revision) and the City of Berkeley's **Municipal Code, Title 21**. If you wish further information, please call the **Subdivision Engineer** at **(510) 981-6409**.

It is your responsibility as the applicant to make certain that your proposal conforms to all of the requirements (Zoning/Current Planning, Planning, Public Works, etc.) for land divisions and lot line adjustments in the City of Berkeley, or that the appropriate variances, waivers, use permits, etc., have been obtained/approved.

1. Please check and give the appropriate map number below if this application is for a:

☐ Tract Map No. _____ ☐ Vesting Tentative Map
☐ Parcel Map No. _____ ☒ Lot Line Adjustment ☐ Certificate of Compliance

2. This subdivision contains _____ parcels/lots.

3. Address of property: 1423 Ward Street

4. Record Lot(s)/Block/Tract (or portions thereof – refer to the title report legal description, or deed)
Lot 7, Block 3, Map of San Pablo Park, filed November 21, 1906 in Book 22 of Maps, Page 1, Alameda County Records.

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 2

5. Assessor's Parcel Number(s) 054-1736-006-00 and 054-1735-020-00
6. Name, Address, and Telephone Numbers of **Owner(s)**:
- | | |
|--|--|
| <p>A. <u>City of Berkeley</u></p> <p><u>2180 Milvia Street</u></p> <p><u>Berkeley, CA 94704</u></p> <p>Day: (510) <u>981 - 6738</u></p> <p>Evening () _____</p> | <p>B. <u>[REDACTED]</u></p> <p><u>[REDACTED]</u></p> <p><u>[REDACTED]</u></p> <p>Day: ([REDACTED]) <u>[REDACTED]</u></p> <p>Evening ([REDACTED]) <u>[REDACTED]</u></p> |
|--|--|
7. Name, Address, and Telephone Numbers of **Applicant** (letters from the City will be addressed to this person):
- Stacey Rutherford
- 1947 Center Street, Floor 5
- Berkeley, CA 94704
- Day: (510) 981 - 6738
- Evening () _____
- 7a. Name, Address, and Telephone Number of **Engineer/Surveyor**, and Registration information:
- | | |
|---|--|
| <p><u>Christopher Vandrey</u></p> <p><u>201 N. Calle Cesar Chavez, Suite 300</u></p> <p><u>Santa Barbara, CA 93103</u></p> <p>(805) <u>719 - 9818</u></p> | <p><u>8783</u></p> <p>Registration Number of Engineer/Surveyor</p> <p><u>12/31/24</u></p> <p>Expiration Date of Registration</p> |
|---|--|
8. Describe the present use of the site: 1423 Ward is a single family home. City property is currently vacant land that will be remediated and converted into a public park.
9. Briefly describe the purpose and intent of the proposed subdivision: To resolve encroachments onto City property.
10. Current zoning status of site: R-1
11. Total area of subdivision: _____ square feet

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 3

12. Complete the following table, attach additional sheets as needed when applying for a Tract Map using the same format as shown below:

DESCRIPTION OF PROPOSED PARCELS AND IMPROVEMENTS

Parcel	A	B	C	D	E
Area (Sq. ft.)	3,147	16,011			
Proposed Use	Residential	public park			
Proposed Structures (Y/N)	N (existing)	N			
Proposed Access: Strips (Lineal ft.)	N (existing)	N/A			
R.O.W. Frontage: (Lineal ft.)	32.29	94.35			

13. Are there any easements in/on/over the site? If so, please describe:

No

14. Are there any utilities in an abutting public right-of-way(s) or easements?

Check all that apply and show on Tentative Map:

Gas X Electricity X Telephone X
 Water X Storm _____ Sanitary X

15. The nearest fire hydrant is 9 feet from the farthest parcel as measured along the public right-of-way and/or proposed access roads.

16. Is any utility construction proposed? Yes _____ No X

If yes, please describe: _____

17. Is any sanitary sewer construction proposed? Yes _____ No X

If yes, please describe: _____

18. Is any private sanitary sewer construction (main or lateral) proposed? Yes _____ No X

If yes, please describe: _____

19. Is any grading/excavation proposed? Yes X No

If yes, please describe: City will remediate the contaminants left behind from the site's historic
railroad use as part of the Santa Fe Trackbed to Park Conversion project.

20. Is any demolition proposed? Yes X No

If yes, please describe: City will remove the existing fence and construct a new one along the new, shared property line as part of the Santa Fe Trackbed to Park Conversion project.

21. Is "off-street" parking provided as required by the City's Zoning Ordinance? Yes X No

If no, please describe:

22. Describe any proposed construction of private access roads/strips. Will all passages or driveways (proposed or existing) be sufficient size so as to permit the entry of fire fighting equipment?

No proposed construction of private access roads/strips. This lot line adjustment will resolve existing encroachments onto City property and update 1423 Ward into a conforming lot.

23. Briefly describe any other proposed improvements:

City will construct a new teaching garden and outdoor classroom after soil remediation.

24. Will any variances, waivers, use permits, etc., be required for this application? Yes ☐ No ☒

25. If so, have the variances, waivers, use permits, etc., been obtained?

Yes _____ No _____ Applied for _____

NOTE: If applying with a VESTING Tentative Map, written approval from the Board of Adjustments, in the form of APPROVED variances, permits, etc., is required PRIOR to applying for a land division.

If yes, please show the appropriate permit number _____ or date granted _____, and a description:

If applied for, city date, agency, application data, and a brief description:

NOTE: THIS IS NOT AN APPLICATION FOR SUCH VARIANCE, PERMITS, ETC., WHICH MUST BE MADE WITH THE APPROPRIATE DEPARTMENTS.

APPLICATION FOR SUBDIVISION, LAND DIVISION AND/OR LOT LINE ADJUSTMENT

Page 5

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SIGNATURES OF APPLICANT AND ALL OWNERS OF RECORD (attach additional sheets, as needed):

_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ OWNER (PRINT NAME)	_____ OWNER'S SIGNATURE	_____ DATE
_____ APPLICANT (PRINT NAME)	_____ APPLICANT'S SIGNATURE	_____ DATE

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Revised July 25, 2003

DO NOT WRITE BELOW THIS LINE

FILING DATE OF APPLICATION: _____



Office of City Manager

CONSENT CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

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

Subject: Lease Agreement: Youth Musical Theater Company for the Live Oak Theater at 1301 Shattuck Ave

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Youth Musical Theater Company (YMTC) for the use and management of the City's Live Oak Theater at 1301 Shattuck Avenue for a term of three years, anticipated to begin September 1, 2024 and ending August 31, 2027, with one five-year option.

FISCAL IMPACTS OF RECOMMENDATION

Youth Musical Theater Company (YMTC) will pay an annual rent of \$6,000, intended to cover the City's cost for utilities, for a total of \$18,000 in the base period. If the 5-year option period is exercised, rent will increase to reflect updated costs and market conditions. Lease revenue will be deposited in the Parks Tax.

CURRENT SITUATION AND ITS EFFECTS

Live Oak Theater has been managed by community organizations for the past several decades. The most recent tenant, TheatreFirst, closed their operations and ended their lease in October 2023. They had just completed their 10th year; their lease had a 5-year term plus a 5-year option.

Many local theater groups expressed interest in the theater, so the City conducted a competitive process in January 2024. The City received two responses to the request for applications, and YMTC's application was ranked highest by an evaluation panel of City staff.

At Live Oak Theater, YMTC will manage theater rentals for the City to better activate the space with community groups and artists, and expand the community's awareness and use of the space. They will stage at least one YMTC production there each year, though their larger productions with full orchestras will continue to be in other venues. YMTC

will also maintain the theater and its equipment in good repair throughout the lease period.

Live Oak Theater will be open to the public for rentals, managed by YMTC, and is expected to be used for local theater performances, as well as for events like performing arts classes, staged readings, recitals, open mic events, film screenings, holiday shows, professional development, training events, and presentations (e.g. "TED talk"-type events).

During the 3-year base period of the lease, City and YMTC staff will annually review the performance of the lease in terms of community use of the theater, rental costs and revenue, and condition of equipment and premises. A 5-year option may be exercised at the end of the base period with the following conditions:

- Rent will increase to reflect updated costs and market conditions, as documented and agreed by the City and YMTC.
- A list of priority improvements is prepared by YMTC and approved by City staff for completion in the option period.
- The space is well-used and well-attended, as documented by YMTC and approved by the City, with a diversity of local theater productions and other events.
- The premises are well-maintained, as documented by YMTC and approved by the City.

The lease additionally provides the City with free use of the space up to 8 days per year.

BACKGROUND

YMTC is a non-profit 501(c)(3) that produces musical theater and provides theater training to students from 7th grade through the university level. YMTC is a City tenant at another City property at the south end of Aquatic Park, 2925 and 2945 Bolivar Drive, where they perform rehearsals, build sets and conduct programs. YMTC undertook a comprehensive renovation of those buildings starting in 2014, reviving an area of the park that had fallen into disrepair. YMTC is active in the local performing arts community, and has staff with expertise in all aspects of theater management.

The Live Oak Theater is located at the Live Oak Community Center, with a separate entrance to the north, facing Live Oak Park. The theater is approximately 3,000 sq ft and seats 91 people. The space includes an entry foyer with ADA restroom, theater seating and stage, backstage area with two dressing rooms and ADA restroom, and a sound/light booth. The premises include sound and lighting equipment and theater furniture and fixtures that make it a fully operational theater.

ENVIRONMENTAL SUSTAINABILITY

The proposed lease contains a requirement that the tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, the tenant is required

Lease Agreement: YMTC, Live Oak Theater

CONSENT CALENDAR

July 30, 2024

to minimize waste, recycle, and compost, as per Recycling and Composting Guidelines for City Buildings. In addition, the lease is expected to draw more members of the community to Live Oak Park, which can lead to increased environmental awareness and stewardship the park.

RATIONALE FOR RECOMMENDATION

The proposed lease offers the potential for higher use of the City's Live Oak Theater space, and more opportunities for the community to use and attend performances and events. YMTC brings professional theater management, including staff with expertise in theater technical equipment and requirements, as well as demonstrated experience maintaining City properties in good condition.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6711

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

Attachments:

1: Ordinance

Exhibit A: Lease Agreement

ORDINANCE NO. –N.S.

LEASE AGREEMENT WITH YOUTH MUSICAL THEATER COMPANY FOR THE USE
AND MANAGEMENT OF LIVE OAK THEATER AT 1301 SHATTUCK AVENUE

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

Section 1. The City Manager, or designee, is hereby authorized to execute a 3-year lease agreement with one 5-year option and any amendments thereto with Youth Musical Theater Company for the use and management of Live Oak Theater at 1301 Shattuck Ave. in Berkeley, CA. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be \$6,000 per year, intended to cover the City's cost of utilities. If the 5-year option period is exercised, rent will increase to reflect updated costs and market conditions.

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

CITY OF BERKELEY
IMPROVED PROPERTY LEASE

Between

THE CITY OF BERKELEY, A CHARTER CITY
ORGANIZED AND EXISTING UNDER THE LAWS
OF THE STATE OF CALIFORNIA

as Landlord,

and

YOUTH MUSICAL THEATER COMPANY

as Tenant.

For the Live Oak Theater property,
Located at 1301 Shattuck Ave.
Berkeley, CA

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PROPERTY LEASE**BASIC LEASE INFORMATION**

1.	Landlord:	City of Berkeley, a California municipal corporation (City) 2180 Milvia Street Berkeley, CA 94704 Attention: Director, Parks, Recreation & Waterfront Telephone: (510) 981-6700 Email: parks@cityofberkeley.info
2.	Tenant:	Youth Musical Theater Company (YMTC)
3.	Tenant Trade Name:	Youth Musical Theater Company
4.	Effective Date:	September 1, 2024
5.	Premises:	Live Oak Theater, located at the Live Oak Community Center, approx. 3,000 sq ft, including an entry foyer and restroom, 91 theater seats, stage, backstage area with 2 dressing rooms and restroom, and a sound/light booth.
6.	Permitted Uses:	The Premises shall be used by Tenant for theater productions and events like performing arts classes, staged readings, recitals, open mic events, film screenings, holiday shows, professional development, training events, and presentations (e.g. “TED talk”-type events).
7.	Initial Term:	Three (3) year(s), commencing as of September 1, 2024 (“ Commencement Date ”).
8.	Option Period:	Five (5) years.
9.	Base Rent:	\$6,000 per year. If option period is exercised, rent will increase to reflect updated costs and market conditions.
10.	Improvements & Maintenance	Tenant accepts premises in as-is condition. Tenant is responsible for all expenses associated with improvements needed to maintain the property in good condition. If unforeseen improvements with extraordinary costs are required, Landlord and Tenant agree to meet to discuss options for funding. Landlord makes no representation that it will fund any improvements.
11.	Maintenance	Tenant will be responsible for ongoing maintenance for the premises, including but not limited to plumbing, building systems, graffiti abatement, janitorial, and pest control, as well as maintenance, repair and replacement as needed of theater equipment and inventory.
12.	Services	Landlord will pay for gas, electric, water and sewer. Tenant will be responsible for and pay for all other services.

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

LANDLORD'S INITIALS

TENANT'S INITIALS

LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and YOUTH MUSICAL THEATER COMPANY, a non-profit organization doing business at 1000 42nd Street Oakland, CA 94608 ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

1. DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

B. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.

C. "Premises" shall mean the Live Oak Theater, located at the Live Oak Community Center, approx. 3,000 sq ft, including an entry foyer and restroom, 91 theater seats, stage, backstage area with 2 dressing rooms and restroom, and a sound/light booth, and as further depicted in Exhibit "A."

2. TERM

A. Initial Term and Term of Renewal. The initial term is for a period of three years. Tenant has the option, under certain terms and conditions as described below, to renew this lease for an additional five-year term. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant ("the Effective Date"). The Initial Lease Term will expire at midnight August 31, 2027 ("the Termination Date").

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. Landlord may extend to Tenant a five-year option to renew this Lease if Landlord, in its sole discretion, determines that throughout the Initial Term (a) Tenant has complied with all terms and conditions of the Lease, (b) the space has been well-used and well-attended, as documented by Tenant and approved by Landlord, with a diversity of local theater productions and other events, and (c) the Premises have been well-maintained, as documented by Tenant and approved by the Landlord. Any such option shall be subject to the following conditions:

1. Rent will increase to reflect updated costs and market conditions, as

- documented and agreed by Landlord and Tenant.
2. A list of priority improvements is prepared by Tenant and approved by Landlord staff for completion in the option period.
 3. Tenant will continue to ensure the space is well-used and well-attended, as documented by Tenant and approved by Landlord, with a diversity of local theater productions and other events.
 4. Tenant will continue to ensure the Premises are well-maintained, as documented by Tenant and approved by the Landlord.

Landlord shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the increase in rent and additional improvements, at least thirty (30) days prior to the expiration of the Initial Term.

C. If, after Landlord's initial determination that Tenant has complied with the terms and conditions of the Lease but prior to its actual expiration, Landlord determines, at its sole discretion, that Tenant has failed to comply with any term or condition of the Lease, Landlord may revoke the granting of the additional term and seek applicable remedies under the Lease, including, but not limited to Section 20.

D. If Landlord and Tenant are unable to agree upon conditions for renewal, as described above, but Tenant is in compliance with the terms and conditions of the Lease, the Lease will terminate at the end of the Initial Term.

E. At the expiration of the term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the premises and its appurtenances to Landlord in good order and condition. Tenant agrees to reimburse the Landlord for any damage done to the property caused by Tenant's occupation or tenancy excepting reasonable wear and tear and damage by the elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord's designated agent.

3. **RENT**

A. **Minimum Rent.** Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **SIX THOUSAND DOLLARS (\$6,000)** per year of the Initial Term. For purposes of determining Minimum Rent, the first year of the Lease is the period up to August 31, 2025.

B. **Manner of Payment.** All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

C. **Delinquency and Late Charges; Interest.**

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include,

without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

D. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subsection D.1. No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

4. PROPERTY AND OTHER TAXES

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Property by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Property by the City. Tenant acknowledges that City has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. The City reserves the right to create additional districts and to terminate any such district(s). Tenant shall be billed for each such assessment in the same manner as other property owners and lessees in the City.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by

Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Property, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Property, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Property.

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

5. USE OF PREMISES

A. The Premises shall be used by Tenant to create a vibrant community space that draws young people, families, working artists, and other members of the public, to Live Oak Theater. Tenant will manage theater rentals, open to the public, and will conduct marketing and outreach to expand the community's awareness and use of the space. Tenant may use the Premises for Tenant-run productions and events, and rentals for local theater performances, as well as for events like performing arts classes, staged readings, recitals, open mic events, film screenings, holiday shows, professional development, training events, and presentations (e.g. "TED talk"-type events).

B. Landlord agrees that Tenant may operate a box office within the lobby area of the theater provided that tenant first obtain all necessary licenses and permits for operation from local and state governments.

C. Tenant may operate a concession stand within the lobby area of the theater provided that Tenant first obtain all necessary licenses and permits for operation from local and state governments.

D. Adult-oriented businesses, as defined in the City of Berkeley Zoning Code, are not permitted to use the premises.

E. At all times, Tenant agrees to provide adequate personnel to operate and manage the theater and ensure that safe and efficient management of the Premises.

F. At Tenant shall comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants and patrons are properly supervised to prevent injury to participants and others. Tenant will provide adequate supervision of the participants and patrons at all times while using the Premises.

G. Landlord shall have no responsibility for Tenant's furnishings, property or equipment that may be lost, stolen or damaged.

H. Tenant acknowledges that the Premises is located within Live Oak Park and agrees to require its employees, participants, and patrons who use the Premises to abide by standards of behavior common to the general park use.

I. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held on the Premises.

J. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

K. In renting space, or at any other time, Tenant shall not represent itself as an agent of the City of Berkeley or of Landlord.

L. Tenant shall not, without the written consent of the Landlord:

1. place, construct, or maintain in, on, or about the Premises or within Live Oak Park any advertisement media, except for the bulletin board location outside the Live Oak Community Center and the current theater sign designated for advertising, subject to Berkeley Municipal Code, Title 20; including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;

2. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;

3. store, display or sell goods or merchandise on the Premises or place or permit portable signs or other devices to be stored or to remain on the Premises;

4. use or permit any portion of the Premises to be used as living or sleeping quarters;

5. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of Live Oak Park.

M. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering Live Oak Park, Live Oak Community Center or the Premises or any of its contents, or (except with the prior written consent of Landlord) which

may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon Live Oak Park, Live Oak Community Center or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises, Live Oak Park, or Live Oak Community Center which increases the existing rate of such insurance upon Live Oak Park, Live Oak Community Center or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of Live Oak Park and Live Oak Community Center including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

N. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

O. Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises; (iv) impair or interfere with the proper operation and maintenance of the Premises and/or Live Oak Park and Live Oak Community Center; or (v) violate any of Tenant's other obligations under this Lease.

P. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

Q. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of Live Oak Park and Live Oak Community Center or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

6. FREE CITY USE

The City may have free use of the space up to 8 days per year. In Year 1, Landlord will identify dates for the first year at the start of the lease. In Years 2 and 3, Landlord will provide dates 6 months in advance. As needed, Tenant may negotiate different dates with Landlord approval.

7. **ANNUAL PERFORMANCE REVIEW**

During the three-year Initial Term of the lease, Landlord and Tenant staff will annually review the performance of the lease in terms of community use of the theater, rental costs and revenue, and condition of equipment and premises. This review will inform Landlord's decision to exercise the option period, and conditions therein.

8. **USE OF LIVE OAK PARK PROPERTY**

A. The parties acknowledge that Tenant has, as a member of the general public, the non-exclusive right, in common with others duly authorized by Landlord, and subject to all generally applicable laws and regulations, to use Live Oak Park.

B. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Property or Live Oak Park or Live Oak Community Center, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to Live Oak Park and Live Oak Community Center (other than to the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning Live Oak Park, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

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

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's members, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of those using the Premises pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for Live Oak Park or Live Oak Community Center or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant 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 illegal acts. Tenant hereby waives any present or future claims Tenant may have

against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Tenant or any other person or entity.

F. Tenant will use its best efforts to maintain effective relations with other users of Live Oak Park, Live Oak Community Center and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the sensitive environment of Live Oak Park.

G. Tenant shall not interfere with the free and unobstructed access by the public to Live Oak Park. Tenant shall not preclude other users of Live Oak Park or Live Oak Community Center from exercising a different use without first obtaining any and all appropriate permits. Tenant shall be obligated to permit such access to Live Oak Park as required for consistency with applicable laws of the State of California, the Grant, and/or City's plans adopted from time to time; however, this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across, in or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

9. EQUIPMENT AND INVENTORY

The premises include sound and lighting equipment and theater furniture and fixtures that make it a fully operational theater as-is. Tenant will maintain or replace equipment and inventory as needed to keep the theater in good repair and fully operational. See Exhibit X for a list of equipment and inventory included within this lease. Tenant acknowledges that this equipment and inventory is the property of the Landlord, and will remain with the theater at the termination of the lease.

10. SERVICES

A. Landlord will pay for gas, electric, water and sewer costs, as these costs are on a shared meter with the Live Oak Community Center.

B. Tenant will make arrangements for and pay for all other utilities and services,

including but not limited to garbage, internet, alarm service, pest control, janitorial and all fees and periodic charges related thereto.

C. Landlord makes no representation or warranty that the supply of any utility or service to the Premises will not be interrupted, delayed or reduced.

D. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Property or Live Oak Park or Live Oak Community Center; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

11. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the Landlord and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

12. ALTERATIONS AND IMPROVEMENTS

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Property and the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Premises' structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent. All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's work involves the Premises' structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances,

including but not limited to asbestos and fiber glass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's work shall require a building permit or other permits from the City of Berkeley, and/or any other governmental agency, Tenant shall not perform any of Tenant's work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Tenant shall not repair, replace or modify any utility system located within the Premises without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Premises, facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings, or construction of any new buildings, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord and all are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

F. Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property at the termination of this Lease, except that Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Premises.

G. 1. Tenant agrees that to the extent it is required to comply with the prevailing

wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Property. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's work covered by this subsection H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subsection, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subsection H.

13. LIENS

Tenant shall keep the Premises, Live Oak Community Center and Live Oak Park free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

14. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Premises, whether required by deterioration or by operations of Tenant or otherwise.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Premises, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Premises in efficient and attractive condition, given the nature and age of the Premises, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within Live Oak Park as may be designated by Landlord for pick-up and disposal.

E. In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

F. Nothing in this Section 11 shall be deemed to affect or impair Landlord's rights under Section 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Premises or to improve the Premises, or any part thereof. Landlord has made no representations respecting the condition of the Premises, Live Oak Community Center or Live Oak Park, except as specifically set forth in this Lease.

15. EXTRAORDINARY COSTS

Tenant accepts the Premises in "as-is" condition. Tenant is responsible for all expenses associated with the operation, maintenance, and needed improvements to maintain the property in good condition. If unforeseen improvements with extraordinary costs are determined necessary by both the Landlord and Tenant, the parties agree to meet to discuss options for funding. Tenant acknowledges that the Landlord makes no representation that it will fund any improvements.

16. ENVIRONMENTAL

A. Tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Tenant shall minimize waste and recycle and compost, as per Recycling

and Composting Guidelines for City Buildings. Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Solid Waste Management Division.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City's Solid Waste Management Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.
7. Tenant shall conserve energy.

17. DAMAGE OR DESTRUCTION

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Section 13) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its equipment and leasehold improvements.

B. Anything in subsection A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Premises, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

18. INDEMNIFICATION

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, 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 Lease. 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 Tenant'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 Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant 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 Tenant from its separate and distinct obligation to defend Landlord. 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 Tenant 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, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease 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 Tenant or any of the Tenant'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 Tenant or its subcontractors, the Tenant 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.

19. INSURANCE

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, Live Oak Community Center, Live Oak Park, with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises, Live Oak Community Center, or Live Oak Park.

2. Special Form Property insurance for cost of damage to the Premises, including, without limitation, during any term of construction of Tenant's work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and

cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Section 35 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Section 15 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

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

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord 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 Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant shall forward all insurance documents to:

Parks, Recreation & Waterfront Department
City of Berkeley
2180 Milvia St., 3rd Floor
Berkeley, CA 94704

20. COMPLIANCE WITH LAWS

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises.

Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises, or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

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

21. ASSIGNMENT AND SUBLEASE

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

22. INSPECTION

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Premises or Live Oak Park; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

23. DEFAULT

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. Failure to Use Premises. Failure to use the Premises as specified in Sections 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. General Assignment. A general assignment by Tenant for the benefit of creditors.

E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation,

dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises and/or Live Oak Park by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of Live Oak Park caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with lease term. Failure to pay all rents or sums due, failure to perform any of the obligations, such failure continuing for 30 days after notice from the landlord of said default.

24. REMEDIES UPON DEFAULT

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation After Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subsection A above. In such case, Landlord may enforce all its rights and remedies under this Lease, 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 Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages Upon Termination. Should Landlord terminate this Lease pursuant to subsection A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (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 Tenant 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 Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease 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 Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord 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 subsection C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

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. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord'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 Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant 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 Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

25. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored,

treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the 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 Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Section 14 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or Live Oak Park by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or Live Oak Park, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this Section 21.C. shall survive the expiration or termination of this Lease.

26. LANDLORD'S RIGHT TO CURE

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Section 19, Landlord, without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by

Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

27. EMINENT DOMAIN

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Premises to the extent necessary to constitute the portion of the Premises not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

28. SUBORDINATION

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Live Oak Park and Live Oak Community Center, all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or

documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

29. NO MERGER

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

30. TRANSFER BY LANDLORD

In the event the original Landlord or any successor owner of Live Oak Park shall sell or convey the Premises, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

31. ESTOPPEL CERTIFICATES

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

32. HOLDING OVER

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

33. CHANGES BY LANDLORD

- A. The description of the Premises and the location of any Premises utility system(s),

including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of Live Oak Park and Live Oak Community Center, and to change the name, number or designation by which the Premises is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

34. GOVERNING LAW

This Lease shall be governed by the laws of the State of California.

35. SECURITY DEPOSIT

As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease, Tenant shall deposit with Landlord in an amount of **SEVEN HUNDRED DOLLARS (\$700)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

36. SIGNAGE

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria

outlined in Berkeley Municipal Code, Title 20 and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises contrary to the terms of this Section 32. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Premises caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in Live Oak Park.

37. NO PARTNERSHIP

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

38. NO WAIVER

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

39. NOTICES

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered

personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

To Tenant: Youth Musical Theater Company
1000 42nd Street
Oakland, CA 94608

To Landlord: Parks, Recreation & Waterfront
City of Berkeley
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

With copy to: City Manager
City of Berkeley
2180 Milvia Street, 5th Floor
Berkeley, CA 94704

Notices to Landlord regarding Hazardous Substances required by Section 21 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises.

40. COMPLETE AGREEMENT

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

41. REQUESTS FOR CONSENT; WAIVER OF CLAIM

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

42. INTERPRETATION

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

43. SUCCESSORS AND ASSIGNS

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

44. AUTHORITY

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

45. UNAVOIDABLE DELAYS

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Section 41 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

46. TIME OF THE ESSENCE

Time is of the essence of each and every covenant and condition of this Lease.

47. BROKERAGE

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against,

and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

48. CITY NON-DISCRIMINATION ORDINANCE

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

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

B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S. This resolution, as may be amended from time, stipulates that Tenant's memberships policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

49. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

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

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

50. CONFLICT OF INTEREST PROHIBITED

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

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

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

51. NUCLEAR FREE BERKELEY

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

52. OPPRESSIVE STATES

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

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

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

C. Tenant's failure to comply with this paragraph shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Section 19. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

53. BERKELEY LIVING WAGE ORDINANCE (LWO)

A. 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 mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this 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 Section 19 herein.

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

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

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 19.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

54. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

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

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Section 19 of this lease.

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

Tenant's failure to comply with this section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 20.

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.

55. REQUIRED ACCESSIBILITY DISCLOSURE

A. Landlord hereby advises Tenant that the Premises and Facility have undergone an inspection by a certified access specialist, and Tenant acknowledges receipt of findings from that inspection. Except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Project in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

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

56. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records

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

57. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

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

58. SURVIVAL

The provisions of this Lease and obligations of Tenant, that by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

59. EXHIBITS

Exhibit A, and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

LANDLORD:

CITY OF BERKELEY
A municipal corporation

By: _____
City Manager Date

Approved as to form:

Registered by:

City Attorney Date City Auditor Date

Attest:

City Clerk Date

TENANT:
YOUTH MUSICAL THEATRE COMPANY
A non-profit organization

By: _____
Jennifer Boesing, Executive Director Date _____

TENANT INFORMATION

Tax Identification No. _____

Incorporated: Yes No

Certified Woman Business Enterprise: Yes _____ No _____

Certified Minority Business Enterprise: Yes _____ No _____

Certified Disadvantaged Business Enterprise: Yes No

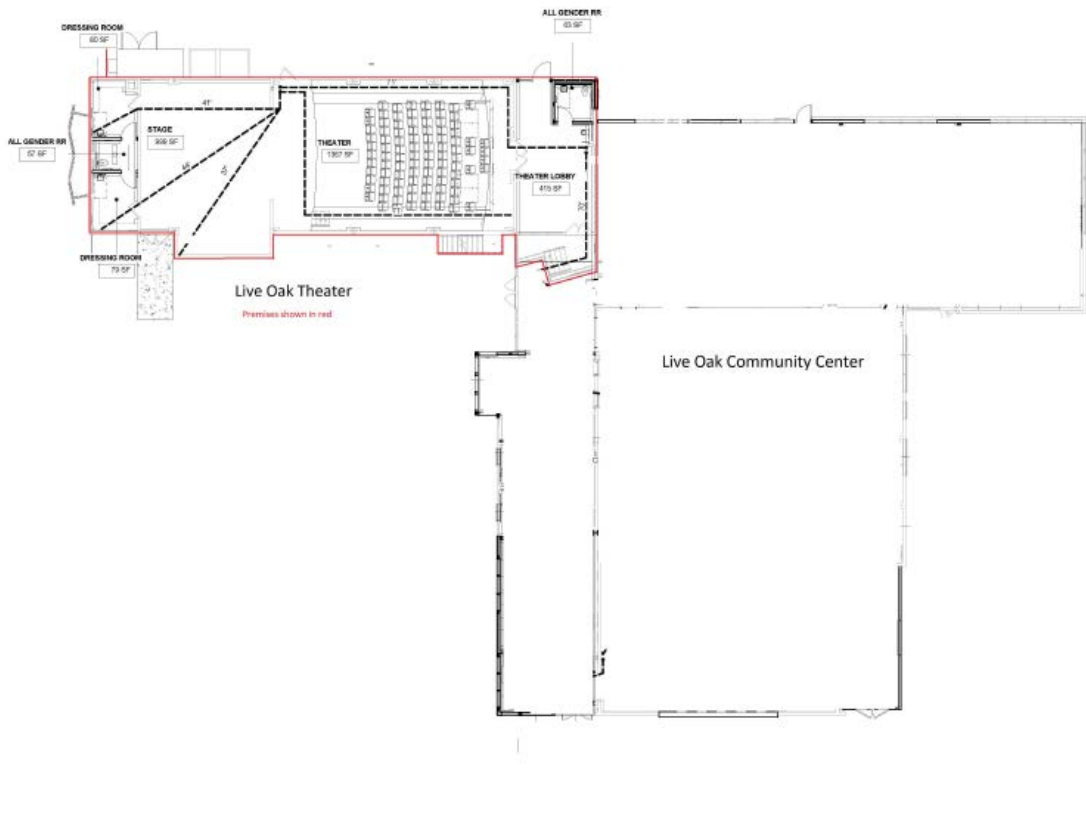
City Business License No. _____, or Exempt pursuant to B.M.C. Section _____

Exhibit “A”: Leased Premises

Live Oak Theater:

That portion of the Live Oak Community Center known as Live Oak Theater, occupying the area as depicted in Figure 1. The Premises comprises approx. 3,000 sq ft, and includes an entry foyer and restroom, 91 theater seats, stage, backstage area with 2 dressing rooms and restroom, and sound/light booth.

Figure 1: Live Oak Theater Premises





Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council
From: LaTanya Bellow, Interim City Manager
Submitted by: Jennifer A. Louis, Chief of Police
Subject: Revenue Grant: Cannabis Tax Fund Grant Program (CTFGP) Acceptance

RECOMMENDATION

Adopt a Resolution authorizing the Chief of Police to accept the CTFGP grant and enter into the resultant grant agreement and any amendments, with the California Highway Patrol. This grant is for \$111,716.80 for the period of July 1, 2024 through June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

The total of this project will not exceed \$111,716.80. Grant revenues will be deposited into budget code 336-71-703-812-0000-000-000-432110 to offset expenditures. Appropriation of the expenditures is being included in the First Amendment to the Appropriations Ordinance. This grant will fund overtime, benefits, training costs, and reduce additional General Fund expenditures.

CURRENT SITUATION AND ITS EFFECTS

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

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

BACKGROUND

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

injured in traffic collisions that occur in the City of Berkeley. Berkeley maintains a high ranking in total fatal and injury collisions, hit and run injury collisions, speed related collisions, nighttime collisions, and motorcycle involved collisions. With assistance from the 2025 CTFGP Grant, the department will continue our efforts to reduce the number of community members injured in collisions whether they choose to walk, drive, bike or ride a motorcycle in our city.

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

Dep. Chief Jen Tate, Police, (510) 981-5760

Attachments:

1: Resolution

Exhibit A: CTFGP Grant Agreement

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

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

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

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

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

WHEREAS, grant revenues will be deposited into budget code 336-71-703-812-0000-000-000-432110, in the DUI Enforcement Education Program Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Chief of Police is authorized to accept the CTFGP Grant and enter into the resultant grant agreement and any amendments, with the CHP to fund increased levels of impaired driving enforcement in the amount of \$111,716.80 for the period of July 1, 2024 to June 30, 2025.

Exhibit

A: CTFGP Grant Agreement



Berkeley Police

Prepared by Berkeley Police
for California Highway Patrol (CHP) Law Enforcement: Small and Mid-Size Organizations/Agencies FY 2024/2025

Primary Contact: Jen Tate



Opportunity Details

Opportunity Information

Title

Law Enforcement: Small and Mid-Size Organizations/Agencies FY 2024/2025

Description

Law Enforcement grants provide financial assistance to allied agencies for the education, prevention, and the enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis and cannabis products.

The intent of the program is to educate the public regarding the dangers of impaired driving, enforce impaired driving laws on the roadway, and improve the Organization/Agency's effectiveness through training and development of new strategies.

Awarding Agency Name

California Highway Patrol

Agency Contact Name

Cannabis Grants Unit (CGU)

Agency Contact Phone

916-843-4360

Agency Contact Email

CGUGrants@chp.ca.gov

Fund Activity Categories

Education, Law, Justice and Legal Services

Opportunity Manager

Cannabis Grants Unit (CGU)

Opportunity Posted Date

1/9/2024

Public Link

<https://www.gotomygrants.com/Public/Opportunities/Details/468aa0b8-b253-4f24-b655-b0bf6cf72569>

Is Published

Yes

Funding Information

Funding Sources

State

Funding Source Description

With the passage of Proposition 64 in 2016, The Control, Regulate, and Tax Adult Use Marijuana Act (AUMA), California voters mandated the state to set aside funding for the CHP to provide grants to local governments and Qualified Nonprofit Organizations for the education, prevention, and enforcement of impaired driving laws pursuant to Section 34019 (f)(3)(B) Revenue and Taxation Code (RTC).

Funding Restrictions

State Agencies/Departments, please refer to Section 34019 (f)(3)(B) RTC and California Code of Regulations, Title 13, Division 2, Chapter 13, for additional information.

Award Information



Award Range

\$500,000.00 Ceiling

Award Period

07/01/2024 - 06/30/2025

Award Type

Competitive

Indirect Costs Allowed

No

Matching Requirement

No

Submission Information

Submission Timeline Type

One Time

Submission Timeline Additional Information

GRANT APPLICATIONS ARE DUE FEBRUARY 23, 2024, BY 5:00 PM PST

Grant Applicants are advised to ask submittal questions well before the deadline. The Cannabis Grants Unit (CGU) cannot guarantee an immediate response and the Grant Management System (GMS) will automatically close at 5:00 PM PST. Once a Grant Application is submitted through the GMS, Grant Applicants may not add, edit, or delete any Grant Application information.

Question Submission Information

Question Submission Email Address

CGUGrants@chp.ca.gov

Eligibility Information

Eligibility Type

Public

Additional Eligibility Information

Small and Mid-Size Law Enforcement Organizations/Agencies, with the primary function of enforcing traffic laws, which includes responding to calls, making arrests, and issuing citations, pursuant to the California Penal Code, California Vehicle Code, and California Health and Safety Code

Small-Size Law Enforcement Organizations/Agencies: 100 employees or less

Mid-Size Law Enforcement Organizations/Agencies: 500 employees or less

Additional Information

Additional Information URL

<https://www.chp.ca.gov/programs-services/programs/cannabis-tax-fund-grant-program>

Award Administration Information

State Award Notices

Awards will be announced in May and June 2024.

Administrative and National Policy Requirements

The California Highway Patrol (CHP) adopted regulations within Title 13 of the California Code of Regulations (CCR),



Division 2, by adding Chapter 13, which govern the CHP, Cannabis Tax Fund Grant Program.

These regulations outline:

- * Grant Provisions
- * Grant Project Types
- * Specific Grant Application Requirements
- * Grant Evaluation Criteria
- * Necessary Administrative Procedures for the Program

Regulations can be found at:

<https://www.chp.ca.gov/programs-services/programs/cannabis-tax-fund-grant-program/program-regulations>

Reporting

Quarterly Reporting is required and due within 14 calendar days after the close of each quarter.

Quarter One (Q1): July 1 - September 30

Quarter Two (Q2): October 1 - December 31

Quarter Three (Q3): January 1 - March 31

Quarter Four (Q4): April 1 - June 30

Other Information

Please ensure your Organization/Agency has the capability to electronically sign required documents (ex: Grant Agreement).



Project Information

Application Information

Application Name
Berkeley Police

Award Requested
\$111,716.80

Total Award Budget
\$111,716.80

Primary Contact Information

Name
Jen Tate

Email Address
jtate@berkeleyca.gov

Address
2100 Martin Luther King Junior Way
Berkeley, CA 94704

Phone Number
(510) 981-5810



Project Description

1. Organization/Agency Representatives

Organization/Agency Section/Unit (subdivision) to administer the Grant Agreement

Berkeley Police Traffic Bureau

Organization/Agency Representative

Please complete the following fields with appropriate Organization/Agency representatives, as applicable.

- The Authorized Official is authorized to enter into a Grant Agreement with signing authority.
- The Authorized Financial Contact maintains financial records, documentation, and recipient of warrant.
- The Administrative Contact is responsible for day-to-day administration.

Authorized Official Name (first and last)

Jennifer Louis

Authorized Official Title

Chief of Police

Authorized Official Address (street, city, state, zip code)

2100 Martin Luther King Jr Way, Berkeley, CA 94704

Official Address to Receive Reimbursement Payment - MUST MATCH FISCAL FORM (street, city, state, zip code)

2100 Martin Luther King Jr Way, Berkeley, CA 94704

Authorized Official Phone Number (with area code)

510-981-5700

Authorized Official Email Address

jlouis@berkeleyca.gov

Authorized Financial Contact Name (first and last)

Chuck Gunter

Authorized Financial Contact Title

Administrative and Fiscal Services Manager

Authorized Financial Contact Phone Number (with area code)

510-981-5976

Authorized Financial Contact Email Address

cgunter@berkeleyca.gov

Administrative Contact Name (first and last)

Jen Tate

Administrative Contact Title

Deputy Chief

Administrative Contact Phone Number (with area code)

510-981-5810

Administrative Contact Email Address



jtate@berkeleyca.gov



2. Senate/Assembly/Congressional/County Information

To determine the State Senate District(s), State Assembly District(s), and California Congressional District(s), copy and paste the below URL in your browser and search:

<https://gis.data.ca.gov/maps/CDEGIS::legislative-districts-in-california-2/about>

Select one or more State Senate District(s) where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

State Senate 09

Select one or more State Assembly District(s) where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

State Assembly 15

Select one or more California Congressional District(s) where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

California Congressional District 13

Select one or more California counties where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

Alameda

Number of residents (population) that your Organization/Agency serves.

124321



3. Statistical Data

Ensure the responses below are accurate and align with the statistical data provided within the Grant Application. If a question is not applicable, please input "0" or "N/A".

How many schools are in your jurisdiction?

	Elementary Schools	Middle Schools	High Schools	Colleges/Universities
Number of Schools	19	9	5	3

How many law enforcement personnel are within your Organization/Agency?

151

Does your Organization/Agency have specifically designated traffic enforcement personnel who conduct driving under the influence (DUI) enforcement operations?

- ☐ Yes
☒ No

How often does your Organization/Agency conduct DUI enforcement activities (ex: DUI Saturation Patrols, DUI Checkpoints)?

	Weekly Average	Monthly Average	Yearly Average
Enforcement Activities	1	4	48

How many law enforcement personnel have attended Standard Field Sobriety Test (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), and/or Drug Recognition Evaluator (DRE) training?

	SFST	ARIDE	DRE
Number of Trained Law Enforcement Personnel	21	14	6

How many certified DREs does your Organization/Agency currently have?

0

How many law enforcement personnel are certified SFST and/or DRE Instructors?

	SFST	DRE
Number of Certified Instructors	4	0

What in-service training does your Organization/Agency offer related to DUI/DUID?

All new Berkeley Police Department Officer's field training period includes a one hour class which covers topics which include describing BPD's

DUI checkpoint programs, determining the primary collision factor in DUI collisions, and sobriety investigations at the scene of collisions. Additionally, each recruit receives a 30 minute class teaching the functions, use, and courtroom testimony as it relates to the PAS machine.

BPD's patrol schedule allows for paid training days throughout the year. As we have four active SFST instructors, we have been able to use some of this time to provide DUI related training. In the past, topics have covered updates to SFST's, blood draw warrants, an introduction to drug impaired driving.



Is training conducted at your Organization/Agency or at an alternate facility?

- ☒ Within Organization/Agency
- ☐ Alternate Facility

Do law enforcement personnel participate in training with local city attorneys and/or district attorneys?

- ☐ Yes
- ☒ No

Grant Funded Equipment

Have Cannabis Tax Fund Grant Program Grant Funds been utilized to purchase equipment (an acquisition cost of at least \$5,000)?

- ☐ Yes
- ☒ No

If yes, list EACH equipment item and fiscal year of the Grant Agreement.

EXAMPLE ONLY

FY21-22 = Two Message Boards

FY22-23 = One DUI Vehicle



4. Project Description

Project Types: Please select project type(s) applicable to your Project.

- ☒ Law Enforcement Training
- ☒ Public Education and/or Prevention
- ☒ Enforcement Efforts

Provide a brief overview/synopsis (a paragraph) of the proposed Project. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

According to the National Highway Traffic Safety Administration (NHTSA), traffic deaths in California increased 6% in 2021 from the last reported data in 2020. Between 2021-2023, Berkeley Police Officers investigated 224 collisions wherein the driver was impaired. Of those, 56 were injury collisions, and 2 were fatal collisions.

Best practice strategies will be employed to reduce the number of persons killed and injured in collisions involving impaired drivers. The funded strategies will focus on reducing impaired driving through special enforcement operations, and increasing public awareness through education and media engagement. Additional training for BPD officers in SFST and ARIDE will add to our collective effort to reducing fatal and serious collisions caused by impaired drivers.



5. Problem Statement & Proposed Solution

Clearly identify the problem/need (Problem Statement) in your local community that will be addressed by the Project. Then, clearly identify the Proposed Solution to address the problem/need. If applicable, provide recent and high-level statistical data that directly supports the problem/need in your local community. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - EITHER TYPE INFORMATION IN FIELD OR ATTACH DOCUMENT.

In California alone, there are 49 cities with larger populations than Berkeley. In Alameda County, Berkeley is ranked number four in population behind Oakland, Fremont, and Hayward. Yet, the City of Berkeley is famous around the globe.

As of the 2020 census*, Berkeley's population was 124,321. The population density was over 11,000 per square mile. Nearly 48 percent of Berkeley residents use a motor vehicle to commute to work, just under eight (8) percent used a bicycle and 16 (16) percent walked. Berkeley makes up only eight (8) percent of Alameda County's population but more than 37 (37) percent of the county's population of people who walk and ride bikes to work.

Additionally, there are seven (7) cannabis dispensaries located within the City;

- The Apothecarium Cannabis Dispensary & Delivery, 2312 Telegraph Ave.
- Cannabis Buyer's Club of Berkeley, 3033 Shattuck Ave.
- Hi-Fidelity Cannabis Dispensary, 2465 Telegraph Ave.
- Berkeley Patients Care Collective, 2590 Telegraph Ave.
- Berkeley Patients Group, 2366 San Pablo Ave.
- Farmacy Berkeley, 3243, Sacramento St.
- Frisco Labs Fulfillment Center, 2930 Domingo Ave.

In 2023, the Berkeley Police Department (BPD) made 139 misdemeanor DUI arrests (110 alcohol, 19 drugs only, 10 combo), and two (2) minor with BAC over .05%. In 2023, Berkeley Police made seven (7) felony DUI arrests (six (6) alcohol, one (1) combination alcohol/drugs).

Over the past three (3) years (2021-2023), BPD investigated 215 DUI Collisions. Of those 215 collisions 67 were injury collisions with a total of 91 injured people. The number of DUI injury collisions and persons injured has risen each of these years.

2023 DUI collisions: 75, of which 26 were injury collisions with 39 people injured

2022 DUI collisions: 78, of which 25 were injury collisions with 30 people injured

2021 DUI collisions: 62, of which 16 were injury collisions with 22 people injured

Currently, the Traffic Bureau at the Berkeley Police Department is staffed by only one Motor Officer, one Traffic Data Analyst, one Sergeant and one Lieutenant. Motor Officer responsibilities include injury-collision investigations and traffic enforcement; however, resources are often depleted rapidly due to ancillary duties and personnel shortages in the Operations/Patrol division. Grant funding would build upon our current traffic safety efforts by allowing patrol and motor officer's opportunities to address traffic safety and impaired driving — in addition to and outside of their regularly scheduled duties. Additionally, the funds would provide opportunities for leadership development and learning in traffic safety and DUI/impaired driving enforcement, and enhance the department's overall mission of public safety.

Proposed Solution:

The Berkeley Police Department's (BPD) traffic enforcement strategy employs a data-driven three prong approach;

1. Enforcement of Primary Collision Factors – unsafe speed, pedestrian right-of-way at crosswalks, failure to yield at intersections, red light and stop sign violations. Collision data is used to direct enforcement efforts.
2. Community Reports – Response to calls from community members regarding possible DUI drivers, unsafe driving acts, and other crimes involving vehicles (hit and run).
3. Community Caretaking – Distracted driving enforcement, DUI investigations, seatbelt violations

By focusing on the three prongs above BPD, in conjunction with grant funding, will continue to take a proactive and comprehensive approach to public safety where injury-collisions are concerned. The department will address impaired



drivers within the City limits by way of DUI saturation patrols. These patrols allow officers to both proactively seek out impaired drivers and to deploy targeted enforcement tactics based on DUI arrest and injury-collision data, enhancing the overall training and experience of those officers.

BPD will continue to work with local media to publicize our proactive enforcement efforts and to educate the community by way of public awareness campaigns and strategies.

In addition, grant funds will assist our training program. Backfill funds will enable the department to send officers to trainings by offsetting the financial impact of staffing the vacant shifts. Training officers in SFST, ARIDE and SFST Instructor will enhance our overall effectiveness as a department at detecting, deterring, and apprehending impaired drivers. The purchase of Preliminary Alcohol Screening equipment will contribute to our effectiveness and overall efficiency, and will greatly assist the officers in their saturation patrol efforts.

The BPD Traffic Bureau will coordinate with our Community Service Bureau and patrol officers to include impaired driving awareness into any public education opportunity.

All of these projects will be achieved through the timeline of the grant cycle, with emphasis on training and purchases conducted as early as possible to utilize the new training as much as possible during enforcement opportunities.

*census information from www.census.gov

Statistical Data/Report(s)

BPD DUI Collisions CHP 2024.xlsx, BPD Collision Data.docx



6. Performance Measures/Scope of Work

Detail EACH Project activity/item below, which will serve as your goals and objectives for the Project. For EACH goal/objective, include estimated timelines (ex: monthly, quarterly), quantitative measurements (ex: reduction of DUI/DUID by %), and justification detailing how it will enhance/support the Project. NOTE: These goals and objectives must be consistent with the Budget. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

Grant funds would allow for officer training, public education, and enforcement opportunities in regards to impaired driving. Each of these goals in addition to activities and timeline would be monitored by the grant administrator. By tracking the activity of the funded projects, BPD would be able to account for, and report on the effectiveness of the proposed projects.

Goal One - Officer Training: Provide our community with well-trained Officers and with the skills needed to investigate impaired driving incidents and collisions. To accomplish this goal, the BPD will seek out SFST, ARIDE, and SFST Instructor training.

Objective 1.A. Two (2) police officers will be trained in SFST within the one-year term of this grant.

Objective 1.B. Two (2) police officers will be trained in ARIDE within the one-year term of this grant.

Objective 1.C. One (1) police officer will be trained and certified in SFST Instructor Training within the one-year term of this grant.

Q1=2 officers to SFST school

Q2=1 officer to SFST Instructor

Q3=2 officers to ARIDE school

Goal Two - Enforcement:

Objective 2.A. Implement DUI Saturation Patrols – BPD will conduct ten (10) DUI saturation patrols per quarter (a minimum of two (2) officers per saturation patrol on eight (8) hour shifts). These patrols will focus their efforts in areas known to have a high incidence of impaired driving collisions or DUI related arrests. BPD will aim to reduce DUI/DUID related collisions by 10% , which will improve roadway safety in the community.

Q1=10 Saturation Patrols

Q2=10 Saturation Patrols

Q3=10 Saturation Patrols

Q4=10 Saturation Patrols

Goal Three - Purchase PAS and other supplies to support DUI saturation patrols.

Q1=Purchase supplies

Q2-Q4=implement supplies after purchase to be used during saturation operations

Performance Plan:

<u>Goal</u>	<u>Goal Type</u>
SFST Officer Training	Two (2) Officers trained
ARIDE Training	Two (2) Officers trained
SFST Instructor	One (1) Officer trained
Press Releases	Four (4) Issued
Enforcement Operations	40 Completed



EXAMPLE ONLY

16 DUI Saturation Patrols (Q1 = 4, Q2 = 4, Q3 = 4, Q4 = 4): Aim to reduce DUI/DUID deaths by 10%, which will improve roadway safety in the community.

2 DUI Checkpoints (Q2 = 1, Q4 = 1): Aim to reduce DUI/DUID by 15%, which will reduce the number of impaired drivers in the community.

4 Message Boards for DUI Checkpoints and Educational Messaging (Q1 = Purchase, Q2 = Receive, Q2-Q4 = Use to complete DUI Checkpoints and education): We will utilize the Message Boards to notify the public of an approaching DUI Checkpoint. In between DUI Checkpoints, we will display educational messaging against driving under the influence.

4 Educational Presentations at local high schools (Q1 = 1, Q2 = 1, Q3 = 1, Q4 = 1): Aim to contact at least 100 students each quarter to increase awareness of driving under the influence. The presentations will educate students on the implications of driving impaired.



7. Project Performance Evaluation

Provide the method of evaluation to show Project effectiveness and positive impact(s) on the community. These strategies shall include captured quantitative/qualitative data and a communication plan to share Project results with both internal and external stakeholders. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

The Berkeley Police Department (BPD) has a plan to evaluate the progress of each project and by the end of the grant term be able analyze projects success and share the results with internal and external stakeholders. This plan includes setting goals for each quarter with regards to training, public education through media, the purchase of equipment, and special enforcement opportunities. At the end of each quarter the grant administrator will be able to use appropriate data to support the progress of goals and objectives set.



8. Program Sustainability

Describe the plan for reducing reliance on future grant funding. Include a summary and timeframe to continue efforts when grant funds are either not available or significantly reduced. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

With more officers trained in SFST, ARIDE, and as SFST Instructor, there will be more personnel on patrol who are able to effectively and actively engage in and seek out assignments in DUI detection and apprehension efforts in the course of their current work assignment. As other officers see the success of this training, and the ability to reduce the number of impaired drivers, it is BPD's hope additional officers will seek training to be more effective in regard to DUI enforcement.

Grant funding builds upon our current traffic safety efforts by allowing officers opportunities in saturation enforcement to address impaired driving—in addition to and outside of their regularly scheduled duties. Additionally, the funds provide opportunities for community outreach with emphasis on impaired driving. In addition to grant funded enforcement operations, the purchase of equipment that our department might not otherwise be able to purchase, it is our hope this will have a cumulative effect on the safety of our roadways.



9. Administrative Support

Describe the administrative support, including the Organization/Agency's grant experience, personnel, and physical resources needed to successfully implement the Project. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

The Berkeley Police Department (BPD) maintains a fulltime Traffic Data Analyst within the Traffic Bureau for collision data analysis and reporting to SWITRS. In addition, the BPD has a full-time civilian Administrative and Fiscal Manager, who has several years of successful management experience with grant programs both at the state and local levels. The BPD employs and Assistant Fiscal/Management Analyst whose responsibilities include preparation of fiscal reporting and justification. The Assistant Fiscal/Management Analyst and the Traffic Bureau Sergeant work in unison to effectively manage and deploy grant resources.



10. Other Grant Programs

Impaired Driving Enforcement Funding

Has your Organization/Agency previously received grant funding for impaired driving enforcement?

☒ Yes

☐ No

If yes, detail the outcome. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

The BPD has been previously awarded 3 CHP cannabis grants to fund impaired driving enforcement/education operations. The grants were highly successful, allowing the BPD to conduct dozens of impaired driving enforcement operations and send officers to ARIDE and SFST classes they not otherwise have been able to attend.

Other Grant Programs

Has or will your Organization/Agency submit a proposal to another grant program for this Project (ex: funds for the same components as this Project, or for similar/related components that will be completed during the same time period as this Project)?

☒ Yes

☐ No

If yes, detail the granting Organization/Agency. In addition, clearly distinguish which tasks would be funded by the CTFGP and which tasks would be funded by another Organization/Agency. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

The BPD has applied for OTS grant funds for the 2024-2025 grant year for traffic enforcement, DUI saturation patrol, DUI checkpoints, officer training, and public education.

Are any personnel dedicated to this Project funded by other sources/grants?

☐ Yes

☒ No

If yes, detail which source/grant. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.



11. Terms and Conditions

By submitting your Grant Application, you agree to the following Terms and Conditions:

I certify, under penalty of perjury, that the information I entered in this Grant Application is true and complete to the best of my knowledge. I further understand that any false, incomplete, or incorrect statements may result in my disqualification from the grant process or dismissal from receiving grants funded by the California Highway Patrol (CHP), Cannabis Tax Fund Grant Program. I authorize the California Highway Patrol, Cannabis Grants Unit (CGU), to investigate referenced documents or other documents submitted to the program to check the accuracy of the information provided.

I agree with the Request for Application, the above Terms and Conditions, and the California Code of Regulations, Title 13, Division 2, Chapter 13, Sections 1890.00 through 1890.27.

☒ I Agree

When using the GMS (AmpliFund), I authorize the state to take my requested action by an electronic means and authorize the state to accept the combination of my User ID and password in lieu of my written signature.

☒ I Agree

My password is unique to me and is to remain confidential. I will not allow other individuals to use my User ID and password to access the GMS (AmpliFund).

☒ I Agree

It is my responsibility to maintain the confidentiality of GMS (AmpliFund) information.

☒ I Agree

Once I submit the Grant Application, I am unable to add, edit, or delete any Grant Application information.

☒ I Agree

Confidentiality Notice: All documents submitted as a part of the Cannabis Tax Fund Grant Program Grant Application are public documents and may be subject to a request pursuant to the California Public Records Act. The CHP, CGU, cannot ensure the confidentiality of any information submitted in or with this Grant Application (Gov. Code, § 6250 et seq.).

☒ I Agree

Generated Income Disclaimer: There will be no program income generated from this grant. Nothing in this Grant Application shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations, in pursuance of the goals and objectives. Although special emphasis will be placed upon violations specific to this Grant Application, appropriate enforcement action will be taken for all observed violations.

☒ I Agree

Financial Information System for California Government Agency Taxpayer ID (FI\$Cal Form)

A FI\$Cal Form is required for reimbursement. If the Grant Applicant does not have a completed FI\$Cal Form at final Grant Application submission time, the Grant Applicant may submit the completed FI\$Cal Form via email to CGU prior to execution of the Grant Agreement. NOTE: The "Remit-To Address" on the FI\$Cal Form MUST match the "Official Address to Receive Reimbursement Payment" you entered in Form #1. Organization/Agency Representative. This address shall be the official address on file with FI\$Cal and the State Controller's Office (SCO) to receive warrants (Reimbursement Request Payments). Forms are located on the Cannabis Tax Fund Grant Program's website at <https://www.chp.ca.gov/programs-services/programs/cannabis-tax-fund-grant-program>.

☒ I Agree

FI\$Cal Form

City Council or County Resolution

A county, city, district, or other public body shall provide a copy of a resolution, order, motion, or ordinance of local governing body, which by law has the authority to enter into an agreement authorizing execution of a Grant Agreement. If the Grant Applicant does not have a signed resolution at final Grant Application submission time, the Grant Applicant may submit a signed resolution via email to CGU prior to execution of the Grant Agreement. NOTE: The resolution MUST explicitly state the Organization/Agency has delegated authority to enter into a Grant Agreement for the requested amount.

☒ I Agree





Budget

Proposed Budget Summary

Expense Budget

	Grant Funded	Total Budgeted
Personnel		
Saturation Patrol	\$93,484.80	\$93,484.80
Training Backfill	\$14,607.00	\$14,607.00
Subtotal	\$108,091.80	\$108,091.80
Other Direct Costs		
DUI Saturation Supplies	\$3,625.00	\$3,625.00
Subtotal	\$3,625.00	\$3,625.00
Total Proposed Cost	\$111,716.80	\$111,716.80

Revenue Budget

	Grant Funded	Total Budgeted
Grant Funding		
Award Requested	\$111,716.80	\$111,716.80
Subtotal	\$111,716.80	\$111,716.80
Total Proposed Revenue	\$111,716.80	\$111,716.80

Proposed Budget Detail

See attached spreadsheet.

Proposed Budget Narrative

Personnel

Costs may include compensation for wages, such as overtime, and benefits (annual leave and sick leave) for work directly related to, and consistent with, the Project. Personnel hours will be awarded based on the number of grant-funded Project activities approved by CGU. To be eligible for reimbursement, personnel services must occur within the Project Performance Period. Please note, full salary positions are not allowed. Itemize separate Budget line items by Project activity (ex: one Budget line item for DUI Saturation Patrol; one Budget line item for DUI Checkpoint). Combine wages and benefits in the same Budget line item for each Project activity. For EACH Budget line item, the narrative shall include the below: * Number of times Project activity will occur * Classification(s) working Project activity * Rate of pay for each classification working Project activity (notate regular or overtime pay) * Number of hours for each classification working Project activity EXAMPLE 16 DUI Saturation Patrols = \$9,600 2 Officers per patrol / Officer = OT \$60 per hour 5 hours per patrol / 80 hours per Officer / 160 hours

Training Backfill



Backfill funding for officers to attend training ARIDE Class Backfill: 2 Officers 10 hours/day for 3 days each at 146.07/hour OT for 60 hours total = \$8764.15 SFST Class Backfill 2 Officers 10 hours/day for 2 days each at 146.07/hour OT for 40 hours = \$5842.80

Saturation Patrol

40 DUI Saturation Patrols = \$93484.80. 2 officers per patrol / Officer OT \$146.07 per hour 8 hours per patrol / 640 hours total.

Other Direct Costs

Costs may include operational costs. Other Direct Costs shall be directly related and necessary to complete grant-funded activities included in the Project. Other Direct Costs should be purchased at the beginning of the Project Performance Period to ensure they are utilized when completing corresponding Project activities. DUI Saturation Patrol Other Direct Costs approved by CGU may utilize eligible outfitting expenses, which only include emergency lights, sirens, radio, and transport partition (cage). To be eligible for reimbursement, Other Direct Costs must be purchased and received within the Project Performance Period. Itemize separate Budget line items for each Other Direct Costs item. For EACH Budget line item, the narrative shall include: * Name/description of Other Direct Costs * Quantity * Unit cost and total cost EXAMPLE Message Board = \$20,000 \$4,000 each / 4 = \$20,000 Wrap/Decals for DUI/DUID Trailer = \$275 Decals = \$200 / Installation = \$75 Cones = \$170 \$70 each / 10 = \$170

DUI Saturation Supplies

4 PAS Devices = \$750 each / 4 = \$3000 Replacement software for PAS accuracy checks = \$450 New gas for testing PAS = \$175



Office of the City Manager

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Terrance Davis, Director, Department of Public Works

Subject: Purchase Order: National Auto Fleet Group for Prisoner Transport Vehicle Body Assembly Upgrade

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcwell bid procedures and authorize the City Manager to execute a purchase order for one Prisoner Transport Vehicle Body Assembly Upgrade with National Auto Fleet Group in an amount not to exceed \$340,000.

FISCAL IMPACTS OF RECOMMENDATION

The cost of the 2024 prisoner transport vehicle body assembly upgrade will not exceed \$340,000 and includes installation, shipping of chassis, sales tax and delivery fees. Funding for the purchase is available in FY25 budget funds:

Fund	Account	Amount
Equipment Replacement Fund: (671)	671-54-626-723-0000-000-473-664120-	\$189,250
Police Fund (011)	011-71-705-820-0000-000-421-670160-	\$ 150,750

CURRENT SITUATION AND ITS EFFECTS

The completed prisoner transport van will replace unit 1116, a 2002 Ford E450 gas-powered 11 passenger prisoner transport vehicle which has exceeded its planned useful life expectancy. Equipment Maintenance has already purchased the replacement vehicle and it is awaiting completion of the upfitting of the new prisoner transport van. The new asset will be utilized by City's Police Department personnel responsible for daily transportation of detainees to the Alameda County Santa Rita Jail, located in Dublin CA. The upfitting is needed by City's Police Department in their work to provide public safety services in the City.

The prisoner transport vehicle body is a self-contained unit, built entirely of aluminum and includes the following: capacity to support 23 passengers, wheelchair lift assembly, laser cut partitions and window coverings, sprayed with a polyurea bedliner for frequent and repeated pressure washing, interior construction free of items inmates can remove or damage and independent dual AC System. The body is easily transferable to future support vehicle chassis if replacement is required. It will take approximately 330 days to build.



Above is an example what the transporter would look like once completed.

This purchase will support the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

BACKGROUND

Throughout the year, each City Department pays its proportionate share into the Equipment Replacement Fund, and those funds are utilized to replace equipment at the end of its useful life. If a vehicle purchase request exceeds \$100,000, the Department of Finance General Services Division solicits bids or piggybacks off competitively bid contracts to ensure City Departments receive the best pricing.

City Charter XI Section 67.2 may, by resolution, authorize the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive process.

The City is a no-cost member and participant of Sourcewell, a municipal contracting agency operating under the legislative authority of Minnesota Statue 123A.21. The original statute was revised in 1995 to allow government clients to better meet their specific needs through participation in a 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 non-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 April 16, 2020 Sourcewell released Request for Proposals No. 060920 for Class 4-8 Chassis with Related Equipment, Accessories, and Services. The solicitation was released for approximately fifty-five days and twenty-five proposals were submitted and received. Upon review, the Sourcewell proposal evaluation committee selected 72 Hour, LLC dba National Auto Fleet Group as the best most responsive proposer to meet the specifications thusly awarding Contract No. 060920-NAF.

The upfit of the Prisoner Transport Vehicle will be completed by National Auto Fleet Group sub-contractor TriVan Truck Body, located in Washington State. Police Department staff solicited vendors for this work, however TriVan met their requirements for this project and was selected for this project. TriVan Truck Body has previously done custom upfitting work on other City vehicles in the past and has experience with the work needed for this project. TriVan Truck Body will complete the specialized service and deliver the completed vehicle to the city for final inspection. Upfitting work will take at least 6 months to be complete.

In addition, a 2023 Ford F600 chassis was purchased for \$76,990.41 in March 2024 from Southern California dealership South Bay Ford and they are awaiting authorization to finish the upfitting of the prison transport van. The cost for the chassis is separate from the vehicle body assembly upgrade but is needed to complete the unit.

For all contracts, Sourcewell charges an administrative fee based upon the percentage of the sale, and that fee is paid by the Contractor directly to Sourcewell. The fee for the purchase of this assembly upgrade will be paid by National Auto Fleet Group and will not be passed on to the City.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Public Works Equipment Maintenance endeavors to procure the most fuel-efficient vehicles and equipment that are suitable for the required tasks. Equipment Maintenance also researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition away from fossil fuels towards an all-electric fleet, where technically feasible.

At present, no suitable electric vehicle alternative is readily available to meet the need of the Police Department in this capacity. The Prisoner Transport Vehicle will be powered by 100% renewable diesel that reduces greenhouse gas emission by as much as 50-80% and complies with the City's Fossil Free Recommendations by retiring a present gas-powered vehicle. Public Works Staff are committed to procuring electric alternative solutions and essential infrastructure that supports the specific needs of Police Department operations. The TriVan Truck Body design is a self-contained unit that is transferable to future support electric vehicle chassis.

Purchase Order: National Auto Fleet Group for
Prisoner Transport Vehicle Body Assembly Upgrade

CONSENT CALENDAR
July 30, 2024

RATIONALE FOR RECOMMENDATION

Unit 1116 was long overdue for replacement, and the replacement chassis has already been ordered. The upfitting is the final step in completion of the new asset. The upfitted body would be able to be transferred to an electric vehicle.

ALTERNATIVE ACTIONS CONSIDERED

None. Listed vehicle has reached the end of its useful life.

CONTACT PERSON

Greg Ellington, Superintendent, Public Works, (510) 981-6469
Joy Brown, Operations Manager, Public Works, (510) 981-6629

Attachment:

1: Resolution

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

PURCHASE ORDER: NATIONAL AUTO FLEET GROUP FOR PRISONER
TRANSPORT VEHICLE BODY ASSEMBLY UPGRADE

WHEREAS, one (1) Prisoner Transport Vehicle is needed by the City of Berkeley Police Department in their work to provide public safety services in the City; and

WHEREAS, a vehicle body assembly upgrade is needed to complete the build; and

WHEREAS, this Prisoner Transport Vehicle is a replacement for unit 1116 which has reached the end of their useful life; and

WHEREAS, City Charter XI Section 67.2 may, by resolution, authorize 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 Sourcewell released Request for Proposals No. 060920 for Class 4-8 Chassis with Related Equipment, Accessories, and Services. The solicitation was released for approximately fifty-five days and twenty-five proposals were submitted and received. Upon review, the Sourcewell selected 72 Hour, LLC dba 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 satisfied the procurement requirements of the City; and

WHEREAS, funds in the amount of \$150,750 is available in the FY25 Police Department fund (011) and funds in the amount of \$189,250 is available in the FY25 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 with National Auto Fleet Group for Prisoner Transport Vehicle Body Assembly Upgrade in an amount not to exceed \$340,000.



Office of the City Manager

CONSENT CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Terrance Davis, Director, Department of Public Works

Subject: Purchase Order: Turf Star, Inc. for Go-4 Parking Enforcement Vehicles

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcwell bid procedures and authorize the City Manager to execute a purchase order for Go-4 Parking Enforcement Vehicles with Turf Star, Inc. in an amount not to exceed \$400,000.

FISCAL IMPACTS OF RECOMMENDATION

The cost of the replacement vehicles will not exceed \$400,000 and includes installation of new or transfer of existing equipment, shipping, taxes and delivery fees. Funding for the purchase is available in FY25 Equipment Replacement (Fund 671) baseline budget.

Fund	Account	Amount
Equipment Replacement Fund: (671)	671-54-626-723-0000-000-473-664120-	\$400,000

CURRENT SITUATION AND ITS EFFECTS

Eight Parking Enforcement Vehicles, Equipment Numbers 1406, 1410, 1411, 1418, 1423, 1424, 1425, 1432 are in need of replacement due to end of useful life, parts failure, or damage due to collisions. Assets are needed by the City's Parking Enforcement staff in their work patrolling residential, business, and parking permitted locations within the City to ensure adherence to local regulations and state vehicle code laws.

These purchases support the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Throughout the year, each City Department pays its proportionate share into the Equipment Replacement Fund, and those funds are utilized to replace equipment at the end of its useful life. If a vehicle purchase request exceeds \$100,000, the Department of

Finance General Services Division solicits bids or piggybacks off competitively bid contracts to ensure City Departments receive the best pricing.

City Charter XI Section 67.2 may, by resolution, authorize the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive process.

The City is a no-cost member and participant of Sourcewell, a municipal contracting agency operating under the legislative authority of Minnesota Statute 123A.21. The original statute was revised in 1995 to allow government clients to better meet their specific needs through participation in a 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 non-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 November 3, 2020 Sourcewell released Request for Proposals No. 122220 for Utility, Transport, Golf, and Recreation Vehicles with Related Accessories, Equipment, and Services. The solicitations was released for approximately 55 days and 13 submissions were received. Upon review, the Sourcewell proposal evaluation committee selected Westward Industries as the best most responsive proposer to meet the specifications thusly awarding Contract No. 122220-WWI. The authorized Bay Area dealer of Westward Industries is Turf Star, Inc.

For all contracts, Sourcewell charges an administrative fee based upon the percentage of the sale, and that fee is paid by the Contractor directly to Sourcewell. The fee for the purchase of this assembly upgrade will be paid by Westward Industries and will not be passed on to the City.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

With this purchase, the Police Traffic Division is replacing the two model year 2016 electric GO-4 parking enforcement vehicles with new electric Go-4s. The existing electric vehicles experienced malfunctions, battery packs are losing charge frequently, and impacted staff's ability to perform their duties on a consistent basis.

The Traffic Division is located at 125 & 127 University Avenue does not have existing electric charging infrastructure. Additional electric vehicle purchases at this time would significantly impact the overall parking enforcement operations. Public Works is actively working with AVA Energy on a citywide electric charging infrastructure assessment, and once the proper charging infrastructure has been put in place, and electric scooter performance is confirmed to meet the needs of the staff, the Parking Enforcement division is expecting to replace all its parking enforcement vehicles with electric models thereafter. This particular order will have six scooters powered by a fuel efficient 1.0 liter

gasoline engine that averages 45 mpg, and meets all current state, federal, and local emissions regulations. Two of the scooters will be 100% electric and it is anticipated that they will be able to charge at the Corporation Yard once the fast charger is installed later in 2024.

Public Works Equipment Maintenance endeavors to procure the most fuel-efficient vehicles and equipment that are suitable for the required tasks. Equipment Maintenance also researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition away from fossil fuels towards an all-electric fleet, where technically feasible.

RATIONALE FOR RECOMMENDATION

Police Department parking enforcement vehicles must be replaced on a reasonable schedule to ensure Parking Enforcement Officers can safely, effectively and efficiently carry out their duties.

ALTERNATIVE ACTIONS CONSIDERED

None. Listed vehicles have reached the end of their useful life.

CONTACT PERSON

Greg Ellington, Superintendent, Public Works, (510) 981-6469
Joy Brown, Operations Manager, Public Works, (510) 981-6629

Attachment:

1: Resolution

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

PURCHASE ORDER: TURF STAR, INC. FOR GO-4 PARKING ENFORCEMENT
VEHICLES

WHEREAS, eight GO-4 parking enforcement vehicles are needed by the Berkeley Police Department to replace existing vehicles that have reached the end of their useful life; and;
and

WHEREAS, vehicles must be replaced on a reasonable schedule that allows city employees to efficiently and effectively carry out their duties; and

WHEREAS, the GO-4 parking enforcement vehicle is the preferred parking enforcement vehicle for many cities because of its maneuverability through city street, good visibility, ability to chalk mark vehicles easily and driver safety features; and

WHEREAS, Turf Star, Inc. is Westward Industries exclusive authorized dealer for California GO-4 sales, service and warranty repairs, and failure to have service and warranty work performed by an authorized dealer voids any warranty by this manufacturer; and

WHEREAS, funds in the amount of \$400,000 are available in the FY 2025 Equipment Replacement Fund 671.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the requirement of City Charter Section 67(a) are waived because no other vendors or manufacturers are able to provide a three-wheeled parking enforcement vehicle; and

NOW THEREFORE, BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order with Turf Star, Inc. for the purchase of fifteen GO-4 parking enforcement vehicles in an amount not to exceed \$400,000.



Environment and Climate Commission

CONSENT CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council
From: Environment and Climate Commission (ECC)
Submitted by: Cecilia Lunaparra, Chair, ECC
Subject: Referral to Develop Curb Management Plan

RECOMMENDATION

Refer to the City Manager to fund and develop a Curb Management Plan.

POLICY COMMITTEE RECOMMENDATION

On July 3, 2024, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee adopted the following action: M/S/C (Lunaparra/Taplin) to send the item to Council with a positive recommendation, and that the item be taken up when additional funding for streets and infrastructure is approved and/or during the next budget process.

FISCAL IMPACTS OF RECOMMENDATION

Development of a curb management plan will require substantial staff time and likely additional consultant support (tentatively estimated at \$100,000-\$250,000). Implementation of the plan and ongoing upkeep may have additional costs and staff time required. Refer to the City Manager for budgetary projecting; a long-term funding plan is necessary.

CURRENT SITUATION AND ITS EFFECTS

Transportation has stubbornly remained Berkeley's largest source of greenhouse gas (GHG) emissions, contributing over 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, and achieving an 80% reduction in GHG emissions by 2050. However, GHG emissions from transportation are currently expected to increase, and have not meaningfully declined as a proportion of total city emissions since 2008.

Berkeley's Strategic Plan sets the goal of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment. Addressing climate change as it applies to transportation, and in particular driving emissions, will require the city to engage in a multipronged strategy, including:

- increasing and improving bus service
- improving the ability to bike safely throughout the city
- developing complete streets improvements
- reducing excess parking spaces where appropriate to encourage alternative transportation

The City has developed several individual plans to accomplish these goals, including the 2017 Berkeley Bicycle Plan, the 2020 Pedestrian Plan, the Berkeley Strategic Transportation (BeST) Plan, the 50/50 Sidewalk Program and the Long-Term Paving Plan, the ADA Transition Plan, the Gilman Street Interchange Project, the Streetlight Comprehensive Plan, and Southside Complete Streets. One key aspect that has received less focus in these plans is curb management.

Curb management plays an important role in ensuring that roads are able to be effectively and safely used by all road users. Presently, based on data from the Mineta Transportation Institute at San Jose State University, Berkeley has an estimated 72,193 on-street parking spaces, with another 71,773 off-street parking spaces (a total of 143,966 spaces), or 21.3 spaces per acre. The Bay Area median Census block group-level parking density was 19.7 spaces per acre, while Berkeley's median Census block group-level parking density is 23.5 spaces per acre.

At the same time, Berkeley households had roughly 57,500 registered vehicles, or about 2.5 parking spaces per automobile.

Parking abundance and underpricing encourages automobile usage, driving up greenhouse gas emissions. At the same time, in many parts of Berkeley, there is frequently insufficient parking available due to low parking turnover (extended parking duration), often resulting in double-parking that endangers cyclists and other drivers, and can delay transit riders or impair emergency vehicle access. Many areas of Berkeley need a review and adjustment of the allocations of different curbside uses to better align this public resource with City goals and the needs of existing businesses and residents.

Other cities, such as San Francisco and New York, have begun to prioritize the creation of more loading zones to reduce parking spots that accommodate driving trips into the city, while improving the efficiency of within-city short-term trips such as meal pick-up. Understanding how curb use is apportioned in Berkeley, especially in heavily trafficked areas, will help the City understand how to shift curb usage away from car storage and towards more dynamic use. A curb management program could function as a Strategic Plan Priority Project advancing the City of Berkeley's goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

A presentation and reference map have been created by the Environment and Climate Commission's ad-hoc Transportation Subcommittee, quantifying the total number of loading zones on more than 30 streets within Berkeley, including all commercially-zoned corridors. A member of the subcommittee counted the total number of loading zones on each street using Google Satellite Imagery, Google Street view, and in some cases physically walking along streets to confirm loading zone presence. Based on this methodology, there are roughly 330-360 loading zones (yellow curbs) and 220-240 <1 hour parking spots (mostly green curbs). There are additionally 82 disabled parking spots on the studied streets. Most of these loading zones (59%) are on a street that contains a bike lane. However, few of these loading zones are directly in front of large apartment buildings or restaurants with high traffic; on the whole, the existing loading zones are sub-optimally located. The highest density of loading zones in the studied streets occurs on Telegraph Avenue over five blocks in the Southside neighborhood, where roughly 50% of storefronts have direct curb access to a loading zone.

BACKGROUND

On June 12, 2018, Berkeley City Council unanimously declared a Climate Emergency, calling "to end citywide greenhouse gas emissions as quickly as possible." Berkeley also set a goal of being a Fossil Fuel Free city, achieving carbon neutrality by 2045.

Transportation is the single largest source of greenhouse gas emissions in Berkeley, contributing around 60% of the city's total emissions. Unfortunately, this share – and the total level of emissions – is currently expected to grow.

The proposed policy would request that the Transportation Division develop a curb management program to improve the City's understanding of curb usage and help shift city curb infrastructure away from private car parking and towards more dynamic usage.

The ECC encourages Transportation Division staff and the Transportation Commission to consider:

- 1) Inventory the City's existing curb allocations.
- 2) Ensure adequate loading zones (yellow curbs) and <1 hour parking zones (green curbs) in all appropriate areas of the city.
- 3) Ensure adequate disabled parking (blue curbs) and review the City's existing process for blue curb requests in coordination with and under the guidance of the Disability Commission.
- 4) Ensure daylighting of all intersections (red curbs) in accordance with AB 413 to improve visibility of road users and reduce traffic crashes.
- 5) Support emergency vehicle access and emergency evacuations in the Very High Fire Hazard Severity Zone.
- 6) Additional parking meters, bicycle parking, or other curb management and use practices that may be appropriate to align curb uses with City goals and priorities.

Referral to Develop Curb Management Plan

CONSENT CALENDAR
July 30, 2024

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Reducing on street parking to favor loading zones will shift travel away from automobiles, reducing greenhouse gas emissions and improving environmental sustainability.

RATIONALE FOR RECOMMENDATION

An initial review of loading zone availability done by the ECC ad-hoc subcommittee, and City staff expressed interest in the development of a curb management plan.

ALTERNATIVE ACTIONS CONSIDERED

The ECC considered taking no action and waiting for the staffing crisis in the Transportation Division to be addressed before making this referral. However, Transportation Staff conveyed interest in the topic of curb management, prompting the ECC to forward this recommendation.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report and recommends that it be referred to the budget process.

CONTACT PERSON

Sarah Moore, Commission Secretary, Environment and Climate Commission, (510) 981-7494

Attachments:

- 1: Parking and Loading Zone Pilot Presentation
- 2: Loading Zone Interactive Map

Parking and loading zone pilot analysis

ECC Transportation and Public Space subcommittee
Prepared by Commissioner Brianna McGuire, D3



Agenda

- Background, context, and methodology
- General maps
- Housing mini-analysis
- Telegraph restaurant mini-analysis
- Next steps

Background, context, and methodology

Background - why do this?

- To make recommendations for the locations of new loading zones
- To start building the infrastructure needed for a cargo-bike powered delivery structure in the city
- To identify win-win opportunities to reduce demand for private personal automobile trips while simultaneously improving traffic congestion and safety

Berkeley has a lower-to-similar ratio of loading zones to metered parking compared to San Francisco and New York

City	Total parking	Metered parking	Total loading zones	Total planned by 2024	Ratio metered: loading	Total green zones
Berkeley	>15,000	3,800*	330-360	?	0.086	220-240
San Francisco	442,000	27,550	9,324 (717)	?	0.338 (0.026)	625
New York	5,375,612	81,875	7,902	9,402 (+500/yr)	0.097	?

*Metered parking includes city-owned garage space. This is not the case for the other cities.

“The Bay Area has 2.6x more parking than it needs.”

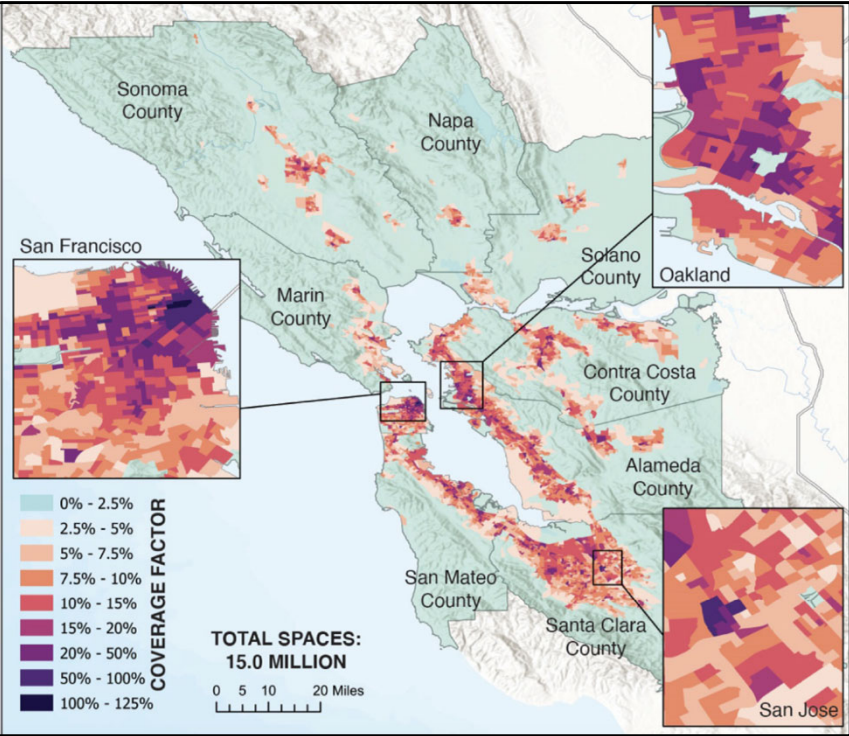
Project 2021 | February 2022

SJSU SAN JOSE STATE UNIVERSITY

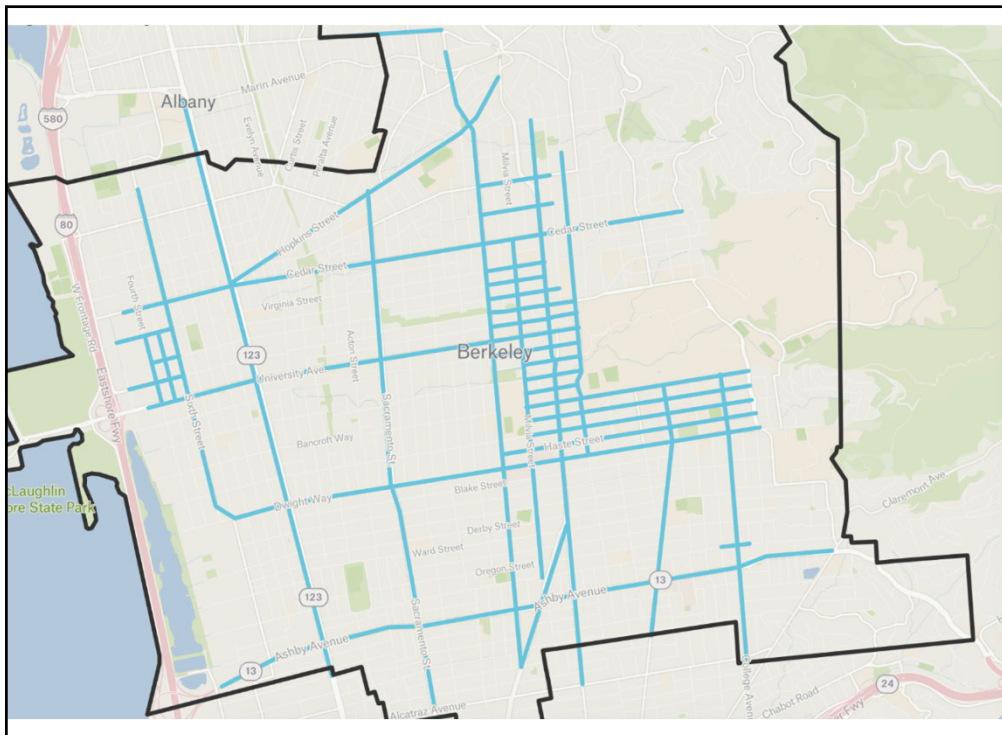
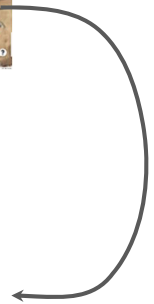
MTI/ MOUNTAIN TOP INSTITUTE

Inventorizing San Francisco Bay Area Parking Spaces: Technical Report Describing Objectives, Methods, and Results

Nikhil Chester, PhD
Alysha Helmreich, PhD
Rui Li

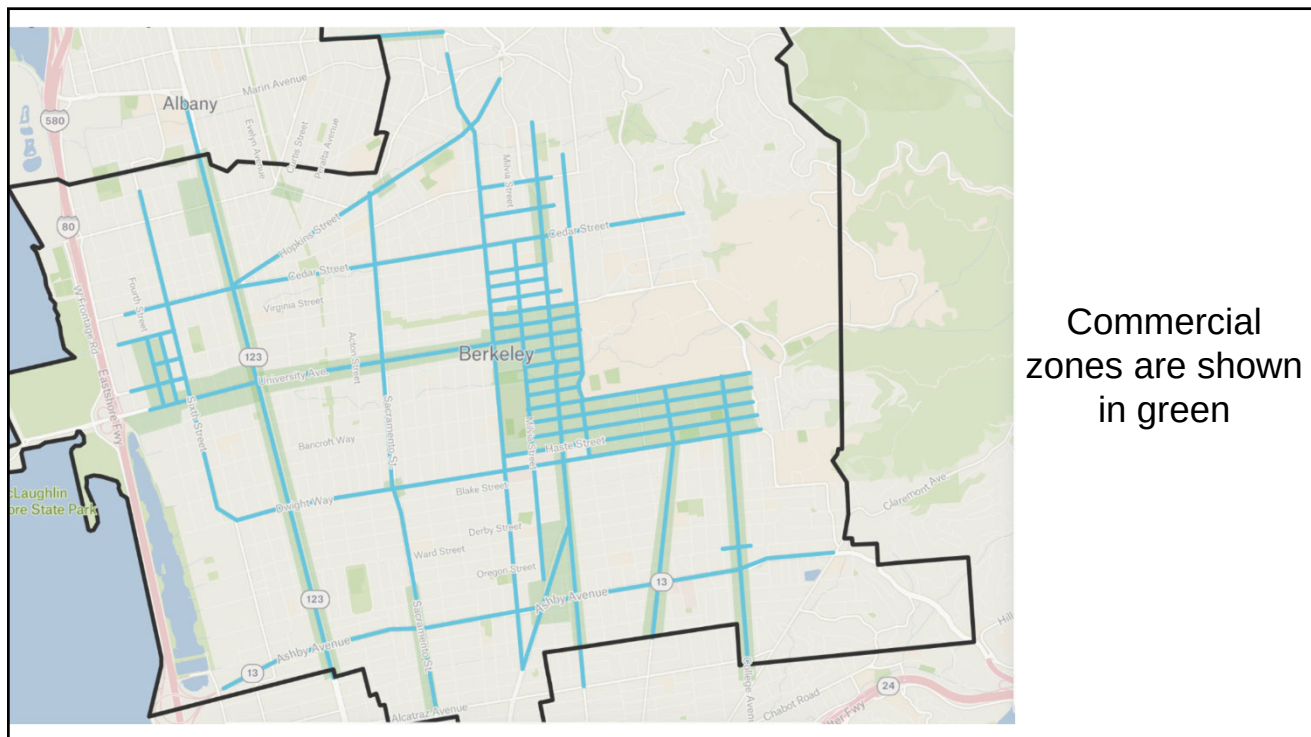
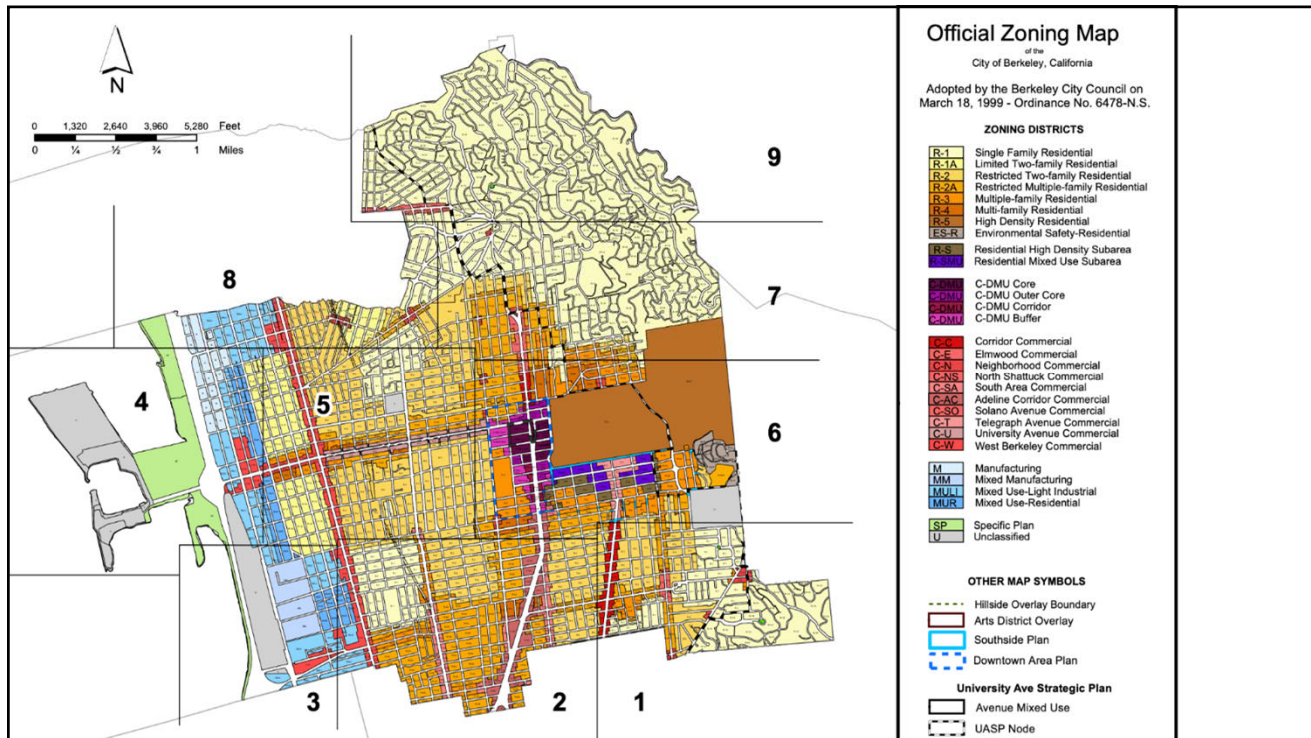


Methodology



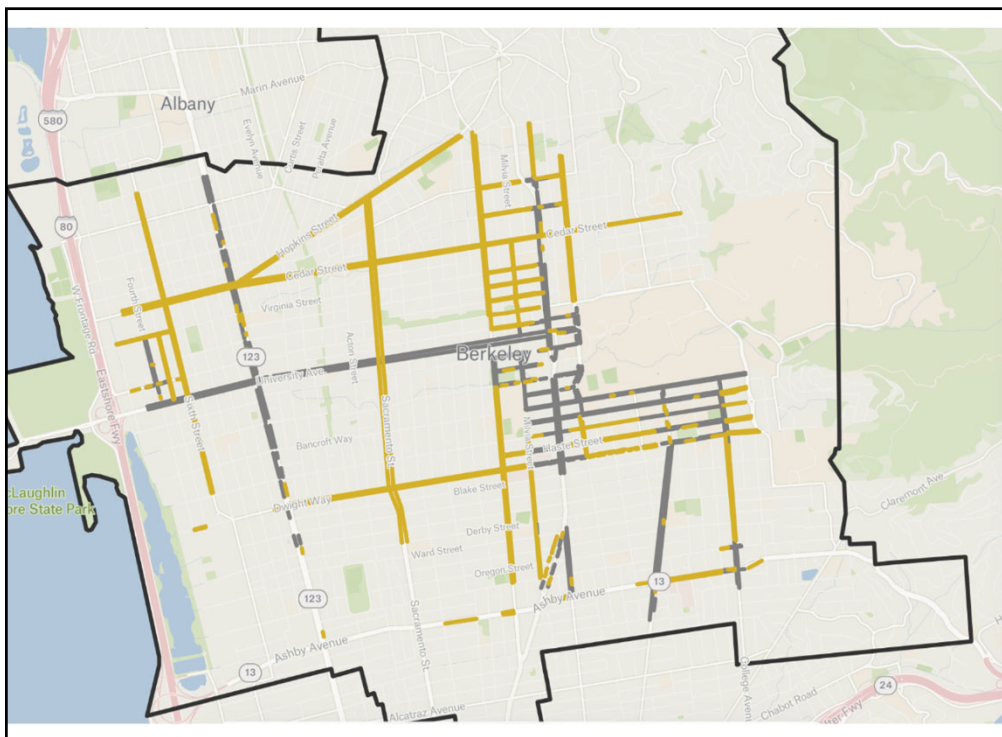
Streets of interest
are shown in blue

<https://docs.google.com/presentation/d/1xVruoBWcIIIB-fLBYYD7hXJ0sDi6QJO3YNYcla1Zsh0/edit?pli=1#slide=id.p>



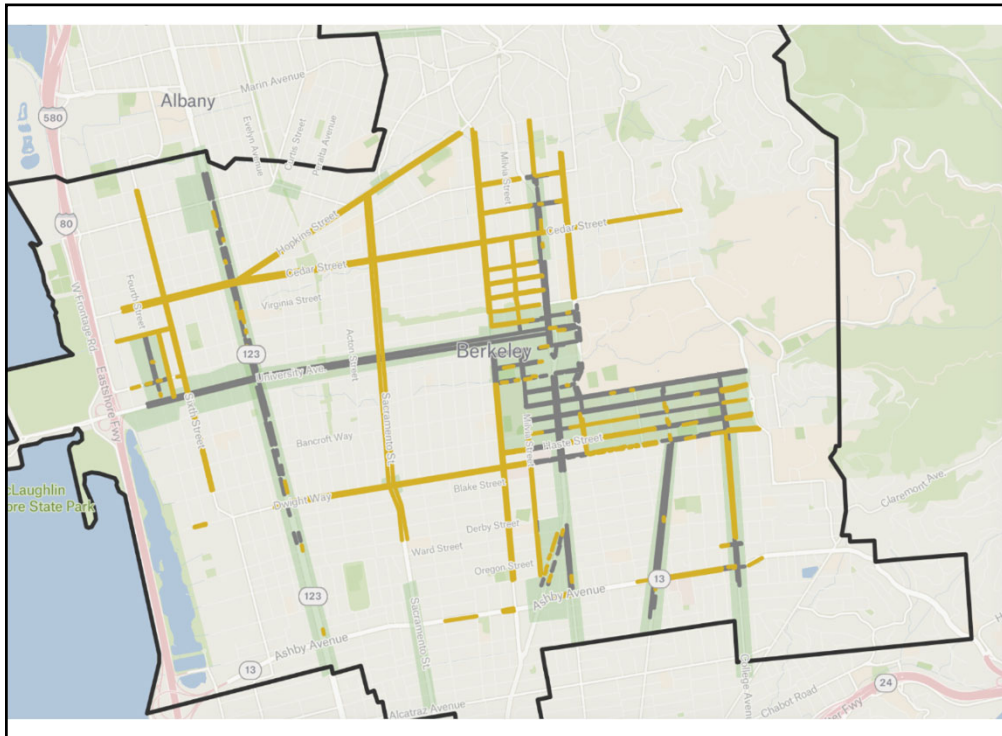
<https://docs.google.com/presentation/d/1xVruoBWcIIIB-fLBYYD7hXJ0sDi6QJO3YNYcla1Zsh0/edit?pli=1#slide=id.p>

General maps

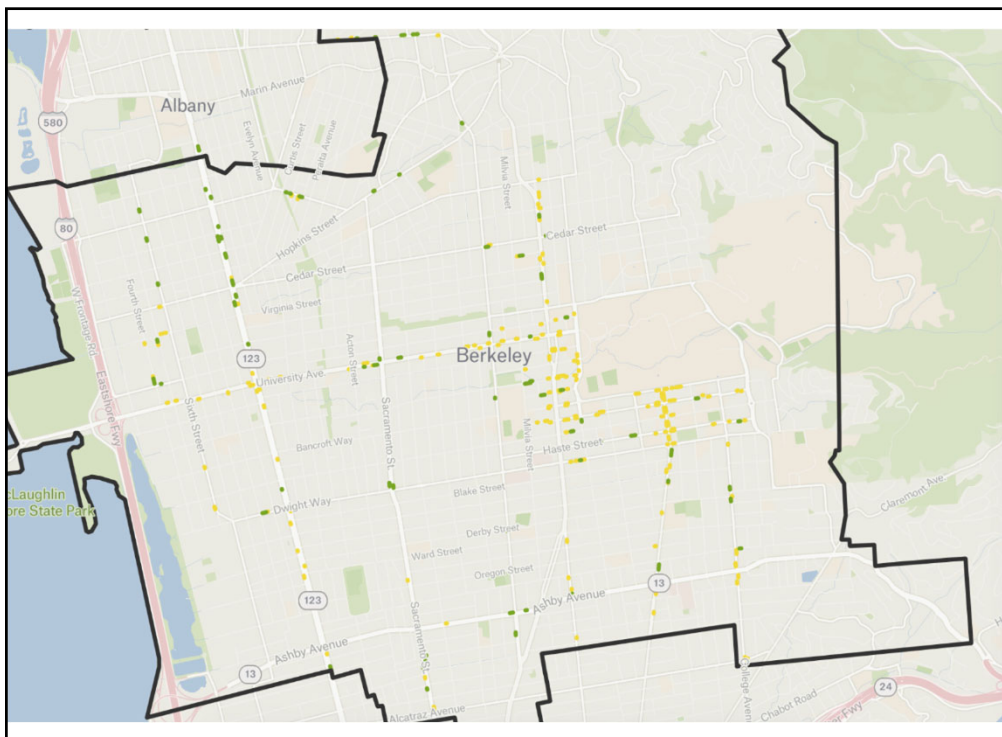


Yellow (lighter) =
free
Gray (darker) =
metered

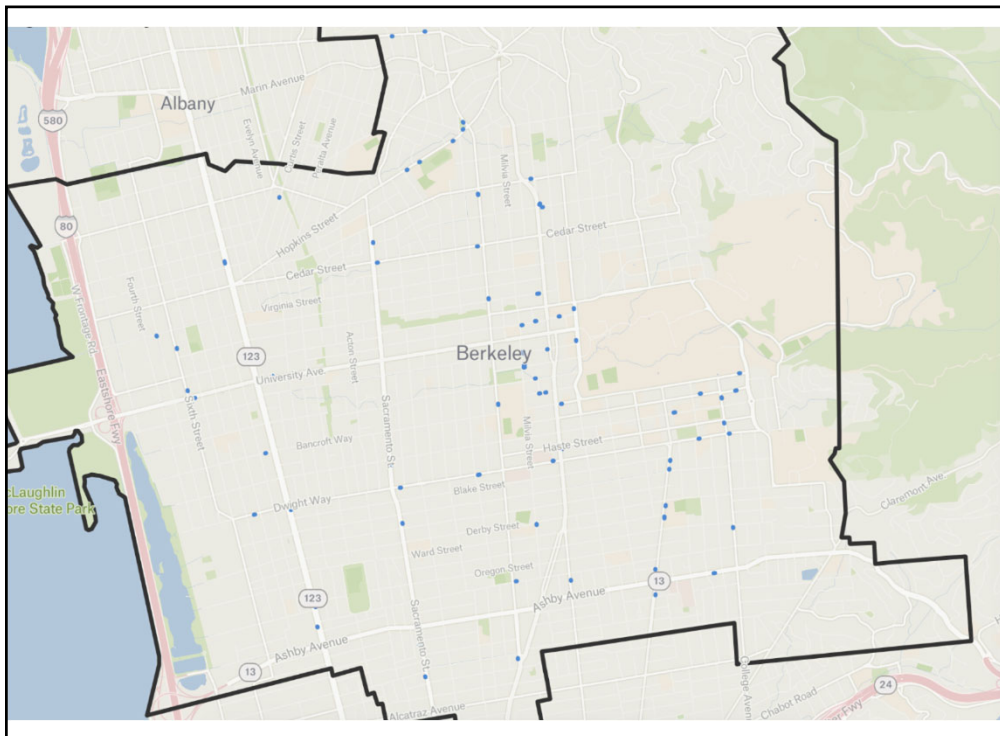
<https://docs.google.com/presentation/d/1xVruoBWclIIB-fLBYYD7hXJ0sDi6QJO3YNYcla1Zsh0/e/dit?pli=1#slide=id.p>



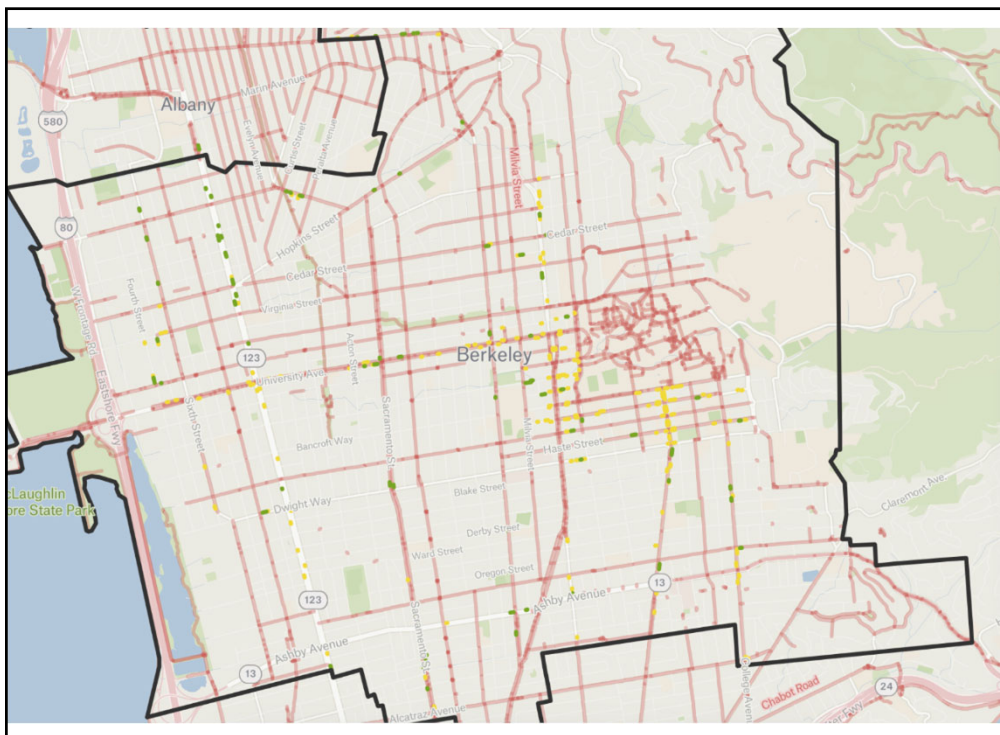
Areas of interest
(in green) are
mostly metered



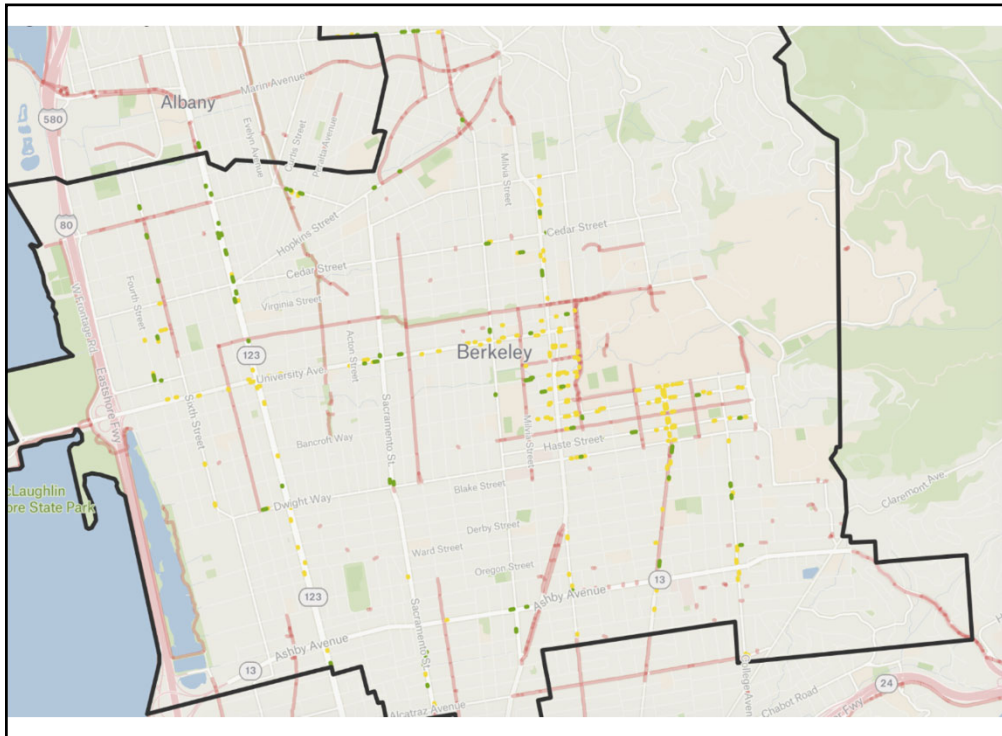
330-360 loading
zones (yellow)
and 220-240
short term spots
(green) on
streets of
interest



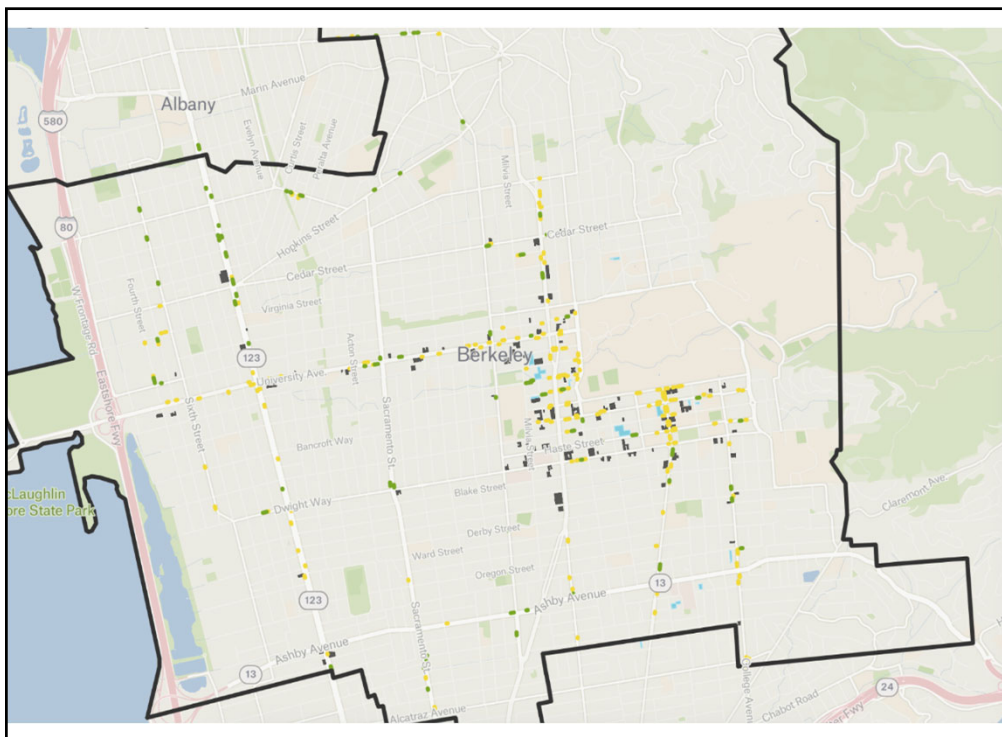
~82 disabled
parking spots on
streets of interest



Most loading
zones are on a
type of bike
lane (59%)

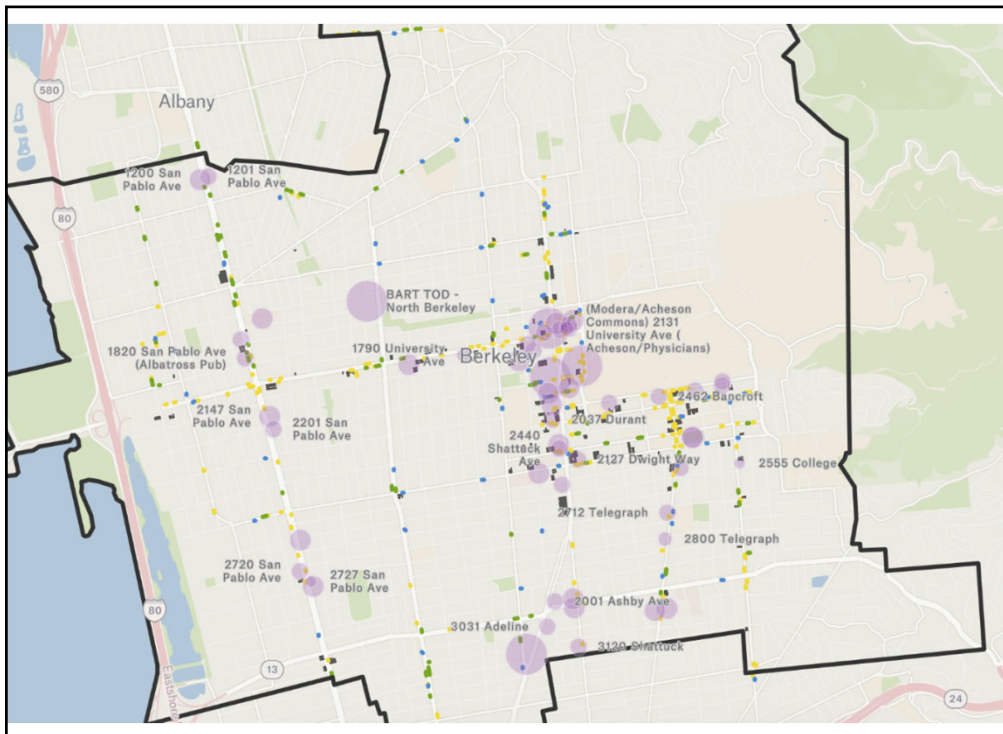


Only 10% of spots (36 loading zones and 22 short term parking spots) are on dedicated or protected bike lanes



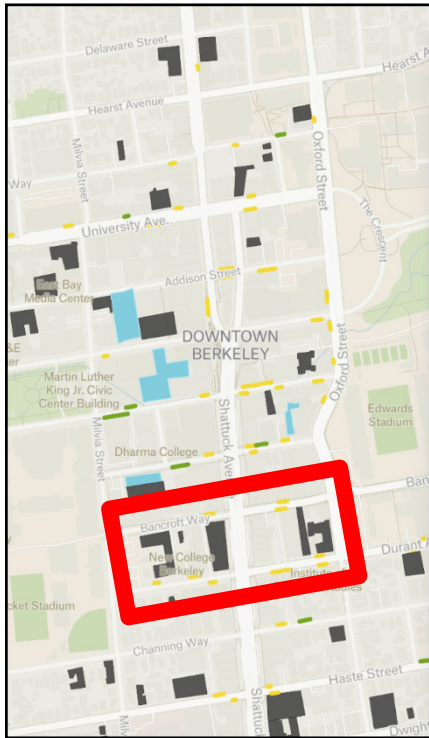
Blue (light) squares = parking

Dark squares = apartment buildings

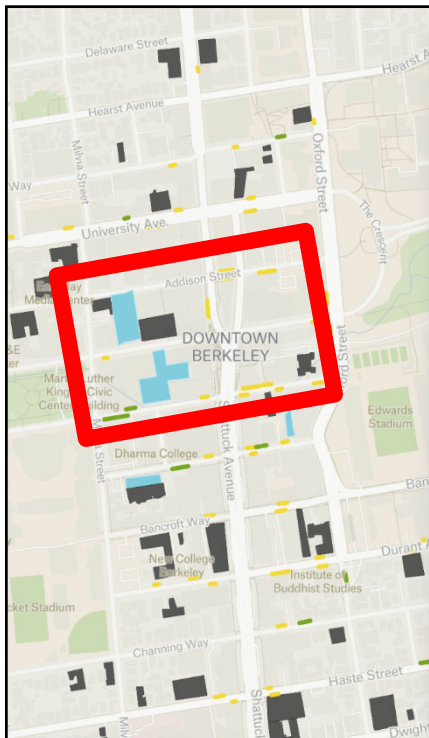


Planned
housing: purple
(circles)

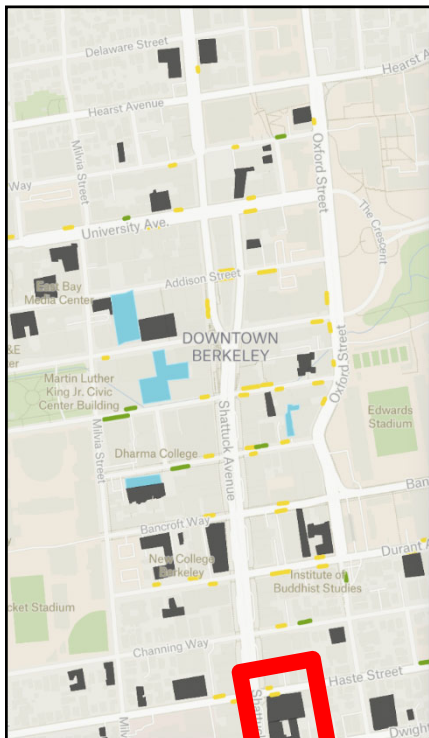
Housing mini-analysis



Only 2 loading spots
among these five
apartment buildings



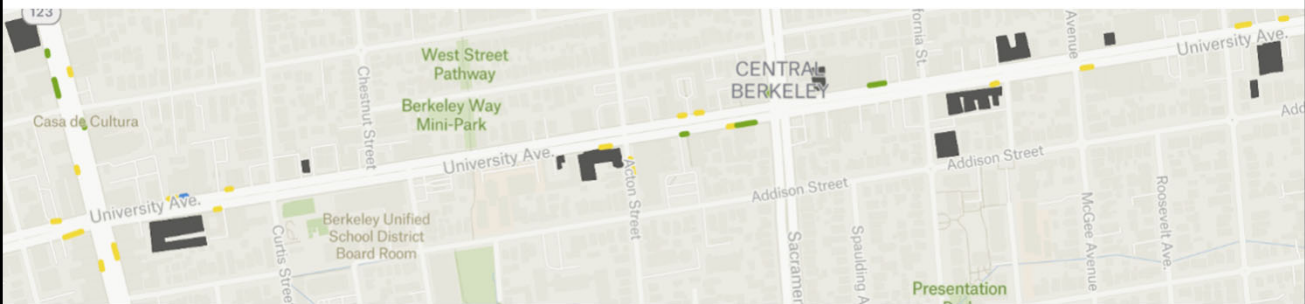
Great candidate area
for loading zones -
parking lots are very
nearby!



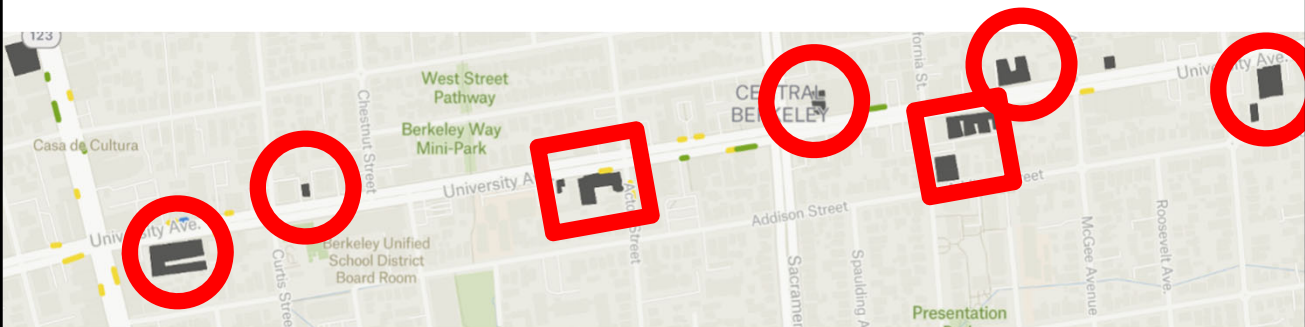
2 buildings - 1
loading zone!

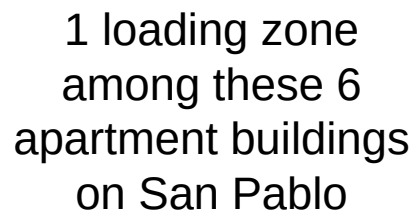


University is entirely metered parking, medium restaurant density, medium-low housing density, but low loading density

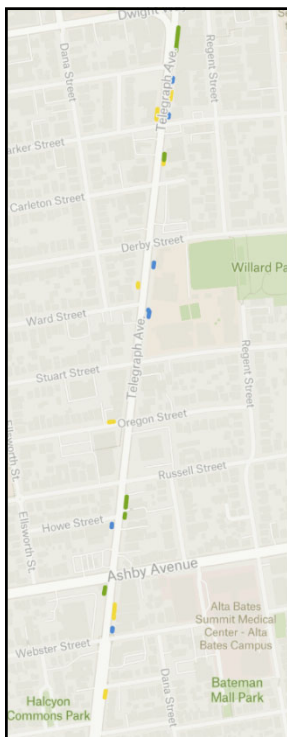
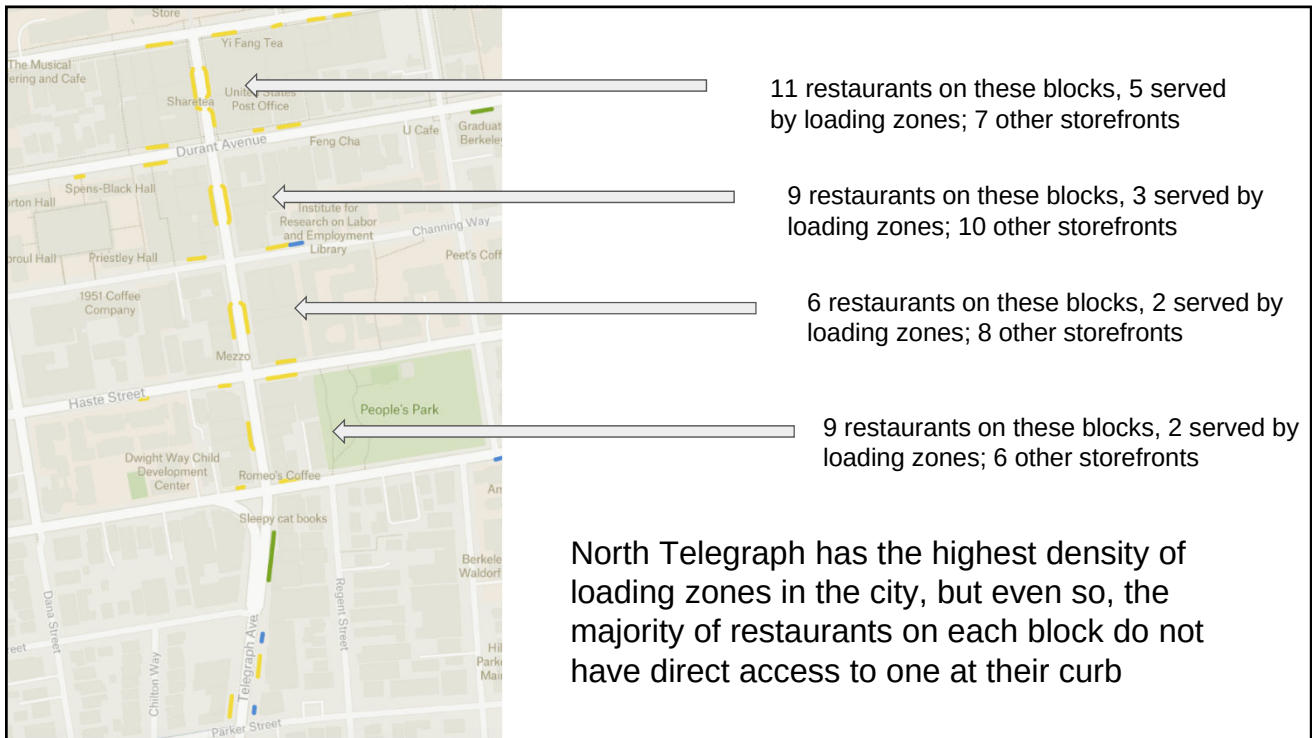


Buildings with squares have loading zones, buildings with circles do not





Telegraph restaurant analysis



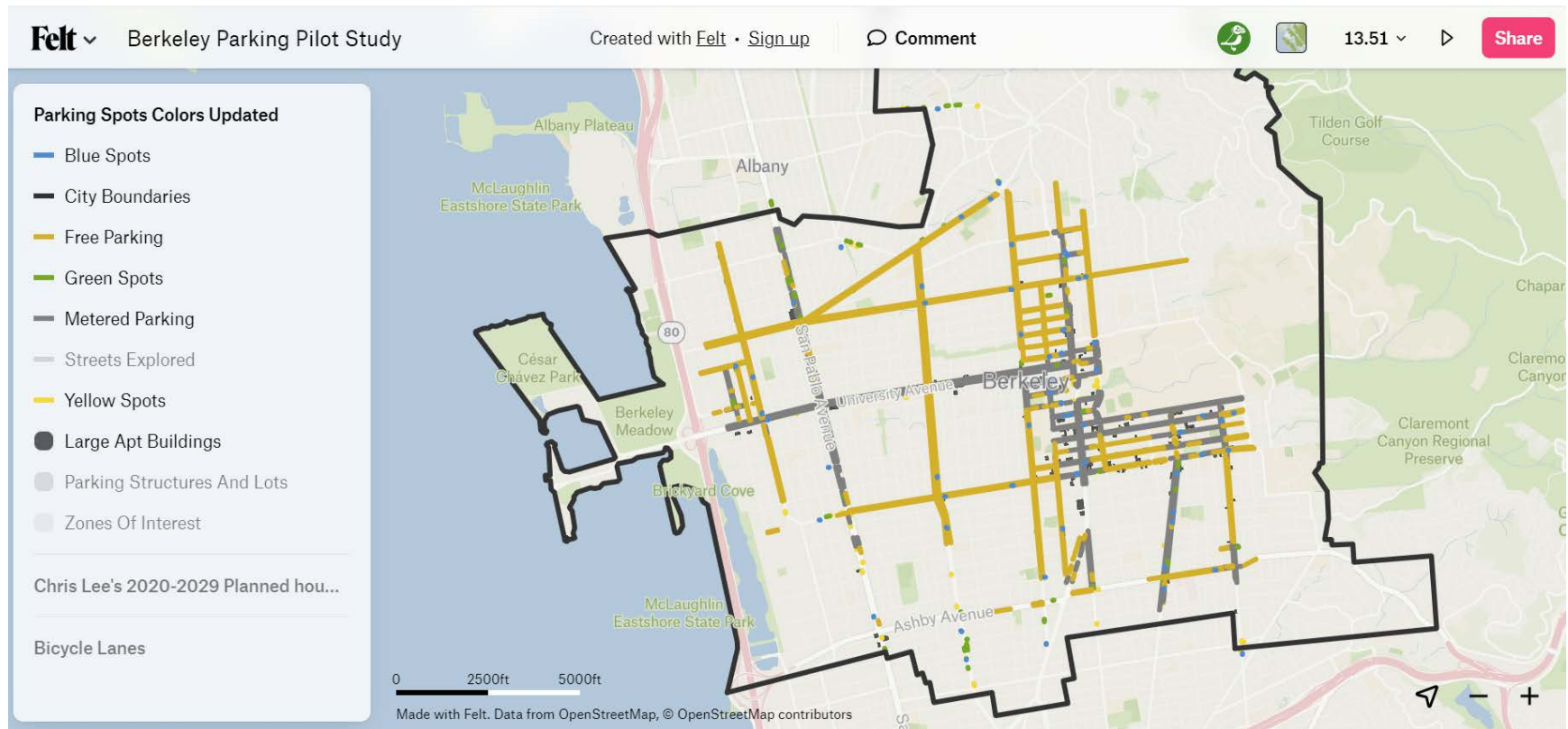
South Telegraph is less well served by loading zones - there are 9 restaurants total on this stretch, only 2 with loading zones. The rest of the loading zones serve urgent cares, dry cleaners, thrift stores, or schools

Conclusions and next steps

- While we may have somewhat comparable levels of loading zones to other cities, we (and they) could probably use more
- Apartments and restaurants are mostly poorly served by loading zone locations
- Determine highest priority intervention space
 - Compare Telegraph to other restaurant corridors
 - Evaluate loading zone density more completely on blocks with planned housing
- Study “completeness” of loading zone transition and best practices
- When to refer to Council to refer to Transportation and Infrastructure?

What other work is needed at this time?

ATTACHMENT 2



Available at:

<https://felt.com/map/Berkeley-Parking-Pilot-Study-Asymc9AjmTk6TemDtxhWZB?loc=37.866123,-122.264268,16.22z&share=1>



Office of the Mayor

CONSENT CALENDAR
July 30, 2024

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Ben Bartlett

Subject: Referral to City Manager: Ashby BART Area Enhanced Infrastructure Finance District (EIFD) Analysis

RECOMMENDATION

Refer to the City Manager and City Attorney to return to Council with an analysis and recommended actions to initiate an Enhanced Infrastructure Finance District (EIFD) encompassing the Ashby BART station area, and consider:

1. Earmarked provisions of an EIFD to finance specific infrastructure and community development investments in an effort to actualize improvements to a Southern Plaza and greater Adeline Corridor adjacent to the West Lot, including benefits supporting impacted communities;
2. A preliminary analysis on additional, non-contiguous EIFD catchment areas that extend beyond the BART development sites; and
3. An EIFD Financial Plan that determines the funding potential of such a district or districts, including the total amount of tax revenue that could be generated through property taxes, transfer taxes, sales taxes, and other revenue, for associated infrastructure and public works improvements. These improvements may include, but are not limited to a Black Arts and Cultural District and associated facilities, and Berkeley Flea Market facilities.

Refer to the November 2024 AAO1 process up to \$100,000 for a) engaging a consultant to collaborate with the City Attorney, Planning and Finance Departments to prepare an EIFD Financial Plan, b) to initiate and conduct a community engagement process, and c) to establish an ad-hoc steering committee to guide this work consisting of residents, community-based organizations, the Planning Department, the Office of Economic Development, Civic Arts, and leaders involved in Equitable Black Berkeley work and the development of the Black Arts and Cultural District.

BACKGROUND

In connection with the Ashby BART Transit Oriented Development (TOD), Planning established a draft Framework for Community Benefits to be included in part of the negotiations with BART and the City. Per the draft framework, the community benefits were to include a minimum of 35% of new housing units to be developed as affordable or

Below Market Rate (BMR), with a goal of building 50% affordable housing units.¹ A number of community benefit proposals in the draft framework include the potential of forming an Enhanced Infrastructure Finance District (EIFD) to capture the City's share of any tax increment (from property or other local sources) over a 40-year period², derived mostly from market rate units, to be invested in infrastructure improvements and community placemaking elements.³ What has yet to be determined is the boundaries of the district, percentage and specific allocation of funds that would be captured, what constitutes eligible and approved expenditures, and the community's role in prioritization and governance of the funds.

On February 13 2024, Council passed an item to establish the Black Arts and Cultural District⁴ in South Berkeley. Eligibility of investments towards arts and capital investments to bring this type of special economic zone to fruition is a worthwhile consideration. In addition, the Mayor's Office has outlined the need for placemaking investments in connection with the Equitable Black Berkeley (EBB) Initiative's Right to Remain and Right to Own as part of its Harm Repair Model supporting the ability of legacy families from South Berkeley to thrive.⁵ EIFD investments could go towards capital improvements for the East Plaza⁶, a community hub and town hall envisioned to have multiple economic engine opportunities, such as:

- The permanent site for the Berkeley Flea Market;
- Semi-permanent and permanent kiosks for emerging and established vendors, where they can have stable residence and ground floor retail opportunities to serve local residents and visitors to the area; and
- A business incubator for burgeoning Berkeley Flea Market vendors and other emerging small businesses, where entrepreneurs can take advantage of technical assistance, shared cost and resource savings, and business investments that can lead to the graduation of vendors into more permanent locations.

While EIFD's do not include a housing requirement, expenditures can support the preservation and production of affordable housing. Researchers note EIFD funding have a potential to be used to directly subsidize rent-restricted units within mixed-income development, and can be used towards infrastructure costs and development fees.⁷

¹ See [Council Worksession on July 18, 2023](#). A final draft framework has yet to be approved by Council.

² A different timeframe may be considered if deemed justifiable.

³ Exemptions would apply towards income restricted lower income housing units.

⁴ See Council Meeting Agenda Item 14: [Establishing a Black Arts and Culture District in the Adeline Corridor](#). See [Adopted Resolution No. 71,208-N.S.](#).

⁵ A Right to Stay approach would reduce the displacement of Black residents from Berkeley by investing in business and community development, and creating protections for low-income residents. One avenue of keeping Black residents in Berkeley is to invest in cultural placemaking, which can include art installations, investments in local art venue capital improvements, infrastructure investments for public safety, and other investments for community building and social cohesion.

⁶ Also referred to as the South Plaza.

⁷ See Turner Center for Housing's Report "[Enhanced Infrastructure Financing Districts: West Sacramento](#)".

The Port of San Francisco is cited as having a successful EIFD in its capital plan, which includes the Pier 70 and Mission Rock redevelopments, which bring commercial and residential improvements to the area.⁸ The City of Sacramento has three EIFDs (Aggie Square, Sacramento Stadium Area, and Railyards, bringing similar investments to commercial, housing, and public facilities.⁹

The Planning Department enlisted the help of Century Urban to complete a scope of work that consisted of:

1. Developing estimates of future property tax assessments in the area covered by the EIFD (using the same development scenarios as air rights economic analysis) and projections of tax increment revenues;
2. Evaluating other sources of EIFD funding such as property tax in-lieu of Vehicle License Fee (VLF);
3. Analyzing potential for EIFD to fund ongoing public space maintenance costs.
4. Drafting a memo identifying and describing the specific steps to be undertaken by the City of Berkeley in order to complete EIFD formation; and
5. Attending ad hoc meetings and prepared ad hoc presentations as may be requested by the City of Berkeley.

FINANCIAL IMPLICATIONS

\$100,000 from the City's General Fund, to be made available using AAO1 funding.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report. The report and plan produced may include elements that enhance the environmental conditions and experiences of residents in South Berkeley.

CONTACT

Mayor Jesse Arreguín	(510) 981-7100
Anthony Rodriguez, Senior Legislative Assistant	(510) 981-7102

Attachment:

1. Council Worksession agenda for July 18, 2024 on Ashby BART Station Transit-Oriented Development (TOD)

⁸ See SF Building Trades Council's Article "[How Cities Strike Deals With Developers to Improve Surrounding Neighborhoods](#)."

⁹ See City of Sacramento's Website: [Enhanced Infrastructure Financing Districts](#).



Office of the City Manager

WORKSESSION

July 18, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development
Subject: Ashby BART Station Transit-Oriented Development (TOD)

SUMMARY

This report provides an update on activities to facilitate transit-oriented development (TOD) at the Ashby BART station area, including:

- The City's Option to Acquire Air Rights to the Western Parking Lot
- Draft Framework for Community Benefits
- Ashby BART Station Infrastructure and Operations and Future Development
- Additional Funding Sources for Affordable Housing and/or Infrastructure.

The purpose of this worksession is to update the City Council on efforts related to the Ashby BART TOD project and to obtain input about the draft framework for community benefits and other aspects of the project.

CURRENT SITUATION AND ITS EFFECTS

For the past several years, the City and BART have been collaborating to facilitate transit-oriented development at the North Berkeley and Ashby BART sites. The City Council and BART Board of Directors executed a Memorandum of Understanding (MOU) in March 2020 and a Memorandum of Agreement (MOA) in June 2022 that outlined key milestones to advance to a solicitation for developer teams. Several of the milestones outlined in these agreements have been completed already, including:

- Reservation of \$53 million of City Affordable Housing Funding for the North Berkeley and Ashby BART Sites in April 2021.
- New zoning and General Plan amendments consistent with Assembly Bill 2923 adopted in June 2022.

- City and BART adoption of Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station (“JVP”) in June 2022.
- Council approval of preferred option for redesign of Adeline Street at Ashby BART that includes new plaza as a permanent location for the Berkeley Flea Market (November 2022).
- Issuance of a Request for Developer Qualifications and Notice of Funding Availability for the North Berkeley BART station area in July 2022 and selection of a developer team in December 2022.

Due to the additional complex issues that must be resolved prior to issuance of solicitation(s) for developer teams for the Ashby BART station area, the efforts to advance TOD at the North Berkeley and Ashby BART stations are on different timelines. These outstanding issues were identified in the June 2022 MOA. The status of efforts to resolve them are described in more detail below.

A. City’s Option to Acquire Air Rights for the Western Parking Lot

As a result of an agreement between the City and BART in October 1964 (prior to the construction of BART), and subsequent agreements and transactions including those related to construction of the Ed Roberts Campus, the City of Berkeley retains an option to acquire the air rights over the western parking lot for \$55,000. This arrangement requires cooperation between the City and BART in devising the ultimate terms of a transaction to develop this site.

City staff from the City Manager’s Office, Planning and Development, City Attorney’s Office, Health Housing and Community Services, and Public Works have conducted extensive research to inform options under discussion by the City (led by Major Jesse Arreguin) and BART (led by BART Board Director Lateefah Simon). The negotiating teams are exploring options that would protect and advance both the City’s and BART’s respective objectives, while establishing processes and parameters that do not dissuade the most qualified developer teams from participating in future developer solicitations. Staff anticipates returning to Council in the fall to discuss property negotiations and disposition.

B. Draft Framework for Community Benefits

The June 2022 MOA outlines a set of minimum requirements for the North Berkeley BART station area transit-oriented development, many of which are derived from the JVP and other City and BART Board-adopted requirements (e.g., project labor requirements). Since the JVP establishes both minimum expectations for development as well as aspirational goals, the intent in the MOA is to clearly convey a minimum level of requirements any potential developer team would be required to

meet for the North Berkeley BART site. The MOA also establishes mechanisms by which BART, the City, or both will reinforce these requirements. Requirements for the North Berkeley BART station area include a project with a residential program with a minimum of 1,000 bedrooms in a variety of sizes, minimum affordability requirements, and a connection to the Ohlone Greenway, among other elements.

The draft framework for community benefits and other project requirements for the Ashby BART site being negotiated by the City and BART reflect: the June 2022 MOA, the JVP, the Adeline Corridor Specific Plan, and key input from a parallel effort, “Equitable Black Berkeley”. Equitable Black Berkeley (EBB) is an initiative spearheaded by the Mayor’s Office, in partnership with Healthy Black Families, that is exploring innovative funding proposals and policies for the Ashby BART station and “Adeline Community” area. This effort is part of a grant-funded, community-driven effort to develop options to support equity, opportunity and the well-being of Berkeley’s African American community.¹ The central premise established by EBB for Ashby TOD is that the project must begin to reverse and repair the inter-generational harm that resulted from the development of the Ashby BART station and redlining.

As noted above, the City has a property interest (the option to acquire air rights) in the western parking lot at Ashby BART, which makes the City a necessary partner in determining the use of the site. The City Council and the BART Board of Directors must ultimately approve the community benefits for Ashby BART, as well as any related agreements and real estate transaction documents. Many of the details, including funding sources and enforcement mechanisms, are still being negotiated, and will be affected by the disposition of the City’s air rights option. The City and BART negotiation teams have been discussing elements of the draft community benefits framework. To date, the BART Board of Directors has not had the opportunity to review or discuss this draft community benefits framework.

The draft framework for community benefits for the Ashby BART station area includes the following elements:

1. **Affordable housing:** Minimum of 35% of new housing units to be developed shall be affordable or Below Market Rate (BMR) housing, with a goal of 50%, in accordance with income targets identified in the JVP (or other Affordable Housing Framework adopted by the City Council for the Ashby BART station area). The draft framework for community benefits reflects proposals being explored to finance the anticipated infrastructure/right-of-way improvements and affordable housing at the Ashby BART site. These proposals include the potential of forming an Enhanced Infrastructure District (EIFD). An EIFD encompassing Ashby (or both Ashby and North Berkeley stations) could capture the City’s share

¹ <https://healthyblackfam.org/e4bb>

of any property tax increment over a 45-year period. Income restricted lower income housing units would generally be exempt from property tax so only market rate units would contribute to the tax increment.² While some community members have advocated for the Ashby TOD project to be 100% affordable, the funding to finance that amount of affordable housing does not currently exist. Even with the City's reservation of its affordable housing funding, the project would need to rely on application to multiple cycles of future state and federal funding which would add significant delay and uncertainty to the TOD project; for those reasons, BART would not likely agree to this as a minimum requirement. Additionally, there is not a consensus among stakeholders that the entirety of the Ashby BART site should be 100% affordable. Some stakeholders have advocated for a mixed-income community (with 100% affordable projects, including at moderate income levels and market rate projects that could have below market rate inclusionary units) in order to better promote economic mobility and to provide a source of funding (e.g. property tax increment) that goes towards affordable housing and infrastructure needs.³

2. **Permanent home for the Berkeley Flea Market.** The Ashby TOD project will include a permanent home for the Berkeley Flea Market and other public markets and microenterprise businesses (e.g., with a plaza, market stalls, and/or other relevant amenities). The City of Berkeley will allow some portion of adjacent Adeline Street right-of-way to also be utilized to support the Berkeley Flea Market (and other public programming). The project will include an installation celebrating the history of the Flea Market, office space for the Flea Market administration, and additional amenities to facilitate the Flea Market and other public markets and microenterprise businesses.
3. **Ground floor space for civic uses at below market rate rent.** Consistent with the vision to have the Ashby BART station area be a vibrant neighborhood center that includes affordable space for community non-profits, the draft framework for community benefits includes a requirement that space at below market rate rent be provided to civic and community uses. The location and amount of space is still being negotiated.

² Senate Bill 628 "Enhanced Infrastructure Financing Districts" (1/2/2015), Assembly Bill 464 "Enhanced Infrastructure Financing Districts: allowable facilities and projects" (6/29/2021), Assembly Bill 336 "Enhanced infrastructure financing districts: public financing authority: members: joint powers authorities" (6/29/2021).

³ 4/27/21 City Council Item #31: City Affordable Housing Funds: Ashby and North Berkeley BART Station Areas and Future Housing Funding Notices of Funding Availability (NOFA), Attachment 2, p.36 regarding estimate of City subsidy needed to exceed 35% affordable housing:
<https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2031%20City%20Affordable%20Housing%20Funds%20%20Ashby%20and%20North%20Berkeley%20BART%20Station%20Areas%20and%20Future%20Housing%20Funding%20Notices%20of%20Funding%20Availabilit....pdf>

4. **A plaza and/or development that is adjacent and connected to Adeline Street at southern portion of the west parking lot.** The JVP and the Adeline Corridor Specific Plan prioritize that future development should connect directly to the greatest extent possible with Adeline Street. The Ashby TOD project shall be directly connected to Adeline Street at the southern end of the western parking lot (which could be possible through construction of a podium), as shown in the preferred right-of-way redesign concept for Adeline Street at Ashby BART selected by the City Council (see section C below for more details). The connection could become part of the future plaza and/or development. The source of funding for this aspect of the future TOD is still under negotiation and includes identifying grant funding.
5. **A reparative community benefits fund for South Berkeley.** Beyond construction of the TOD project itself, the Ashby BART TOD project can play a deeper role in repairing and reversing the intergenerational harm generated by the displacement of homes and businesses as a result of construction of the Ashby BART station. Equitable Black Berkeley has been central in shaping the proposal that a portion of the revenue generated from the future development project must be dedicated to a fund to be used for and by the greater South Berkeley community. A community advisory committee or similar body would direct the expenditure of the funds. The source of funding for this benefit is still subject to negotiation.

There are also other project elements under discussion which would be included in the future solicitation(s) for developer teams where prospective teams would be encouraged to use their creativity and expertise to include in their project proposals, such as:

- An accessible gymnasium on the east parking lot (to the west of Adeline Street and the Ed Roberts Campus), complementary to existing service providers for persons with disabilities;
- Development that interfaces directly with Adeline Street to the greatest extent possible in additional locations other than the southern portion of the west parking lot (in a manner that meets BART's station operations and BART and the City's life safety requirements);
- Additional publicly accessible civic space, green space or other amenities.

The City and BART have also been discussing other aspects of the project and have reached agreement or are nearing agreement on:

- A two-part developer solicitation process. Due in part to the additional complexity to develop the Ashby BART station site, the solicitation process must consist of a two-part process that includes a request for developer

qualifications, followed by a request for proposals from a short-list of respondents.

- Incorporation of the public artwork by Mildred Howard that was recently commissioned by the City of Berkeley (with the specific location subject to consultation with the artist).
- An interpretive display that satisfies Cultural Resources Mitigation Measure CR-1 in the Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project EIR.⁴

C. Ashby BART Station Infrastructure and Operations and Future Development

The Adeline Corridor Specific Plan and the JVP identify a goal to create an at-grade connection between Adeline Street and the planned development on the west parking lot. On April 20, 2023 BART held a community meeting to present information about Ashby BART station operation and infrastructure needs and how that impacts the connection of the future TOD to Adeline Street.⁵ BART staff presented information about the design process and constraints that led to the current configuration of the new Traction Power Substation (TPSS) planned for the Ashby Station.⁶ BART staff presented the maintenance, access, and clearance requirements for any development on top of or adjacent to the substation (Attachment 1).

BART staff also presented conceptual studies for opportunities for TOD to connect directly to Adeline Street, given safety and operational constraints. Based on information available at this time, the opportunities to connect to future development on the west parking lot to connect to Adeline Street appear to be most constrained in the northern two-thirds of the Adeline Street frontage due to the requirements of the TPSS and safety requirements related to station egress. As noted above, the preferred right-of-way redesign concept for Adeline Street at Ashby BART selected by the City Council included the potential for an expanded plaza at the southern end of the western parking lot. It is anticipated that the future solicitation(s) for developer teams will invite teams to propose creative solutions to maximize opportunities to connect to Adeline Street while still maintaining BART's safety and operational requirements for the Ashby station.

⁴ <https://berkeleyca.gov/sites/default/files/documents/2022-07-06%20MMRP.pdf>

⁵ Presentation from BART's 4/20/23 community meeting is available at: https://www.bart.gov/sites/default/files/docs/23_0420_Ashby_Presentation.pdf

⁶ BART runs trains using electrical power provided by Pacific Gas and Electric (PG&E), which in-turn supplies to over one hundred substations throughout the system that convert electricity to the voltage required to propel BART cars. These substations exist in all kinds of communities throughout the BART system. A traction power substation also exists at the North Berkeley BART station at the southeast corner of the intersection of Acton and Virginia Streets.

D. Additional Funding Sources for Affordable Housing and/or Infrastructure

The City and BART recognize that to achieve mutual goals for TOD at the Ashby BART station area, additional funding will need to be identified and secured beyond what the development project can provide to support desired levels of affordable housing, the redesign of Adeline Street, support for the Berkeley Flea Market and other community benefits. City and BART staff are seeking grant and other funding opportunities on an on-going basis. At this juncture, City and BART staff have submitted and/or been awarded the following:

- In 2020 BART secured major grants from Caltrans and the Federal Transit Administration to support planning for TOD, providing approximately \$1,700,000 for work specifically targeting Berkeley BART station area TOD projects, including affordable housing finance and economic analysis, station access planning, and community engagement.
- In June 2023, the City was awarded a \$600,000 grant from the Alameda County Transportation Commission to further refine the preferred concept for redesign of Adeline Street at Ashby BART station.
- In May 2023, BART and the City submitted an application to the State of California's 2021 Regional Early Action Planning Grants (REAP) 2.0 for the Affordable Housing Predevelopment Loan Fund and City of Berkeley Community Benefits Fund.⁷
- In June 2023, the City nominated the Ashby and the North Berkeley BART Station Areas for the Metropolitan Transportation Commission/Association of Bay Area Governments' Priority Site Pilot Program (which provides regional predevelopment funding).

Advancing TOD at the Ashby and North Berkeley BART stations is a Strategic Plan Priority, advancing our goals to:

- Create affordable housing and housing support service for our most vulnerable community members.

⁷ As part of the required application process, the City Council adopted Resolution 70,687-N.S. on January 31, 2023 to authorize the City Manager to execute a grant agreement with the California Housing and Community Development Department should BART and the City be awarded the grant. The application includes \$10 million for BART to create a predevelopment loan fund to help BART partner with local community development organizations who work in Disadvantaged Communities and often lack the working capital to finance predevelopment work themselves. The application also includes \$1 million to the City of Berkeley to set up its first Enhanced Infrastructure Financing District (EIFD) in the Ashby BART station area in order to increase the number of affordable residential homes in the Ashby TOD project and provide a revenue stream to provide investment in the community that surrounds the Ashby BART station.

- Champion and demonstrate social and racial equity.
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

Spurred by the passage of Assembly Bill 2923, the City and BART have been closely collaborating for the past few years to advance TOD at the Ashby and North Berkeley BART station areas. A first set of key milestones outlined in the March 2020 MOU between BART and the City of Berkeley were completed in June 2022. These milestones included:

- **Reservation of \$53 million of City Affordable Housing Funding for the North Berkeley and Ashby BART Sites.** The City Council approved a reservation of \$53 million in City affordable housing funds to support at least 35% of the housing units proposed at each of the stations being deed-restricted low, very low and/or extremely low-income affordable housing.
- **New zoning and General Plan amendments consistent with Assembly Bill 2923.** Zoning for the Ashby and North Berkeley BART station areas was amended to be consistent with AB 2923. The zoning amendments established a new Residential - BART Mixed Use (R-BMU) zoning district and amended the Zoning Map to apply the new R-BMU zoning district to the Ashby and North Berkeley BART sites. General Plan amendments added a new land use classification (the Ashby/North Berkeley BART Transit-Oriented Development) and the General Plan was updated for the Ashby and North Berkeley BART sites.
- **City and BART Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station (“JVP”).** The JVP was informed by an 18-month community process that included public meetings with a Council-appointed Community Advisory Group and the community at-large. The JVP builds on the framework provided by the City and BART’s adopted plans, policies and regulations, and the additional land use, site planning and financial feasibility studies undertaken as part of this planning process. The JVP is organized around five key topics: Affordable Housing, Public and Civic Space, Land Use, Building Form, and Station Access, and is incorporated into the City and BART Memorandum of Agreement (See Referenced Links: June 2022 MOA, Exhibit C). The JVP was adopted by both the City Council and the BART Board of Directors in June 2022.

- **City and BART Memorandum of Agreement (“MOA”).** The June 2022 MOA clarifies the processes that BART and/or the City will pursue to develop BART-owned property at North Berkeley BART Station and includes a timeline for pending actions related to the Ashby BART site.

Completion of these milestones enabled BART to issue a Request for Qualifications for developer teams and the City to issue a Notice of Funding Availability for the North Berkeley BART Station Area in July 2022. On December 1, 2022, the BART Board of Directors approved the selection of a development team to build housing at the North Berkeley BART station site. The team comprises lead nonprofit developer BRIDGE, nonprofit development partners East Bay Asian Local Development Corporation (EBALDC) and Insight Housing (formerly Berkeley Food and Housing Project), and market-rate developer Avalon Bay Communities. As outlined in the June 2022 MOA, the City initiated a process to develop Objective Design Standards (ODS) for the North Berkeley BART site in November 2022. Staff is anticipating bringing draft ODS to the Council in November/December 2023.

In addition, in November 2022, the City Council completed a milestone in the June 2022 MOA related to the Ashby BART station area.⁸ On November 29, 2022, the City Council selected a preferred concept to redesign the Adeline Street right-of-way at Ashby BART (between Ashby Avenue and Martin Luther King Jr. Way) in order to improve safety and access, and to create a new public plaza that would serve as the new permanent home for the Berkeley Flea Market.⁹ The Council adopted a resolution to authorize the City Manager to direct staff to proceed with the preliminary engineering and detailed engineering design based on the recommended conceptual design with Two-Lane Adeline option as the conceptual, pending identification of funding. Redesigning Adeline Street at Ashby BART supports future housing development plans for the Ashby BART station by designing future plaza space that could accommodate the needs of the Berkeley Flea Market that currently utilizes the parking lot (west of Adeline Street).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Creating equitable, transit-oriented mixed-use development that includes affordable housing and housing support services for Berkeley’s most vulnerable community members is a City Strategic Plan goal, which also helps advance the environmental goals of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

⁸ In addition to the June 2022 MOA, a Council Budget Referral (Feb. 2020) and a recommendation from the Adeline Corridor Specific Plan (Dec. 2020) also identified studying potential reconfigurations of Adeline Street to increase safety and opportunities for public space as a priority.

⁹ 11/29/22 City Council Meeting, Item 15: Adeline Street at Ashby BART Conceptual Design:

<https://berkeleyca.gov/sites/default/files/documents/2022-11-29%20Item%2015%20Adeline%20Street%20at%20Ashby%20BART.pdf>

POSSIBLE FUTURE ACTION

Following further negotiation meetings between the City and BART, it is anticipated that staff will return to Council in Fall 2023 with proposed amendments to the City and BART's June 2022 Memorandum of Agreement (MOA), as well as related agreements and documentation in order to advance solicitation of developer(s) for the Ashby BART station area.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are a variety of potential fiscal impacts to the City related to Ashby BART TOD, including the allocation of affordable housing funding, capital expenditures related to Adeline Street roadway reconfiguration, and operational costs related to on-street parking management adjacent to the stations. The actions for possible future consideration by the City Council do not result in direct fiscal impacts, since future funding commitments will return to Council for action. Staff will provide more detail about these potential fiscal impacts in advance of possible future actions.

CONTACT PERSON

Alisa Shen, Principal Planner, Planning Department, (510) 981-7409.

Links to Referenced Documents:

1: June 2022 City and BART Memorandum of Agreement for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas:

<https://berkeleyca.gov/sites/default/files/documents/UpdatedMOA%20North%20Berkeley-Ashby%20TOD%2005.16.23.pdf>

Attachment:

1: Ashby Substation Access and Clearance Requirements, BART Memorandum, March 15, 2023.



Ashby Substation Access and Clearance Requirements

Summary: This document summarizes the design process and constraints that led to the current configuration of the new Traction Power Substation (TPSS) planned for the Ashby Station. BART understands a desire exists to create an at grade-connection between Adeline Street and the planned development on the western surface parking lot, so this document also aims to outline the maintenance, access, and clearance requirements for any development on top of or adjacent to the substation.

Background: BART runs trains using electrical power provided by Pacific Gas and Electric (PG&E), which in-turn supplies to over one hundred substations throughout the system that convert electricity to the voltage required to propel BART cars. These substations exist in all kinds of communities throughout the BART system and are not unique to South Berkeley.

Substation improvements are part of a systemwide effort allowing BART to provide more frequent and timely service and to upgrade and replace aging infrastructure. Measure RR was an approved 2016 bond measure that includes funds to rebuild substations. New substations are included in the Core Capacity program which is partially funded by the Federal government. The construction schedule of the substations has been impacted by the pandemic and ensuing price escalation.

Current Design: BART street level facilities allows for more efficient maintenance and emergency access to the traction power equipment, and makes replacing the equipment much less complicated and expensive. The at-grade preference is being pursued at Ashby Passenger Station (Alternative #3), but it is worth noting that BART considered three alternatives at the location:

1. Installing the substation within the footprint of the existing underground facility.
2. Building the Alternating Current (AC) and Direct Current (DC) houses in one large facility adjacent to the existing TPSS
3. Separating the AC and DC houses in a narrower facility adjacent to the existing TPSS.

The first alternative was eliminated because the space couldn't accommodate the new equipment needed for a modern power system. The second alternative eliminated the accessible path to the station at the corner of Adeline St. and Ashby Ave.

The third alternative was ultimately selected because it was most cost effective, and most efficient to maintain.

The following sections detail the access needs that were incorporated into the current design and must be merged into any buildings adjacent to or over the planned substation at the Ashby Passenger Station.



Ashby Substation Access and Clearance Requirements

Access Requirements

1. Vehicular Access:
 - a. A minimum of 6 unobstructed parking spaces directly adjacent the facility must be provided for BART service trucks and vans.
 - b. Access to the substation must be provided by specified entrance and exit points, as well as turnarounds for cranes and emergency vehicles must be provided. As required by the California Building Code requirement for Emergency Vehicle Access (EVA) lanes.
 - c. These access points will need to be exclusive to BART and first responders, and that they are separated by bollards.
2. Crane Access: Cranes with a rating axis between 80 and 800-tons must be able to access the facility and manipulate these transformers. This requires the following:
 - a. A clear width of 30 feet for a crane, with an additional 5 feet-clear on both sides to accommodate outriggers.
 - b. A clear length of 175-feet to accommodate a 60-foot crane, the equipment trailer, and working clearances around and between vehicles.
 - c. Any cover over the Ashby TPSS must allow a crane to be staged next to the facility to extend a lifting boom and attached hoisting into the substation, lift it above the wall surrounding the facility, and place it onto a flatbed or carrier vehicle. **Figure 1** shows the working range of a crane BART has identified as capable of lifting all substation equipment. Any development over the substation must accommodate the vertical space necessary to support the operating radius of a capable crane.
 - d. The clearance between the Ashby TPSS and any development must also provide adequate space for replacing electrical equipment. Airspace must be provided to accommodate the hoist and swing of equipment capable of lifting a minimum of 60,000 pounds as refer in Figures 1 & 2. Figures 1 & 2 illustrate the dimensions of equipment known to be capable of meeting BART's maintenance needs.
3. Staging Requirements:
 - a. A secure laydown area of at least 43' x 36' must be included adjacent to the substation to store equipment.
 - b. An additional area must be reserved to accommodate three trailers housing a temporary substation. The average trailer measures 38' L x 9' W x 14' H, so 1,200 square feet (trailers situated end-end-end) or 1,350 sq ft (trailers situated side-side-by side) adjacent to the substation will be required in the event the substation fails. All areas would be off-limits to the public, would need to comply with all applicable building code requirements, and must always be accessible by BART maintenance staff and first responders.



Ashby Substation Access and Clearance Requirements

Fire and Life Safety Requirements

This document does not preclude those requirements mandated by the California Building Code, California Occupational Safety and Health Administration, National Electrical Code, Title 24, or any other applicable local, state, and Federal building or safety codes.

working range – MEGALIFT

142'-197' MEGALIFT

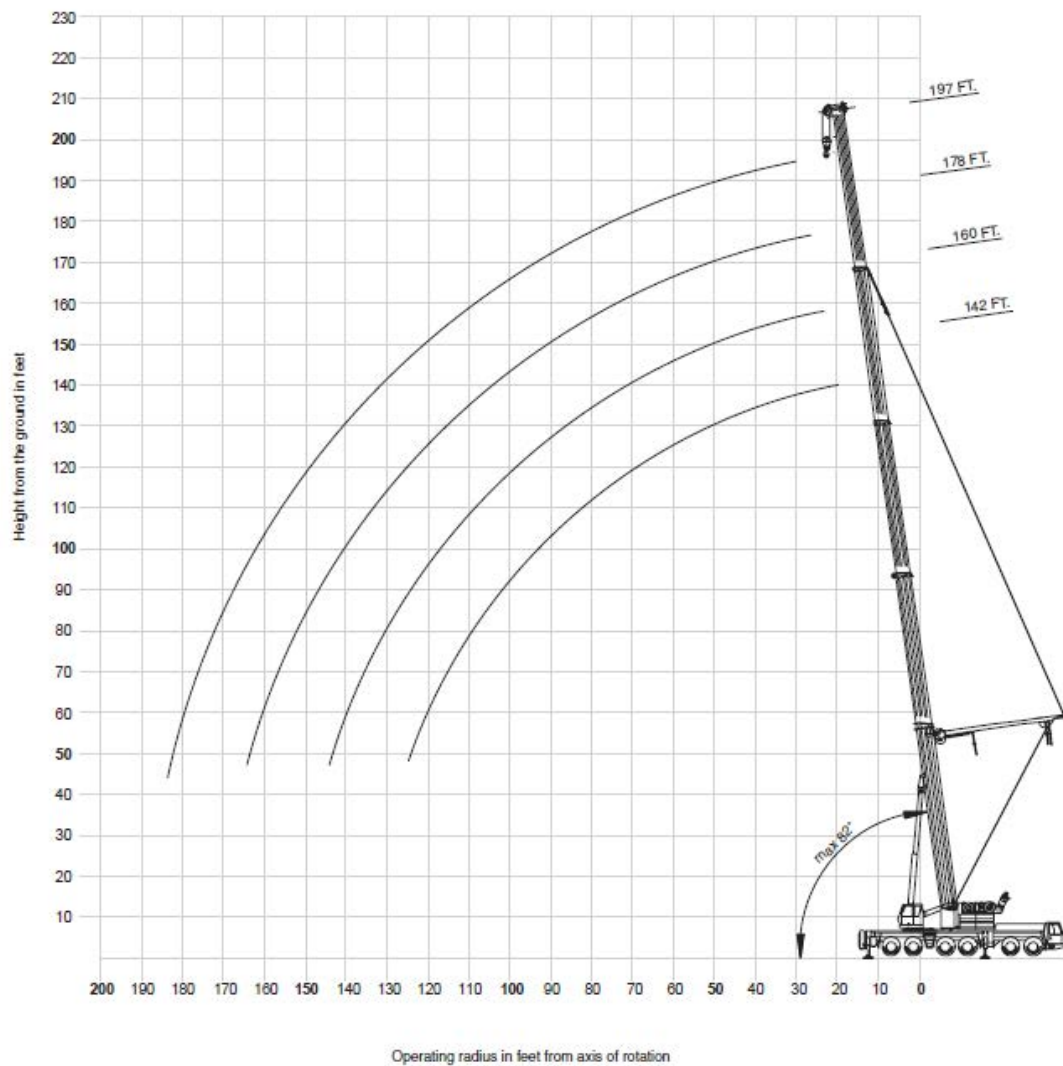


Figure 1: Typical Crane Operating Radius



Ashby Substation Access and Clearance Requirements

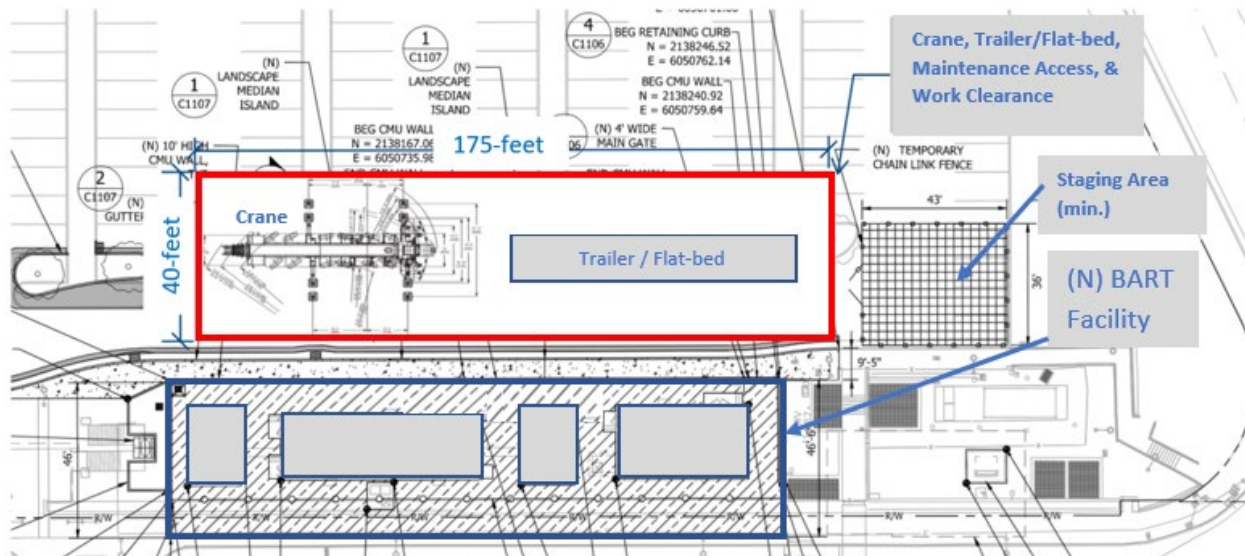


Figure 2: Typical layout of Crane and Trailer at High Voltage (HV) Substation

N.T.S



Cecilia Lunaparra

Councilmember, District 7

CONSENT CALENDAR

July 30, 2024

To: Honorable Members of the City Council

From: Councilmember Lunaparra (Author), Mayor Arreguin (Co-Sponsor),
Councilmember Hahn (Co-Sponsor)

Subject: Supporting the “Renewing Immigration Provisions of the Immigration Act of 1929 or “Registry Bill” (HR 1511 & SB2606)

RECOMMENDATION

Adopt a Resolution Supporting the “Renewing Immigration Provisions of the Immigration Act of 1929 or “Registry Bill” (HR 1511 & SB2606) and endorsing the Northern California Coalition for Just Immigration Reform’s “Three-Day Walk for a Path to Citizenship” from San Jose to San Francisco on August 17-19, 2024.¹

BACKGROUND

Berkeley has a history of recognizing the contributions that undocumented immigrants make to our community and protecting the rights of all residents of our city, regardless of legal status or nation of origin. In November 2016, the City of Berkeley reaffirmed its status as a sanctuary city. In January 2020, the City Council voted on a Resolution for a New Border Vision. In partnership with the Southern Border Communities Coalition, this Resolution calls on Congress to implement a new framework that expands public safety and protects human rights in border communities

CURRENT SITUATION AND ITS EFFECTS

It is estimated that there are over 11 million undocumented residents living in the United States. They are family members, friends, coworkers, neighbors, and valued community members. They pay state and federal taxes, and contribute to Social Security and Medicare, for which they are ineligible. They contribute to the workforce, often as essential workers who disproportionately suffer from exploitation, lack of adequate healthcare, and fear of deportation. On March 9, 2023, U.S. Representatives Zoe Lofgren (CA), Norma Torres (CA), Grace Meng (NY), Lou Correa (CA), Adriano Espaillat (NY), and Jesús “Chuy” García (IL) reintroduced the **“Renewing Immigration Provisions of the Immigration Act of 1929,”** or **“Registry Bill.”** The bill updates the 1929 law so that undocumented individuals may apply for legal permanent residency as long as they have lived in the country for at least seven years.

¹ [facebook.com/groups/httpswww.raizescollective.org](https://www.facebook.com/groups/httpswww.raizescollective.org).

The Northern California Coalition for Just Immigration Reform plans to hold regional community forums on the “Registry Bill,” and 40-mile Walk in August. The Coalition joins other groups at the national level to hold marches on August 8 and participate in a General Work Strike to draw attention to the Registry Bill.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

FISCAL IMPACTS

No General Fund impact.

CONTACT PERSON

Councilmember Cecilia Lunaparra (510) 981-7170

Attachments:

1. Resolution
2. Article on Registry Bill by Renee Saucedo

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

SUPPORT THE “RENEWING IMMIGRATION PROVISIONS OF THE IMMIGRATION ACT OF 1929 OR “REGISTRY BILL” (HR 1511 & SB2606)

WHEREAS, the 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, on July 1, 2024, the Peace and Justice Commission unanimously passed a resolution entitled “Support the “Renewing Immigration Provisions of the Immigration Act of 1929” or “Registry Bill” (HR 1511 & SB2606);” and

WHEREAS, California has the highest number of migrants in the country;¹ and

WHEREAS, undocumented families continue to suffer greatly due to the lack of opportunities to adjust their legal status. Mothers and fathers are unable to see the children they were forced to leave behind in their home countries. People suffer emotional distress by not seeing their elderly parents before they die. They continue to suffer exploitation at work and remain vulnerable if they complain about work conditions. And they suffer a constant fear that law enforcement will discover them and deport them, forcibly separating them from family and loved ones living with them here; and

WHEREAS, for nearly 40 years Congress has failed to update our immigration laws, leaving millions of people to live in fear and unable to become full Americans, and

WHEREAS, in 2020, California Congressional leaders Zoe Lofgren (D-Santa Clara) and Senator Alex Padilla (D-Los Angeles) introduced the “Renewing Immigration Provisions of the Immigration Act of 1929,” (HR 1511 & SB 2606), or “Registry Bill,”² which allows undocumented people living continuously in the US for at least 7 years to apply for legal permanent residency.³ It is estimated that approximately 8 million undocumented people may benefit from the passage of this law;⁴ and

¹ “Immigrants in California,” Public Policy Institute of California; January 2024; Mejia, Perez & Johnson, ppic.org/publication/immigrants-in-california/.

² H.R.1511 - Renewing Immigration Provisions of the Immigration Act of 1929, congress.gov/bill/118th-congress/house-bill/1511.

³ “Restoring Immigration Registry: Priority Bill Spotlight: Renewing Immigration Provisions of the Immigration Act of 1929,” FWD.us, March 9, 2023, <https://www.fwd.us/news/immigration-registry-bill/>

⁴ “America’s outdated immigration system is hurting countless people and holding back our country and our economy,” said Senator Padilla. “My bill would update the Registry cutoff date for the first time in more than 37 years so that more immigrants are eligible to apply for permanent resident status. This would have a profound impact on millions of immigrants, some of whom have been living, working, and contributing to the United States for decades, by allowing them to live freely without the fear of an uncertain future.” padilla.senate.gov/newsroom/press-releases/padilla-introduces-legislation-to-broaden-lawful-pathway-to-citizenship.

WHEREAS, the Registry Bill is a simple, practical solution that prioritizes permanent solutions for immigrants, addresses those already here without an immigration status, those with only temporary protections like TPS, and those with DACA (Deferred Action for Childhood Arrivals); and

WHEREAS, it is time for Congress to act to update the immigration registry by passing H.R. 1511 and S.2606, to ensure hardworking immigrants can live with dignity, have the freedom to travel, and contribute to our economy. Giving immigrants the ability to obtain a green card through a registry update would bring \$121 billion to the U.S economy annually and \$35 billion in taxes,⁵ and

WHEREAS, “Registry” means a path to citizenship for millions of undocumented Americans. It means having the ability to reunite with their families, the hope for a brighter future, the opportunity to find a better job, and thrive; and

WHEREAS, immigrant communities continue to passionately organize around a legalization bill, despite the betrayals by politicians and the continued, anti-immigrant sentiment; and

WHEREAS, many immigrant rights organizations in our region participate in the national Campaign for Citizenship Through Registry as part of the Northern California Coalition for Just Immigration Reform.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council call on Congress to pass the Registry Bill as soon as possible.

BE IT FURTHER RESOLVED that the Council ask the Clerk to send this resolution to our Congressional representatives.

BE IT FURTHER RESOLVED that the City of Berkeley supports and endorses the Northern California Coalition for Just Immigration Reform’s “Three-Day Walk for a Path to Citizenship” from San Jose to San Francisco on August 17-19, 2024.⁶

⁵ [fwd.us](https://www.fwd.us).

⁶ [facebook.com/groups/httpswww.raizescollective.org](https://www.facebook.com/groups/httpswww.raizescollective.org).

Registry Bill HR1511 Article + translation

JUSTICE COMING FOR UNDOCUMENTED IMMIGRANTS

By Renee Saucedo

On March 9, 2023, U.S. Representatives Zoe Lofgren (CA), Norma Torres (CA), Grace Meng (NY), Lou Correa (CA), Adriano Espaillat (NY), and Jesús "Chuy" García (IL) reintroduced the **"Renewing Immigration Provisions of the Immigration Act of 1929,"** Or **"Registry Bill."** The bill, kept the same as last year's Registry Bill, updates the 1929 law so that undocumented individuals may apply for legal permanent residency as long as they have lived in the country for at least seven years.

The registry, a provision of the Immigration and Nationality Act (INA), [has existed for nearly a century](#). It was first implemented by the [Registry Act of 1929](#) and permitted immigrants who had been continuously present in the United States since June 3, 1921, were of "good moral character," and were not otherwise deportable, to apply for permanent resident status. Since then, the cutoff date for the registry has been updated only [four times](#), usually as part of comprehensive immigration reforms, but has not been updated since the Reagan era. The statute has also been modified in other ways.

Today, immigrant communities are pushing for the registry process to be updated by establishing a seven years presence eligibility in order to apply for a green card. Under the new bill, the 1929 Immigration Act would also incorporate a rolling component so that future legislation would not be required to update the registry, and undocumented people can apply after living in the U.S. for seven years.

It is estimated that approximately eight million of the approximately eleven million undocumented people in the U.S. will benefit under this new update of current law.

Nationally, the immigrant rights movement is divided on whether or not to prioritize continuing to push for "Immigration Reform" this year, in view of the Republican-dominated Congress. However, many immigrant rights organizations, especially those which have grassroots constituencies, believe that we must continue to organize around passage of just legalization policies. While legislation like the Registry Bill may not pass this year, it is important to continue to build community participation in the campaign, and to create the political climate needed to push forward pro-undocumented legislation. Immigrant communities continue to organize, not to achieve a fast win, but rather, to continue to build support for a just law which will offer an ongoing path to citizenship, a permanent solution to the current injustice.

Currently, the national campaign "Unlock Permanent Residence Through Registry," based with the Coalition For Humane Immigrant Rights of Los Angeles (CHIRLA), is taking the lead coordinating the national campaign around the Registry Bill. Here in Sonoma County, organizations like ALMAS Libres/Raizes Collective and the North Bay Organizing Project (NBOP) are leading the Northern California Coalition For Just Immigration Reform, which involves organizations and unions in Sonoma, San Francisco, Humboldt, and the East Bay. Our local

Coalition collaborates with CHIRLA, as well as other coalitions around the country, such as the Dignity Campaign and United 4 Immigration Reform.

The Northern California Coalition plans to hold regional community forums on the “Registry Bill,” and 40-mile Walk in August. We’ll join groups at a national level to hold marches on August 8 and participate in a General Work Strike on August 9.

Why do immigrant communities continue to passionately organize around a legalization bill, despite the betrayals by the Democrats and the continued, anti-immigrant sentiment? Undocumented immigrants explain their involvement and sacrifice the best. They and their families continue to greatly suffer due to the lack of opportunities to adjust their legal status. Mothers and fathers are unable to see the children they were forced to leave behind in their home countries. People suffer emotional distress by not seeing their elderly parents before they die. They continue to suffer exploitation at work and remain vulnerable if they complain about work conditions. And they suffer a constant fear that law enforcement will discover them and deport them, forcibly separating them from family and loved ones living with them here.

Last year, Congress had various legislative options at the table including the Renewing Immigration Provisions of the Immigration Act of 1929 (introduced in both chambers), the Dream and Promise Act (passed out of the House), Dream Act (introduced in the Senate) Farm Workforce Modernization Act (passed out of the House), Citizenship for Essential Workers (introduced in both chambers) and the US Citizenship Act (introduced in both chambers). Immigrant communities overwhelmingly supported the bill related to the changing of the registry date, because it doesn’t include harmful policies like the expansion of temporary worker programs, more border and inland enforcement, and an increase in detention centers.

For more information, please see <https://www.facebook.com/groups/1620107098392385>.

Renee Saucedo is Coordinator of ALMAS Libres, of the Raizes Collective.

Translation in Spanish

El 9 de marzo de 2023 U.S.Representatives Zoe Lofgren (CA), Norma Torres (CA), Grace Meng (NY), Lou Correa (CA), Adriano Espaillat (NY), and Jesús "Chuy" García (IL) reintroducido el **"Renovando Inmigración Provisiones de la ley de inmigración de 1969,"** o **"Factura de Registro."** La Factura, deja el mismo Factura de Registro del año pasado, actualizando la ley de 1929 para que personas indocumentadas puedan aplicar para permanente legal residencia siempre y cuando hayan vivido en el país al menos por los siete años pasados.

La registra, una provision del inmigración y Nacilidad (INA), a existido por casi un siglo. Estaba primera implementada por la Registra Acta de 1929 y permitia inmigrantes que han estado continuamente presente in los Estados Unidos desde Junio 3, 1921, eran de "buen moral character," y no de otra manera no eran deportable, para solicitar el estatus de residente permanente. Desde entonces, la fecha límite para el registro se ha actualizado sólo cuatro veces, generalmente como parte de reformas migratorias integrales, pero no se ha actualizado desde la era Reagan. El estatuto también ha sido modificado en otros aspectos.

Hoy en día, las comunidades de inmigrantes están empujando para que se actualice el proceso de registro estableciendo una elegibilidad de presencia de siete años para poder solicitar una tarjeta verde. Según el nuevo proyecto de ley, la Ley de Inmigración de 1929 también incorporaría un componente renovable para que no se requiera legislación futura para actualizar el registro, y las personas indocumentadas puedan presentar su solicitud después de vivir en los EE.UU. durante siete años.

Se estima que aproximadamente ocho millones de los aproximadamente once millones de personas indocumentadas en Estados Unidos se beneficiarán con esta nueva actualización de la ley actual.

A nivel nacional, el movimiento por los derechos de los inmigrantes está dividido sobre si priorizar o no seguir empujando una "reforma migratoria" este año, en vista del Congreso dominado por los republicanos. Sin embargo, muchas organizaciones de derechos de los inmigrantes, especialmente aquellas que tienen electorados de base, creen que debemos continuar organizándonos en torno a la aprobación de políticas de legalización justas. Es posible que una legislación como el Proyecto de Ley de Registro no se apruebe este año, es importante continuar fomentando la participación de la comunidad en la campaña y crear el clima político necesario para impulsar una legislación a favor de los indocumentados. Las comunidades de inmigrantes continúan organizándose, no para lograr una victoria rápida, sino más bien para seguir generando apoyo para una ley justa que ofrecerá un camino continuo hacia la ciudadanía, una solución permanente a la injusticia actual.

Actualmente, la campaña nacional "Desbloquear la Residencia Permanente a través del Registro", basada en la Coalición por los Derechos Humanos de los Inmigrantes de Los Ángeles (CHIRLA), está tomando la iniciativa de coordinar la campaña nacional en torno al Proyecto de

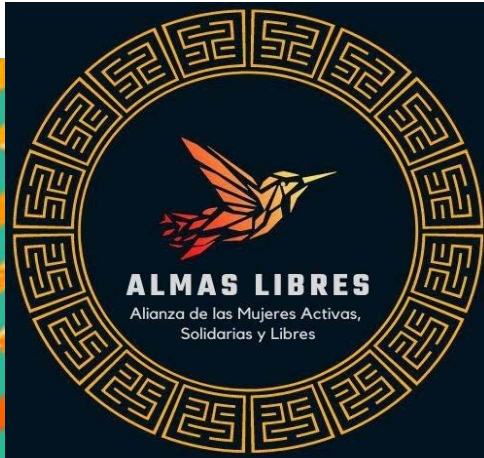
Ley de Registro. Aquí en el condado de Sonoma, organizaciones como ALMAS Libres/Raíces Collectiva y North Bay Organizing Project (NBOP) están dirigiendo la Coalición del Norte de California para una Reforma Migratoria Justa, que involucra a organizaciones y sindicatos en Sonoma, San Francisco, Humboldt y East Bay. Nuestra Coalición local colabora con CHIRLA, así como con otras coaliciones en todo el país, como Dignity Campaign y United 4 Immigration Reform.

La Coalición del Norte de California planea celebrar foros comunitarios regionales sobre el “Proyecto de Ley de Registro” y una caminata de 40 millas en agosto. Nos uniremos a grupos a nivel nacional para realizar marchas el 8 de agosto y participaremos en una Huelga General de Trabajo el 9 de agosto.

¿Por qué las comunidades de inmigrantes continúan organizándose apasionadamente en torno a un proyecto de ley de legalización, a pesar de las traiciones de los demócratas y el continuo sentimiento antiinmigrante? Los inmigrantes indocumentados explican su implicación y sacrifican lo mejor. Ellos y sus familias siguen sufriendo mucho por la falta de oportunidades para ajustar su estatus legal. Las madres y los padres no pueden ver a los niños que se vieron obligados a dejar atrás en sus países de origen. Las personas sufren angustia emocional al no ver a sus padres ancianos antes de morir. Siguen sufriendo explotación en el trabajo y siguen siendo vulnerables si se quejan de las condiciones laborales. Y sufren un temor constante de que las autoridades los descubran y los deporten, separándolos por la fuerza de sus familiares y seres queridos que viven con ellos aquí.

El año pasado, el Congreso tenía varias opciones legislativas sobre la mesa, incluida la Renovación de las Disposiciones de Inmigración de la Ley de Inmigración de 1929 (introducida en ambas cámaras), la Ley Dream and Promise (aprobada en la Cámara), Dream Act (introducida en el Senado). Ley de Modernización de la Fuerza Laboral Agrícola (aprobada por la Cámara), Ciudadanía para Trabajadores Esenciales (introducida en ambas cámaras) y Ley de Ciudadanía de EE. UU. (introducida en ambas cámaras). Las comunidades de inmigrantes apoyaron abrumadoramente el proyecto de ley relacionado con el cambio de la fecha del registro, porque no incluye políticas dañinas como la expansión de los programas de trabajadores temporales, más vigilancia en las fronteras y el interior, y un aumento de los centros de detención.

Para mas información, por favor visite <https://www.facebook.com/groups/1620107098392385>



MUA

Mujeres Unidas y Activas





Cecilia Lunaparra

Councilmember, District 7

CONSENT CALENDAR

July 30, 2024

To: Honorable Members of the City Council

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

Subject: Berkeley Student Cooperative (BSC): Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Lunaparra's discretionary fund and funds from any other Councilmembers who would like to contribute, to the Berkeley Student Cooperative (BSC) for the repair of the glass skylights above Casa Zimbabwe (CZ) with funds relinquished to the City's general fund for this purpose.

BACKGROUND

The Berkeley Student Cooperative (BSC) is a 501(c)3 non-profit student housing organization that has served students of the City of Berkeley and the greater Bay Area by providing low-cost cooperative housing to over 1,300 students who otherwise would not be able to afford a college education. With 20 units ranging from large and small houses, themed housing, apartments, and graduate student housing, the BSC has worked to ensure diverse housing options for the differing needs of all students. For over 90 years the BSC has been a place for students to find community through house events, member ownership, and the cooperative experience. In the Spring of 2024, the City Council celebrated the BSC's 90 years of service to the community by presenting BSC with a proclamation in honor of its decades of commitment to housing equity. BSC has also received city funding in the past, demonstrating the longstanding relationship that the City of Berkeley has had with BSC.

CZ has a rich history of providing for the community. With its opening in 1966, CZ became one of the first co-ed student housing in the nation, as well as the first building intentionally built as a co-op. Casa Zimbabwe's namesake represents the community's commitment to the struggle for decolonization by honoring South Rhodesia's fight for independence from British rule and the subsequent creation of the Republic of Zimbabwe. Furthermore, CZ is the second largest house in the BSC, offering housing to

120 students and providing numerous opportunities for community-building and personal/professional development.

CURRENT SITUATION AND ITS EFFECTS

The BSC is still recovering from the widespread effects of the COVID-19 pandemic. This includes completing delayed maintenance projects on select units, managing the exodus that came with remote learning, and navigating the impacts of the COVID-19 rent moratorium in Berkeley, all of which heavily impacted BSC's ability to thrive. Additionally, during the Winter of 2023, Kingman Hall, a property owned by BSC, incurred over \$1 million dollars in unforeseen recovery maintenance expenses as a result of the Bomb Cyclone Storm.

The BSC's Casa Zimbabwe is in critical need of skylight repair above the dining area. The BSC Maintenance Department estimated that the total cost of renovation would be about \$6,000. The BSC is seeking support from the City to help reduce the cost of the project. BSC members currently face the impact of the skylight dysfunction by water coming into the unit through cracks around the skylight when it rains. This skylight is in the CZ dining area where many members congregate on a daily basis for meals, to do homework, conduct meetings, and much more. As we come into the fall and winter, the BSC is seeking partnership now on this project to ensure the common space is functional in the upcoming rainy season.





Images of broken skylights in Casa Zimbabwe common areas.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

FISCAL IMPACTS

No General Fund impact. \$500 is available from the Councilmember's office budget discretionary account.

CONTACT PERSON

Councilmember Cecilia Lunaparra (510) 981-7170

Attachments:

1. Resolution

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

SUPPORT FOR BERKELEY STUDENT COOPERATIVE (BSC) SKYLIGHT REPAIR
AT CASA ZIMBABWE (CZ)

WHEREAS, the Berkeley Student Cooperative (BSC) is a 501(c3) nonprofit providing over 90 years of low-cost student housing to those experiencing financial strain; and

WHEREAS, the BSC will utilize such funds to repair the glass skylights above Casa Zimbabwe; and

WHEREAS, the City Council and the BSC have a long history of collaboration and partnership, most recently demonstrated by the City's proclamation recognizing 90 years of the BSC in February 2024; and

WHEREAS, Councilmember Lunaparra has surplus funds in her office expenditure account; and

WHEREAS, the BSC seeks funds in the amount of \$500 from each Councilmember to help cover the cost of the project of repairing the glass skylights above Casa Zimbabwe; and

WHEREAS, the provision of such services would help ensure 90 more years of affordable housing in the face of rampant inflation.

NOW THEREFORE, BE IT RESOLVED by the Berkeley City Council that up to \$500 relinquished by Councilmembers – including \$500 from Councilmember Lunaparra – shall be granted to the Berkeley Student Cooperative for helping cover maintenance costs.

ACTION CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets

RECOMMENDATION

We recommend City Council request that the City Manager report back by January 2025 and at least annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Environmental Health Division. Recommendations include developing a plan to improve inspection coverage and response to alleged foodborne illness complaints, tracking program spending, taking steps to address staffing needs, and implementing placarding once the Division stabilizes. The Division agreed or partially agreed to our findings and recommendations. Please see our report for their complete response and the auditor's response.

FISCAL IMPACTS OF RECOMMENDATION

Implementing the audit recommendations will ensure that the Environmental Health Division improves coverage of food inspections and can provide the public with complete and accessible information on food safety, minimizing public health risk to the community. Staffing up the food inspection program may carry financial implications depending on the specific implementation strategies, however, filling budgeted positions is necessary to meet inspection targets. Additionally, updating the information shared online and implementing placarding may require initial investments in design and implementation. However, we anticipate the ongoing costs of placarding to be minimal, as placards are updated as part of the routine inspection process.

CURRENT SITUATION AND ITS EFFECTS

In 2023, the Environmental Health Division did not meet its targets for food facility inspections. Almost half of permitted food facilities (45 percent) were not inspected at least once, and restaurants made up the largest group of uninspected facilities. Berkeley's inspections were behind other jurisdictions, such as Alameda County where only 3 percent of food facilities were not inspected at least once in 2023. The Division only met its target to respond within one business day for 6 out of 23 complaints involving alleged foodborne illness in 2023.

The Division did not separately track food inspection revenue and spending from its other inspection programs over the audit period. As a result, the Division was unable to provide revenues and expenditures for the period covered by the audit and could not distinguish between revenues from the food inspection program and its other inspection programs. This information is important to ensure that Division leadership has access to information on

program resources and can demonstrate sound financial management over food program revenues.

Food inspectors' assigned workload exceeded recommended levels and impacted food inspectors' ability to meet inspection targets. The food inspection program had two persistent vacancies in a supervisor role and a food inspector role for over four years but the City did not consistently recruit for these positions. Short staffing made it harder to manage inspection data and monitor program performance. We found a lack of reliable data needed to effectively manage food inspections. For example, two preschools were not included in the Division's database and, as a result, were not inspected in 2023.

Public information about food safety in Berkeley was limited. The information on food inspections the Division provides online was incomplete and not fully accessible. Information to consumers is additionally limited because Berkeley does not require food facilities to post placards with a food safety score, unlike Alameda County and other jurisdictions.

BACKGROUND

The Environmental Health Division's food inspection program is responsible for permitting and inspecting food facilities in Berkeley, including restaurants, markets, schools, and licensed health care facilities. Food inspections play an important role in preventing foodborne illness for the many residents and visitors who dine in Berkeley. The City of Berkeley is one of four cities in California that has its own health department and food inspection program independent from the county. Meeting their inspection targets is critical to fulfilling their role to protect public health and safety.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will help the Environmental Health Division fulfill its public health role of conducting timely inspections and sharing information on food safety with the public.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

- 1: Audit Report: Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets

Audit Report
July 10, 2024

Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets



BERKELEY CITY AUDITOR

Jenny Wong, City Auditor
Caitlin Palmer, Audit Manager
Erin Mullin, Audit Manager
Pauline Miller, Auditor II
Kendle Kuechle, Auditor I



Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets

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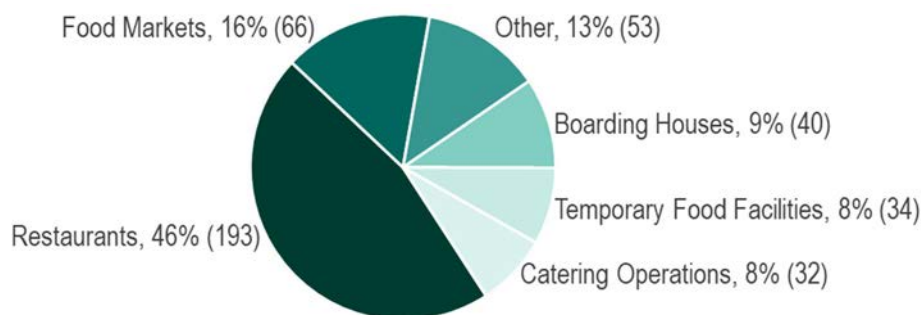
Report Highlights

July 10, 2024

Findings

1. The Environmental Health Division (Division) did not meet its targets for food facility inspections in 2023, increasing health risk. Almost half (45 percent) of Berkeley's food facilities were not inspected, including 193 restaurants. For comparison, Alameda County health officials reported that only 3 percent of facilities were not inspected at least once in 2023. Additionally, the Division responded to only 26 percent of potential foodborne illness complaints within the target of one business day.

Restaurants made up the largest group of facilities not inspected in 2023



Source: Environmental Health Division and analysis of Division database

2. The Division did not separately track program revenue and spending to ensure compliance with state code. Short staffing increased inspectors' workloads and made it difficult to meet targets and monitor program performance. City leadership did not consistently recruit for budgeted positions despite persistent vacancies. For example, supervisor and inspector positions had been vacant since 2019.
3. Public information on food inspections was incomplete and hard to access. Berkeley provided less information about inspections online compared to other jurisdictions. Berkeley did not use placards, a common practice for communicating food safety used by other jurisdictions including Alameda County.

Recommendations

We recommend the Division develop a plan to improve inspection coverage and quickly respond to alleged foodborne illness complaints. We recommend they track program spending to comply with state code, take steps to address staffing needs, and improve data management and reporting. Finally, we recommend they make online food inspection information more accessible and complete, and develop a plan for placards in Berkeley. The Environmental Health Division agreed or partially agreed with these recommendations.

Objectives

1. To what extent is the Food Safety and Inspection Program meeting its inspection targets?
2. To what extent is the Food Safety and Inspection Program adequately funded and staffed?
3. How well does the Food Safety and Inspection Program keep the public informed about food safety?

Why This Audit Is Important

We initiated an audit of Berkeley's Food Safety and Inspection Program in October 2023 because food inspections play an important role in preventing foodborne illness for the many residents and visitors who dine in Berkeley. The City of Berkeley is one of four cities in California that has its own health department and food inspection program independent from the county. Meeting their inspection targets is critical to fulfilling their role to protect public health and safety.



BERKELEY CITY AUDITOR

For the full report, visit:
<https://berkeleyca.gov/your-government/city-audits>

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Introduction

Many residents and visitors to Berkeley dine at restaurants and other food facilities daily, from long established culinary options to new pop-ups. We initiated an audit of Berkeley's Food Safety and Inspection Program in October 2023 because it has an important role in inspecting food facilities to ensure food safety and prevent foodborne illness. Centers for Disease Control (CDC) estimates that 48 million people get sick, 128,000 are hospitalized, and 3,000 die from foodborne diseases each year in the United States. We identified some challenges in the Food Safety and Inspection Program's ability to fulfill its role which may pose threats to public health.

Objectives, Scope, and Methodology

Our audit objectives were to determine:

1. To what extent is the Food Safety and Inspection Program meeting its inspection targets?
2. To what extent is the Food Safety and Inspection Program adequately funded and staffed?
3. How well does the Food Safety and Inspection Program keep the public informed about food safety?

To address these objectives, we analyzed data on inspections in 2023 and reviewed staffing information from fiscal years 2019 to 2023. We also compared Berkeley's inspection rate and online inspection data to a sample of similar and/or nearby jurisdictions. Additionally, we reviewed state mandates, Berkeley's policies and procedures, and interviewed program staff and leadership.

Background

Berkeley's Environmental Health Division (Division) operates the Food Safety and Inspection Program (food inspection program), which is responsible for permitting and inspecting food facilities in Berkeley, including restaurants, markets, schools, and licensed health care facilities. Restaurants make up the highest number of food facilities requiring inspections. According to the Division's database, at the end of 2023, Berkeley had 933 permitted food facilities. On its webpage, the food inspection program focuses on preventing foodborne and food-related illnesses and responding to complaints from the community.

Food inspectors provide an important service by working with local businesses and organizations feeding the Berkeley community. Inspectors' work includes routine and follow-up inspections, responding to complaints, and fielding inquiries from food facility operators.

Berkeley is one of four cities in California that has its own health department independent from the county. Therefore, Berkeley administers its own food inspection program, despite being within Alameda County, which conducts inspections throughout the rest of the county. In spring 2024, new management was appointed to the Division and department.

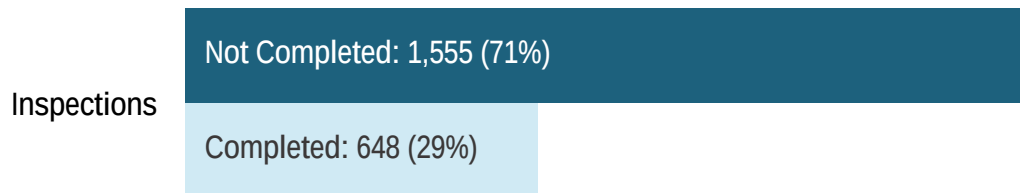
The Division was significantly behind on inspections in 2023, increasing health risk.

The Division did not meet its targets for food facility inspections. In 2023, the Division completed only 29 percent of the total required inspections, and 45 percent of food facilities were not inspected even once during this time. Restaurants made up the largest group of facilities that were not inspected—193 restaurants were not inspected in 2023. The Division only responded to 26 percent of potential foodborne illness complaints within the target of one business day.

The Division did not meet its inspection targets in 2023.

The Division did not meet its targets for food facility inspections in 2023. Based on Berkeley’s policy to conduct inspections according to risk level, the Division should have conducted a total of 2,203 inspections in 2023 but only completed 648, or 29 percent (Figure 1).

Figure 1. The Division completed only 29 percent of its target inspections in 2023.



Note: Numbers are based on an estimated minimum of 1 annual inspection for facilities that do not have an assigned risk level.

Source: Auditor analysis of Berkeley’s Environmental Health Division database

The food inspection program’s policies state that food facilities should be inspected at least 1-3 times per year depending on their risk level (Figure 2).

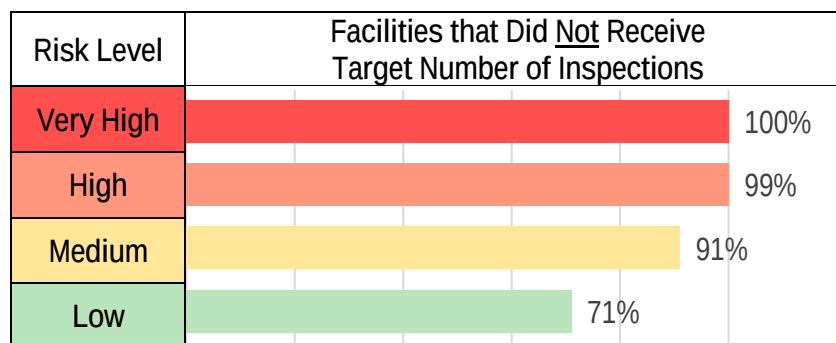
Figure 2. Inspection Targets By Risk Level, 2023

Risk Level	Description and Examples	Total Facilities	Annual Inspection Targets
Very High	Foods that fall within the high risk designation and serve a vulnerable population. Example: nursing care facilities.	7	3
High	Foods with complex preparation, including pre-preparation, cooling, and reheating. Examples: catering operations, food trucks, and restaurants.	526	3
Medium	Foods that require light preparation. Examples: cafes, schools, and fraternities/sororities.	204	2
Low	Pre-packaged foods. Examples: small grocery stores, convenience stores, and farmer’s market stands.	143	1
No Risk Level	Various types of facilities listed above.	53	1 or more

Source: Environmental Health Division and analysis of Division database

Nearly all of Berkeley’s high or very high risk facilities, which include restaurants and nursing care facilities, did not meet the requirement of having 3 inspections in 2023. Similarly, 91 percent of medium risk facilities, including senior centers, fraternities, and sororities, did not receive 2 required inspections that year (Figure 3).

Figure 3. The Division did not meet its inspection targets for facilities in any risk level in 2023.



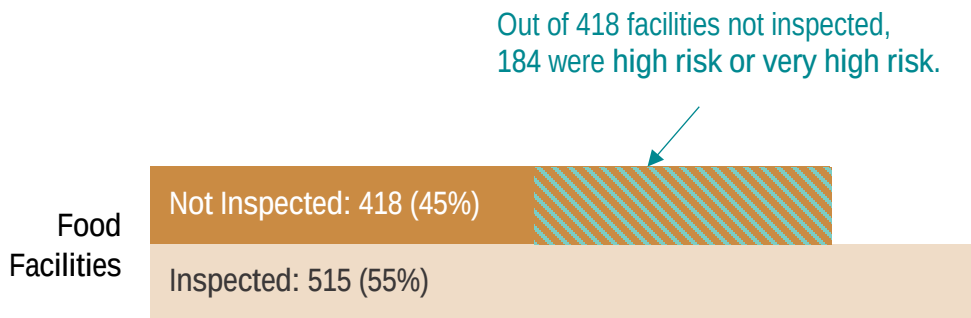
Note: Facilities with no assigned risk level are not included because the total number of target inspections for these facilities is unknown.

Source: Environmental Health Division and analysis of Division database

Inspectors and Division leadership acknowledged that they were not meeting their targets for inspections. Multiple inspectors said that these targets were not achievable given prolonged staff shortages in the Division. As a result, all food inspectors had a backlog of facilities overdue for inspection.

The Division was also not able to meet a baseline of one inspection per year. Almost half of Berkeley's 933 food facilities (45 percent) were not inspected even once in 2023 (Figure 4). Additionally, of the facilities that were not inspected at all, 184 (44 percent) were high risk or very high risk (see appendix on page 23 for more information about facilities that were not inspected by risk level).

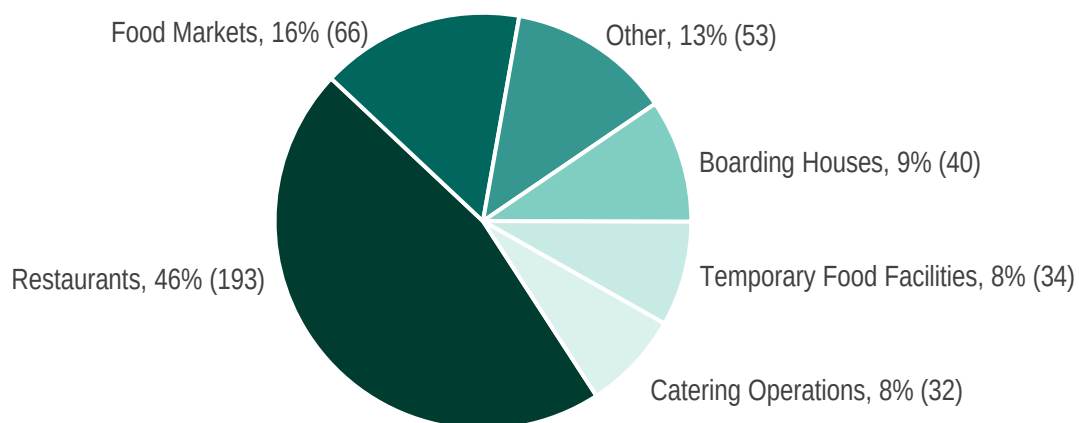
Figure 4. Almost half of Berkeley's food facilities were not inspected in 2023.



Source: Auditor analysis of Berkeley's Environmental Health Division database

The types of facilities not inspected in 2023 include restaurants, food markets, boarding houses, temporary food facilities, and catering operations (Figure 5). At the top of the list, 193 restaurants made up the largest group of facilities that were not inspected during this time.

Figure 5. Restaurants made up the largest group of facilities not inspected in 2023.



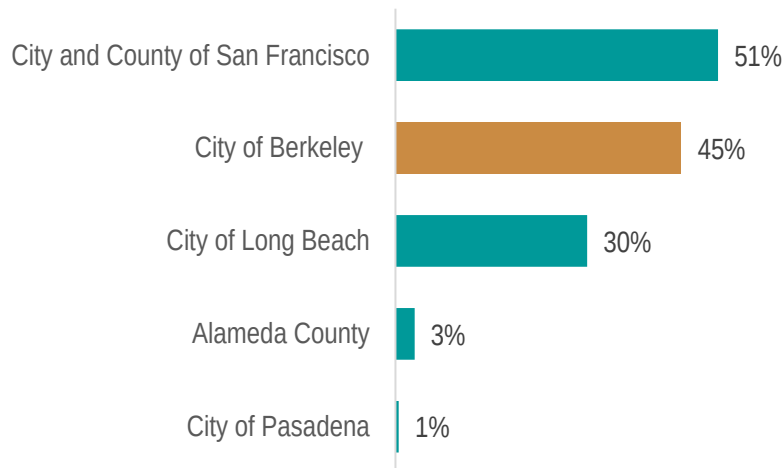
Note: Totals do not include any food facilities not included in the Division's inspection inventory. "Other" includes a variety of facility types, such as bakeries, mobile food facilities, and cottage food operations. Boarding houses includes facilities such as co-ops, fraternities, and sororities. For temporary food facilities, examples include some vendors at flea markets or farmers markets.

Source: Environmental Health Division and analysis of Division database

Alameda County and the City of Pasadena reported that they also did not meet their inspection targets. However, officials from these two jurisdictions stated that they did meet a baseline of at least one inspection per year for most facilities.

When compared to information from four other California food inspection programs, Berkeley had the second highest percentage of food facilities that were not inspected in 2023 after the City and County of San Francisco (Figure 6). Berkeley is in Alameda County, where health officials reported that only 3 percent of facilities were not inspected at least once in 2023.

Figure 6. Berkeley had the second highest percentage of food facilities that were not inspected in 2023.

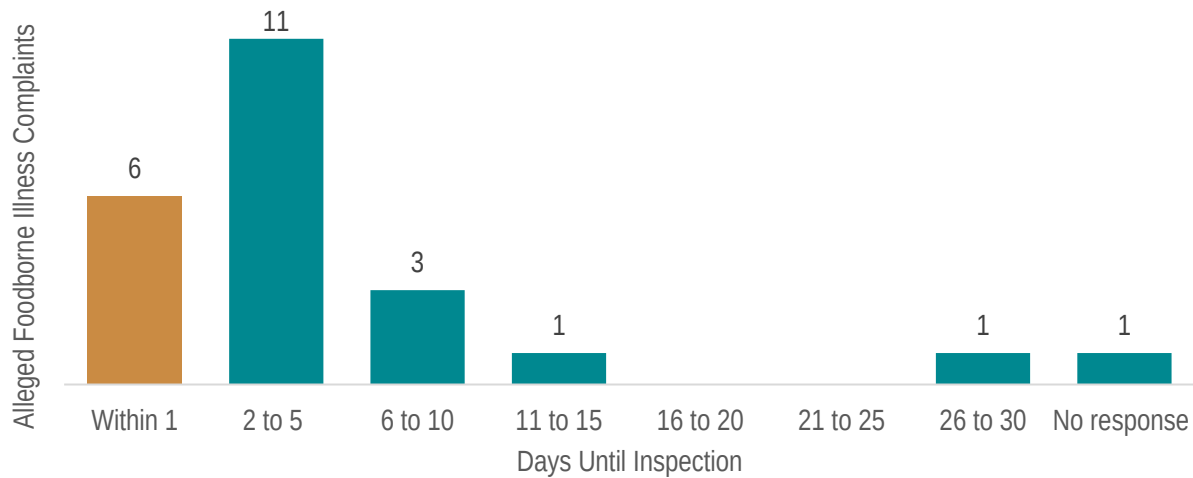


Note: The percentages reflect responses we received from these jurisdictions to our public information requests, and each jurisdiction confirmed these percentages. We did not receive or analyze inspection data for these jurisdictions.

Source: Auditor analysis of Berkeley's Environmental Health Division database, responses to public information requests

The Division also did not meet its targets for responding to complaints of alleged foodborne illness. In addition to routine inspections, the food inspection program responds to complaints from the community. The Division's procedures state that inspectors should inspect facilities following complaints of an alleged foodborne illness within one business day. Of 23 such complaints in 2023, only 6 complaints (26 percent) resulted in an inspection within one business day (Figure 7).

Figure 7. Only 6 out of 23 alleged foodborne illness complaints resulted in an inspection within one business day.



Source: Auditor analysis of Berkeley’s Environmental Health Division database

In a memo to City Council in November 2023, Division leadership stated that in order to balance inspection workload and staff vacancies, it would prioritize responding to viable threats in the environment, including those discovered through complaints. The memo also noted that there had been no confirmed foodborne illness outbreaks in Berkeley in recent years.¹

Delayed inspections increased public health risk and impacted education to food facilities.

Delayed inspections increased public health risks when food establishments were not inspected. When inspectors are behind on inspections, they have fewer opportunities to educate facility operators on food safety, which is an important part of the inspection process. Employees may miss opportunities to learn about food safety and preventing foodborne illness at facilities that are not inspected regularly. Prioritizing the health and safety of the community is an important consideration in managing food inspections. Delayed response to complaints could impact the Division’s ability to prevent possible foodborne illness outbreaks.

The backlog of inspections also limited inspectors’ ability to fulfill their other responsibilities. Inspectors’ high workloads limit the time they can spend at each facility and their ability to conduct follow-up inspections to ensure that previous violations are resolved. With fewer inspections, there are also fewer opportunities for food operators to discuss possible changes to their facilities with inspectors. As a result, operators may make changes to their facilities without guidance on how to comply with health regulations.

¹ According to the CDC, a foodborne disease outbreak is defined as an incident in which two or more persons experience a similar illness resulting from the ingestion of a common food.

Recommendations

To stabilize the food inspection program, we recommend the Division:

- 1.1 Develop a plan to improve coverage of routine inspections throughout the City, which may require the Division to prioritize health and safety duties over other responsibilities. As part of this process:
 - a. Evaluate inspection targets to determine if current inspection frequencies are achievable, or establish different temporary targets to adapt to periods of understaffing.
 - b. Establish a baseline of inspection coverage for all permitted food facilities in the City and prioritize inspection of facilities with high risk and very high risk designations that were not inspected in 2023.
- 1.2 Develop a plan to ensure timely response to complaints involving alleged foodborne illness, which may require the Division to prioritize health and safety duties over other responsibilities.

The Division did not track spending and left critical positions vacant.

The Division was unable to show if food inspection program revenues fell short of, covered, or exceeded the cost of operations because it did not have an established practice of separately tracking its revenue and spending. Additionally, short staffing in the Division increased inspectors' workloads beyond their capacity and prevented them from meeting inspection targets. City leadership did not consistently recruit to fill persistent vacancies in budgeted positions. For example, a supervisor position has been vacant since 2019. Short staffing also made it more difficult to manage inspection data and monitor food inspection program performance. For example, two preschools were not included in the Division's database and, as a result, were not inspected in 2023.

The Division did not track food inspection program revenue and spending.

The Division was unable to demonstrate compliance with state law because it did not have an established practice of separately tracking the food inspection program's revenue and spending. The food inspection program is state-mandated and primarily funded by fees, which state code requires to be used only for food inspections. However, the Division did not track food inspection revenue at the program-level, and could not distinguish between revenues from the food inspection program and its other inspection programs.

Without this information, it was unclear whether inspection fees from food facilities covered, fell short of, or exceeded the cost of its operations.² However, given that some facilities were not inspected in 2023, those facilities did not receive the inspection services the inspection fee is intended to be used for. Tracking spending at the program level could help the Division ensure that it complies with state code and uses food permit fees for food facility inspections.

Short staffing prevented inspectors from meeting inspection targets.

Short staffing in the Division led to inspection workloads that exceeded recommended levels. Vacant positions in the Division increased from 1 in FY 2019 to 5 in FY 2023.³ The Food and Drug Administration's (FDA) National Retail Food Regulatory Standards recommend one full-time inspector for every 280-320 inspections (Figure 8). Following this standard, Berkeley would need about 7-8 full-time dedicated food inspectors.⁴ The Division's staffing model was not in line with the FDA standard. In 2023, Berkeley had only 3 full-time food

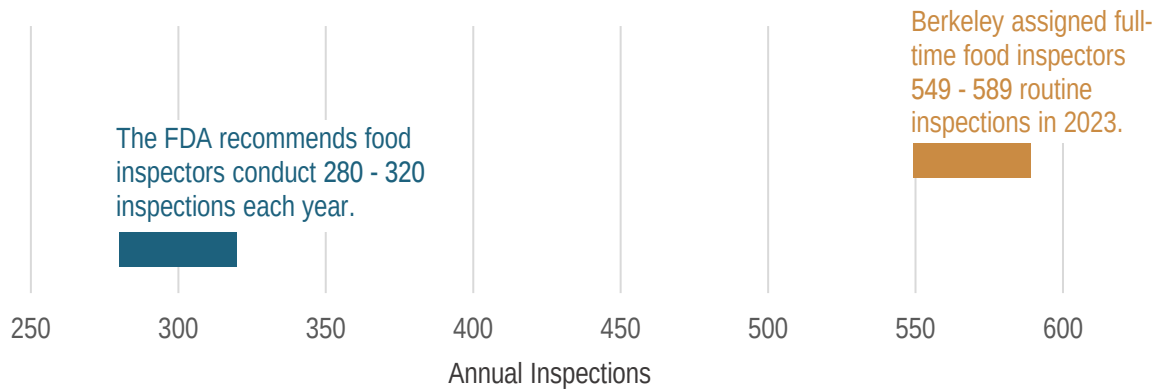
² We did not conduct an in-depth comparison of Berkeley's fees because the Division was working with a contractor to conduct a fee study during the audit period.

³ The vacancy numbers represent point-in-time estimates. The Division had 13.4 total budgeted positions in FY 2019 and 13 total budgeted positions in FY 2023.

⁴ This is a conservative estimate that does not include other types of inspections conducted by food inspectors, like complaint-related inspections.

inspectors who were each assigned 549-589 routine inspections, far exceeding the FDA recommended workload.⁵

Figure 8. Berkeley food inspectors' workloads exceeded the Food and Drug Administration's (FDA) recommendation.



Source: Auditor analysis of Berkeley's Environmental Health Division database, FDA Voluntary National Retail Food Regulatory Program Standards

Short-staffing extended food inspectors' workloads beyond their capacity. In addition to food inspections, inspectors also covered for vacant inspector positions that usually handled other types of inspections, such as vector inspections. With turnover in support staff roles, inspectors also reported spending more time handling inquiries from food facility operators such as questions about delays in receiving health permits. Altogether, vacancies throughout the Division increased inspectors' workloads to the point that they were not able to meet their inspection targets and respond to complaints involving alleged foodborne illness in a timely manner. According to Division leadership, although staff in other Environmental Health programs were qualified to help out with food inspections, working on competing priorities limited their ability to do so.

In recent audit reports, we found that understaffing can result in excessive workloads and promote an unhealthy work environment. According to payroll data, in 2023, two senior staff members in the food inspection program worked 147 overtime hours combined. These staff covered mobile food truck inspections and temporary event food inspections that year. Our 2018 audit on Berkeley's 911 dispatch center underscores how overtime can lead to fatigue, decreased quality of service and impact cognitive performance.⁶ Additionally, our 2023 audit of employee retention found that understaffing impaired services to the community and caused high workloads leading some employees to look for other jobs.⁷

⁵ This calculation focuses on full-time inspectors to align with the FDA's methodology. We excluded two senior environmental health specialists who were assigned 163 food inspections in addition to their primary duties in 2023.

⁶ [911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale](#)

⁷ [Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring](#)

The City did not consistently recruit to fill critical vacancies.

City leadership did not consistently recruit for budgeted positions despite persistent vacancies. The Division started recruitment to fill a vacant food inspector position and a supervisor position in November 2019 but neither position was filled then. According to the Division, they planned to interview candidates for the supervisor position in March 2020. However, Department leadership asked the Division to delay the hiring process at the onset of the pandemic. The Division then deferred hiring for both of these positions as part of a citywide cost saving hiring freeze during the COVID pandemic. The Division did not resume recruitment after the hiring freeze ended in September 2022. The Division eventually opened a recruitment for the vacant food inspector position in July 2023, but as of June 2024, the position was not filled. No action has been taken to recruit for a supervisor since 2019.

According to Division leadership, there is a workforce shortage for many positions in the environmental health field. The former deputy director overseeing the Division said that state and federal credentialing requirements limit the pool of qualified candidates for these positions, including in Berkeley. Division leadership also stated that Berkeley's compensation for inspectors may make it more difficult to hire, but stated that they have not conducted a compensation analysis for at least five years.

Trainee programs can be an effective strategy for employing more inspectors. According to a 2018 audit of the City and County of San Francisco's Public Health Department, Contra Costa, Santa Clara, and Alameda counties had offered a trainee program that provides the required experience for an entry-level food inspector position. Pasadena also operates a similar program, reporting greater success in recruiting for trainee positions compared to inspector roles. Berkeley has hired trainees in the past, and one of the division's most tenured staff was hired as a trainee. According to senior staff, while hiring trainees can expand the pool of applicants, bringing on a trainee would require hiring a supervisor to oversee training.

Short staffing made it harder to manage inspection data and monitor performance.

Staff reported that issues with the inspection database, Envision, made it harder to prioritize and track inspection data.⁸ Although our audit did not include an in-depth analysis of the database's functionality, we identified three critical data discrepancies:

-  53 food facilities in the Division's database had no assigned risk level in 2023, making it difficult for inspectors to determine the appropriate inspection frequency. As a result, inspectors may not have prioritized some higher risk facilities for multiple inspections. The Division was also unable to accurately calculate the total number of inspections required and inspectors' actual workloads.

⁸ Envision is a component of Accela, the City's licensing and permitting system.

 According to some inspectors, the Envision software inspectors used during inspections could not produce an accurate list of priority inspections due to an error in the date field. This made it impossible for the system to generate accurate lists of facilities due for inspection based on the length of time since last inspection. As a result, inspectors had no easy way to prioritize their workload and focus on facilities that had gone the longest time since their last inspection. We did not verify that all inspections completed were reflected in the database.

 Two preschools that serve food to students were not included in the Envision database. As a result, they were not inspected in 2023. We did not assess whether the database included all food facilities in Berkeley, but this indicates that it did not.

The Division did not have the staff needed to configure Envision to produce reports to monitor and prioritize inspections. According to Division leadership and staff, short staffing made it difficult to resolve issues with the database. The Division has considered switching to a different database, but we did not fully assess the adequacy of the current database to determine if it meets the Division's needs. Additionally, staff shortages may make this migration difficult.

The Division also did not use data to track inspection targets or monitor program performance. Despite having inspection targets, the Division did not measure progress toward these targets or publicly report on performance metrics. As a result, the Division did not have the information needed to make decisions about how to manage or prioritize inspections. Additionally, the Division did not track data on common inspection violations. This limited the Division's ability to design targeted interventions to reduce the occurrence of common violations, which could reduce overall workload and help the Division meet its targets in the long-run.

Recommendations

To ensure compliance with state code, we recommend the Division:

2.1 Work with the Budget Office to track how the food inspection program revenues are used.

To meet the Division's immediate staffing needs, we recommend the Division:

- 2.2** Take the following steps to fill positions and assess program staffing:
- a. Open recruitment for the supervisor position.
 - b. If the recruitments for the supervisor and food inspector positions do not yield qualified candidates, work with the Human Resources Department (HR) to develop targeted recruitments for the inspector and supervisor roles. This may include conducting an analysis of compensation or other factors that affect recruitment.
 - c. Develop a trainee program to build a pipeline into the Division's inspector positions.
 - d. Work with HR as needed to identify staffing resources needed to meet inspection targets.

To ensure accuracy of key data needed to effectively manage inspections, we recommend the Division:

- 2.3** Make the following updates to the inspection data:
- a. Add a risk designation to all food facilities in the Envision database.
 - b. Correct the date of last inspection in the Envision software that inspectors use during inspections, or develop a workaround to ensure inspectors have an accurate list of facilities prioritized by last inspection date.
 - c. Develop a process to regularly verify that the Envision database includes all food facilities that should be permitted and inspected.

In order to conduct effective, ongoing monitoring of the food inspection program, we recommend the Division:

- 2.4** Work with the Department of Information Technology (IT) to develop list of database functionalities and/or datapoints needed to help meet the Division's targets and produce reports. If the current database cannot provide this functionality, document the limitations of the current database and include these requirements in the future request for proposals for a new database.

In order to conduct effective, ongoing monitoring of the food inspection program, we also recommend the Division:

- 2.5** Identify performance metrics and report them to the public at least annually.

Public information about food safety was limited.

Berkeley's publicly available food inspection data was incomplete and not fully accessible. Information in the City's Open Data Portal did not clearly match inspection reports or include all of the information required by state code for information posted online. Additionally, Berkeley provided less information about inspections to the public online compared to some other jurisdictions. Although placards are a common method to provide food safety information, including in the rest of Alameda County, Berkeley did not use placards.

Inspection data was incomplete and not fully accessible to the public.

While Berkeley did provide some food inspection data online, it was incomplete. For example, some facilities that were inspected in 2023 were not included in the City's online Open Data Portal. The information in the Open Data Portal also did not clearly match the inspection reports. We identified violations at specific facilities in inspection reports that were not reflected in the Open Data Portal. This may give the wrong impression that a facility had no violations during the last inspection when in fact it did. While IT and the Division work together to upload the data, according to Division leadership, there was no one responsible for maintaining the accuracy of the data in the Open Data Portal.

Additionally, Berkeley's Open Data Portal did not include all of the information required by state code for information posted online. The Open Data Portal included the name and address of food facilities and the date of the last inspection, but did not include all violation types, the re-inspection date, or period of closure (Figure 9). The Open Data Portal included most violation categories required by state code, but did not include the category of improper cooling of potentially hazardous foods, which is one of the most common causes of foodborne illness according to the U.S. Department of Agriculture (USDA).

Figure 9. Berkeley's Open Data Portal did not include all information required by the California Health and Safety Code for information posted online.

State requirement for information reported online	Included on Berkeley's Open Data Portal
Name and address of the food facility	✓
Date of last inspection	✓
Major violations identified in a food facility inspection	○*
Reinspection date, if applicable	✗
Period of closure, if applicable	✗

* Regarding the state requirement to identify any major violation, Berkeley's Open Data Portal does list most major violations, but does not include violations related to improper cooling of potentially hazardous foods.

Source: Berkeley Open Data Portal, California Health and Safety Code

Additionally, Berkeley’s public information about individual food facilities was not easily accessible and limited compared to other jurisdictions. In order to access information on inspections, users have to download a spreadsheet from the Open Data Portal. In addition to the missing fields described above, Berkeley’s publicly available food inspection information did not include the facility’s overall inspection score or a detailed description of the violations cited. In contrast, jurisdictions such as Alameda County and the City and County of San Francisco offer online tools that allow users to search for a food facility by name and access more comprehensive information including inspection type, details about violations, and inspection scores (Figure 10 and Figure 11). Other jurisdictions such as the City and County of San Francisco and the County of Contra Costa also make full inspection reports available to the public online. These tools enhance accessibility and empower consumers to make informed choices about where to eat.

Figure 10. Alameda County’s online search tool.

The image shows two screenshots of the Alameda County Department of Environmental Health's online search tool. The top screenshot displays the main menu with three options: 'Click/Tap Here! for Mobile Food Facility Inspection Results' (with a food truck icon), 'Click/Tap Here! for Fixed Food Facility Inspection Results' (with a plate and fork icon), and 'Got comment for us? Tap here!' (with an envelope icon). The bottom screenshot shows the 'Fixed Food Facility Inspection Results' search page. It includes a search bar with the text 'bakery' and a dropdown arrow. Below the search bar, there are two example inspection result cards. Each card features a 'PASS' badge, a QR code, and the following information: 'TAKE OUT RESTAURANT - 3 OR MORE FOODHANDLERS', 'Address: [redacted]', 'Phone: [redacted]', 'Inspection type: Routine', 'Inspection date: [redacted]', 'Permit expires: [redacted]', and 'Violation count(s): 4 Violations; click for details' (for the first card) and '6 Violations; click for details' (for the second card).

Source: Alameda County food inspection webpage

Figure 11. The City and County of San Francisco's online search tool.

My Health Department Inspections Home

San Francisco Department of Public Health, Environmental Health Branch
49 South Van Ness Avenue, Suite 600, San Francisco, CA 94103 | [Visit Official Website](#)

| San Francisco Department of Public Health, Environmental Health Branch | Search Results

Locate an establishment.

Showing results for: **bakery**

My Health Department Inspections Home

San Francisco Department of Public Health, Environmental Health Branch
49 South Van Ness Avenue, Suite 600, San Francisco, CA 94103 | [Visit Official Website](#)

| San Francisco Department of Public Health, Environmental Health Branch | **BAKERY** | Retail Food | Routine

Retail Food | Routine
[View Original Inspection PDF](#)

Inspection Information

Purpose	Routine
Inspection Date	
Facility Rating Status	Pass

Source: City and County of San Francisco food inspection webpage

Berkeley did not use placards to inform the public about food inspections.

Placarding is another common practice to show how food facilities follow food safety requirements, but Berkeley did not use placards. Placards are typically displayed near a facility's entrance. While state code requires food facilities to make their last inspection report available upon request, placards provide a quicker and more accessible summary of results to the public. According to the CDC, posting inspection scores in restaurants may also be linked with fewer foodborne illness outbreaks. The Division looked into placarding in 2013, but did not implement it. Other jurisdictions, including Alameda County, use placards to share food safety information with the public (Figure 12).

Figure 12. Examples of placard models used by other jurisdictions.

Example Image	Description	Where This Model Is Used
	Color-Coded: Includes a green pass placard, yellow conditional pass placard, and red closed placard. Score based on violations found during the last inspection.	Some San Francisco Bay Area jurisdictions, including the City and County of San Francisco, Alameda County, and Contra Costa County
	Emoji: Includes emojis with the following scores: excellent, good, okay, and needs to improve. Score based on violations found during the last two to four inspections.	King County, Washington
	Letter Grade: Includes A, B, C placards. Score based on violations found during the last inspection.	Los Angeles County
	Pass/Conditional Pass/Closed: Score based on violations found during the last inspection.	City of Pasadena

Note: We did not assess the effectiveness of each placard model.

Source: Jurisdictions' food inspection program webpages.

King County in Washington is an example of a jurisdiction that worked with food facilities and the community to design their placards. Some considerations for designing and implementing evidence-based, equitable placarding include:

- ✓ Scoring based on the results from several inspections to represent more than a snapshot in time.
- ✓ Limiting re-inspections for the purpose of improving grades to ensure that requests for grade re-inspections do not draw resources from routine inspections.
- ✓ Scoring based on only higher risk violations to account for inconsistencies in reporting lower risk violations.
- ✓ Implementing a peer-review process for inspectors to help ensure that scoring is equitable and consistent across different facilities.
- ✓ Using community engagement to design placards that can be easily understood by people of different cultures and feature information that is meaningful to the community.

While placards can be added to the inspection process, sufficient staffing is required to design and implement placarding.

Recommendations

In order to provide more complete and accessible information on inspections to the public, we recommend the Division:

- 3.1 Work with Department of Information Technology (IT) to update the online system for sharing information on food inspections. As part of this process:
 - a. Develop internal guidance informed by state code that details what information the Division will share with the public online and defines responsibility for managing the data.
 - b. Make inspection history available online for all permitted food facilities in Berkeley. This could include sharing a copy of the most recent inspection report.
- 3.2 Develop a plan to implement placarding in Berkeley once staffing levels are stable. As part of this process:
 - a. Assess resources needed to implement placarding.
 - b. Consider adding elements such as community engagement for designing and implementing evidence-based, equitable placarding.

Methodology, Scope, and Statement of Compliance

We analyzed Berkeley's inspections data for 2023. This included requesting inspection numbers from a sample of similar and/or nearby jurisdictions. We reviewed staffing information for a five-year period from fiscal years 2019 to 2023. We performed a risk assessment of the food inspection program's practices and procedures to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. Our work included a review of relevant laws, policies and procedures, and interviews with food inspection program staff as well as division leadership. We compared the information Berkeley makes available to the public online to the information a sample of other nearby and/or similar jurisdictions make available to the public online. Additionally, we reviewed placarding best practices and examples of different placarding models. Our audit scope focused on the high risk area of meeting inspection targets did not include the Division's processes for issuing permits or enforcement.

To assess the food inspection program's ability to meet inspection targets, we analyzed data from Envision, the Environmental Health Division's (Division) inspection database. Evaluating the inspection process was not a part of our audit scope. We did not assess individual inspector performance, but did assess the Division's performance overall by analyzing total inspections.

To assess the Division's inspection performance, we compiled and analyzed:

- A subset of complaints data from 2023, and
- Inspection data from 2023 compared to the Division's list of permitted food facilities as of January 2024.

To assess the Division's publicly available data on inspections, we reviewed:

- Information on the Open Data Portal compared to sample inspection reports and inspection data from 2023.

We also reviewed:

- The California Food Code,
- The Berkeley Municipal Code,
- The Food and Drug Administration's National Retail Food Regulatory Standards,
- Division policies, procedures, and internal staffing documents,
- Human Resources vacancy and recruitment information,
- Payroll vacancy and overtime information, and
- Audits of food inspection programs performed by other jurisdictions, including the City and County of San Francisco Controller's Office.

We also conducted interviews with:

- Division staff and leadership,
- Food inspection program officials at the City of Pasadena and the County of Alameda,
- Information Technology staff,
- Human Resources staff, and
- Budget Office staff.

Data Reliability

We assessed the reliability of Envision data by reviewing it for reasonableness and completeness. We identified instances of data entry omissions and incomplete data, however, we determined that Envision data is reliable to address the audit objectives and provide an estimate of the Division's inspection performance. We did not conduct an in-depth assessment of the inspection data system's functionality, or conduct a thorough review of the accuracy of the data. Additionally, this audit did not include an assessment of the Division's process for establishing and/or updating risk level.

Independence

Payroll Audit is a Division of the City Auditor's Office. The Payroll Audit Division performs citywide payroll functions and is a module leader for the payroll/personnel module used to record payroll costs. Human Resources and department payroll clerks are responsible for entering employee data and collecting relevant documentation. Payroll Audit is not responsible for verifying the employee's time worked or the use of budget codes by the department. Further, Payroll Audit limits its review of sufficient documentation for the reported time or transaction; Human Resources and department payroll clerks are responsible for making adjustments to ensure the accuracy of the information in the system.

To reduce the threat to our independence, we limited our work to exclude areas overseen by our office. We also selected data from closed payroll periods that was in read only status. We relied on previous consultations with representatives from the U.S. Government Accountability Office to assess the safeguards we put in place. Based on this, we determined that the safeguards mentioned above reduced the identified threats to our independence to an acceptable level to proceed with the audit.

Statement of Compliance

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix: Food Facilities Not Inspected, By Risk Level

Food Facilities Not Inspected, By Risk Level, 2023

Risk Level	Facilities That Received <u>No</u> Inspections	
Low	101 out of 418 (24%)	19 Boarding Houses (mostly co-ops) 54 Food Markets 10 Cottage Food Operations 8 Temporary Food Facilities 5 Confectionaries 5 Other
Medium	104 out of 418 (25%)	38 Restaurants 21 Boarding Houses (fraternities/sororities) 18 Temporary Food Facilities 8 Mobile Food Trucks 6 Food Markets 5 Catering Operations 4 Bakeries 4 Other
High/Very High	184 out of 418 (44%)	140 Restaurants 23 Catering Operations 8 Mobile Food Trucks 4 Temporary Food Facilities 4 Bakeries 5 Other
No Assigned Risk Level	29 out of 418 (7%)	13 Restaurants 4 Food Markets 4 Temporary Food Facilities 3 Cottage Food Operations 3 Catering Operations 1 Mobile Food Truck 1 Flea Market/Swap Meet

Source: Auditor analysis of Berkeley's Environmental Health Division database

Recommendations and Management Response

We provided a draft of this report to city management and the Environmental Health Division (Division) for review and comment. The Division agreed or partially agreed with our findings, conclusions, and recommendations. We generally expect the City to implement audit recommendations within two years of report issuance. The Division provided the implementation dates and corrective action plan below. We will be conducting our standard recommendation follow up process after the audit is issued. We have not yet confirmed to what extent the recommendations have been implemented prior to the audit release date.

We have concerns about the Division's response to recommendations 2.1 and 3.1. We provide comments on page 29.

- 1.1 To stabilize the food inspection program, develop a plan to improve coverage of routine inspections throughout the City, which may require the Division to prioritize health and safety over other responsibilities. As part of this process:
 - a. Evaluate inspection targets to determine if current inspection frequencies are achievable, or establish different temporary targets to adapt to periods of understaffing.
 - b. Establish a baseline of inspection coverage for all permitted food facilities in the City and prioritize facilities with high risk and very high risk designations that were not inspected in 2023.

Management Response: Agree

Implementation Date: October 2024

Corrective Action Plan: Beginning in April 2024, the Environmental Health Division (EHD) began the process of reviewing all food facilities in the city to determine risk designation and status of last inspection, with an eye towards clearing the backlog of any overdue inspections as quickly as possible. Efforts to clear the 2023 backlog of uninspected food facilities is already underway; as of June 20, the number of remaining uninspected facilities has been reduced from 418 to 260. After this, EHD will draft a plan to ensure prioritization of high-risk food facilities during periods of low staffing and will deploy all available, qualified staff to focus their efforts on inspecting these higher risk facilities. With the added burden on existing inspectors that comes from redistributing the work of vacant inspectors, inspection targets will adjust to ensure that all high-risk facilities receive at least one inspection per year. During periods of especially low staffing, this plan will consider not only how to prioritize inspections within the food facility inspection program to minimize risk to the public, but also how to appropriately prioritize response to the Division's numerous State mandates and local ordinances, keeping the Division's chief focus on the health and safety of the public.

- 1.2 To stabilize the food inspection program, develop a plan to ensure timely response to complaints involving alleged foodborne illness, which may require the Division to prioritize health and safety duties over other responsibilities.

Management Response: Agree

Implementation Date: October 2024

Corrective Action Plan: Existing policies and procedures have been in-place to address the issue of timely response to complaints involving alleged foodborne illnesses (FBIs). During the COVID pandemic, staff priorities necessarily shifted to be more responsive to COVID-related health and safety violations (e.g., illegal operations during lockdown, mask mandate compliance, etc.). As EHD transitions back to normal protocols, staff, particularly support staff, will be retrained on the response timelines for alleged FBI complaints.

2.1 To ensure compliance with state code, work with the Budget Office to track how the food inspection program revenues are used.

Management Response: Agree

Implementation Date: August 2024

Corrective Action Plan: The City's long-standing practice has been to deposit all fee and permit revenues, except those associated with Enterprise funds, into the City's general fund. Since the expenses associated with administering EHD's field inspections (\$1,148,532 in FY2024) exceed the revenues brought in by that program annually (\$699,244 in FY2024), and since all health inspections are funded by the general fund, the Department is confident that the sum total of food inspection revenues is indeed being spent on food program administration; revenue from all health inspection fees only covers on average 60% of expenditures. However, for greater transparency, HHCS will work with the Budget Office and the Finance Department to create a new revenue code to track food inspection program revenues at the program-level.

2.2 To meet the Division's immediate staffing needs, take the following steps to fill positions and assess program staffing:

- a. Open a recruitment for the supervisor position.
- b. If the recruitments for the supervisor and food inspector positions do not yield qualified candidates, work with the Human Resources Department (HR) to develop targeted recruitments for the inspector and supervisor roles. This may include conducting an analysis of compensation or other factors that affect recruitment.
- c. Develop a trainee program to build a pipeline into the Division's inspector positions.
- d. Work with HR as needed to identify staffing resources needed to meet inspection targets.

Management Response: Agree

Implementation Date: Barring any city-wide hiring freezes, recruitment for the EH Supervisor is expected to be initiated no later than October 2024 and bid solicitation for a staffing analysis as well as initiation of work towards a trainee program can occur by July 2025.

Corrective Action Plan: In 2019, the Environmental Health Division's contract with Alameda County for vector services (another State mandate the Division implements) was revised by the County. The EH Supervisor position is funded, on the order of 44% of total costs, by revenues from this vector contract. Partly as a result of the new administrative requirements of the revised contract, vector revenues received from the County for the Division dropped from \$284,000 to \$147,000 annually on average. Consequently, the Department made a calculated decision to prioritize recruitment for a vacant vector technician position funded by this contract, since this position was critical for both meeting the requirements of the contract and for billing against the contract to maximize funding drawdown for the Supervisor. Unfortunately, we were unable to begin recruitment for the vacant vector

tech position until FY23, due to the City's hiring freeze. Recruitment for the vector tech position began in Jan of 2023 and resulted in a Vector Tech being hired in July of 2023. Recruiting for the EH Supervisor position was deprioritized until after this position was filled.

Since that time, HR has extended a conditional offer for the vacant Registered Environmental Health Specialist (REHS) position, which will help address staff shortages that contributed to missed inspections. Once this position is fully onboarded, and barring any potential city-wide hiring freezes, the Division will immediately begin recruitment for the Supervisor position and will consult with HR as needed to ensure an efficient, effective recruitment.

Once the supervisor position is filled, EHD will:

- (a) Explore the development of a trainee program to build a pipeline for the Division's Inspector roles, including examining how workforce development programs in other HHCS divisions could be applied to EHD. This could include hiring staff who still need to perform training hours prior to certification, as well as reviewing classification career ladders to create a career pipeline for unlicensed staff. This pipeline would ideally include promoting staff once certification is complete. Additionally, there could be partnerships with local universities to, establish internship programs.
- (b) Work with the Department and City leadership to identify the budgetary resources needed for a comprehensive staffing and compensation analysis, which we believe will be best conducted by a third-party consulting firm that specializes in those analyses. Solicitation of bids to identify a consultant can be initiated within the next year.

2.3 To ensure accuracy of key data needed to effectively manage inspections, make the following updates to the inspection data:

- a. Add a risk designation to all food facilities in the Envision database.
- b. Correct the date of last inspection in the Envision software that inspectors use during inspections or develop a workaround to ensure inspectors have an accurate list of facilities prioritized by last inspection date.
- c. Develop a process to regularly verify that the Envision database includes all food facilities that should be permitted and inspected.

Management Response: Agree

Implementation Date: July 2025

Corrective Action Plan: EHD has already added risk designations to all food facilities in Envision wherever those were missing. Moving forward, EHD will assess entries in Envision Connect Remote (ECR) to identify where inaccuracies exist, and departmental administrative staff will support with editing/updating/cleaning the entries using back up documentation. Simultaneously, EHD inspectors will all be trained on inputting information including dates into ECR, so the new data entered is uniform and accurate. The current policy and procedures for data entry practices will be reviewed and edited as needed during this process to further improve and maintain quality assurance.

2.4 In order to conduct effective, ongoing monitoring of the food inspection program, work with the Department of Information Technology (IT) to develop a list of database functionalities and/or datapoints needed to help meet the Division's targets and produce reports. If the current database cannot provide this functionality, document the limitations of the current database and include these requirements in the future request for proposals for a new database.

Management Response: Agree

Implementation Date: Initiated January 2025; completed September 2025

Corrective Action Plan: EHD will begin working with Resource Development Associates (RDA) to integrate a results-based accountability methodology into their data collection and reporting. In the early stages of this project, EHD will be sharing their current data collection procedures. Sharing these current methods with RDA will help clarify the specific data points needed to inform performance metrics across EHD programs, including the Food Safety and Inspections programs. This work will help illuminate what is possible within the current database, and document potential gaps. This will inform the ongoing collaboration with IT to determine next steps for the database system.

- 2.5 In order to conduct effective, ongoing monitoring of the food inspection program, identify performance metrics for the food inspection program and report on them to the public at least annually.

Management Response: Agree

Implementation Date: Initiated October 2024; completed September 2025

Corrective Action Plan: EHD is in the early stages of working with RDA to implement results-based accountability in the Division which will identify performance metrics across programs for integration into public dashboards. RDA will work closely with EHD to examine existing data, and data collection measures, to inform performance metrics. This project initiates this fall and is expected to be completed late summer of 2025.

- 3.1 In order to provide more complete and accessible information on inspections to the public, work with the Department of Information Technology (IT) to update the online system for sharing information on food inspections. As part of this process:
- a. Develop internal guidance informed by state code that details what information the Division will share with the public online and defines responsibility for managing the data.
 - b. Make inspection history available online for all permitted food facilities in Berkeley. This could include sharing a copy of the most recent inspection report.

Management Response: Partially agree

Implementation Date: Bid solicitation for new database vendor initiated by July 2025, pending available funding for a database replacement.

Corrective Action Plan: There is already a State requirement for each food facility to make available a copy of the most recent inspection report to anyone interested. EHD staff will be reminded and retrained to advise food facility operators of this legal requirement and will instruct each operator to post a sign in a conspicuous location advising the public of this legal requirement. The reporting of inspection results online is not a State-required activity, but this information is considered valuable by the dining public. Thus, if a jurisdiction does choose to report results online, the State requires that the reporting meet certain standards. EHD is considering disabling the current online reporting feature on the City's 'Open Data' portal, since the information currently being made available is confusing, misleading and not in compliance with State requirements for voluntary online posting. Instead, EHD will include State-compliant online reporting of inspection results as one of the criteria in selecting a

new database software, which we anticipate putting out to bid one year from now, pending available funding.

- 3.2** In order to provide more complete and accessible information on inspections to the public, develop a plan to implement placarding in Berkeley once staff levels are stable. As part of this process:
- a. Assess resources needed to implement placarding.
 - b. Consider adding elements such as community engagement for designing and implementing evidence-based, equitable placarding.

Management Response: Agree

Implementation Date: Initiated no sooner than July 2026.

Corrective Action Plan: We agree that the immediate focus for the Division needs to be on stabilizing staffing levels, including conducting and completing a comprehensive staffing and compensation analysis for the Division. We also note the Auditor's finding that the EHD's budget-authorized staffing levels for the Food Inspection program do not align with FDA standards, which call for an additional 4-5 FTE in the Division's budget. A robust, evidence-based, equitable placarding system presupposes sufficient inspector capacity to perform frequent inspections at FDA recommended levels; in addition to ongoing efforts to fill vacant authorized positions, these staffing shortfalls will first need to be addressed before EHD can realistically address the feasibility of a placarding system. Implementation of a placarding system also requires a reliable and robust database, and before assessing placarding, the Environmental Health Division intends to work with the IT Department to replace the current database, Envision, pending available funding to do so. Given these priority projects and the additional staffing levels called for by the FDA, we anticipate that an assessment of placarding and requisite resources, and an analysis of options for the City Council's consideration, will take until at least the FY27-28 Budget process (at least 2-3 years) to initiate.

Auditor's Response

We find it necessary to respond to the Environmental Health Division's (Division) response to recommendations 2.1 and 3.1 in order to correct facts and provide context related to our findings. In this audit, the Division, despite repeated requests, did not provide financial information until our audit work was completed, and stated that they partially agreed with our recommendation, then proposed a solution that runs directly opposite to our intent and the public's interest. We make every effort in our audit process to gather and develop convincing evidence that identifies significant findings that need management's attention. In the interest of accuracy and completeness we request documents, conduct interviews, meet with staff to verify information, and provide a draft of our audit reports to city management for review and comment. For this audit, city management and Division leadership were asked to review and comment on the report.

We discussed the draft with Division leadership who acknowledged that food inspection program revenues were not tracked and agreed to recommendation 2.1 to work with the Budget Office to begin tracking how they are used. During the audit process, we requested food inspection program revenues and expenditures multiple times and were told by Division leadership that this information was not tracked or available. We held a briefing meeting and an exit conference, in addition to bi-weekly meetings with Division leadership. However, in their audit response, they reported for the first time on the estimated revenues and expenditures for FY 2024. Because this information came after the audit process was completed, we could not review it and cannot confirm the accuracy of the information or how the numbers were developed. The timing of the Division's disclosure of this information is not consistent with the longstanding audit process.

Further, if accurate, the Division's estimates suggest that the General Fund subsidizes 40 percent of food inspection spending. This level of subsidization is high compared to the rest of Alameda County and the City of Pasadena, where officials stated that their food inspection program revenues cover most program costs. If this financial information had been available, it would have been a significant finding in our report. This subsidy may be an issue City Council will want to explore in the future.

The Division partially agreed with Recommendation 3.1 to update the online system for sharing information on food inspections. However, their corrective action plan runs counter to the purpose of the recommendation, which is to provide the public with more complete and accessible information on food inspections. Rather than improving the data available on the Open Data Portal, the Division stated that they will consider disconnecting the food inspection feature, since the information is not currently in compliance with the state requirements for voluntary online posting. This response would decrease transparency of information and reduce public knowledge about the state of restaurant inspections. The Division did not provide any indication that adding the required information—such as violations related to improper cooling of potentially hazardous foods—would not be feasible.

The Division stated that they will request funding for new software that will comply with state requirements. Depending on whether the new software system is funded, this action would disable online reporting until a vendor is selected, the new system is designed, and current data is successfully transferred, requiring far more than a year.

Mission Statement

Promoting transparency and accountability in Berkeley government.

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BERKELEY CITY AUDITOR



Office of the City Manager

PUBLIC HEARING
JULY 30, 2024

To: Honorable Mayor and Members of the City Council
 From: LaTanya Bellow, Interim City Manager
 Submitted by: Jordan Klein, Director, Planning & Development Department
 Subject: ZAB Appeal: 2600 Tenth Street, Administrative Use Permit ZP2023-0031

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt a Resolution either:

- A. Upholding the appeal and reversing the Zoning Adjustment Board (ZAB) decision, thereby approving Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot; or
- B. Denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision, thereby denying Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot.

SUMMARY

In November 2023, the Zoning Officer (ZO) approved Administrative Use Permit (AUP) #ZP2023-0031 to change the use of 9,750 square feet of space at 2600 Tenth Street from the existing use of Media Production to Research and Development. The approval was based on findings that the project would not be detrimental to the general welfare of the City; is consistent with the purposes of the District; is compatible with the surrounding uses and buildings; and complies with the adopted West Berkeley Plan. The ZO decision was appealed to the Zoning Adjustment Board (ZAB) by a group of individuals who argued that the existing use is Art/Craft Studio, not Media Production, and that Art/Craft Studio uses must be considered a Protected Use. On April 25, 2024 ZAB voted to support the appeal and deny the AUP based on use history, definitions, and impact of the proposed project at 2600 Tenth Street. On May 10, 2024 the project applicant, Wareham Development, appealed ZAB's decision to the City Council.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Recent Permit History for Changes of Use

On May 17, 2019, Wareham Development submitted an Administrative Use Permit (AUP) application (ZP2019-0090) to change the use of 15,584 square feet of Media Production space to Office use on the ground floor.

On May 13, 2021, Wareham Development obtained a Zoning Certificate (ZCBL2021-0121) to change the use of 19,955 square feet of space (Unit 105 to Unit 109) from Media Production to Research and Development, which was allowed by-right because the change was less than 20,000 square feet¹. This Zoning Certificate was later replaced by ZCBL2022-0190 on May 19, 2022 (see below).

On August 25, 2021, Wareham Development revised the AUP Application (ZP2019-0090) to eliminate the proposed office use and instead change the use of 20,367 square feet of Media Production to Research and Development. The proposed conversion was in addition to the space already converted by-right, and would have resulted in a total of 40,332 square feet of Research and Development space.

On October 13, 2021, staff issued the Notice of Administration Decision to approve the AUP Application (ZP2019-0090) for the change of use to Research and Development.

On November 3, 2021, Alex Wilmer & Sea Wilmer submitted an appeal of the AUP Application (ZP2019-0090) to the Zoning Adjustment Board (ZAB).

On January 13, 2022, the ZAB conducted a public hearing for the appeal of the Zoning Officer's decision to approve the AUP Application (ZP2019-0090). The ZAB requested clarification on the existing use from the City Attorney, and the hearing was continued to a date uncertain.

On April 28, 2022, the ZAB continued the public hearing for the appeal of the Zoning Officer's decision to approve the AUP Application (ZP2019-0090). Due to time constraints, the item was continued to a date certain, May 26, 2022.

On May 19, 2022, Wareham Development obtained a Zoning Certificate (ZCBL2022-0190) to change 19,553 square feet of space (Units 107 to Unit 110) from Media Production to Research and Development use. This Zoning Certificate revised the suites proposed to be converted from Media Production to Research and Development

¹ Per BMC 23E.030 Use Permitted in prior Ordinance

and replaced the previously approved Zoning Certificate (ZCBL 2021-0121) obtained in May 2021.

On May 25, 2022, Wareham Development withdrew the AUP (ZP2019-0090).

Current Zoning Permit Application Subject to this Appeal (ZP2023-0031)

On March 9, 2023 Wareham Development submitted an AUP Application (ZP2023-0031) to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development, resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces in the two-story section of the building in the north side abutting Parker Street.

On November 13, 2023 staff issued the Notice of Administration Decision to approve the AUP. The Zoning Officer determined that the proposed project would not be detrimental or contribute to a shortage of industrial spaces in West Berkeley as the established use of the site as of July 6, 1989 was Media Production, which is not a protected Non-Industrial use. Pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F) Findings for Approval, the Zoning Officer found that the project in AUP application ZP2023-0031, to change the use from Media Production to Research and Development, would be consistent with the purposes of the District, comply with the adopted West Berkeley Plan, and would be supportive of the industrial character of the district (see Attachment 3, packet for the April 25, 2024 ZAB meeting, for those AUP Findings and Conditions).

On December 4, 2023 Rick Auerbach (on behalf of West Berkeley Artisans & Industrial Companies (WEBAIC)), Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht submitted an appeal of the Zoning Officer's Decision to approve the AUP Application.

On April 25, 2024, the ZAB conducted a public hearing for the appeal of the Zoning Officer's decision to approve the AUP Application (ZP2023-0031). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, appellants, and the members of the public, the ZAB approved the appeal and denied the AUP (Motion: Duffy/Second: O'Keefe) a vote of 4-1-0-2-1 (Yes: Duffy, O'Keefe, Sanderson, Gaffney; No: Yung; Abstain: None; Absent: Thompson, Tregub; Recused: Kahn).

On May 6, 2024 staff issued the Notice of Decision for the ZAB denial which established a 14-day appeal period.

On May 10, 2024 Wareham Development, the Applicant, submitted an appeal of the ZAB decision to deny the AUP to the City Clerk.

On or before July 16, 2024 staff posted the public hearing notice at the site and three 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.

CURRENT SITUATION AND ITS EFFECTS

Project Scope

The current AUP application proposes to change the use of three tenant spaces (suites 105, 106, and 201) on the first and second floors of the building, totaling 9,750 square feet, from Media Production to Research and Development, and be further divided into no more than nine tenant spaces. The existing building already contains 19,553 square feet of Research and Development space. By changing the use of the three existing tenant spaces, the proposed project would result in a total of 29,303 square feet of Research and Development space in the building.

Pursuant to BMC Section 23.206.020, an AUP is required to establish a Research and Development use that is over 20,000 square feet in gross floor area. A Zoning Certificate (ZCBL2022-0190) to change the use of 19,553 square feet of space from Media Production to Research and Development was obtained in May 2022, which would result in a Research and Development use that is over 20,000 square-foot in gross floor area with this proposal.

Zoning Officer's Decisions to approve the AUP

In consideration of the proposed land use and the structure that accommodates the use, as required per BMC 23.406.030(F) Findings for Approval, the Zoning Officer found that the change of use from Media Production to Research and Development and creating six to nine tenant spaces in the AUP application ZP2023-0031:

- Would not be detrimental, contribute to a shortage of industrial spaces in West Berkeley, or induce substantial changes of use away from industrial uses; and
- Would be consistent with the purposes of the District, compatible with the surrounding uses and buildings, comply with the adopted West Berkeley Plan, and would be supportive of the industrial character of the district (see Exhibit A to the first Resolution for AUP Findings and Conditions, dated November 13, 2023).

The AUP approval was appealed by Non-Applicant individuals who are current building tenants. They argued that the existing use of the building is an Art/Craft Studio use, not Media Production, and thus must be protected, and that the conversion to Research and Development would be detrimental to the general welfare of filmmakers and video artists working at 2600 Tenth Street. They further argue that the proposed Research and Development use does not serve the purposes of the district and does not abide by the West Berkeley Plan goals and policies for the protected arts uses (see Attachment 3, materials for the April 25, 2024 ZAB meeting).

ZAB decision to overturn the Zoning Officer's AUP approval and deny the project

At the April 25, 2024 hearing, ZAB members discussed the issues around the established uses, definitions, and impact of the proposed project at 2600 Tenth Street. The captioner's record of the ZAB discussion is provided as Attachment 4 to this report. ZAB decision to uphold the Appeal and deny the AUP were based on the following points:

- **Definitions:** ZAB stated that there are overlapping aspects of creative work that are included in the definition of Media Production and Art/Craft Studio, and the West Berkeley Plan intended to protect the work of all artists including filmmakers. They noted that because the Art/Craft Studio definition includes filmmakers as individuals engaged in the type of work that require artistic skills, it is considered art and should be protected.
- **Stand-alone use:** ZAB discussed that the stand-alone use does not mean that it has to be within a stand-alone building and it does not refer to a single occupation on the site. They asserted that because small tenant spaces used for artistic work had to obtain a business license to operate, they can be considered as Art/Craft Studio in that space. ZAB added that these uses are considered free standing in that they are self-contained. In conclusion, ZAB determined that because Art/Craft Studio is an existing long-standing use within the building and is a Protected Non-Industrial Use in the Mixed-Use Light Industrial Zoning District per BMC 23.206.050(B), the Protected Use provisions extend to all of the tenant spaces in the building.

RATIONALE FOR RECOMMENDATION

Selected issues raised in the Appellant's letter (Attachment 2) and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety.

Issue 1: The Applicant-Appellant asserts that the existing established use meets the Media Production definition, and so is not a Protected Use requiring a Use Permit

Response:

Staff agree with the Applicant-Appellant. The 19,553 square feet previously converted to Research and Development may have included areas previously used for Art/Craft Studio use. However, according to the building's use history, those art-related uses were not established as of July 6, 1989, and did not exist as single stand-alone uses, nor were they combined with residential use in a live/work unit. Therefore, they are not considered a "Protected Use." Per the Applicant, the proposed changes to an additional 9,750 square feet would occur in locations that have been specifically used for Media

Production, and have been vacated since 2018. These square feet are similarly not considered “Protected Uses.”

Definitions

Media Production and Art/Craft Studio are separately defined non-industrial uses in BMC Section 23.502.020, Defined Terms:

- Art/Craft Studio: “An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district’s requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.”
- Media Production: “Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.”

Art/Craft Studio is considered a Protected Non-Industrial Use in the MU-LI District (BMC Section 23.206.050(B)(1)²) provided that the use was (a) legally established as of July 6, 1989, and (b) exists as a single stand-alone use or is combined with residential use in a live/work unit. Media Production is not a protected non-industrial use.

The established use of the subject site determines what type of zoning permit is required, and whether the provisions of BMC Section 23.206.050, Protected Uses, apply to the project. Changing from a protected nonindustrial use such as Arts/Crafts Studio to a non-protected use is allowable with either an Administrative Use Permit or a Use Permit, depending on the size (BMC Section 23.206.050(B)(2)), and subject to

² The full list of protected non-industrial uses per BMC 23.206.050(B): Art/craft studio; art galleries, ancillary to art studios when located in the same building; child care facility, fine arts performance, instruction and rehearsal studios (dance, music theater); theaters, stage performance, but excluding motion picture theaters

additional findings for approval that require comparable replacement space to be provided (BMC 23.206.050(B)(4)).

Permitting History

Land Use Division records indicate that, subsequent to the establishment and expansion of the facility, Zoning Certificates for Business Licenses were issued to multiple enterprises leasing space at the Zaentz Center after the July 6, 1989 cut-off date for establishing a protected non-industrial use. These included Media Production and artistic uses such as education film production, film making, motion picture and video services, TV production, writing office, post-production film editing, and television programming. There were also less related uses including computer software design, a health information company, a consulting office, and a general business office for import-export of goods. If there were individual uses that could have been defined as Art/Craft Studio uses within the building prior to July 6, 1989, they did not exist as a single stand-alone use, nor were they combined with residential use in a live/work unit. Therefore, the existing uses of the building are not protected uses. A listing of the City's records of businesses licenses issued for the site is summarized here:

- 1971: At the time of opening, the building contained three recording studios, a mastering room, offices, and a warehouse. Owner Saul Zaentz then expanded the company into film production known as Fantasy Films.
- 1980: Construction / opening of Saul Zaentz Media Center, a seven-story addition to the building that housed a film post-production center and a fourth recording studio. The Saul Zaentz Film Center was a commercial arts business service consisting of several recording and editing studios and office spaces for the purpose of producing various forms of media, including music and film.
- Prior to July 6, 1989: Prior to the 1989 cut-off date for establishing a Protected Use, records include Zoning Certificates for business licenses for uses such as a record company, a sound studio, offices, a publishing company, a computer software, and a computer word processing company.
- July 6, 1989 and after: After the 1989 cut-off date for establishing a Protected Use, Zoning Certificates for business licenses were issued to multiple enterprises including media production, film making, writing office, and television programming, as well as computer software design, a health information company, a consulting office, and a general business office for import-export of goods (A listing of the City's records of businesses licenses after this date is provided as Attachment 6).

Staff Analysis

Based on the permit history and the definitions, staff determined that the established use as of July 6, 1989 was Media Production, which is not a protected Non-Industrial

use. The long-existing film and video production use of the complex, constructed in phases, is consistent with the current definition of Media Production. Specifically, the Saul Zaentz Film Center was a commercial arts business service consisting of several recording and editing studios and office spaces for the purpose of producing various forms of media, including music and film. Prior to the Film Center use, on-site uses included audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.

An Art/Craft Studio is commonly differentiated from Media Production by the scale and purpose of the establishment, understood to encompass studio spaces for art production and performing art instruction, rehearsal studios, and theatre spaces. Media Production uses, by contrast, are “commercial arts and art-related business services” involving various media types. Although filmmakers may rightfully be considered as artists, that does not in turn establish that spaces used by filmmakers are rightfully defined as Art/Craft Studio. The definition of Media Production explicitly includes ‘commercial arts’ and would encompass the work of filmmakers within the building. Since the historic uses of the space in question has primarily consisted of audio and film recording, editing studios and services, film and video production, titling, special effects production and motion picture, it is still best identified as Media Production and not considered as a Protected Non-Industrial Art/Craft use by BMC Section 23.206.050(B).

Further, even if the established use as of July 6, 1989 could be characterized as Art/Craft Studio, this did not exist as a single stand-alone use at the site, which is a necessary precondition for a use to be a protected use under BMC 23.206.050(B). As the permitting history for the site reflects, the Zaentz Center has had a number of commercial uses over its history, such as a computer software design business and a business to import and export goods, that cannot be categorized as “Art/Craft Studio” uses.

ZAB’s decision to restrict uses to Art/Craft Studio would deviate from the previously established Media Production use. Pursuant to BMC Section 23.206.050(B), to change a Protected Non-Industrial Use such as the Art/Craft Studio Use to a Non-Protected use such as Media Production^[1], an AUP (for less than 5,000 square feet) or a Use Permit (for 5,000 square feet or more) is required. This change of use requires that the space occupied by the existing Art/Craft Studio use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. This would impact the property owner’s ability to continue to use the building for Media Production as the use would be subject to a use permit public hearing and replacement requirements. In this scenario, there would be limitation and additional regulatory requirements to establish a Media Production use, but the use itself would not be prohibited.

Issue 2: The Applicant-Appellant refers to Appendix B to the West Berkeley Area Plan which explicitly notes the film, video and record production companies located at the Fantasy Building to be distinct from the identified arts and crafts studios located in West Berkeley.

Response:

Staff agrees with the Applicant-Appellant. The Zoning Ordinance was amended in 1999 to implement the West Berkeley Plan, and included provisions for Protected Uses. Art/Craft Studio uses were included as Protected Uses provided they were legally established as of July 6, 1989 and were a stand-alone use or combined with residential use, same as the current code requirement. The Subsequent amendments to the West Berkeley Plan in 2011 and the corresponding zoning amendments did not include Media Production as a protected use or alter the Protected Use criteria for Art/Craft Studios.

The West Berkeley Plan's Appendix B *Cultural Resources of West Berkeley* refers to West Berkeley as a hub for a strong community of artist and crafts people and identifies some of the studios and worksites of artists and craftspeople. It goes on to state that "in addition to art and craft studios, there are also film, video, and record production companies in West Berkeley, at the Fantasy Building and in other locations." Therefore, despite the overlap of artistic work in both definitions, the West Berkeley Plan considers two separate categories for Media Production and Art/Craft Studio use. The existing use of the subject building was Media Production³ at the time of West Berkeley Plan implementation in the Zoning Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), 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.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The project complies with all state and local environmental requirements.

Action Deadline:

Pursuant to BMC Section 23.410.040(I), 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.

³ Formerly called Radio, Television or Audio/Sound Recording and/or Broadcast Studios

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534

Anne Hersch, Land Use Planning Manager, (510) 981-7411

Nilu Karimzadegan, Senior Planner, (510) 981-7430

1. Draft Resolution
 - A. Option to Uphold Appeal, Reverse the ZAB Decision, and Approve AUP
 - o Exhibit A: Findings and Conditions, dated November 13, 2023
 - o Exhibit B: Project Plans, received March 9, 2023
 - B. Option to Deny Appeal, Affirm the ZAB Decision, and Deny AUP
 - o Exhibit A: ZAB Notice of Decision with Findings for Denial, issued May 6, 2024
 - o Exhibit B: Project Plans, received March 9, 2023
2. ZAB Decision Appeal Letter, received May 10, 2024
3. ZAB Packet (Staff Report, AUP Appeal Letter, and attachments), dated April 25, 2024
4. Captioner's Record, ZAB meeting April 25, 2024
5. Appendix B, Cultural Resources of West Berkeley
6. List of approved Zoning Certificates for Business Licenses at the site
7. Index to Administrative Record
8. Administrative Record
9. Public Hearing Notice

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

UPHOLD THE APPEAL AND REVERSE THE ZONING ADJUSTMENT BOARD DECISION TO DENY ADMINISTRATIVE USE PERMIT #ZP2023-0031 TO CHANGE THE USE OF THREE TENANT SPACES (9,750 SQUARE FEET) FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT RESULTING IN A TOTAL OF 29,303 SQUARE FEET OF RESEARCH AND DEVELOPMENT SPACE, AND TO CREATE SIX TO NINE TENANT SPACES IN A SEVEN-STORY BUILDING ON A 114,998 SQUARE-FOOT LOT.

WHEREAS, on March 9, 2023 Wareham Development (“applicant”) submitted an AUP Application (ZP2023-0031) to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development, resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces in a seven-story building on a 114,998 square-foot lot; and

WHEREAS, on November 13, 2023 staff issued the Notice of Administration Decision to approve the AUP; and

WHEREAS, on December 4, 2023 Rick Auerbach (on behalf of West Berkeley Artisans & Industrial Companies (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht submitted an appeal of the Zoning Officer’s Decision to approve the AUP Application; and

WHEREAS, April 11, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site; and

WHEREAS, on April 25, 2024, the ZAB conducted a public hearing for the appeal of the Zoning Officer’s decision to approve the AUP Application (ZP2023-0031). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, appellants, and the members of the public, the ZAB approved the appeal and denied the AUP (Motion: Duffy/Second: O’Keefe) a vote of 4-1-0-2-1 (Yes: Duffy, O’Keefe, Sanderson, Gaffney; No: Yung; Abstain: None; Absent: Thompson, Tregub; Recused: Kahn); and

WHEREAS, on May 6, 2024 staff issued the Notice of Decision for the ZAB denial which established a 14-day appeal period; and

WHEREAS, on May 10, 2024 Wareham Development, the Applicant, submitted an appeal of the ZAB decision to deny the AUP to the City Clerk; and

WHEREAS, On or before July 16, 2024 staff posted the public hearing notice at the site and three 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; and

WHEREAS, on July 30, 2024, 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 reverses the decision made by ZAB to deny Administrative Use Permit #ZP2023-0031; adopts the Findings and Conditions of Approval in Exhibit A; adopts the project plans in Exhibit B; and upholds the appeal.

Exhibits

- Exhibit A: Findings and Conditions
- Exhibit B: Project Plans, received March 9, 2023

ATTACHMENT 1

FINDINGS AND CONDITIONS NOVEMBER 13, 2023

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

PERMITS REQUIRED

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

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 of the CEQA Guidelines ("Existing Facilities").
2. 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.

FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097¹, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.
4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:
- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
 - The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
 - Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

¹ [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:
- (1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:
- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
 - The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
 - The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
 - The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.
6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:
- (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
- (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.
-

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer 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. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

Standard Construction-related Conditions Applicable to all Projects:

12. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

13. 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.

14. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

15. 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 in thickness and secured to the ground.

16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. 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.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

At All Times (Operation):

24. 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.
25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.
27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
28. Transit Subsidy. If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.



Prepared by: Nilu Karimzadegan
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

**1ST FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

PLANS APPROVED by

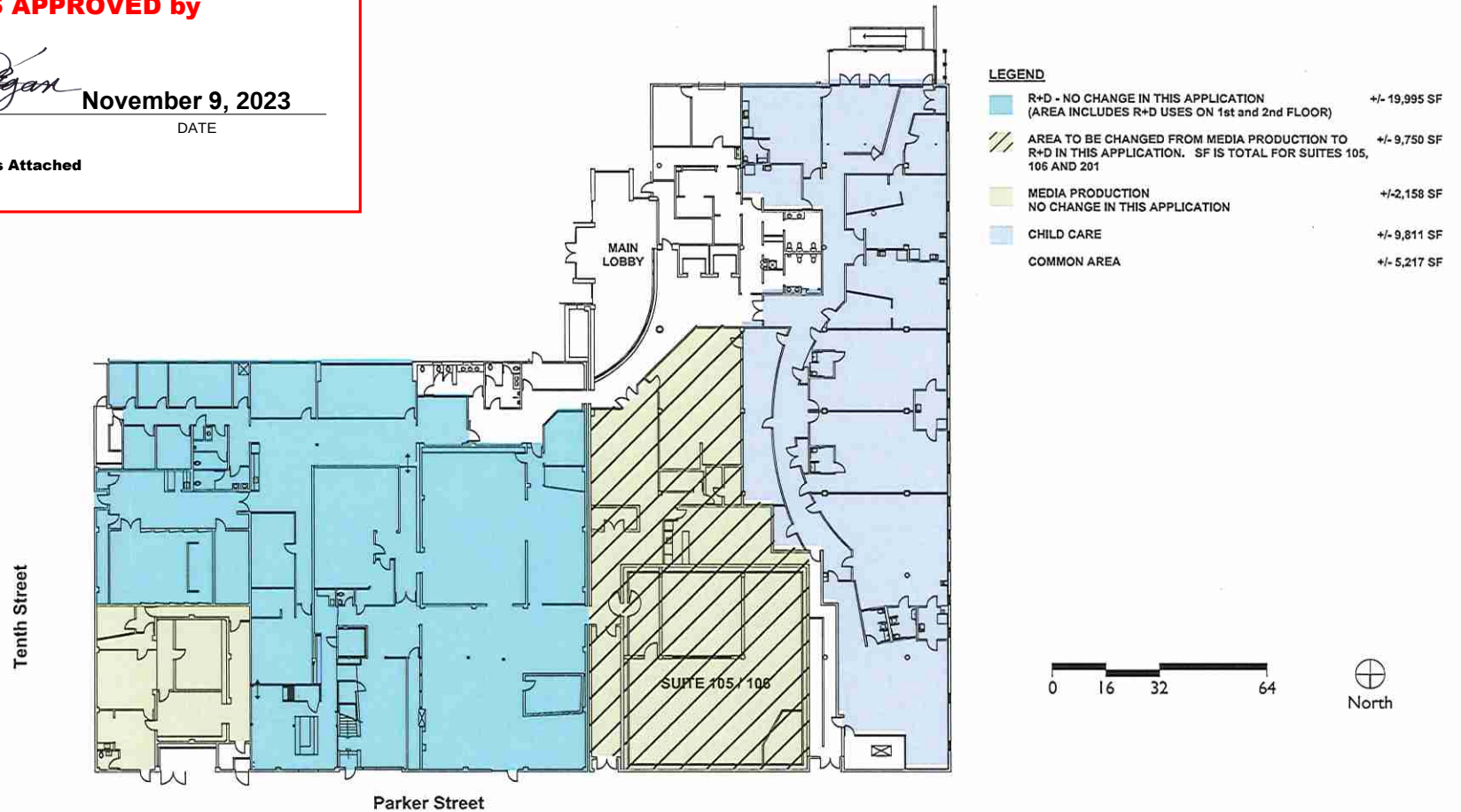


November 9, 2023

SIGNATURE

DATE

***AUP Findings and Conditions Attached**



WAREHAM
DEVELOPMENT



2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

PLANS APPROVED by

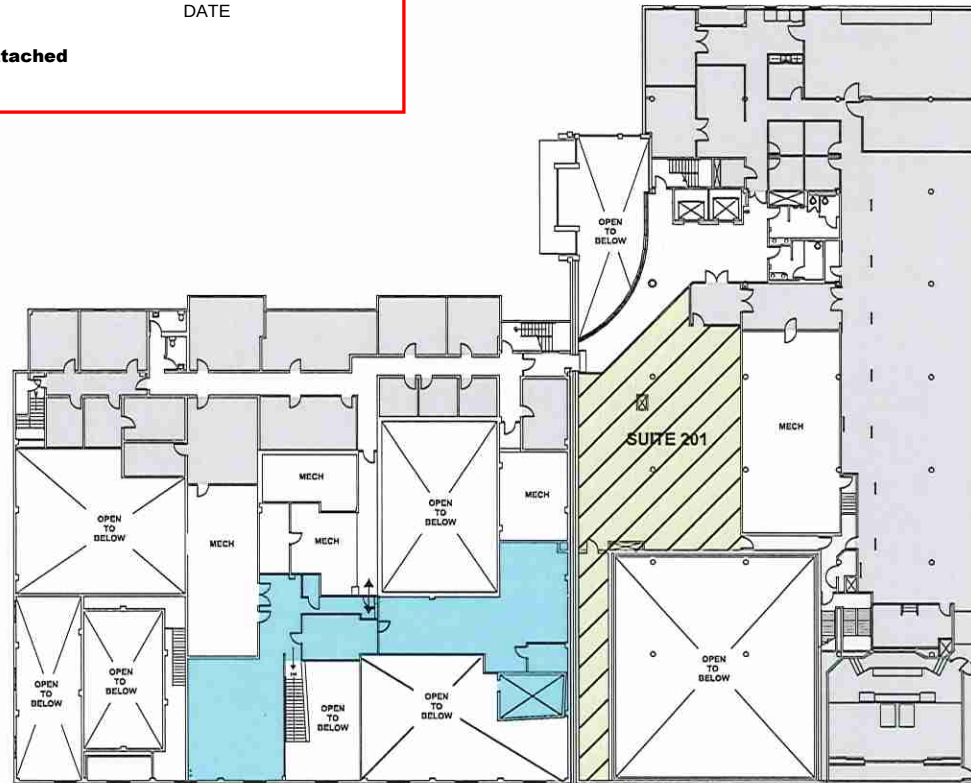
Miguel Delgado

November 9, 2023

SIGNATURE

DATE

***AUP Findings and Conditions Attached**



LEGEND

- R+D - NO CHANGE IN THIS APPLICATION
(AREA INCLUDES R+D USES ON 1st and 2nd FLOOR) +/- 19,995 SF
- AREA TO BE CHANGED FROM MEDIA PRODUCTION TO
R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105,
106 AND 201 +/- 9,750 SF
- NO CHANGES TO THESE AREAS IN THIS APPLICATION +/- 15,001 SF
- COMMON AREA +/- 2,744 SF

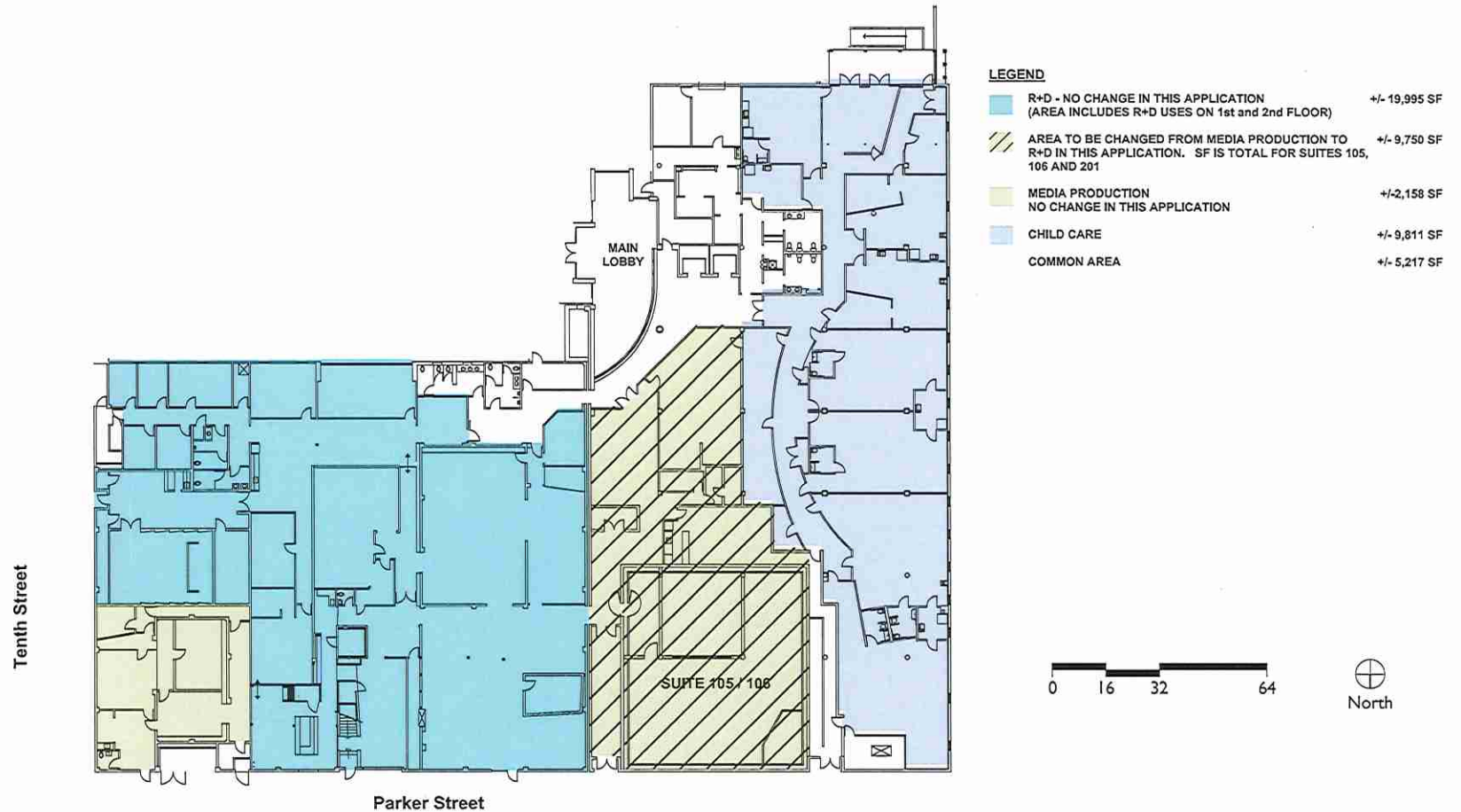


2600 TENTH STREET, BERKELEY CA

19 December 2022

**1ST FLOOR
USE CHANGE EXHIBIT**

SCALE: 1/32"=1'-0"

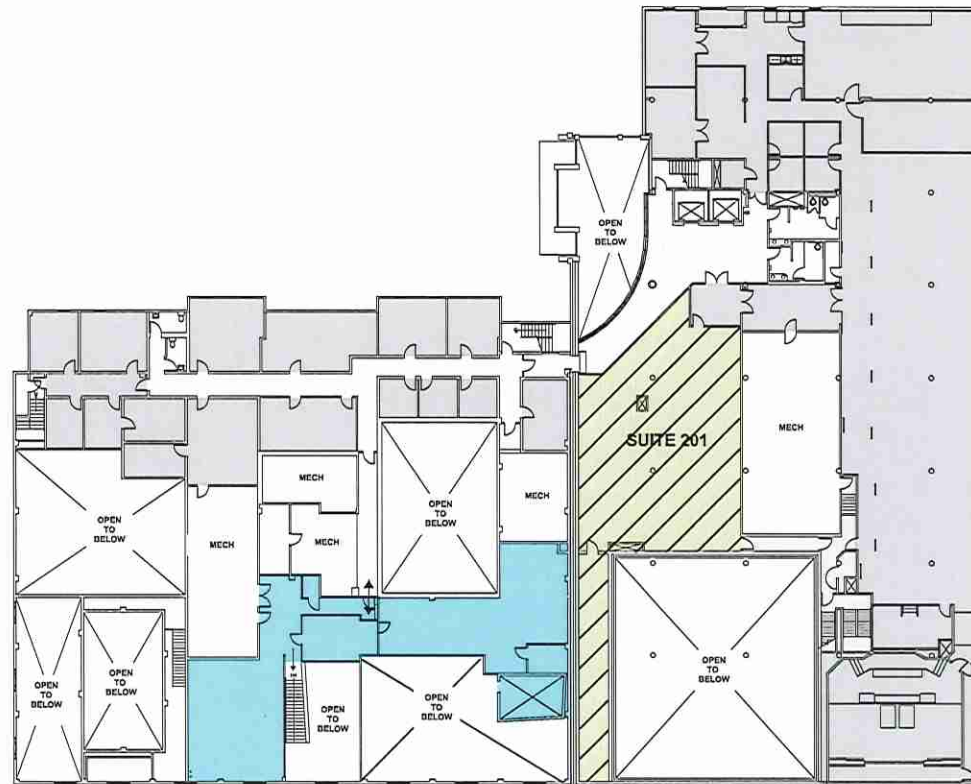


2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"



LEGEND

 R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
 AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
 NO CHANGES TO THESE AREAS IN THIS APPLICATION	+/- 15,001 SF
COMMON AREA	+/- 2,744 SF



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

DENY THE APPEAL AND AFFIRM THE ZONING ADJUSTMENT BOARD DECISION TO DENY ADMINISTRATIVE USE PERMIT #ZP2023-0031 TO CHANGE THE USE OF THREE TENANT SPACES (9,750 SQUARE FEET) FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT RESULTING IN A TOTAL OF 29,303 SQUARE FEET OF RESEARCH AND DEVELOPMENT SPACE, AND TO CREATE SIX TO NINE TENANT SPACES IN A SEVEN-STORY BUILDING ON A 114,998 SQUARE-FOOT LOT

WHEREAS, on March 9, 2023 Wareham Development (“applicant”) submitted an AUP Application (ZP2023-0031) to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development, resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces in a seven-story building on a 114,998 square-foot lot; and

WHEREAS, on November 13, 2023 staff issued the Notice of Administration Decision to approve the AUP; and

WHEREAS, on December 4, 2023 Rick Auerbach (on behalf of West Berkeley Artisans & Industrial Companies (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht submitted an appeal of the Zoning Officer’s Decision to approve the AUP Application; and

WHEREAS, April 11, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site; and

WHEREAS, on April 25, 2024, the ZAB conducted a public hearing for the appeal of the Zoning Officer’s decision to approve the AUP Application (ZP2023-0031). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, appellants, and the members of the public, the ZAB approved the appeal and denied the AUP (Motion: Duffy/Second: O’Keefe) a vote of 4-1-0-2-1 (Yes: Duffy, O’Keefe, Sanderson, Gaffney; No: Yung; Abstain: None; Absent: Thompson, Tregub; Recused: Kahn); and

WHEREAS, on May 6, 2024 staff issued the Notice of Decision for the ZAB denial which established a 14-day appeal period; and

WHEREAS, on May 10, 2024 Wareham Development, the Applicant, submitted an appeal of the ZAB decision to deny the AUP to the City Clerk; and

WHEREAS, On or before July 16, 2024 staff posted the public hearing notice at the site and three 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; and

WHEREAS, on July 30, 2024, 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 ZAB in Exhibit A to affirm the decision made by ZAB, denies Administrative Use Permit #ZP2023-0031; denies the project plans in Exhibit B; and dismisses the appeal.

Exhibits

- Exhibit A: ZAB Notice of Decision with Findings for Denial, issued May 6, 2024
- Exhibit B: Project Plans, received March 9, 2023



Z O N I N G A D J U S T M E N T S B O A R D N O T I C E O F D E C I S I O N

DATE OF BOARD DECISION: April 25, 2024
DATE NOTICE MAILED: May 6, 2024
APPEAL PERIOD EXPIRATION: May 20, 2024
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)¹ May 21, 2024

2600 Tenth Street

Administrative Use Permit ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, upheld the appeal and **DENIED** the following permits:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create six to nine tenant spaces.

ZONING: MU-LI - Mixed-Use Light Industrial District

APPLICANT: Lisa Vogel, Wareham Development

PROPERTY OWNER: 2600 Tenth Street, LLC

APPELLANTS: Rick Auerbach (WEBAIC). Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht

ENVIRONMENTAL REVIEW STATUS: Categorically exempt under the California Environmental Quality Act Guidelines, Section 15301 of the CEQA Guidelines ("Existing Facilities").

¹ Pursuant to BMC Section 23.410.050(C), the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB's decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or "tolls" the Council's deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

FINDINGS FOR DENIAL ARE ATTACHED TO THIS NOTICE

	Yes	No	Abstain	Absent	Recused
DUFFY	X				
KAHN					X
O'KEEFE	X				
SANDERSON	X				
THOMPSON				X	
GAFFNEY	X				
Yung		X			
TREGUB				X	
BOARD VOTE:	4	1		2	1

ATTEST:


 Claudia Garcia, Zoning Adjustments Board
 Secretary

PUBLICATION OF NOTICE:

Pursuant to BMC Section 23.404.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7430 or nkarimzadegan@berkeleyca.gov. All project application materials, including full-size plans, may be viewed online at: <https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>, or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

TO APPEAL THIS DECISION (see Section 23.410 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
2. Submit the required appeal fee (checks and money orders payable to "City of Berkeley"):
 - A. The fee for persons other than the applicant is \$1500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
 - B. The fee for all appeals by Applicants is \$5,520.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown on page 1 (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision 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 Zoning Adjustments Board at, or prior to, the public hearing.
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, your appeal of this decision must include the following information:
 - 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.

ATTACHMENT 1

FINDINGS FOR DENIAL
APRIL 25, 2024

2600 Tenth Street

Administrative Use Permit ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.

FINDINGS FOR DENIAL

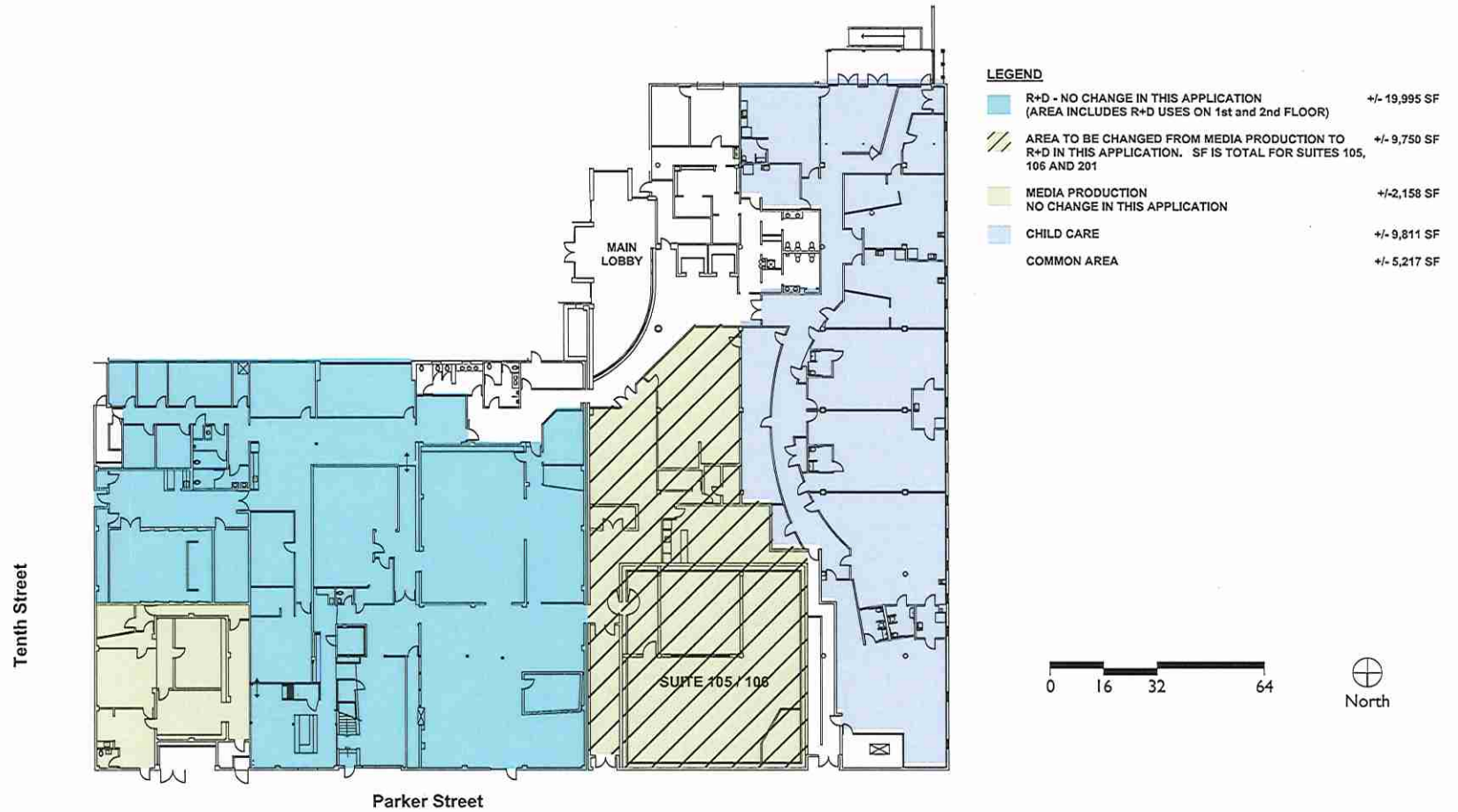
1. As required by Berkeley Municipal Code (BMC) Section 23.406.040(E)(1), Findings for Approval, the Zoning Adjustments Board finds that the project, under the circumstances of this particular case existing at the time at which the application is granted, will be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The building was developed as a film, video, and record production company. There are overlapping aspects of creative work that are included in the definition of Media Production and Arts/Crafts Studio, and the West Berkeley Plan intended to protect the work of all artists including filmmakers. The Arts/Crafts Studio definition includes filmmakers as an example of individuals engaged in the creation of arts or crafts that require artistic skill. Film makers are part of the creative community in Berkeley, their work is considered arts and should be protected.
 - Stand-alone use does not mean that it has to be within a stand-alone building and it does not refer to a single occupation on the site. These artistic and creative work spaces are small tenant spaces that had to obtain a business license to operate as Arts/Crafts Studio in that space. These uses are considered free standing in that they are self-contained. It is essential for the creative community to cluster and to be collaborative in their work as individual artists.
 - Because Art/Craft Studio is an existing a long-standing use within the building and is a protected non-industrial use in the Mixed-Use - Light Industrial Zoning District per BMC 23.206.050(B), the protected use provisions extend to all of the tenant spaces in the building.
-

2600 TENTH STREET, BERKELEY CA

19 December 2022

**1ST FLOOR
USE CHANGE EXHIBIT**

SCALE: 1/32"=1'-0"

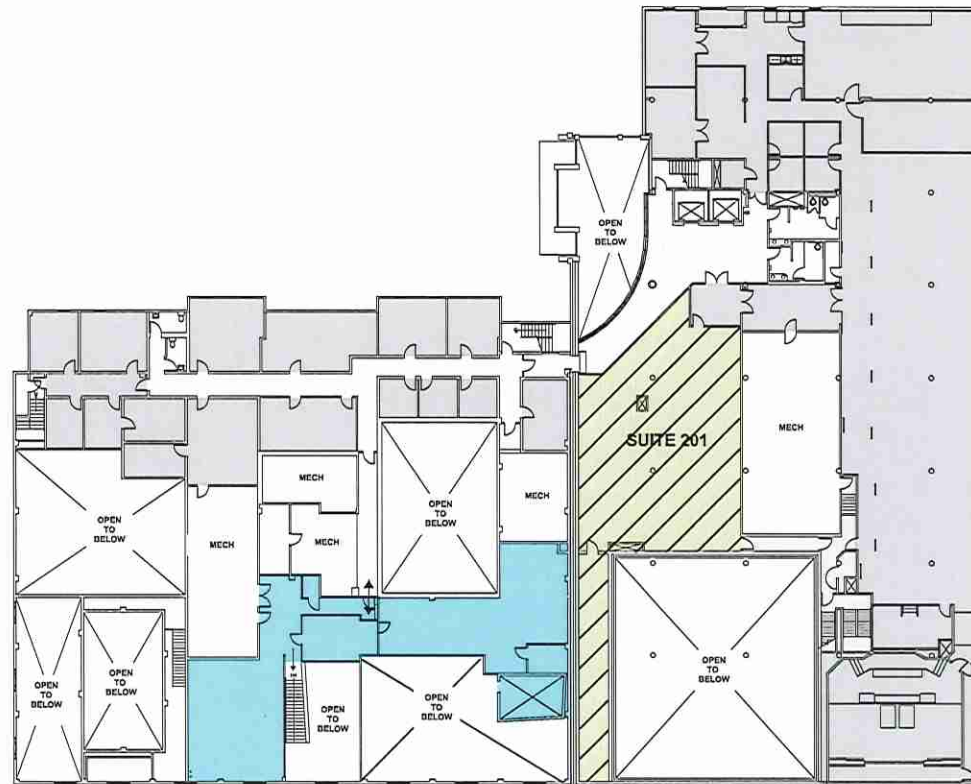


2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"



LEGEND

 R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
 AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
 NO CHANGES TO THESE AREAS IN THIS APPLICATION	+/- 15,001 SF
COMMON AREA	+/- 2,744 SF





By: Hand Delivery

May 9, 2024

Mr Mark Numainville
City Clerk
City of Berkeley
2180 Milvia Street, First Floor
Berkeley, CA 94704

**Re: Appeal to the City Council of the Zoning Adjustment Board's Decision to Uphold an
Appeal of Administrative Use Permit ZP#2023-0031**

Dear Mr. Numainville,

Please accept this letter as Applicant's request to appeal the above decision made at the Zoning Adjustment Board (ZAB) meeting of May 2, 2024 to the City Council. Enclosed is a check in the sum of \$5,520 in payment of the appropriate appeal fee.

We believe that the ZAB's decision to uphold an appeal against an Administrative Use Permit (AUP) issued in November 2023 by the Zoning Officer to convert 9,750 SF at 2600 Tenth Street from Media Production to Research and Development was incorrect for several reasons. We will expand on these points further at the City Council meeting:

1. The ZAB decision contradicts both the Zoning Officer's findings in granting the AUP and the Planning Department staff's recommendation that the appeal be dismissed. The Staff Report contains a detailed point-by-point rebuttal of all the arguments raised by the appellants. The appellants assert that the use within the AUP area and other areas of the building is not Media Production but is instead Art/Craft studios. The Staff Report rightly states that "the existing film production use most accurately meets the **Media Production** definition."
2. The decision did not recognize that the 9,750 SF subject to the AUP was previously used for Audio Recording which is clearly defined as **Media Production** in BMC 23.502.020. All this area lies within the former premises of Fantasy Recording Studios, which operated at the building until operations ceased in 2018. The 9,750 SF is vacant - no tenant in the building will be displaced by changing the use from Media Production to Research and Development.
3. The findings for denial state: "These artistic and creative workspaces are small tenant spaces that had to obtain business licenses to operate as Arts/Crafts Studios in that space" and that Art/Craft Studio is a "long-standing use within the building" both of which are incorrect statements. The Staff Report indicates that Planning staff researched City records but did not find any Business Licenses issued at the building with an approved use of Art/Craft Studio before the cut-off date for establishment of a protected use of July 6, 1989.

Mr Mark Numainville
May 9, 2024
Page 2 of 2

4. The findings are based on the false premise that since filmmakers should be considered as artists, their places of business must be Art/Craft Studios. The Media Production definition also recognizes the artistic nature of filmmaking and commences with “*Commercial arts and art-related services...*”

The ZAB members misinterpreted *commercial arts* to mean activities such as the making of corporate training videos (at the suggestion of one of the appellants to the AUP) whereas the BMC 23.502 Glossary defines commercial activities to be *any use determined to be a business activity*, which would encompass the work of the filmmakers within the building.

5. Despite there being some overlap in the BMC 23.502.020 definitions of Media Production use and Art/Craft Studio use, the characteristics of the premises used by the filmmakers at 2600 Tenth Street, and the nature of their production work performed at the building, fit much more logically within the Media Production use. That definition reads:

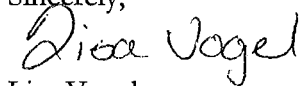
Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.

In contrast, the Art/Craft Studio use definition includes *photographers/filmmakers* in a list of typical occupants who create physical products within their premises such as woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weaves, jewelry makers, painters and fine art print makers...

6. As the Staff Report highlights, Appendix B to the West Berkeley Area Plan notes the important creative activities of film, video and record production companies located at the Fantasy building in addition to (and hence not part of) the arts and crafts studios located in West Berkeley.
7. The ZAB decision and future application by the City of its findings would constitute an impermissible taking of property under the California and United States Constitutions. Any requirement or policy that space within 2600 Tenth Street must be devoted to Art/Craft Studio uses would deny the owner economically viable use of the building. Purchase and improvement of, and investment into, the property were based upon more permissive, remunerative uses to the degree that such shift in City policy and Code interpretation would frustrate the owner's reasonable, investment-backed expectations and require compensation for the loss.

We look forward to presenting our appeal to the City Council. Please do not hesitate to contact me should you have any questions.

Sincerely,



Lisa Vogel
for Wareham Property Group
on behalf of 2600 Tenth Street, LLC



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
APRIL 25, 2024

2600 Tenth Street

Appeal of the Zoning Officer's Decision to approve Administrative Use Permit (AUP) ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.

I. Background

A. Land Use Designations:

- General Plan: M - Manufacturing
- Zoning: MU-LI - Mixed-Use Light Industrial District

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create six to nine tenant spaces.

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

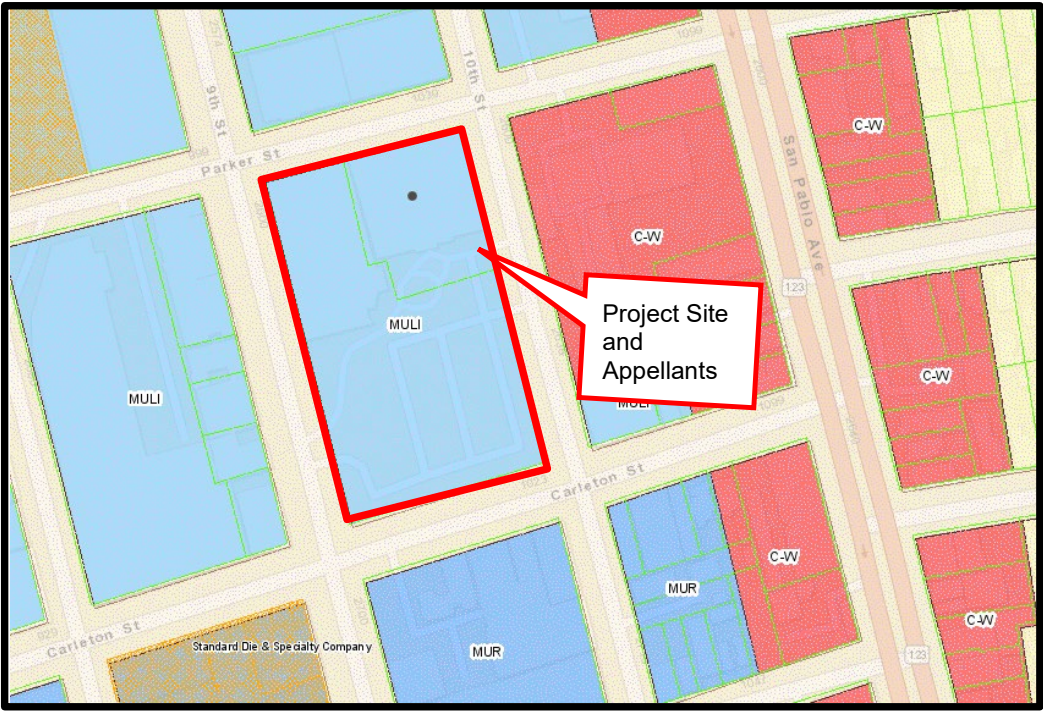
A. Parties Involved:

- Applicant Lisa Vogel, Wareham Development
- Property Owner 2600 Tenth Street, LLC
- Appellants Rick Auerbach (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

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April 25, 2024

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Figure 1: Vicinity Map



Legend:
Zoning Districts
MU-LI: Mixed Use – Light Industrial District
MU-R: Mixed Use – Residential District
C-W: West Berkeley Commercial District

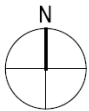
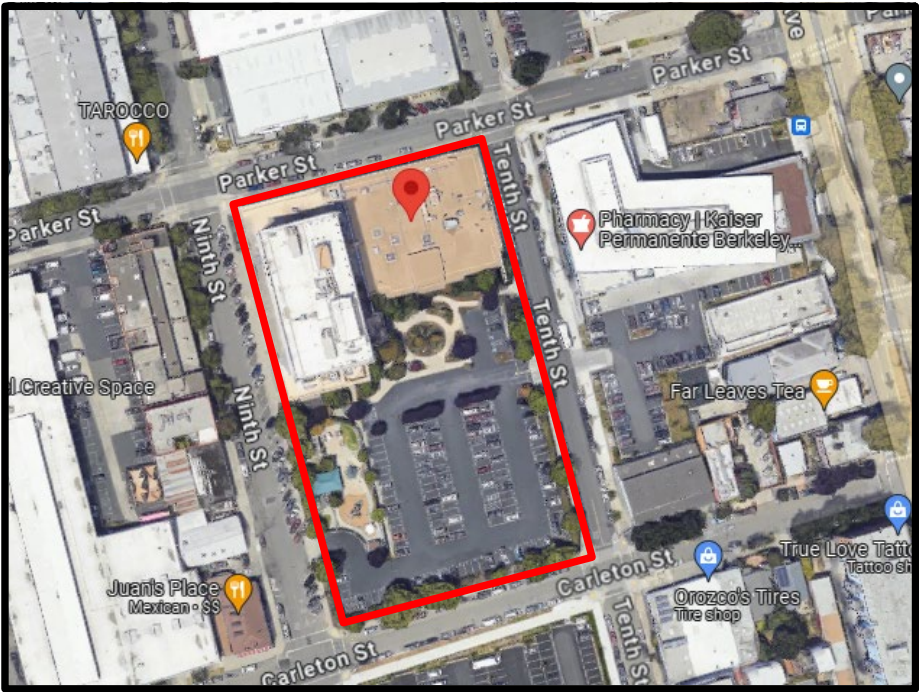


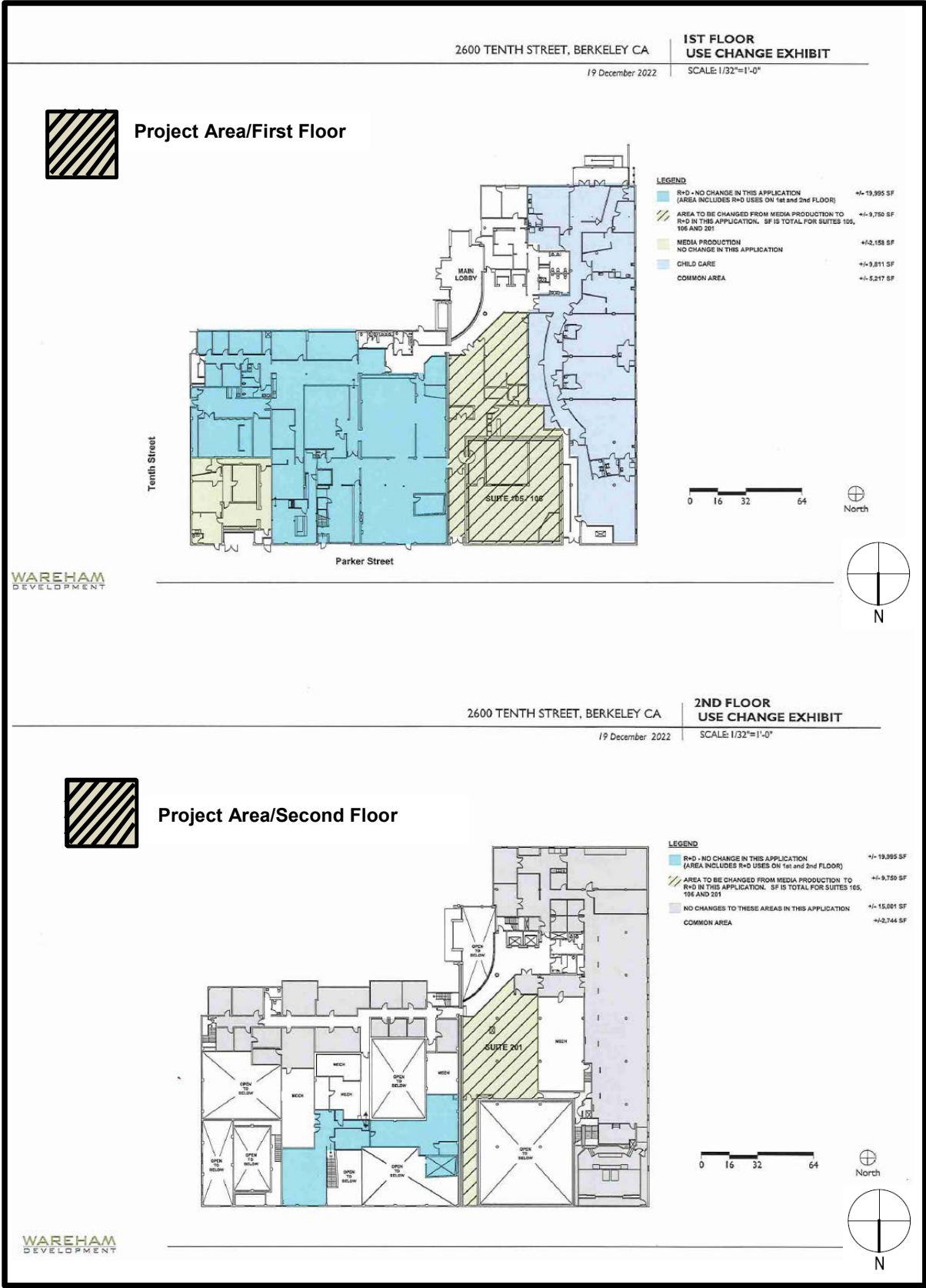
Figure 2: Site Plan



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Figure 3: Floor Plans



ZONING ADJUSTMENTS BOARD
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Page 4 of 15**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Office, Media Production, and Child Care	MU-LI (Mixed Use-Light Industrial) District	M (Manufacturing)
Surrounding Properties	North	Light Manufacturing and Warehouse		
	South	Light Industrial and Commercial Uses, various	Mixed-Use Residential (MU-R)	
	East	Medical Office (Kaiser)	West Berkeley Commercial (C-W)	
	West	Offices, Media Production	MU-LI	

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 net new 7,500 square feet of non-residential floor area. The project is a change of use from Media Production to Research and Development. Therefore, this fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project is not a housing development project, as defined in BMC 23.328.020 because it does not include the construction of any residential units. Therefore, the inclusionary housing provisions do not apply.
Alcohol Sales/Service	No	This project does not involve alcohol sales/services.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.
Density Bonus	No	This project is not a density bonus project.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a building over 40 years old.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	A "housing development project" is defined as a project that is: residential units only, a mixed-use project with at least two-thirds of the square-footage, or for transitional or supportive housing. The project is a change of use from Media Production to a Research and Development use and would not create new dwelling units, therefore, HAA and the Housing Crisis Act are not applicable.
Housing Crisis Act of 2019 (SB330)		
Oak Trees	No	There are no coast live oak trees on or abutting the project site.
Rent Controlled Units	No	There are no rent controlled units on the subject site.
Residential Preferred Parking (RPP)	No	The project site is not located in a zone of the Residential Preferred Parking program.
Seismic Hazards (SHMA)	No	This property is located within an area susceptible to a liquefaction, but not to earthquakes and landslides, as shown on the State Seismic Hazard Zones Map, however, the the project is a change of use, and no new floor area is proposed and any alterations to the interior resulting from dividing tenant spaces would not exceed 50 percent

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April 25, 20242600 TENTH STREET
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		of the value of the structure or 50 percent of the existing floor area.
Soil/Groundwater Contamination	No	The project site is not on the Cortese List. The project site is located within the City's Environmental Management Area; however, no ground disturbance or site improvements are proposed. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is one block west of the San Pablo Avenue transit corridor, and is approximately 1 mile southeast of the Berkeley Amtrak station. The site is adjacent to the bike boulevard on Ninth Street and the bikeway on Parker Street, which connect to transitways with access to the greater region. The property is located within 5 minutes of the AC Transit #79 and 604 Bus Routes.

Table 3: Project Chronology

Date	Action
March 9, 2023	Application submitted
April 10, 2023	Application deemed incomplete
April 20, 2023	Resubmittal of application material
May 19, 2023	Application deemed complete
November 13, 2023	Notice of Administrative Decision issued
December 4, 2023	Appeal letter received
April 11, 2024	Public hearing notices mailed/posted
April 25, 2024	ZAB appeal hearing

II. Project Setting

A. Neighborhood/Area Description: The subject property is located on the northwest corner of Tenth and Parker Streets, one block south of Dwight Way and one block west of San Pablo Avenue. This area includes office and light industrial/warehousing uses including medical offices to the east (Kaiser Medical outpatient facility), light manufacturing and warehousing to the north, and offices to the west. The subject property is located 1.6 miles northwest of the Ashby Station BART station, 1.1-mile southeast of the Berkeley Amtrak station, and is served by several AC Transit bus routes that operate on San Pablo Avenue and Dwight Way. There are several bike boulevards within one and two blocks of Tenth Street and Channing Way.

B. Site Conditions: The project site is a rectangular 114,998 square foot corner lot, consisting of the one-block area bounded by Park Street to the north, Tenth Street to the east, Carleton Street to the south, and Ninth Street to the west. The parcel is currently developed with one building totaling 117,316 square feet: the two-story structure formerly occupied by the Saul Zaentz Media Center, and a seven-story addition for media production, office uses, as well as a child care center, and is served by a 105-space surface parking lot with vehicular access from Ninth and Tenth Streets. The building has pedestrian access via an interior

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April 25, 2024

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landscaped plaza. The current uses at the site include a child care center, Media Production and Research and Development.

III. Project Description

The project scope would change the use of three tenant spaces (suites 105, 106, and 201), totaling 9,750 square feet, from Media Production to Research and Development, and be further divided into up to nine tenant spaces. The existing building has approximately 19,995 square feet of Research and Development space, by changing the use of the three existing tenant spaces the proposed project would result in a total of 29,745 square feet of Research and Development space in the building. No changes to the exterior of the building, nor added square footage are proposed.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City, the applicant installed the yellow application posters in April 2023.

B. Project Background: A previous version of this application was submitted in May 2019 requesting a change of use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from Media Production to Research and Development. The Zoning Officer's decision to approve the project was appealed by Alex Wilmer & Sea Wilmer to the Zoning Adjustment Board (ZAB) in November 2021.

At their January 2022 meeting, the ZAB requested that the Planning Department obtain an opinion from the City Attorney regarding the "protected use" status of spaces in the building, including identifying the existing use as either Media Production or Art/Craft Studio. At that time, ZAB continued the item to a later date.

After consulting with the City Attorney's office, the item was placed back on the ZAB calendar for the April 28, 2022 hearing; however, it was continued to the next ZAB meeting due to time constraints. Subsequently, the applicant withdrew the Administrative Use Permit application before the continuation hearing date, and instead obtained a Zoning Certificate (#ZCBL2022-0121) to change 19,555 square feet of area to Research and Development, which was within the size range allowed by-right.

C. Zoning Officer's Decision to Approve: The Zoning Officer determined that the proposed scope in ZP2023-0031 would not be detrimental or contribute to a shortage of industrial spaces in West Berkeley. The project would be consistent with the purposes of the District, compatible with the surrounding uses and buildings, comply with the adopted West Berkeley Plan, meet any applicable performance standards, would not induce substantial changes of use away from industrial uses, and would be supportive of the industrial character of the district.

D. Appeal: The appeal of the Administrative Use Permit decision was filed on December 4, 2023 by Rick Auerbach (on behalf of West Berkeley Artisans & Industrial Companies (WEBAIC)), Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht. (See Attachment 4)

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E. Public Notice: On April 11, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications, aside from the appeal letter, regarding this project.

V. Appeal Points and Analysis

The appellant raised six main issues in their appeal. For the sake of brevity, these are not re-stated in their entirety. Please refer to the appeal letter for the full text. The summary of the issues raised in the appellants' letter and staff's responses are as follows.

Appeal Point #1: The Appellants believe that the designation of the existing use as Media Production is incorrect and that this use ought to be treated as an Art/Craft Studio use subject to the provisions of BMC Section 23.206.050(B) for Protected Non-Industrial Use in the MU-LI and MU-R Districts.

Background:

Definitions. Media Production and Art/Craft Studio are separately defined non-industrial uses in BMC Section 23.502.020, Defined Terms.

***“Media Production:** Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.”*

***“Art/Craft Studio:** An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district's requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.”*

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Art/Craft Studio is considered a Protected Non-Industrial Use in the MU-LI District (BMC Section 23.206.050(B)(1)¹) provided that the use was (a) legally established as of July 6, 1989, and (b) exists as a single stand-alone use or is combined with residential use in a live/work unit. Media Production is not a protected use.

Permitted Uses.

The established use of the subject site determines what type of zoning permit is required, and whether the provisions of BMC Section 23.206.050, Protected Uses, apply to the project.

Changing from a protected nonindustrial use such as Arts/Crafts Studio to a non-protected use is allowable with either an Administrative Use Permit or a Use Permit, depending on the size (BMC Section 23.206.050(B)(2)), and subject to additional findings for approval that require comparable replacement space to be provided (BMC 23.206.050(B)(4)).

Evidence:

Established Use. Staff evaluated the permit history (summarized below), and determined that the established use as of July 6, 1989 was Media Production.

Site History. At the time of construction and opening in 1971, the building at 2600 Tenth Street contained three recording studios (one with a separate entrance built specifically for Creedence Clearwater Revival), a mastering room, offices, and a warehouse. Owner Saul Zaentz then expanded the company into film production known as Fantasy Films. The success launched another expansion of the company, and construction of a seven-story addition to the recording studios on the subject site. Known as the Saul Zaentz Media Center, the new facility opened in 1980 and housed a film post-production center and a fourth recording studio.

Thus, the long-existing film and video production use of the complex, constructed in phases, is consistent with the current definition of Media Production. This use was previously known as Radio, Television or Audio/Sound Recording and/or Broadcast Studios: Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.

Specifically, the Saul Zaentz Film Center was a commercial arts business service consisting of several recording and editing studios and office spaces for the purpose of producing various forms of media, including music and film.

An Art/Craft Studio is commonly differentiated from Media Production by the scale and purpose of the establishment, understood to encompass studio spaces for art production and performing art instruction, rehearsal studios, and theatre spaces.

¹ The full list of protected non-industrial uses per BMC 23.206.050(B): Art/craft studio; art galleries, ancillary to art studios when located in the same building; child care facility, fine arts performance, instruction and rehearsal studios (dance, music theater); theaters, stage performance, but excluding motion picture theaters

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Media Production uses, by contrast, are “commercial arts and art-related business services” involving various media types.

Land Use Division records indicate that, subsequent to the establishment and expansion of the Media Production use in 1971 and 1980, zoning certificate business licenses were issued to multiple enterprises leasing space from the Center starting around 1998, after the 1989 cut-off date for establishing a protected use. These included media production and artistic uses such as film making, writing office, and television programming, as well as less related uses including computer software design, a health information company, a consulting office, and a general business office for import-export of goods. Further, existing Art/Craft Studio uses that are or have been located in the building have not existed as a single stand-alone use, or been combined with residential use in a live/work unit. Therefore, the existing uses of the building are not protected use.

Conclusion:

The existing film production use most accurately meets the Media Production definition. Furthermore, even if the existing uses were considered an Art/Craft Studio, it still would not be a protected nonindustrial use because it was not the established use of July 6, 1989, and since a number of other commercial uses have shared the building with the existing use, it would not have been a single stand-alone use. Because Media Production is not a protected non-industrial use, the provisions in BMC 23.206.050(B) are not applicable to the project. An Administrative Use Permit to establish a Research and Development use that would have a total area that exceeds 20,000 square feet, per BMC 23.206.020 Allowed Land Uses, is the correct permit pathway.

Appeal Point #2: Appellants note that the City’s Planning Staff Reports such as the 2008 Variance Staff Report, considers the recording, mixing, and screening studios as a “Protected Use” in the MU-LI District whereas the most recent staff report (AUP ZP2023-0031 Findings and Conditions) describes the same use as a non-protected industrial use.

Background:

Variance #07-10000132, approved in March 2008, allowed for conversion of 9,961 square feet of office and storage space on the ground floor to a child care center for up to 100 children and conversion of 31 parking spaces in the northwest corner of the parking lot to 7,500 square feet of outdoor play area. The Findings and Conditions identified the existing use as Media Production and refer to it as a protected use.

The subject Administrative Use Permit under appeal would allow the change of use of three tenant spaces, totaling 9,750 square feet, from Media Production to Research and Development use, and create up to nine new tenant spaces. The Findings and Conditions do not refer to Media Production as a protected use, would allow a change of use more than 5,000 square feet with an AUP, and do not include the findings required to change a protected nonindustrial use to a non-protected use. (Attachment 1)

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2008 Review. The previous variance application authorized the conversion of established office uses and storage space to a child care center. Since child care was not an allowed use in the MU-LI, a Variance was required to establish that use on the site. That permit was not in any way related to a change of use from Media Production or Arts/Crafts Studio to another use. While the analysis refers to the Media Production uses elsewhere in the building as a protected use, it is in error. Media Production was not the subject of the permit, and the mis-identification as a protected use had no bearing on the outcome of the variance decision. It cannot be considered a binding determination for future projects which must be evaluated based on the facts and requirements applicable at the time a decision is made on an application².

Change of Use: As discussed in-depth in Section V.A. Appeal Point #1 of this report, per BMC Section 23.206.050(B)(1), Media Production is not listed as a protected industrial use and may be changed to Research and Development per BMC Section 23.209.020(A), Allowed Land Uses and Permit Requirements. Also, as noted above, even if the existing use could be considered an Art/Craft Studio, it would not be considered a protected use because it was not established as of July 6, 1989 and is not a standalone use (or combined with residential uses) because a number of other commercial enterprises that were clearly not Art/Craft Studios have shared the building with artistic uses. For these reasons, the existing use of 2600 Tenth Street is not a protected use. The change of use from Media Production to Research and Development is not subject to the permit requirements and additional findings for changing a protected nonindustrial use to another use per BMC Table 23.206-9. An Administrative Use Permit to convert 9,750 square feet, resulting in a total of 29,745 square feet total Research and Development, is the correct permit pathway subject to the required findings for non-detriment, tenant space reconfiguration, and Manufacturing Districts only.

Conclusion

The existing use is still best identified as Media Production and not considered as a protected nonindustrial use by BMC Section 23.206.050(B). An erroneous reference in prior documents cannot supersede the applicable requirements and definitions present in the Zoning Ordinance, BMC Title 23. Per BMC Section 23.406.040(E)(4), required findings shall be made based on the circumstances existing at the time a decision is made on the application.

Appeal Point #3: Appellants believe that the proposed project would be detrimental to the general welfare of those working at 2600 Tenth Street because the conversion of Media Production to Research and Development diminishes the opportunities for filmmakers and

² BMC Sections 23.406.030(F)(4) and 23.406.040(E)(4) Findings for Approval state that the "required findings shall be made based on the circumstances existing at the time a decision is made on the application."

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video artists to collaborate on projects and limits their economic and cultural contributions to the general welfare of the City.

Background:

Per BMC Sections 23.406.030(F)(1) and 23.406.040(E)(1), Findings for Approval, the review authority shall find that the proposed project or use:

- a. *Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood, of the proposed use; and*
- b. *Will not 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.*

Per BMC Sections 23.406.030(F)(3) and 23.406.040(E)(3), when acting on a project the review authority must consider the proposed land use and the structure or addition that accommodates the use.

Evidence:

The proposed project includes a change of use from Media Production to Research and Development within an existing building in the MU-LI District and would be at a location that is planned for mixed-use light industrial development. Per BMC Section 23.206.020, this use is allowed in the MU-LI zoning district with an AUP. The project would convert three existing Media Production tenant spaces with no changes to the exterior of the building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) Development Standards and 23.322.030(C)(2) Parking and Loading, including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097³, ample on-site parking is currently provided.

The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. The proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of the West Berkeley neighborhood.

Conclusion:

³ [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

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Considering the proposed Research and Development use and the structure that would accommodate the use, the location, site, and building are suitable for Research and Development, and would not be detrimental to the welfare of persons working in the area.

Appeal Point #4: The appellants contend that the change of use does not better serve the purposes of the district as required by BMC Section 23.206.030(B), Tenant Space Reconfiguration.

Background:

To approve an AUP to create between six to nine tenant spaces in the MU-LI, the review authority must find that they would not create or contribute to a shortage of industrial spaces in West Berkeley for the spaces being converted and either (a) the reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact, or (b) the reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

Evidence:

The findings referenced are only required for the tenant space configuration, and do not apply to changes of use.

Conclusion:

Since this provision is not applicable to the appeal point about change of use, no additional analysis is required.

Appeal Point #5: The appellants contend that the change of use is not consistent with the following two MU-LI District purposes: encourage development of a mixed-use light industrial area for a range of compatible uses; and encourage the creation and continuation of well-paid jobs which do not require advanced degrees. They state that there is plenty of space already dedicated to Research and Development in Berkeley while there is not enough for artist and film makers, and that most Research and Development jobs require advanced degrees.

Background:

Pursuant to BMC Section 23.206.100(A)(1) Permit Findings for All Manufacturing Districts), the review authority must find that the project is compatible with the purposes of the district in which it is located. There are ten purposes for MU-LI listed in BMC Section 23.206.080(A) District Purposes, including the two cited above. Research and Development (R &D) is defined as:

“An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping,

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or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.”

Evidence:

Terminology. Throughout the Zoning Ordinance (BMC Title 23), there are a mix of mandatory and discretionary terms used to differentiate between what is required and advisory⁴. Both of the purposes raised in the appeal are written as advisory and not required for every project, however, staff maintains that the proposed project is consistent with both of these district purposes.

Research and Development. MU-LI District Purpose (BMC Section 23.206.080(A)(2)): *Encourage* development of a mixed-use light industrial area for a range of compatible uses. Research and Development Use is classified in the Allowed Land Uses Table (BMC 23.206-1) as an Industrial and Heavy Commercial Use. By definition, Research and Development is comprised of a combination of uses that may include labs, offices, warehousing, and light manufacturing functions. Research and Development uses are present in a variety of industries – including bio-tech and areas of innovative – and encompass a wide range of related activities. The flexibility to create up to nine tenant spaces would allow for multiple Research and Development tenants that can adjust their tenant space size to meet their needs, including renting smaller spaces or expansions, as needed. Media Production is also classified as an Industrial and Heavy Commercial Use, and the proposed project would remain in the same category of the existing use. Therefore, Research and Development would be a compatible use within a mixed-use light-industrial area, the potential for a variety of tenant spaces increases the viability of a range of businesses, and the proposed project satisfies this district purpose.

District Purpose. MU-LI District Purpose (BMC Section 23.206.080(A)(4)): Encourage the creation and continuation of well-paid jobs which do not require advanced degrees. While this purpose primarily relates to traditional manufacturing jobs, as noted throughout the West Berkeley Plan, it also recognizes that uses such as Research and Development (referred to as “Advanced Services” in the plan) create technical positions that may require higher levels of education as well as clerical and service positions. The variety and flexibility of tenant spaces also creates more opportunity for clerical and support services. The proposed project would not displace a manufacturing use.

Findings shall consider the proposed land use and the structure or addition that accommodates the use.

Conclusion:

Research and Development is classified as an Industrial and Heavy Commercial Use, encompasses a wide range of activities, and would be compatible with a range of uses that are allowed and located within the MU-LI District. The flexibility provided for additional tenant spaces would allow a variety of Research and Development tenants. The use would create technical positions that may require higher levels of education as well as clerical and

⁴ BMC Section 23.104.030(L) Mandatory and Discretionary Terms. The words "shall," "will," "must," and "is" are always mandatory. The words "may" and "should" are advisory and discretionary terms.

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service positions. The variety and flexibility of tenant spaces would create additional opportunities. The proposed project would not displace a manufacturing use.

As previously noted, the review authority must base their decision on the required findings in the Title 23 and must consider the proposed land use and the structure or addition that accommodates the use. They may not deny or approve a project based on speculation, unsubstantiated opinions, or the level of support or opposition of various parties regarding its potential economic or social impacts.

Appeal Point #6: Appellants believe that the proposed project does not abide by the West Berkeley Plan goals and policies for the protected arts uses and actively works in contradiction to those goals and policies. In particular, the appellants believe that Goal 7 (Economic Development) and West Berkeley Plan Appendices– Appendix B-Cultural Resources of West Berkeley, are not supported by the proposed project.

Background:

The West Berkeley Plan⁵ was adopted in 1993 and the Zoning Ordinance amendments to implement the plan were adopted in 1999. In 2011, Chapter 1 Land Use, Section 7 Land Use Regulations of the West Berkeley Plan – for Adoption in Principle of the plan was amended to reflect changes in permitted and prohibited uses and special situations and regulations. Major changes included: Research and Development was added to the MU-LI district's permitted uses tables, conversion to Arts/Crafts were allowed within protected industrial spaces, and conversion to Research and Development was allowed to be in Wholesale Trade and Warehouse protected spaces (all subject to the requirements and limitations in the zoning ordinance).

1. Chapter 2 Economic Development⁶

- a. Goal 7⁷: Protect small businesses, particularly arts and crafts businesses, so that they can flourish in West Berkeley.*
 - i. Policy 7a: Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a viable part of the West Berkeley community.*
- b. General Implementation Strategies, Ordinances, Regulation, and Policy Development – Arts and Crafts Review⁸:*
 - i. Review the functioning of the arts and crafts Ordinance, and develop recommendations about how it can be implemented.*
 - ii. Goal and Policies Implemented: Goal 7, Policy 7a*

Evidence:

Distinct Uses. Media Production and Art/Craft Studio are two distinct uses. Appendix B-Cultural Resources of West Berkeley⁹ of the plan identifies some of the studios and

⁵ West Berkeley Plan: <https://berkeleyca.gov/your-government/our-work/adopted-plans/west-berkeley-plan>

⁶ West Berkeley Plan, page 59-94

⁷ West Berkeley Plan, page 87

⁸ West Berkeley Plan, page 92

⁹ West Berkeley Plan, page 221

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worksites of artists and craftspeople, including the Kawneer Building, Nexus Institute, and Kala Institute. It goes on to state that, “in addition to art and craft studios, there is also film, video, and record production companies in West Berkeley, at the Fantasy Building.”

West Berkeley Plan Implementation. The Zoning Ordinance was amended in 1999 to implement the West Berkeley Plan, and included provisions for protected use. Art/Craft Studio uses were included as protected uses provided they were legally established as of July 6, 1989 and were a stand-alone use or combined with residential use, same as the current code requirement. The existing use of the subject building was Media Production¹⁰ at the time of West Berkeley Plan implementation in the Zoning Ordinance. Neither West Berkeley Plan Goal 7 and Policy 7a have been amended to include Media Production as a protected use, nor the criteria for Art/Craft Studios has changed in this plan.

Subsequent Amendments. The Subsequent amendments to the West Berkeley Plan in 2011 and corresponding zoning amendments did not alter the protected use criteria for Art/Craft Studios. They did address changes of use from manufacturing and industrial uses to other uses. These changes allowed protected spaces, including Warehouse, Wholesale Trade, Manufacturing, and Material Recovery Enterprises, to be converted to Arts/Craft Studio uses.

Conclusion:

The appellant’s argument in this point is based on the incorrect premise that the building is subject to the protections for Art/Craft Studio uses. As explained in Appeal Point # 1 and above, the existing use is Media Production and any current Art/Craft Studio uses would not meet the criteria for a protected nonindustrial use. The proposed project would not be counter to the goal, policy, or implementation strategy raised in the appeal.

VI. Recommendation

Because the project is consistent with the Zoning Ordinance and General Plan, and would have minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board uphold the Zoning Officer decision and **APPROVE Administrative Use Permit #ZP2023-0081** pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1), and **DISMISS** the Appeal.

Attachments:

1. Findings and Conditions, November 13, 2023
2. Project Plans, received March 9, 2023
3. Notice of Administrative Decision, dated November 13, 2023
4. Appeal Letter, received December 4, 2023
5. Notice of Public Hearing, dated April 11, 2024

Staff Planner: Nilu Karimzadegan, (510) 981-7430, NKARIMZADEGAN@BERKELEYCA.GOV

¹⁰ Formerly called Radio, Television or Audio/Sound Recording and/or Broadcast Studios

ATTACHMENT 1

FINDINGS AND CONDITIONS

NOVEMBER 13, 2023

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

PERMITS REQUIRED

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

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 of the CEQA Guidelines ("Existing Facilities").
2. 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.

FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097¹, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:

- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
- The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
- Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

¹ [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:

(1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:

- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
- The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
- The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
- The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.

6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:

(a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and

(b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer 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.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

Standard Construction-related Conditions Applicable to all Projects:

- 12.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
- 13.** 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.
- 14.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 15.** 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 in thickness and secured to the ground.
- 16.** All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
- 17.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
- 18.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
- 19.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

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NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions
Administrative Use Permit #ZP2023-0031

20. 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.

21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.

23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

At All Times (Operation):

24. 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.

25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.

26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.

27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

28. Transit Subsidy. If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.



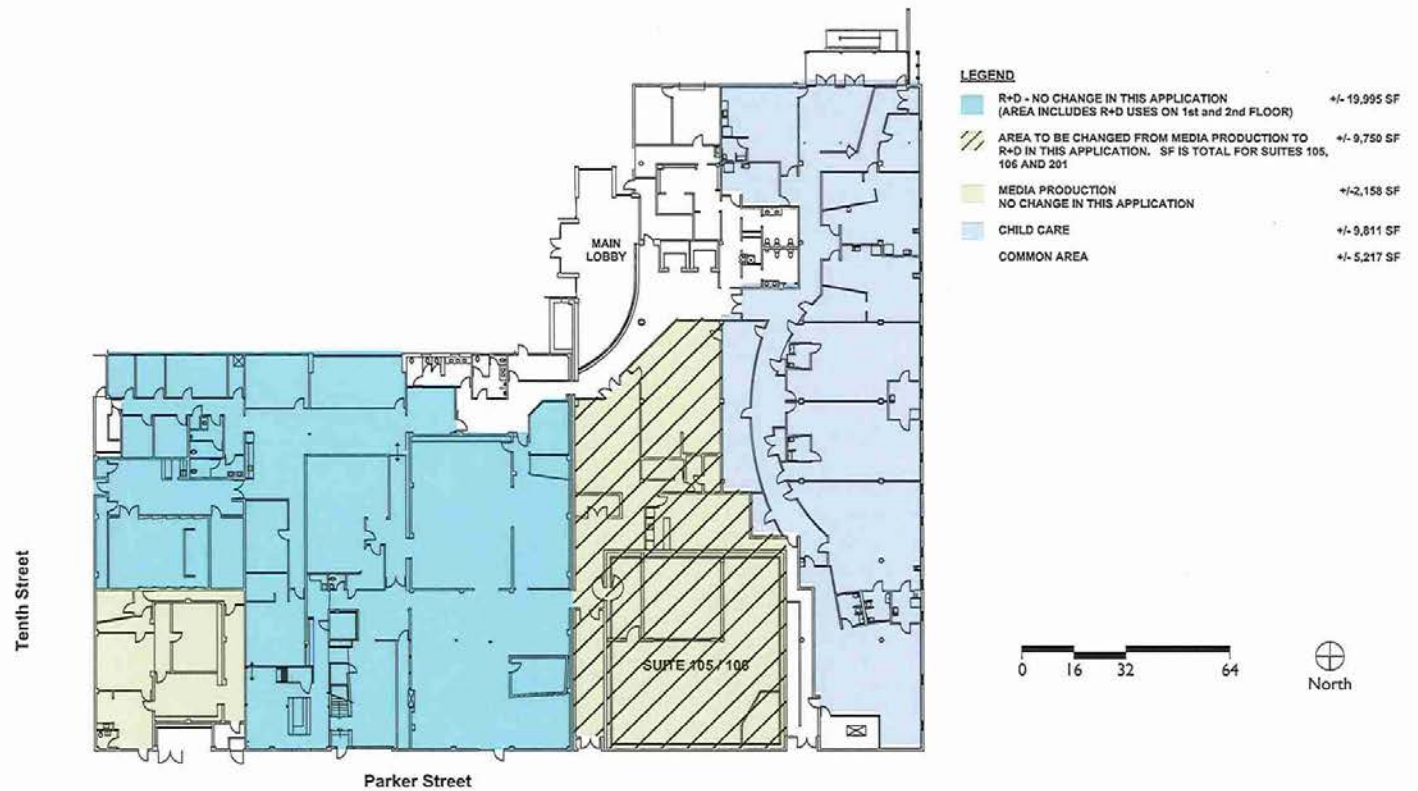
Prepared by: Nilu Karimzadegan
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

19 December 2022

**1ST FLOOR
USE CHANGE EXHIBIT**

SCALE: 1/32"=1'-0"



WAREHAM
DEVELOPMENT

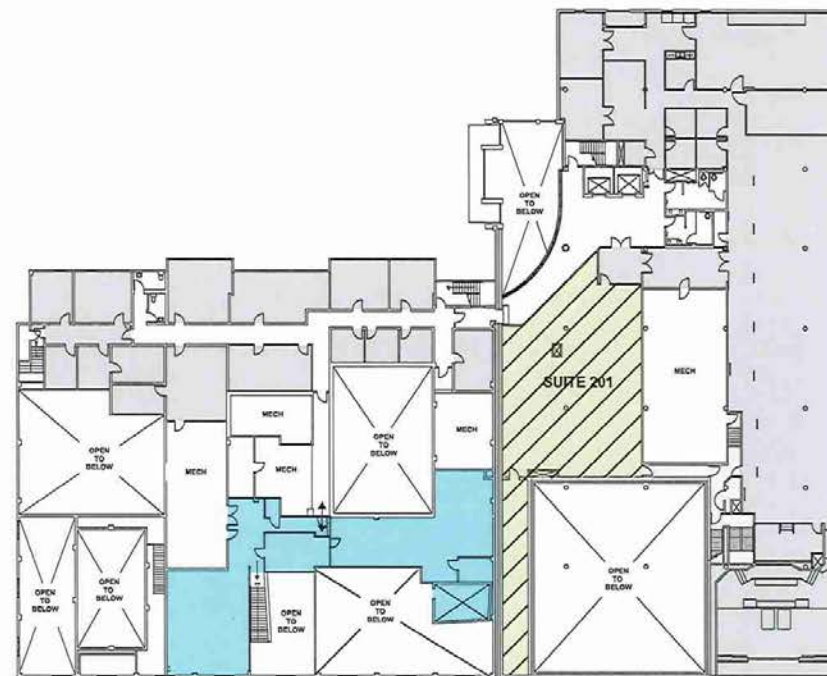


2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"



LEGEND

- R+D - NO CHANGE IN THIS APPLICATION
(AREA INCLUDES R+D USES ON 1st and 2nd FLOOR) +/- 19,995 SF
- AREA TO BE CHANGED FROM MEDIA PRODUCTION TO
R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105,
106 AND 201 +/- 9,750 SF
- NO CHANGES TO THESE AREAS IN THIS APPLICATION +/- 15,001 SF
- COMMON AREA +/- 2,744 SF



**WAREHAM
DEVELOPMENT**





NOTICE OF ADMINISTRATIVE DECISION

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

DATE NOTICE IS ISSUED: November 13, 2023

APPEAL PERIOD: November 14, 2023 to December 4, 2023

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated received March 9, 2023

FOR FURTHER INFORMATION:

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Nilu Karimzadegan at (510) 981-7430 or nkarimzadegan@berkeleyca.gov.

PUBLIC NOTICE, PURSUANT TO BMC SECTION [23.404.040\(A\)](#):

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section [23.404.040\(E\)](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice.

1947 Center Street, 2nd Floor, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420

E-mail: planning@berkeleyca.gov

2600 TENTH STREET
Page 2 of 2

NOTICE OF ADMINISTRATIVE DECISION
Administrative Use Permit #ZP2023-0031

TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER [23.410](#):

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
 - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
 - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
 - C. The fee for all appeals by Applicants is \$3,680.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer 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 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, your appeal of this decision must include the following information:
 - 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 and in court.

ATTACHMENT 1

FINDINGS AND CONDITIONS

NOVEMBER 13, 2023

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

PERMITS REQUIRED

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

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 of the CEQA Guidelines ("Existing Facilities").
2. 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.

FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097¹, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:

- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
- The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
- Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

¹ [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:
- (1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:
- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
 - The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
 - The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
 - The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.
6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:
- (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
 - (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.
-

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer attaches the following additional conditions to this Permit:

2600 TENTH STREET
Page 6 of 7

NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions
Administrative Use Permit #ZP2023-0031

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. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

Standard Construction-related Conditions Applicable to all Projects:

12. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

13. 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.

14. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

15. 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 in thickness and secured to the ground.

16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

2600 TENTH STREET
Page 7 of 7

NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions
Administrative Use Permit #ZP2023-0031

20. 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.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

At All Times (Operation):

24. 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.
25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.
27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
28. Transit Subsidy. If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.



Prepared by: Nilu Karimzadegan
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

19 December 2022

**1ST FLOOR
USE CHANGE EXHIBIT**

SCALE: 1/32"=1'-0"

PLANS APPROVED by

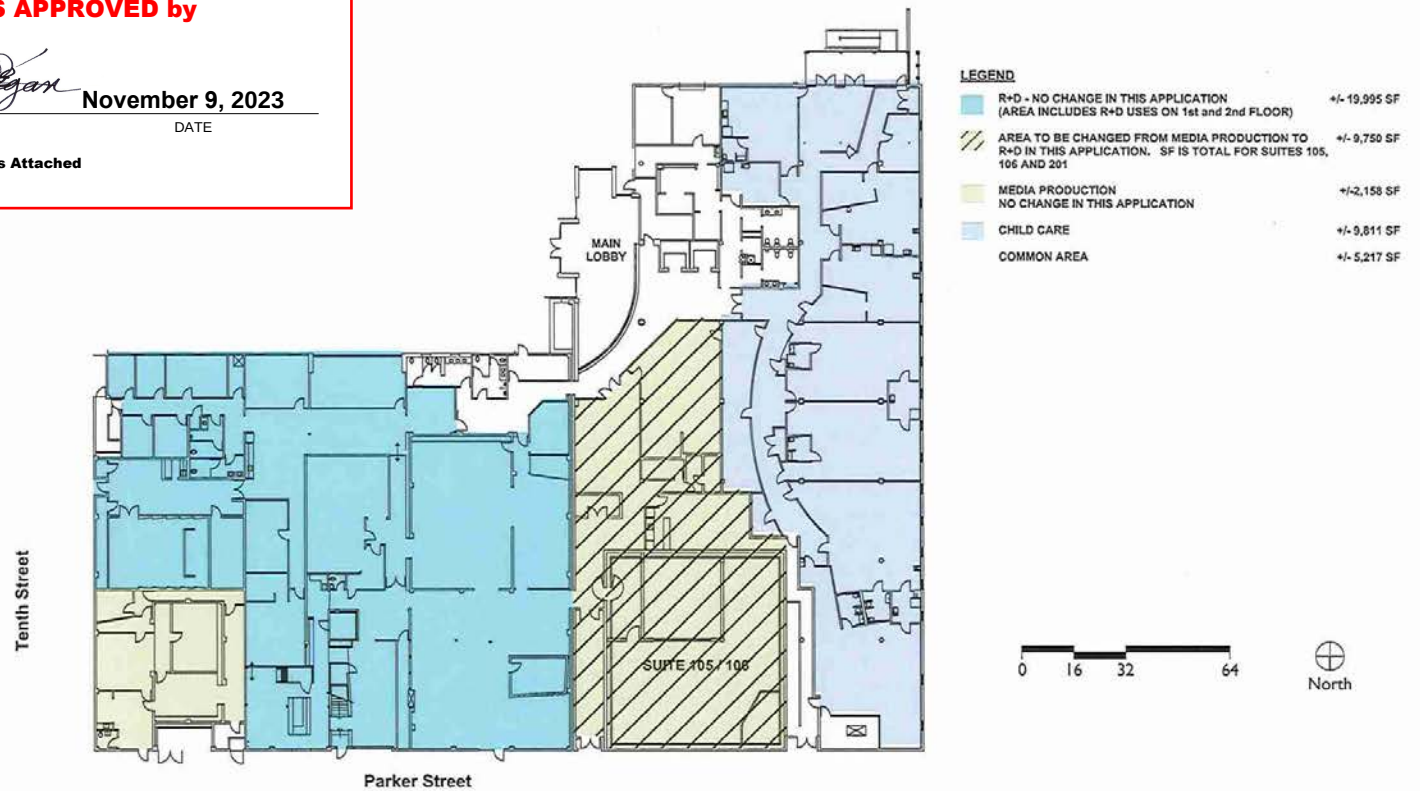
[Signature]

November 9, 2023

SIGNATURE

DATE

***AUP Findings and Conditions Attached**



**WAREHAM
DEVELOPMENT**



2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

PLANS APPROVED by

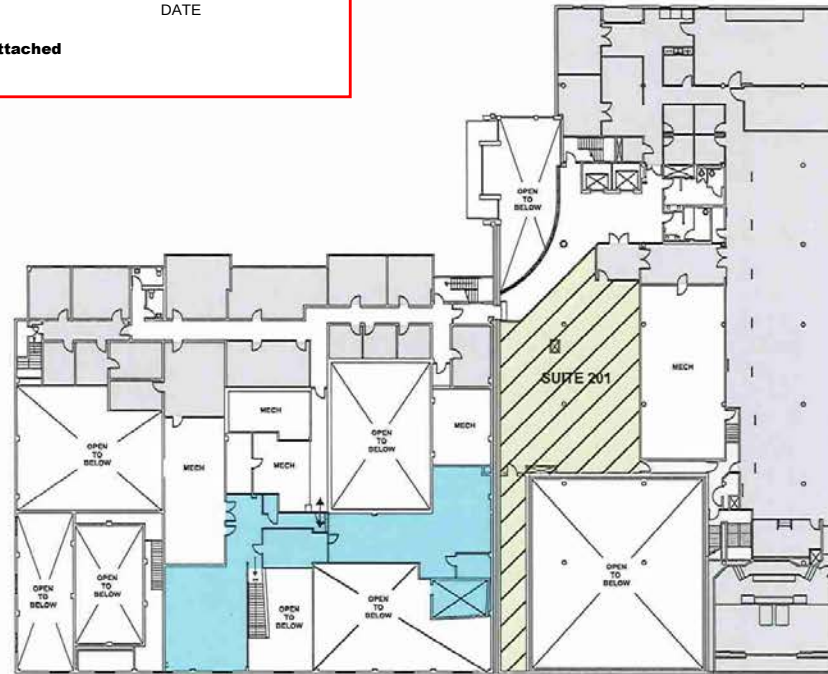
[Signature]

November 9, 2023

SIGNATURE

DATE

***AUP Findings and Conditions Attached**



LEGEND

- R+D - NO CHANGE IN THIS APPLICATION
(AREA INCLUDES R+D USES ON 1st and 2nd FLOOR) +/- 19,995 SF
- AREA TO BE CHANGED FROM MEDIA PRODUCTION TO
R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105,
106 AND 201 +/- 9,750 SF
- NO CHANGES TO THESE AREAS IN THIS APPLICATION +/- 15,001 SF
- COMMON AREA +/- 2,744 SF



**WAREHAM
DEVELOPMENT**





1.

To: The City of Berkeley Zoning Officer, City of Berkeley Planning Department:

From: Appellants of Administrative Use Permit #ZP2023-0031 –

- Rick Auerbach (for WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

Appeal of 2600 Tenth Street Administrative Use Permit #ZP2023-0031

We, the Appellants of this Use Permit, contend that the conditions cited in Planning staff's November 13, 2023 Notice of Administrative Decision to approve Administrative Use Permit #ZP2023-0031 have not been met and therefore this Use Permit should not have been approved and should be rescinded. The reasons for our contention are:

- 1.) Contrary to applicant's and staff's assertion that the spaces at issue are not subject to Zoning Ordinance Table 23.206-8, Section 23.206.050 C of the Berkeley Municipal Code - Protected Non-Industrial arts studio uses, we contend that they are covered under this provision. From the inception of the zoning Ordinance's Arts protections, "filmmakers", and later "video artist" were always included as one of the protected uses in this section of the BMC. It seems a classification calling them "Media Production" was implemented many years after protection was conferred upon them by Zoning Ordinance Table 23.206-8, Section 23.206.050 C. Contrary to staff's classification of these studio spaces as having been used as Media Production spaces, we contend that the previous use of these spaces by "filmmakers" and "video artists" confers "protected" status upon these spaces, meaning they can not be converted to a non-protected use without "equivalent space" being provided as required by BMC section 23.206.050 C. 4 (a).

A.) Berkeley Municipal Code evidence that the spaces are "Protected Non-Industrial Uses."

Section 23.206.050 C. addresses and defines **Protected Non-Industrial Uses** in the MULI. **Table 23.206-8 in Section 23.206.050 C.** establishes 2 categories of Protected Non-Industrial Uses in MULI;

Category 1 - Art/Craft Studio, and

Category 2 – 4). Fine arts performance, instruction and rehearsal studios (dance, music, theater)

5). Theaters, stage performance, but excluding motion picture theaters

The definition of an Art/Craft Studio in Table 23.206-8 and the activities that take place there are found in BMC Chapter 23.502 GLOSSARY, 23.502.020, Defined terms:

22. Art/Craft Studio: "An establishment engaged in the creation of art or crafts that requires artistic skill. Examples of individuals typically engaged in this work include...photographers/filmmakers,..video artists...and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition.

23.206.050 - Protected Uses.,1. Protected Non-Industrial Uses Defined further clarifies that "A use in the MU-LI...district listed in **Table 23.206-8** is classified as a protected non-industrial use, provided the use: (a) Was legally established as of July 6, 1989;

2.

Since the studios under discussion were "legally established as of July 6, 1989" and have been significantly and extensively used by "filmmakers" and "video artists", therefore these studios fall under BMC Section 23.206.050 C. - **Protected Non-Industrial Uses in the MULI**, and therefore **can not be converted to a non-protected use** without triggering the replacement requirement found in the C.4 (a) Findings provision of **23.206.050 C. 2. Permit Required for Change of Use:**

"To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category."

B. Description by Applicant and City Planning Staff in Planning Staff reports of "recording and mixing studios"...and "screening rooms" as "Protected Uses":

On the 2600 Tenth St website it stated: According to the Center's own website, the Center "provide(s) services for the **music, film, video...**communities. We are available for **film, video...**and special events." According to Berkeleyside, since Wareham's purchase, "The Fantasy Building has been used since then by independent **filmmakers...**"

The applicant (Wareham Development) and City staff, in 2008 in three instances within two separate COB Planning staff reports have declared "recording and mixing studios"...and "screening rooms" in 2600 Tenth St to be "protected uses" in the MULI district." These are the exact same uses staff now describes as non-protected "industrial" uses. Nothing has changed in the BMC since 2008 that would support planning staff's present redetermination in Use Permit #ZP2023-0031 that such spaces were not occupied by "protected uses" and are now "Media Production."

From FEBRUARY 14, 2008 Staff Report - 2600 Tenth Street Variance Request #07-10000132 to operate a child care center for children of Pixar employees: : Attachment 1-Findings and Conditions - VARIANCE FINDINGS:" "D. The facility houses over 40 different businesses and organizations that contribute to an interactive arts community. To support the operation's long term success, over the years the owner's (Wareham) have invested in very specialized tenant improvements, including screening rooms and award-winning recording and mixing studios, **which are "protected uses" in the MULI district.**"

GENERAL NON-DETRIMENT FINDING F. "The applicant could theoretically choose to convert existing recording studios or screening rooms to a child care center (a "protected use") with an administrative use permit because the MULI District **allows the conversion of one protected use to another** by the granting of an administrative use permit."

ZONING ADJUSTMENTS BOARD Staff Report - FOR BOARD ACTION FEBRUARY 14, 2008 2600 Tenth Street Variance #07-10000132

"Finally, the MULI District allows the conversion of one protected use to another by the granting of an administrative use permit. However, the conversion of such space would be contrary to the applicant's goal of retaining the **existing protected uses**, and therefore, the applicant requests a Variance to convert space that has been used as offices and storage to the proposed child care center."

3.

In addition, the City of Berkeley has given numerous Use Permits for “film” uses in the exact kind of spaces that City staff and Wareham claim are “Media Production.” Some examples of this are permits given to:

Frame X for “Video Post Production”

KuKu Studios for “Video Production”

PictureStartEdit permit for “Film/video”

Pizzicato Productions Documentary Film Production for “continuing legal use.”

IMDSRV Zoning Certificate for “Post Production Sound Services” for film

3. FINDINGS FOR APPROVAL of Administrative Use Permit #ZP2023-0031

Planning staff states that: “As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the...general welfare of the persons...working in the neighborhood of such proposed use...or to the general welfare of the City...:

The appellants contend that the proposed project will be detrimental to those working in the neighborhood (in 2600 Tenth St) and to the general welfare of the City because:

- 1.) The storied documentary filmmakers, video artists and sound engineers working on film and video at 2600 Tenth St. are a long-standing and interconnected community where there is significant cross-pollination between the different artists. The conversion of this arts studio space to R&D removes space that has previously been used by artists and thus diminishes the opportunities for robust collaboration between artists, limiting their output, economic opportunities, and cultural and economic contributions to the “general welfare of the City.” Maintaining the spaces at issue as art spaces helps to keep the existing community of artists intact, bettering their opportunities for productive collaboration and economic success.

The Zoning Officer states that:

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A) than leaving the space intact because:

“Both the existing Media Production and proposed Research and Development uses are classified as “Industrial and Heavy Commercial Uses” so there is no change in the industrial nature of activities that can occur onsite”

“Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space...”

4.

The 2600 Tenth Street Administrative Use Permit #ZP2023-0031 states that, “as required by BMC Section 23.206.100 (A), “the Zoning Officer finds that the project is: (1) consistent with the purposes of the District; (2)... (and) (3) Complies with the adopted West Berkeley Plan;

1

The Appellants contend that the proposed Change of Use does not better serve the purposes of the district because:

- 1.) The previous use of the spaces – as Staff makes clear in their 2008 Staff Reports that the spaces at issue were - and are - not “Industrial and Heavy Commercial Uses”, but Arts Uses clearly spelled out in BMC section Zoning Ordinance Table **23.206.050 C. 4 (a)**.
- 2.) The proposed R&D use is not consistent with “relevant policies set forth in the adopted West Berkeley Plan.”
- 3.) The proposed change of use is not (1) “consistent with the purposes of the District;”

The Appellants contend that the proposed Change of Use is not “consistent with the purposes of the District,” as found in 23.206.080 MU-LI Mixed Use-Light Industrial District, because:

The # 4 Purpose of the MULI District is to:

4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;

The West Berkeley Plan is clear that the majority of jobs in Research & Development require “advanced degrees” while there is no requirement for a degree to work in film and many who work as filmmakers, video, and sound artists are self-taught or have apprenticed or interned with others in order to learn their skills. Converting space that provides for “well-paid jobs which do not require advanced degrees” to space for those requiring advanced degrees is diametrically opposed to the MULI’s #4 Purpose.

The # 2 Purpose of the MULI District is to:

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

Since there are multiple millions of square feet available for R&D in the MULI District while there is likely only a few tens of thousands of square feet available for filmmakers, video artists, and sound artists, it is clear that any loss or conversion of this precious space would limit the “range” of compatible uses by further minimizing the film arts uses in the MULI.

The Appellants contend that the proposed Change of Use does not does not comply with the adopted West Berkeley Plan because:

The West Berkeley Plan clearly seeks to support arts and crafts enterprises, employment, and culture. The various Goals, Policies, and statements supporting the arts that are found in the Plan are cited below. WEBAIC believe that Use Permit #ZP2019-0090 not only does not abide by Plan Goals and Policies on protected arts uses, but violates and actively works in contradiction to these Goals and Policies:

5.

The Economic Development Chapter (2) of the West Berkeley Plan provides direct guidance on the issue of Arts and Crafts and their protections. The most critical and applicable provision of the West Berkeley Plan as it relates to this issue is found in:

Economic Development - Goals and Policies - Goal 7: "Protect small businesses, particularly arts and crafts businesses, so they can continue to flourish in West Berkeley."

"Rationale: Small businesses, especially arts and crafts businesses, are key in creating the unique character of West Berkeley. The City has developed Arts and Crafts zoning to protect these businesses. However, the zoning has not always worked as intended. It is vital to assure that arts and crafts enterprises are genuinely protected from displacement."

5. Policy: A. Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a vital part of the West Berkeley community.

WEBAIC Comment: Administrative Use Permit #ZP2023-0031 violates Goal 7's commitment to "protect arts and crafts...businesses...from displacement." It additionally violates Goal 7's Policy to "use zoning... to assure that artists and craftspeople remain a vital part of the West Berkeley community." In contradiction to the above WB Plan Goals and Policies, **AUP #ZP2023-0031 as constituted is a mechanism to displace arts and crafts enterprises and assures that artists (particularly endangered film and sound artists) do not "remain a vital part of the West Berkeley community".**

Economic Development (Chapter 2), A. Strategies for Business Retention VII. Implementation Measures, states:

2. Arts and Crafts--Review the functioning of the arts and crafts Ordinance. Goals and Policies Implemented: Goal 7, Policy 7A - Responsibility: City Planning Department, in consultation with affected parties. Funding: Regular staff funding

Economic Development III. The Economic Future of West Berkeley - Economic Prospects by Sector: "One of Berkeley's economic roles as a city--with a strong contribution from West Berkeley firms--is as a reservoir of ... artistic talent for the East Bay, the Bay Area, and... an even larger area."

Under The West Berkeley Plan's Economic Development section, **VII. Implementation Measures - Priority Implementation Activities, A. Ordinances, Regulation and Policy Development, is**

West Berkeley Plan Appendices - Appendix B - Cultural Resources of West Berkeley

5. "West Berkeley is an important locale for artists and craftspeople..." The strong community of artists and craftspeople which exists in West Berkeley is clearly such a resource." "In addition to being a locale where culture is enjoyed, it is also one where cultural products are created and produced."

The West Berkeley Plan's overriding goal is to retain the area's dynamic "economic mix" of uses. To accomplish this the West Berkeley Plan specifically called out R&D as a use that could displace Arts & Crafts because it is "supported by the market" while Arts & Crafts uses are NOT "supported by the market" and therefore require special zoning support (Arts/Crafts protections) to assure they "remain part of the mix."

6.

6.

4.) (a) West Berkeley Plan Policies & statements regarding R&D being “supported by the market:

I. Economic Rationale of the Plan: The City's economic policy must ...strike a balance between working within market... realities on the one hand, and guiding and regulating economic actors to achieve City goals on the other. ...a policy which passively followed dominant market forces would not necessarily achieve City economic goals (and would not require a Plan). Market forces...strongly support the development of advanced services (e.g. research laboratories).” “While support for advanced services (research laboratories) ...is also important, these sectors are generally supported, rather than threatened, by market developments. Thus, the policy structure for these sectors should be different.”

In their application, the applicant states that

3.) An abundance of existing and potential Research & Development space (millions of sq ft) exist in West Berkeley, thus this 20,000 sq ft does not need to be converted to R&D. What IS NEEDED in West Berkeley is the preservation of rare and in-demand studio space for film and sound artists:

In 2012 ,WEBAIC - in negotiations with City staff and councilmembers - agreed to allow 270,000 sq ft of industrially-protected warehouse space to be converted to Research and Development. The square footage limitation of such conversions sun-setted in 2016, allowing the millions of square feet of existing warehouse space to be opened to Research and Development uses, eliminating any need for this 20,000 sq ft to be converted. Additionally, Planning staff – with WEBAIC input - recently updated the definition of R&D which more easily allows this use to occupy West Berkeley’s millions of sq ft of warehouse space previously off-limits to R&D.

The applicant – Wareham Development _ currently has close to one million square feet of space in Berkeley devoted to R&D and Life Sciences. They also have approximately four million square feet of mostly R&D and bioscience in the near East Bay.

Contrasting Wareham Development’s millions of square feet available for R&D to the very, very small amount (20-50 thousand?) of square feet of space in 2600 Tenth St that is available to artists making film, video, and sound, it is clear which use desperately requires space more to remain viable and which use doesn’t. Staff states in its required “Findings” that “additional Research and Development space, (will) maintain(ing) the existing character of the area.” The conversion of this unique film, video, and sound art space to R&D will absolutely NOT “maintain the existing character of the area.”

It will further displace an extremely unique world renown film arts community – one of, if not the, largest concentration of documentary filmmakers who have been nominated for and won numerous Academy Awards, Peabody Awards, Sundance Awards, and many, many “Best” awards at film festivals world-wide. There are millions of square feet available for R&D – at present a one million sq ft project at Aquatic Park ready for R&D leasing and another project with hundreds of thousands of square feet for R&D between 4th and 5th St, a few Blocks away from 2600 Tenth St. The conversion of this space and the other Arts space in the Fantasy building that Wareham has clearly stated it intends to convert as soon as it can will irreparably harm the “existing character of the area” that is now known as a nation center for film, video, and sound production.



Z O N I N G A D J U S T M E N T S B O A R D

NOTICE OF PUBLIC HEARING

2600 Tenth Street

Appeal of the Zoning Officer decision to approve the Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to a Research and Development resulting in a total of 29,745 square feet of Research and Development space, and create up to nine tenant spaces within a seven-story building on a 114,998 square-foot lot.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, April 25, 2024, 7:00 pm

Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.

For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.

A. Land Use Designations:

- General Plan: General Plan: M - Manufacturing
- Zoning: Zoning: MU-LI - Mixed-Use Light Industrial District

2600 TENTH STREET
Page 2 of 4

NOTICE OF PUBLIC HEARING
Posted APRIL 11, 2024

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

C. CEQA Recommendation: Categorically exempt pursuant to Section 153301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

- Applicant Lisa Vogel, Wareham Development
- Property Owner 2600 Tenth Street, LLC
- Appellant Rick Auerbach (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

2600 TENTH STREET
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NOTICE OF PUBLIC HEARING
Posted APRIL 11, 2024

Further Information:

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7430 or NKarimzadegan@berkeleyca.gov.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@berkeleyca.gov.

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.

Written Comments, 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@berkeleyca.gov. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the 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.

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NOTICE OF PUBLIC HEARING
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**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@berkeleyca.gov) 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 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 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 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.

A Partial List of Present and Past Fantasy Building Artist/Filmmaker Tenants

Fantasy filmmakers are at the core of documentary film production in the East Bay. They provide a hub for a broader creative community of editors, cinematographers, writers, graphic artists, composers and more who may not work out of the Fantasy Building but whose careers depend, in some cases, on productions that come out of it.

FILMMAKERS – Academy Award Winning & National Emmy Nominated

Tom Christopher – Academy Award & Emmy Nominee - *Facing Fear*

Jim Capobianco - Academy Award Nominee

Ratatouille - Screenplay

Mary Poppins - Visual Effects

Jason Cohen – Academy Award Nominee, Director's Guild of America Director's Award

Facing Fear – PBS, CNN

Alex D. da Silva –Producer/Cinematographer/Director. Supervised and managed production and post of more than 50 Feature Films including Oscar Nominated projects.

Mary Poppins Returns – Disney, PBS.

Connie Field - Director/Producer, Member of the Academy of Motion Pictures & Arts

Have You Heard from Johannesburg, A seven-part documentary series. Prime Time Emmy for Exceptional Merit in Documentary

Freedom On My Mind, Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival; *The American Experience*, PBS

The Life and Times of Rosie the Riveter, The American Experience, PBS, Academy Award

Nominee

Rick Goldsmith – Director/Producer, Member of the Academy of Motion Pictures & Arts

The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers, co- directed with Judith Ehrlich - Academy Award nominee

Tell the Truth and Run: George Seldes and the American Press - Academy Award nominee

Maureen Gosling – Director/Producer/Editor, Member of the Academy of Motion Pictures & Arts

Burden of Dreams – director Les Blank, British Academy Award for Best Documentary

Bill Jersey – Director/Producer/Executive Producer

The Rise and Fall of Jim Crow – Emmy Nominee, Peabody Award Winner

A Time for Burning – Academy Award Nominee, National Film Registry

Vivian Kleiman – Director/Producer/Writer - Peabody Award, Academy Award & Emmy Nominee

Color Adjustment – with Marlon Riggs

Jim Lebrecht – Sound Design/ Re-Recording Engineer, Member of the Academy of Motion Pictures & Arts

Crip Camp - Academy Award Nominee, Peabody Award, International Documentary

Association/Independent Spirit – Best Documentary; Sundance Film Festival

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Judith Montell – Director

Forever Activists, Academy Award nominee

Stanley Moore – Emmy Awards – Best Director, Cinematography Warner Bros, Magic Johnson Foundation

Marilyn Mulford – Director/Producer

Freedom on My Mind - Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival; *The American Experience*, PBS

The Life and Times of Rosie the Riveter, *The American Experience*, PBS, Academy Award Nominee

Stanley Nelson – Director/Producer

Freedom Riders – 3 Prime Time Emmys

The Black Panthers: Vanguard of the Revolution – Emmy Nominee

Steven Okazaki – Director/Producer, Academy Award Winner (4 nominations), Emmy, Peabody Award Winning Filmmaker. AMPAS ?

Days of Waiting: The Life & Art of Estelle Ishigo

Jed Riffe – Director/Producer

Ishi, The Last Yahi – National Emmy nominee

Justine Shapiro – Producer/Director, Promises Films

Promises - nominated for an Academy Award, won 2 Emmys including "Best Doc"

Ray Telles – Director/Producer

Dogtown Redemption – Emmy Nominee

Alex Woo – Emmy Nominee, Golden Globes, WGA, NAACP Image Award. HBO Executive Producer, Screenwriter – *The Immortal Life of Henrietta Lacks*

Frank Zamacona – 5 Emmy, 3 Clio, & 1 Cine Golden Eagle Award Winning Director and Producer.

POSTPRODUCTION SOUND

Berkeley Sound/IMRSV has worked on hundreds of films, some very high profile. Our studios on the 3rd floor are critical to our ability to work and to generate a lot of taxable income for the city of Berkeley.

FILM FESTIVALS:

Telluride Film Festival – Tom Luddy, Gary Meyer

Jewish Film Festival

FILM DISTRIBUTORS:

Berkeley Media, Dan Bickley

AWARD-WINNING FILMMAKERS

Kim B Christensen - Sound Designer/Re-recording Engineer - Francis Ford Coppola, Skywalker Sound, Pixar

Connie Field - Director/Producer

Feature Length:

2024 - *Democracy Noir*

The Whistleblower of My Lai, KPBS

Oliver Tambo, Paff Best Documentary, PAFF Directors Award.

Al Helm: Martin Luther King In Palestine, Audience Award at the Mill Valley Festival

Have You Heard from Johannesburg, A seven-part documentary series. Prime Time Emmy for Exceptional Merit in Documentary

Salud, Audience Award PAFF.

Freedom On My Mind, Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival. Broadcast: *The American Experience*, PBS.

Forever Activists, Academy Award Nominee.

The Life and Times of Rosie the Riveter, *The American Experience*, PBS.

Short:

Our Stolen Futures

Rick Goldsmith – Director/Producer

Feature Length:

2024 *Stripped for Parts: American Journalism on the Brink*.

Tell the Truth and Run: George Seldes and the American Press - Academy award nominee

Everyday Heroes, co-directed with Abby Ginzberg.

The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers, co- Directed with Judith Ehrlich - Academy Award nominee

Mind/game: The Unquiet Journey of Chamique Holdsclaw

Maureen Gosling – Director/Producer/Editor

Feature Length

2023 *The 9 Lives of Barbara Dane* – producer Jed Riffe

This Ain't No Mouse Music! The Story of Chris Strachwitz and Arhoolie Records – with Chris Simon

Blossoms Of Fire

Shorts:

2023 *Bamako Chic: Threads of Power, Color and Culture* – with Maxine Downs PhD

Out In the Woods

Sketches Of Juchitán 1992

Music Videos with Los Cenzontles:

Good Morning, Atzlan

Los hermanos

Soy Mexico-Americano

Lo siento mi vida

Editor

5 Variations On A Long String – director Peter Esmonde

I Hear What You See – director Chris Simon

Poetry Inside Out – director Joyce Lee

One Voice – director Spencer Wilkinson

2.

Tim Hahn – Executive Producer

Ashley James – Director/Producer/Cinematographer

Bomba, Dancing the Drum –editor Maureen Gosling

Bill Jersey – Director/Producer/Executive Producer

Eames: The Architect & The Painter

The Rise and Fall of Jim Crow – Emmy Nominee, Peabody Award Winner

A Time for Burning – Academy Award Nominee, National Film Registry

Kevin Johnson - Director

Current unreleased, a series of three shorts: *Black Wall Street: Stories of Greenwood*

Nancy Kates – Producer/Director

Regarding Susan Sontag

Brother Outsider: the Life of Bayard Rustin mixed by Jim LeBrecht. (PBS POV),

Vivian Kleiman – Director/Producer/Writer - Peabody Award, Academy & Emmy Nominated

Color Adjustment – with Marlon Riggs

Forgotten Fires - PBS, POV

No Straight Lines

Jim Lebrecht – Sound Design and Re-Recording Engineer

Crip Camp - Academy Award Nominated Filmmaker, Peabody Award

International Documentary Association/Independent Spirit – Best Documentary

Judith Montell – Director

Forever Activists, Academy Award nominee

In the Image with Emmy Scharlatt, editor Ken Schneider

Stanley Moore – Emmy Awards – Best Director, Cinematography Warner Bros, Magic Johnson

Foundation

Stephen Most – Producer/Writer

Life Beyond Earth co-producer, an internationally distributed PBS science series. These include

Our Summer in Tehran – director Justine Shapiro

Promises - director Justine Shapiro

Time for Justice – director Abby Ginzberg

Marilyn Mulford – Director/Producer

Freedom on My Mind - Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival; *The American Experience*, PBS

Archaeology of Memory: Villa Grimaldi

Chicano Park. Gold Award at the Chicago International FF

Stanley Nelson – Director/Producer

Freedom Riders – 3 Prime Time Emmys

The Black Panthers: Vanguard of the Revolution – Emmy Nominee

Freedom Summer

Steven Okazaki – Director/Producer, Academy Award Winner (4 nominations), Emmy, Peabody Award

Days of Waiting: The Life & Art of Estelle Ishigo

Jed Riffe –

Director/Producer

Ishi, The Last Yahi – National Emmy nominee

Who Owns the Past?

Waiting To Inhale: Marijuana, Medicine, And the Law – editor, Maureen Gosling

California And the American Dream Series

California's "Lost" Tribes - editor, Maureen Gosling

Producer

From Here/From There

Pleistocene Park - editor, Maureen Gosling

Ripe For Change

The Long Shadow - editor, Maureen Gosling

A Dangerous Idea: Eugenics, Genetics and the American Dream - editor, Maureen Gosling

The 9 Lives of Barbara Dane – director, Maureen Gosling

Executive Producer

Smokin' Fish - editor, Maureen Gosling

A New Color - editor, Maureen Gosling

Co-Producer/Post-Producer

Andre, The Voice of Wine

Is Your Story Making You Sick?

One Voice - editor, Maureen Gosling

The Final Fight

Interactive Producer

California, A Place and A Dream

TV Of Tomorrow

Africana Studies Center

Autry Museum

Ken Schneider – Editor

Ralph Ellison: An American Story - director Avon Kirkland - American Masters, Sundance

Beyond the Opposite Sex - director Emily Abt - Showtime Channel

In Football We Trust - director Erika Cohn - Independent Lens, Emmy winner

Justine Shapiro – Producer/Director, Promises Films

Feature Length

Our Summer in Tehran

Promises - nominated for an Academy Award, won 2 Emmys including "Best Doc"

Bajo California, El Limite Del Tiempo - director Carlos Bolado, won 7 Ariels (the Mexican Oscar)

Fundraising Videos

Chez Panisse Foundation: Edible Schoolyard

Alan Snitow and Deborah Kaufman

Feature Length

Blacks and Jews

Secrets of Silicon Valley

Thirst

Between Two Worlds

Oil and Water: The San Francisco Mime Troupe

Company Town

Town Destroyer

Shorts/poetry films:

Poetry on Water

Drones in My Backyard

Ezekiel's Wheels

Poetry by Wanda Coleman and Adam Zagajewski

Ray Telles – Director/Producer

The Fight in the Fields, Cesar Chavez and the Farmworkers Movement – with Ray Telles,

Grand Jury Prize, Sundance Film Festival

Race Is the Place

Dogtown Redemption – Emmy Nominee

Rick Tejada-Flores –

Producer/Director

Si Se Puede!

Bonnie and Leroy, An Alternative to Watergate

Low 'N Slow, the Art of Lowriding

Elvia, the Fight for Land and Liberty

Rivera In America

Caminante (2 episodes)

Jasper Johns, Ideas in Paint

The Fight in the Fields, Cesar Chavez and the Farmworkers Movement – with Ray Telles,

Grand Jury Prize, Sundance Film Festival

The Good War and Those Who Refused to Fight It – with Judith Erlich

Race is the Place

Orozco, Man of Fire – with Laurie Coyle

My Bolivia, Remembering What I Never Knew

Water for Life

Editor

Trimpin, the Sound of Invention – director Peter Esmonde

Will the Real Terrorist Please Stand Up

In the Image, Palestinian Women Capture the Occupation – directors Judith Montell, Emmy Scharlett
Adios Amor - director Laurie Coyle

John D White – Filmmaker

David A Wolf – Filmmaker/Camera

The Maze Runner
Terminator Genesis
The Blues Brothers
Focus

Alex Woo – Nominated: Emmy, Golden Globes, WGA, NAACP Image Award. HBO Executive producer, Screenwriter – *The Immortal Life of Henrietta Lacks*

Frank Zamacona – 5 Emmy, 3 Clio, & 1 Cine Golden Eagle Award Winning Director and Producer.

Denise Zmehkol – Director/Producer

Children of the Amazon
Skin of Glass

DRAMATIC FEATURES

Saul Zaentz, Producer

Amadeus – 8 Oscars
One Flew Over the Cuckoo's Nest – 5 Oscars
The English Patient – 9 Oscars
The Mosquito Coast
Goya's Ghost
At Play in the Fields of the Lord
The Lord of the Rings – 1 Oscar – grossed \$30 million worldwide
Three Warriors

Carroll Ballard, Director

Black Stallion

POST-PRODUCTION

David Lynch

Peter Weir

John Waters

Gus Van Sant

Terry Zwigoff - *Crumb* and *Bad Santa*

Walter Murch - Academy Award Winning Editor

Mark Berger – Academy Award Winning Sound Engineer

Alan Splet - Award winning sound designer

ITEM #: _____

ZAB DATE: _____

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ITEM #: 2600 10th StZAB DATE: 4/25/2024

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2600 10th St.NAME Gregory Scharpen
(Please Print- to be sure we spell your name correctly)SUPPORT _____ OPPOSITION _____
(Optional)RESIDENT X BUSINESS OWNER _____
OTHER _____SIGNATURE: [Signature]PHONE 847-9414 DATE 25 Apr '24
(In case we would like to contact you)

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2600 10th StNAME Georgia Shea
(Please Print- to be sure we spell your name correctly)SUPPORT _____ OPPOSITION X
(Optional)RESIDENT X BUSINESS OWNER _____
OTHER _____SIGNATURE: [Signature]PHONE 510 837-8438 DATE 4/25/2024
(In case we would like to contact you)ITEM #: 5ZAB DATE: 4-25-242600 Tenth

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC _____

NAME Frank Zamacoma
(Please Print- to be sure we spell your name correctly)SUPPORT _____ OPPOSITION X
(Optional)RESIDENT _____ BUSINESS OWNER X
OTHER _____SIGNATURE: [Signature]PHONE 510-704-4661 DATE 4/25/2024
(In case we would like to contact you)ITEM #: 4ZAB DATE: 4/25/2024

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2600 Tenth St.NAME John Curl
(Please Print- to be sure we spell your name correctly)SUPPORT _____ OPPOSITION _____
(Optional)RESIDENT ✓ BUSINESS OWNER _____
OTHER _____SIGNATURE: [Signature]PHONE 510 847-3431 DATE 4/25/2024
(In case we would like to contact you)

ITEM #: _____

ZAB DATE: _____

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ITEM #: _____

ZAB DATE: _____

2600 Tenth

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC #4 WB-Appel 2 2023-0031NAME Betsy Morris (Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT ☒ OPPOSITION _____
(Optional)RESIDENT ☒ BUSINESS OWNER _____

OTHER _____

SIGNATURE: Betsy MorrisPHONE 510-809-7252 DATE 4/25/24
(In case we would like to contact you)

Public Testimony Guidelines:

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. The Board Chairperson may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, please submit a speaker card to Planning Staff as early as possible at the meeting.

At the start of the meeting the Board may rearrange the agenda or place additional agenda items on the Consent Calendar, so it is important to submit speaker cards at the start of the meeting to avoid losing the chance to speak to an item.

2600 Tenth St

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC Fantasy BuildingNAME STEPHEN MOST (Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION _____
(Optional)RESIDENT ☒ BUSINESS OWNER _____

OTHER _____

SIGNATURE: Stephen MostPHONE 510 295-3057 DATE 4/25/24
(In case we would like to contact you)ITEM #: 2600 Tenth ZAB DATE: 4-25-24

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC Fantasy BuildingNAME Claire Schoen (Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION _____
(Optional)RESIDENT ☒ BUSINESS OWNER _____

OTHER _____

SIGNATURE: Claire SchoenPHONE 510-882-6164 DATE 4/25/2024
(In case we would like to contact you)



3457 Arlington Avenue, Ste. 104
Riverside, California 92506
951-779-0787 (V)
www.QuickCaption.com

>> Vice Chair Gaffney: ALL RIGHT, HI, EVERYONE.

I WOULD LIKE TO CALL TO ORDER THE BERKELEY ZONING ADJUSTMENTS
BOARD MEETING.

THIS MEETING WILL BE CONDUCTED IN HYBRID WITH VIRTUAL AND IN-
PERSON ATTENDANCE.

FOR IN-PERSON FACE COVERINGS ARE ENCOURAGED.

THEY WILL BE PROVIDED BY THE CITY.

MEMBERS OF STAFF, PUBLIC ARE ENCOURAGED TO USE MASKS.

CURRENTLY THERE ARE NO PHYSICAL DISTANCING REQUIREMENTS IN PLACE
BY THE STATE OF CALIFORNIA OR THE LOCAL HEALTH OFFICER FOR AN
INDOOR EVENT SIMILAR TO A COMMISSION MEETING, HOWEVER ALL ARE
ASKED TO BE RESPECTFUL AND THERE IS DISTANCE SEATING FOR THOSE
WHO NEED TO BE DISTANCED FOR MEDICAL REASONS.

LIVE CAPTIONED WEBCASTS ARE AVAILABLE AND VIDEO STREAM AT THE
LINK ON YOUR PACKET, OR AGENDA.

TO ACCESS REMOTELY, JOIN FROM PC, MAC, ANDROID OR DEVICE, USE
THE URL.

IF YOU DO NOT WISH FOR YOUR NAME TO APPEAR ON THE SCREEN, CLICK ON THE DROP-DOWN MENU AND RENAME YOURSELF TO BE ANONYMOUS.

TO REQUEST TO SPEAK USE THE RAISE HAND ICON.

TO JOIN BY PHONE, CALL THE NUMBER ON THE AGENDA AND ENTERING THE WEBINAR ID.

IF YOU WISH TO SPEAK ON THE PHONE PLEASE PRESS *9 AND WAIT TO BE ACKNOWLEDGED.

THIS MEETING IS BEING RECORDED.

PUBLIC TESTIMONY GUIDELINES, THIS MEETING WILL BE CONDUCTED IN ACCORDANCE WITH THE BROWN ACT, 54953.

ANY MEMBERS OF THE PUBLIC MAY ATTEND THE MEETING.

THE CHAIR MAY LIMIT THE AMOUNT OF SPEAKERS AND LENGTH OF TIME.

TO SPEAK AT A PUBLIC HEARING, PLEASE SUBMIT A SPEAKER CARD TO STAFF AS EARLY AS POSSIBLE.

IF YOU HAVEN'T DONE THAT ALREADY, THAT'S WHAT THESE CARDS ARE.

THANK YOU FOR GETTING THESE CARDS IN ON TIME.

AT THE START OF THE MEETING, THE CHAIR MAY REARRANGE THE AGENDA OR PLACE ADDITIONAL AGENDA ITEMS ON THE CONSENT CALENDAR, SO IT'S IMPORTANT TO BE PRESENT AT THE START OF THE MEETING TO AVOID LOSING THE CHANCE TO SPEAK TO AN ITEM.

THE BOARD ENCOURAGES THE PUBLIC TO SUBMIT COMMENTS IN WRITING IN ADVANCE OF THE MEETING.

NOW WE WILL MOVE ONTO EX PARTE DISCLOSURES AND ROLL CALL.

I WILL HAVE STAFF DO THAT NOW.

>> THANK YOU, WHEN I CALL YOUR NAME, PLEASE LET ME KNOW WHETHER YOU ARE PRESENT AND REPORT ANY EX PARTE COMMUNICATION.

VICE CHAIR PERSON GAFFNEY?

>> Vice Chair Gaffney: PRESENT, NO EX PARTE?

>> COMMISSIONER O'KEEFE?

>> S. O'Keefe: PRESENT, NO EX PARTE.

>> COMMISSIONER KAHN?

>> C. Kahn: VERY DELIGHTED TO BE PRESENT, NO EX PARTE, BUT I WILL BE RECUSING MYSELF FROM THE [INDISCERNIBLE] PROJECT.

>> FROM 2600 TENTH STREET?

>> C. Kahn: YES.

>> THANK YOU, COMMISSIONER YUNG?

>> B. Yung: PRESENT, NO EX PARTE.

>> COMMISSIONER SANDERSON?

>> D. Sanderson: PRESENT, NO EX PARTE.

>> AND COMMISSIONER TREGUB IS LATE.

>> Vice Chair Gaffney: HE WILL BE HERE BUT LATE.

NOW TO MOVE ONTO PUBLIC COMMENT ON NON-AGENDA ITEMS.

IF YOU ARE SPEAKING ON 1788 FOURTH, 1600 TENTH STREET OR 1817 CARLETON STREET, DO NOT SPEAK RIGHT NOW.

WE HAVE ONE IN-PERSON CARD.

AND IF YOU HAVE ANYONE ONLINE RAISE YOUR HAND NOW AND I WILL GET TO YOU AFTER I'M DONE WITH THE IN-PERSON CARDS.

SO YEAH, BETSY MORRIS?

YOU HAVE TWO MINUTES.

>> YOU TELL ME, THAT SOUNDS BETTER.

GOOD EVENING, AND THANK YOU VERY MUCH FOR HAVING HYBRID MEETINGS AND I'M ABLE TO COME IN PERSON.

I'M BETSY MORRIS, HERE AS A PRIVATE CITIZEN AND RETIRED ECONOMIC DEVELOPMENT PLANNER AND RESEARCHER, WHO RECENTLY LEARNED SOME INFORMATION THAT I THINK WILL BE IMPORTANT TO YOU AS YOU DELIBERATE OVER THE NEXT FEW YEARS.

THAT INFORMATION FIRST IS THAT THERE'S CURRENTLY A GLUT, ACCORDING TO THE SAN FRANCISCO BUSINESS JOURNAL, BUSINESS TIMES, I HAVE A COUPLE SOURCES.

THERE'S A GLUT, 20% VACANCY RATE FOR LIFE SCIENCES BUILDINGS. A HUGE FAD OF BUILDING THEM ON SPEC WITH THE ASSUMPTION YOU BUILD THE BUILDINGS, KICK OUT NEW TENANTS, AND NEW TENANTS WILL APPEAR.

THIS IS RELEVANT, I THINK, BECAUSE THE 20% RATE DOES NOT INCLUDE 11 MORE BUILDINGS COMING ONLINE JUST IN THE EAST BAY.

I THINK FOUR OR FIVE ARE HERE IN WEST BERKELEY.

WHICH I STILL CLAIM TO LIVE IN WEST BERKELEY HEIGHTS, ON SACRAMENTO STREET.

BUT THIS IS WHERE I CUT MY TEETH.

THIS IS WHERE I GOT MY COMMUNITY EDUCATION AND I STILL YEARN FOR THE DAYS WHEN I LIVED BELOW SAN PABLO AVENUE.

GREAT NEIGHBORS.

SO THE OTHER ITEM I STILL HAVE A LITTLE TIME TO SHARE ON IS THIS.

CURRENT MODELS FOR UNDERSTANDING SEA RISING, WHICH WE HAVE BEEN SOMEWHAT EXEMPT FROM HERE IN THE BAY AREA BUT IS EXPECTED TO INCREASE OVER THE NEXT DECADES. THE CURRENT SEA LEVEL ENTERING THE BAY, RISING, FLOODS, KING TIDES, THINGS LIKE THAT, PUSH GROUND WATER UP.

AND OUR WEST BERK RY, IN FACT, THE WHOLE EAST BAY AND OTHER PARTS AROUND THE BAY ARE FULL OF TOXINS. HEAVY METAL AND VOLATILE CHEMICALS.

THAT THE ASSUMPTION IS THEY WILL SIT IN PLACE IF WE JUST CAP THEM OR SCRAPE THEM.

BUT THE TRUTH IS, THESE CHANGES IN THE HYDROLOGY HAVE BEEN -- THE MODEL HAS BEEN DOCUMENTED.

I INVITE YOU TO LOOK AT THE RESEARCH, DR. HERALD AT U.C. BERKELEY.

SHE PUBLISHED ARTICLES AND HAS SOME GREAT DIAGRAMS.

YOU ARE CONSIDERING REQUESTS FOR HIGHER HEIGHT LIMITS, THERE'S TWO.

THAT TOXINS WILL MOVE AS THE GROUND WATER RISES, SOUNDS LIKE YOU KNOW ABOUT THIS.

I JUST LEARNED ABOUT IF.

IT.

THEY WILL MOVE, THEY ARE GOING TO MOVE.

THEY HAVE ALREADY MOVED UPSTREAM AWAY FROM THE BAY, BUT I THINK IT'S IMPORTANT TO ALWAYS ASK WHAT IS THE HEIGHT OF THE BUILDING? WHAT IS THE WEIGHT OF THE BUILDING, WHEN YOU START ADDING MORE STORIES AND WHAT IS THE COMPRESSION FACTOR.

BECAUSE THE CURRENT DOCUMENTATION, THE ANALYSIS HAS NOT BEEN DONE, IN TERMS OF EIR'S.

BUT A NUMBER OF EXPERTS AND EIR AUTHORS SAY THIS NEEDS A LOT MORE ANALYSIS AND ATTENTION.

BUT THEY WEREN'T PAID TO GIVE IT SO THEY DIDN'T.

I ENCOURAGE YOU TO LOOK MORE DEEPLY INTO THAT.

I'M NOT OPPOSED TO DEVELOPMENT, BUT IT DOES RAIN ON BUILD HIGHER AND HEAVIER.

PLEASE SHARE THAT AND I WILL BE GLAD TO SHARE SOURCES WITH YOU AFTERWARDS.

>> Vice Chair Gaffney: THANK, BETSY.

THAT'S ALL FOR IN-PERSON.

WE HAVE ONE PERSON ONLINE, KELLY HAMMARGREN.

I DON'T KNOW IF I CAN RECOGNIZE HER OR NOT.

I DON'T HAVE THAT OPTION.

ONE SECOND, KELLY, WE ARE GOING TO RECOGNIZE YOU.

PERFECT.

YOU SHOULD BE ABLE TO TALK NOW.

>> OKAY, THANK YOU.

CAN YOU HEAR ME OKAY?

>> Vice Chair Gaffney: YES, WE CAN HEAR YOU GREAT.

>> OKAY, SO I LOOKED AND THE EMAIL THAT I SENT, MAYBE I SENT IT TOO LATE.

I SENT IT YESTERDAY, BRINGING BACK THE NATIVE GARDENS TOUR.

I DON'T SEE THAT POSTED.

I HOPE CITY STAFF CAN FORWARD THAT TO YOU.

BECAUSE ON MAY 4th AND 5th IS THE BRINGING BACK THE NATIVES GARDEN TOUR.

AND ON THE 4th, ERIN DEAN WHOM SOME OF YOU KNOW FROM HER APPEARANCES AT ZAB AND DRC WILL HAVE -- HER GARDEN IS ON THE TOUR.

AND AT HER HOUSE WE WILL ALSO HAVE DEMONSTRATION OF HOW TO MAKE EXISTING WINDOWS BIRD SAFE.

AND SHE HAS PUT TOGETHER ALL KINDS OF EXAMPLES OF FILMS ANNACOPIAN BLINDS.

I HOPE YOU WILL REGISTER BRINGING BACK THE NATIVE GARDENS TOUR. IT'S COMPLETELY FREE.

IT'S VERY EXCITING.

AND THERE'S ALSO A VIDEO THAT I REALLY ENCOURAGE YOU TO WATCH IF YOU HAVE NOT DONE SO.

DOUGLAS TALAMAY, ENTOMOLOGIST FROM THE EAST COAST HAS A VIDEO USING PHOTOS OF OUR NATIVE BIRDS AND BUTTERFLIES.

AND TALKS ABOUT THE IMPORTANCE OF NATIVE PLANTS. AND IF YOU ARE NOT SOMEONE INTO NATIVE PLANTS NOW, I THINK YOU WOULD BE AFTER

YOU WATCH DOUGLAS TALAMAY AND THAT'S PROBABLY THE MOST IMPORTANT THING YOU COULD DO, BESIDES GOING OUT AND ENJOYING GARDENS.

I ALSO PUT THE LINK IN THE EMAIL THAT I SENT FOR CALSCAPE.

THE YOUTUBE CHANNEL FOR BRINGING BACK THE GARDENS. IT'S VERY EXCITING.

YOU KNOW, WHEN WE ARE DOING LANDSCAPING FOR THE BUILDINGS, WE REALLY CAN DO SO MUCH MORE FOR OUR ENVIRONMENT AND HABITAT AND ECOSYSTEMS. AND FOR THE SURVIVAL OF BIRDS AND BUTTERFLIES AND BEES, IF WE USE NATIVE PLANTS.

SO I JUST ENCOURAGE EVERY SINGLE ONE OF YOU TO TAKE ADVANTAGE OF THE FREE TOURS AND SEE HOW EXCITING NATIVE PLANT GARDENS CAN BE. AND ALSO, JUST TO GET A BETTER GRASP OF WHY WE TALK ABOUT THIS AT MEETING AFTER MEETING.

THANK YOU.

>> Vice Chair Gaffney: THANK YOU SO MUCH, KELLY.

ALL RIGHT.

IT LOOKS LIKE THERE'S ANOTHER HAND.

>> C. Kahn: I JUST WANT TO THANK YOU FOR MAKING US AWARE OF THAT, KELLY.

I JUST TEXTED MY WIFE AND HOPE TO SEE YOU THERE.

THANK YOU.

>> Chair Duffy: WONDERFUL.

--

>> Vice Chair Gaffney: WONDERFUL.

LOOKS LIKE WE HAVE ONE MORE HAND UP.

YOU SHOULD BE UNMUTED OR ALLOWED TO TALK NOW.

SAID, ARE YOU ABLE TO UNMUTE?

LOOKS LIKE YOU ARE STILL MUTED.

SAID, ARE YOU THERE?

TRY TO SEE IF THERE'S AN UNMUTE BUTTON.

IF THERE IS NOT, WE CAN --

ARE YOU THERE?

ALL RIGHT, WELL WE CAN ALWAYS TRY TO COME BACK TO YOU.

WE WOULD LOVE TO HEAR FROM YOU THOUGH, SO IF YOU ARE ABLE TO

UNMUTE, THAT WOULD BE GREAT.

YOU ARE STILL MUTED.

>> HELLO?

>> Vice Chair Gaffney: THERE WE GO, WE CAN HEAR YOU, WONDERFUL.

GO AHEAD, YOU HAVE THREE MINUTES.

>> OKAY, I'M JUST LISTENING TO YOU GUYS AND THANK YOU.

I HAVE NOTHING TO SAY, JUST WATCHING THE PROGRAM, OKAY.

>> Vice Chair Gaffney: WONDERFUL, THAT'S GREAT.

WE ARE HAPPY TO HAVE YOU HERE.

ALL RIGHT.

THANK YOU SO MUCH.

WE ALL NEEDED THAT A BIT.

ALL RIGHT.

>> THANKS FOR TUNING IN, FOLKS.

>> Vice Chair Gaffney: THAT LOOKS LIKE THAT IS IT FOR ANY COMMENT ON NON-AGENDA MATTERS.

I'M GOING TO SUGGEST AN AGENDA CHANGE, WE DON'T REALLY HAVE A QUORUM BECAUSE COMMISSIONER KAHN NEEDS TO RECUSE HIMSELF FROM TENTH STREET.

THE SECOND AND THIRD ITEM ARE GOING TO STAY AS-IS, BUT I WILL SWITCH AROUND THE FOURTH AND FIFTH ITEM.

ITEM 5, WHICH IS 1817 B CARLETON STREET WILL NOW GO BEFORE TENTH STREET.

AND WE WILL GET A QUORUM BEFORE THAT HAPPENS.

SO THE NEW AGENDA, I WILL READ IT OVER JUST TO MAKE SURE WE KNOW.

ITEM #1, THE CONSENT CALENDAR THAT WE ARE ABOUT TO BE VOTING ON, THAT'S THE APPROVAL OF ACTION MINUTES FROM MARCH 28th 2024.

ITEM #2 IS 1788 FOURTH STREET, AND ITEM 3 IS REQUEST FOR LEAVE OF ABSENCE FOR JANET TAM FROM THE DESIGN REVIEW COMMITTEE.

THOSE ARE ON THE CONSENT CALENDAR AND THOSE WON'T HAVE A HEARING IF THEY STAY ON THE CONSENT CALENDAR.

ON ACTION WE WILL HAVE CARLETON STREET GO FIRST.

AFTER THAT WE WILL HAVE 2600 TENTH STREET GO AFTER THAT.

SO THOSE ARE MY PROPOSED CHANGES.

WE ARE NOW GOING TO MOVE OVER TO THE CONSENT CALENDAR, ITEMS #1

--

>> CHAIR GAFFNEY, I JUST WANT TO CHECK, THE AGENDA CHANGE YOU PROPOSED MAKES SENSE.

I WANT TO CHECK, I SEE THERE ARE CHILDREN IN THE AUDIENCE AND I WONDER WHICH PROJECT THEY ARE WITH, IF THEY JUST GOT MOVED TO THE LATER THING WE SHOULD CONSIDER THAT.

CAN WE FIND OUT?

>> Vice Chair Gaffney: CARLETON.

>> S. O'Keefe: THE ONE THAT IS NOW FIRST?

>> Vice Chair Gaffney: YES.

THANK YOU, COMMISSIONER O'KEEFE.

LOVE TO ACCOMMODATE WHEN WE CAN.

WE WILL VOTE ON THE CONSENT CALENDAR, APPROVAL OF ACTION MINUTES, FOURTH STREET AND LEAVE OF ABSENCE FOR JANET TAM.

WE HAVE NO COMMUNICATIONS RIGHT NOW IN PERSON ON THOSE.

IF YOU DO HAVE ANY COMMUNICATIONS ONLINE, NOW IS YOUR TIME TO RAISE YOUR HAND.

SO PLEASE RAISE YOUR HAND IF YOU HAVE ANYTHING TO SAY ON THE ITEMS ON THE CONSENT CALENDAR THAT I JUST LISTED.

I AM SEEING NONE RIGHT NOW.

ALL RIGHT, SO, WOULD ANYONE ENTERTAIN A MOTION?

>> D. Sanderson: I MOVE APPROVAL OF THE CONSENT CALENDAR.

>> C. Kahn: SECOND.

>> Vice Chair Gaffney: BEAUTIFUL.

WE ARE NOW GOING TO TAKE A ROLL CALL VOTE.

>> THANK YOU.

I HAVE A MOTION FROM COMMISSIONER SANDERSON AND SECOND FROM
COMMISSIONER KAHN TO APPROVE THE CONSENT CALENDAR.

WHEN I CALL YOUR NAME PLEASE STATE YOUR VOTE.

VICE CHAIR PERSON GAFFNEY, OR CHAIRPERSON GAFFNEY?

>> YES.

>> COMMISSIONER O'KEEFE?

>> S. O'Keefe: CAN YOU COME BACK TO ME, I JUST RECEIVED THE
MINUTES NOW, I JUST WANT TO READ THEM BEFORE I VOTE.

>> SURE I WILL START FROM THE BOTTOM.

COMMISSIONER SANDERSON?

>> D. Sanderson: YES.

>> COMMISSIONER YUNG?

>> B. Yung: YES.

>> COMMISSIONER MATTHEWS?

>> Vice Chair Gaffney: SORRY, HE IS ABSENT.

>> Clerk: MY APOLOGIES.

COMMISSIONER O'KEEFE?

>> S. O'Keefe: RIGHT, NOT MANY PEOPLE.

YEAH, THESE LOOK FINE.

YES.

>> Clerk: THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT, WONDERFUL.

THE MOTION PASSES THEN.

WE WILL NOW MOVE ON TO THE ACTION CALENDAR.

WE WILL BE DOING 1817-B CARLETON STREET FIRST.

>> Clerk: SORRY, CHAIRPERSON GAFFNEY, I MISSED COMMISSIONER KAHN.

I WAS TOO EAGER TO CLOSE THAT OUT.

I'M SO EXCITED.

COMMISSIONER KAHN?

>> C. Kahn: I WASN'T PRESENT AT THAT MEETING BUT MY UNDERSTANDING FROM THE CITY ATTORNEY IS I CAN STILL VOTE ON THE ITEM.

AND IT'S NECESSARY TONIGHT BECAUSE WITHOUT THAT VOTE IT WON'T PASS.

SO I WILL VOTE YES.

>> Clerk: THANK YOU.

>> Vice Chair Gaffney: WONDERFUL.

NOW THE MOTION OFFICIALLY PASSES.

NOW WE WILL OFFICIALLY MOVE ON TO THE ACTION CALENDAR.

FIRST UP WILL BE CARLETON STREET.

AND WE WILL START FIRST WITH A STAFF PRESENTATION.

>> WAQAR SHAH: ARE YOU ABLE TO HEAR ME?

>> Vice Chair Gaffney: YES.

>> ARE YOU ALSO ABLE TO SEE MY PRESENTATION?

>> Waqar Shah: HOW ABOUT NOW?

>> Vice Chair Gaffney: YES, IT IS.

>> Waqar Shah: WONDERFUL, WILL BEGIN.

I WILL BEGIN.

I'M WAQAR AND I'M PRESENTING THE SUBJECT VARIANCE APPLICATION BEFORE YOU.

FOR THE AGENDA, I WANT TO START OFF BY INFORMING STAFF RECOMMENDS DENIAL OF THE VARIANCE AS ALL THE REQUIRED VARIANCE FINDINGS ARE NOT MADE.

WE WILL STEP IN THE PROJECT DESCRIPTION, R-2 DEVELOPMENT STANDARDS, EXISTING DEVELOPMENT AND THE PROPOSED PROJECT AND ITS COMPLIANCE WITH THE R-2 DISTRICT DEVELOPMENT STANDARDS, THE REQUIRED VARIANCE AND RELEVANT FINDINGS FOR DENIAL.

AND WE WILL ALSO DISCUSS THE PENDING MIDDLE HOUSING ZONING AMENDMENTS AND ZONING ADJUSTMENT BOARD RECOMMENDATION AND THE REASONING BEHIND.

THE PROJECT WOULD CONSTRUCT A 494 SQUARE FOOT THIRD STORY ADDITION OVER 28 FEET IN AVERAGE HEIGHT, THAT EXCEEDS THE ALLOWABLE LOT COVERAGE AND ENCROACHES IN THE REQUIRED THIRD STORY SIDE SETBACK.

I ALSO WANTED TO MAKE A CORRECTION IN THE STAFF REPORT WHERE I MENTION THE TOTAL NUMBER OF BEDROOMS ON THE LOT WERE MISCOUNTED.

NOW THE TOTAL NUMBER OF BEDROOMS IS 12 ON THE LOT.

SO FOR MORE CONTEXT ABOUT THE PROJECT.

THE PROJECT SITE IS LOCATED IN SOUTH BERKELEY, WEST OF CARLETON STREET AND MARTIN LUTHER KING JUNIOR WAY INTERSECTION AND ONE BLOCK FROM DERBY FIELD PARK, SOUTHEAST OF THE PROJECT SITE.

THE AREA IS CHARACTERIZED AS RESIDENTIAL AND COMPRISED 1-3 STORY, SINGLE STORY AND MULTI-FAMILY DWELLINGS. THE LOT IS DEVELOPED WITH THREE TWO-STORY SINGLE FAMILY DWELLING UNITS. SHOWN HERE IS THE EXISTING CONDITION OF THE RESIDENCE FROM A NORTH FACING VIEW.

IN THE R-2 ZONING DISTRICT SOME DEVELOPMENT STANDARDS ARE BASED ON THE NUMBER OF STORIES IN THE MAIN BUILDING.

THE ADDITION OF A THIRD STORY ON SITE REDUCES LOT COVERAGE FROM 30 TO 45 SET AND WHILE THE REQUIRED SETBACK FOR THE FIRST AND SECOND STORIES IS FOUR FEET AS SHOWN IN TABLE 43.202.6 IT MUST BE SAT BACK FROM THE INTERIOR SIDE LOT LINE.

SO THE CURRENT LOT WAS FULLY DEVELOPED WITHIN APPLICABLE R-2 ZONING STANDARDS IN COMPLIANCE WITH THE APPROVED USE PERMIT.

IN 2015 ZAB APPROVED THE DEMOLITION OF THE EXISTING SINGLE FAMILY DWELLING AND ACCESSORY STRUCTURE AND CONSTRUCTED THREE NEW TWO-STORY SINGLE FAMILY DWELLING UNITS. EACH WITH INDIVIDUAL PARKING SPACES, TOTALING THREE.

THE SAME DEVELOPMENT STANDARDS THAT WERE APPLIED THEN STILL APPLY NOW.

THE PROJECT NOW PROPOSES TO CONSTRUCT A 494 SQUARE FOOT THIRD STORY ADDITION TO AN EXISTING TWO-STORY SINGLE FAMILY DWELLING.

THE ADDITION OF A THIRD STORY ON THE LIGHT WOULD CREATE NON CONFORMITIES TO THE LOT COVERAGE AND SIDE SETBACK AS NOTED IN THE SUPPLEMENTAL TABLES.

VARIANCES WOULD BE REQUIRED TO EXCEED THE MAXIMUM LOT COVERAGE AND ENCROACH IN THE SIDE SETBACKS PER THE R-2 DEVELOPMENT STANDARDS.

SO AS I'VE MENTIONED THE PROJECT REQUIRES TWO VARIANCES TO DEVIATE FROM THE R-2 DEVELOPMENT STANDARDS.

THE DOCUMENTATION SUBMITTED WAS ANALYZED AND STAFF CONCLUDES ALL OF THE FINDINGS CAN NOT BE MADE.

AND RECOMMENDS DENIAL OF THE VARIANCES FROM LOT COVERAGE AND SIDE SETBACK FOR A THIRD STORY RESIDENTIAL BUILDING.

I WILL GO FURTHER INTO THE FINDINGS THAT CANNOT BE MADE.

FOR THE FIRST FINDING, THERE ARE NO EXCEPTIONAL CIRCUMSTANCES APPLYING TO THE PROPERTY WHICH DO NOT GENERALLY APPLY IN THE SAME DISTRICT.

THE EXISTING DEVELOPMENT THAT WAS APPROVED BY ZAB IN JULY 2015 COMPLIED AND MET THE MINIMUM SIDE SETBACK WITH TWO STORY BUILDINGS. THE SAME APPLIES TODAY SO HAVING A FULLY BUILT-OUTSIDE THAT MEETS CURRENT ZONING STANDARDS IS NOT AN EXCEPTIONAL CIRCUMSTANCE.

FOR THE SECOND FINDING, THE VARIANCE IS NOT NECESSARY TO PRESERVE A SUBSTANTIAL PROPERTY RIGHT.

THE CURRENT SITE WAS DEVELOPED AS A RESIDENTIAL USE THAT MAXIMIZES THE ALLOWED DENSITY, DEVELOPED IN CONFORMANCE TO LOT COVERAGE AND SETBACKS AND MEETS THE APPLICABLE DEVELOPMENT STANDARDS FOR THE R-2 ZONING DISTRICT.

EXCEEDING THE ALLOWABLE STANDARDS IS NOT A PROPERTY RIGHT. AND FOR THE FIFTH FINDING, THE VARIANCE WILL NOT PROMOTE THE MUNICIPAL HEALTH, WELFARE, AND SAFETY AND BENEFIT THE CITY AS A WHOLE.

THE LOT WAS FULLY DEVELOPED TO COMPLY WITH THE LEGALLY ESTABLISHED REQUIREMENTS FOR THE EXISTING TWO-STORY RESIDENTIAL DEVELOPMENT.

EXCEEDING THE DEVELOPMENT STANDARDS FOR A THREE STORY RESIDENTIAL DEVELOPMENT WOULD BE GRANT A SPECIAL PRIVILEGE THAT IS NOT AVAILABLE TO OTHER PROPERTIES WITHIN THE SAME DISTRICT. SO TO TRANSITION, I'M GOING TO BE DISCUSSING THE PENDING MIDDLE HOUSING CHANGES.

AND I WANTED TO TAKE A MOMENT TO BASICALLY DISCUSS UNDER PROGRAM 29 OF THE HOUSING ELEMENT, THE CITY IS PURSUING AMENDMENTS TO SIMPLIFY AND STREAMLINE HOUSING DEVELOPMENT COMMONLY THROUGH THE MIDDLE HOUSING POLICY.

STAFF DRAFTED CHANGES AND IS PREPARING REVISIONS BASED ON THE PLANNING COMMISSION'S RECOMMENDATION RECEIVED FEBRUARY 7th THIS YEAR.

AND SOME OF THE CHANGES MAY IMPACT A VARIETY OF DEVELOPMENT STANDARDS IN THE R-2 DISTRICT.

AND THE ZONING AMENDMENTS ARE NOT YET SCHEDULED FOR CITY COUNCIL CONSIDERATION.

ESSENTIALLY, LAND USE DECISIONS MUST BE BASED ON THE FACTS THAT ARE TRUE AT THE TIME OF THE DECISION AND CANNOT BE BASED ON THE SPECULATION OF FUTURE ZONING CODE AMENDMENTS.

IN CONCLUSION, BASED ON THE PROJECT'S INCONSISTENCY WITH THE VARIANCE FINDINGS OF THE ZONING ORDINANCE, STAFF RECOMMENDS THE ZONING ADJUSTMENT BOARD TO DENY A VARIANCE FOR 1817-B CARLETON STREET.

THAT'S THE END OF MY PRESENTATION AND I'M AVAILABLE FOR FURTHER QUESTIONS.

>> Vice Chair Gaffney: WONDERFUL, THANK YOU SO MUCH.

DOES ANYONE ON THE COMMISSION HAVE ANY QUESTIONS FOR STAFF?

LOOKS LIKE WE ARE ALL GOOD AS OF RIGHT NOW.

SO RIGHT NOW WE WILL HAVE A FIVE-MINUTE PRESENTATION FROM THE APPLICANT.

>> HELLO, MY NAME IS JOHN NEWTON.

SO I DESIGNED THE THREE HOUSES ON THIS CARLETON LOT IN 2015.

AND I'VE BEEN HAPPY TO SEE THE THREE FAMILY THAT'S HAVE LIVED THERE TOGETHER.

AS A HOUSE DESIGNER IT'S HARD TO PREDICT WHO WILL EVENTUALLY LIVE IN THE HOUSE THAT'S BEING DESIGNED.

BUT HOUSES ARE MEANT TO CHANGE AS NEEDED TO ADAPT TO THE SPECIFIC FAMILY, NOT TO MENTION THE HOUSE MUST ADAPT TO CHANGES IN WORK AND LIFESTYLE PATTERNS. THE HOUSE WAS DESIGNED BEFORE COVID HIT.

ALL THE HOME OFFICES AND THAT SORT OF THING.

IN THE CASE OF TEF AND JAMIE, THEY HAVE THREE KIDS YOU SEE HERE. THEY ARE ALSO PROFESSIONALS AND WORK FROM HOME SO THEY NEED MORE SPACE THAN I ORIGINALLY DESIGNED.

IT'S ALSO IMPORTANT TO ALLOW FAMILIES TO STAY IN PLACE WITH THE NEIGHBORS THEY HAVE GROWN TO APPRECIATE, RATHER THAN FORCING THEM TO MOVE IF THEY NEED AN EXTRA BEDROOM.

IT'S A BENEFIT TO THE SOCIAL FABRIC TO ALLOW PEOPLE TO STAY IN THEIR HOUSE AS LONG AS POSSIBLE.

I JUST WANTED TO POINT OUT THE ADDITION IS NOT PARTICULARLY LARGE.

AND WE HAVE SUPPORT FROM THE OTHER NEIGHBORS BOTH ON THE PROPERTY AND THE IMMEDIATE NEIGHBORHOOD.

WE ARE ALSO NOT INCREASING THE FOOTPRINT OR THE LOT COVERAGE, IT'S JUST THE MERE FACT THAT R-2 REQUIRES LESS LOT COVERAGE IF YOU GO WITH A THIRD STORY.

I'M ACTUALLY PART OF THE PEOPLE GIVING SOME INPUT ON THE MIDDLE HOUSING CODE AND I'M TRACKING IT VERY CLOSELY.

SO IF AND WHEN IT IS APPROVED, THE LOT COVERAGE WILL GO UP TO 60%.

SO FROM 35 TO 60 IS HUGE.

THE SIDE SETBACK IS ALSO GOING TO GO TO FOUR FEET.

SO THE PROJECT WILL BE COMPLIANT AT SOME POINT IN THE FUTURE.

WE STILL NEED THE HEIGHT A.U.P.

SO THAT'S PART OF OUR PROJECT NOW TOO.

WE DID SUBMIT THIS IN OCTOBER OF LAST YEAR.

WE DON'T KNOW WHEN THE NEW CODE WILL BE APPROVED OR EXACTLY WHAT IS GOING TO BE APPROVED.

SO WE ARE HOPING YOU WILL SUPPORT US NOW IN GETTING THE VARIANCE.

>> Vice Chair Gaffney: WONDERFUL.

THANK YOU.

OKAY, YOU HAVE, LET'S SEE, WE DON'T -- WE WILL GIVE YOU TWO AND A HALF.

WE WILL SPLIT THE TIME EVENLY.

>> GOOD EVENING, MY NAME IS TEFERA, WITH MY WIFE, MY THREE CHILDREN, WE ARE THE FAMILY OUR ARCHITECT JUST DESCRIBED A FEW MOMENTS AGO.

WE APPRECIATE THE OPPORTUNITY TO TALK ABOUT THE PERMIT HERE.

A COUPLE POINTS.

WE MOVED IN 2017 AS A FAMILY OF THREE, AND NOW WE ARE A FAMILY OF FIVE, INCLUDING ALL THE CIRCUMSTANCES YOU ALL EXPERIENCED WITH THE PANDEMIC, WE NOW WORK PREDOMINANTLY FROM HOME AND WE HAVE MORE CHILDREN AND WE NEED MORE SPACE.

THE PICTURES THAT YOU SAW ABOUT THE LOT DON'T EXACTLY GIVE YOU A SENSE OF HOW SMALL THE LOT FOR THE PARTICULAR HOUSE IS.

THERE'S NO OTHER DIRECTION TO INCREASE SPACE IN THE HOUSE, EXCEPT UP.

WE HAVE A SOUL PATCH OF A FRONT YARD THAT WOULDN'T ACCOMMODATE SPACE AND WE REALLY DON'T HAVE A REAR AREA TO BUILD.

WORKING WITH THE ARCHITECT THIS WAS THE LEAST CHALLENGING WAY TO OFFER OUR FAMILY THE SPACE WE THINK WE NEED TO STAY IN THE COMMUNITY.

REGARDING RIGHTS AS FAR AS HOMEOWNERS, OUR POSITION IS REALLY ABOUT OUR DESIRE TO STAY IN THE COMMUNITY.

HOW DISRUPTIVE TRYING TO CHANGE HOMES TO FIND A LARGER HOME WOULD BE FOR US.

AND ALSO, AS YOU ALL KNOW, ENTERING A MARKET NOW WHERE INTEREST RATES HAVE CLOSE TO TRIPLED SINCE WE BOUGHT OUR HOME AND HOUSE PRICES ALSO INCREASING WHERE IT'S COST PROHIBITIVE.

SO EVEN THOUGH THERE ARE MANY CHALLENGES TO HAVING A PERMIT APPROVED AND EXPAND EVEN NOMINALLY AS YOUR STAFF REPORT DESCRIBES IT AS A NEGLIGIBLE INCREASE IN SIZE, ABOUT 494 SQUARE FEET, THOSE COSTS ARE SAVINGS FOR US COMPARED TO TRYING TO PAY FOR A HOUSE WE CAN'T AFFORD SOMEWHERE ELSE.

MOST IMPORTANTLY, HAVING RAISED OUR KIDS HERE, WE WANT TO STAY IN THE COMMUNITY AND WE DON'T WANT TO LEAVE THE COMMUNITY.

WE HAVE STRONG GENERAL SUPPORT FROM OUR NEIGHBORS ON CARLETON STREET.

AND WE ARE GRATEFUL TO THEM FOR THAT.

AND IN THINKING ABOUT HOW THIS BOARD MAKES DECISIONS FOR HOUSING FOR BERKELEY, I THINK IT'S REALLY IMPORTANT TO REMEMBER ALL THE PRESSURES THAT BERKELEY RESIDENTS ARE UNDER TO STAY IN THE COMMUNITY --

>> Vice Chair Gaffney: YOU GOT TO WRAP IT UP, MAYBE A COUPLE MORE SENTENCES.

>> SURE.

WHETHER IT'S RENTING OR BUYING, THERE'S A RESPONSIBILITY FOR THE COUNCIL AND IT'S APPOINTED BOARDS TO SUPPORT RESIDENTS IN EXPANDING NOMINALLY SPACES SO WE CAN HAVE --

>> Vice Chair Gaffney: THANK YOU SO MUCH.

WE APPRECIATE YOU ALL BEING HERE.

I GUESS SHOULD WE TAKE A PAUSE AND GET YES VOTED IN, NOT VOTED IN, EX PARTE'D?

>> Clerk: SURE, I THANK YOU.

COMMISSIONER GAFFNEY.

CHAIRPERSON DUFFY, PLEASE LET ME KNOW IF YOU ARE PRESENT AND REPORT ANY EX PARTE.

>> Chair Duffy: THANK YOU, AND APOLOGIES FOR THE DELAY. PRESENT, NO EX PARTE.

>> Clerk: THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT, WONDERFUL.

NOW BACK TO BUSINESS.

DOES ANYONE ON THE COMMISSION HAVE ANY QUESTIONS FOR THE APPLICANT AT ALL?

YES, COMMISSIONER YUNG?

>> B. Yung: YEAH, I WANTED TO ASK, SO STATE LAW AND THE LOCAL IMPLEMENTING ORDINANCE ALLOWS FOR ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS, I JUST WANT TO ASK YOU DID LOOK INTO THAT AT ALL.

DID THAT PROVE INFEASIBLE FOR THE SITE CHARACTERISTICS?

>> Vice Chair Gaffney: YOU CAN COME BACK UP.

>> YOU MEAN TO USE THE A.D.U. LAW AS A WAY TO KIND OF BYPASS THE VARIANCE?

OR?

>> B. Yung: CORRECT, TO USE A.D.U. LAW TO PERMIT THIS ADDITIONAL RESIDENTIAL SQUARE FOOTAGE.

>> YEAH, THAT'S AN INTERESTING QUESTION.

IT DIDN'T COME UP.

I DIDN'T THINK AN A.D.U., YOU COULD USE THAT TO VIOLATE THE LOT COVERAGE AND THE HEIGHT.

I COULD BE WRONG.

>> D. Sanderson: SO YOU CAN USE THE A.D.U. LAW TO BUILD AN A.D.U., TO BUILD A NEW UNIT.

YOU CAN BUILD A FREE-STANDING LITTLE COTTAGE TYPE THING OR BUILD IN ADDITION TO AN EXISTING DWELLING.

BUT THAT ADDITION MUST BE A UNIT, A SEPARATE DWELLING UNIT.

SO YOU WOULD GO FROM THREE TO FOUR DWELLING UNITS ON THE LOT.

THERE IS A RELAXATION OF THE LOT COVERAGE AND RELAXATION OF THE HEIGHT.

WHAT HEIGHT IS YOUR CURRENT BUILDING?

>> I CAN'T REMEMBER LIKE 26.

>> D. Sanderson: YOU COULDN'T GO UP BECAUSE OF THE HEIGHT.

I DON'T THINK IT WOULD.

I MEAN IT'S GOOD TO THINK ABOUT ALL THESE OPTIONS BUT IT'S NOT GOING TO HELP YOU.

>> I'M TRYING TO THINK THROUGH ALL THIS STUFF.

EVEN THE MIDDLE HOUSING, SPENDING HOURS AND HOURS EVERY WEEK, REPROCESSING IT AND THINKING THROUGH THE RAMIFICATIONS OF IT.

BUT IN THIS CASE, THEY ONLY WANTED A SMALL ADDITION.

>> D. Sanderson: I UNDERSTAND.

>> JUST ONE BEDROOM AND A HOME OFFICE.

SO TO TRY TO HAVE TO PAY FOR ANOTHER KITCHEN OR BATH AND ALL THIS, EVEN IF IT COULD HAVE BEEN APPROVED IN THAT WAY DIDN'T SEEM, WASN'T WHAT THEY WANTED.

IT DOESN'T SEEM APPROPRIATE IN THIS CASE.

>> Vice Chair Gaffney: THANK YOU, ARE THERE ANY OTHER COMMISSIONERS WHO HAVE ANY QUESTIONS? OR SHOULD WE GO TO THE PUBLIC NOW?

OKAY, YOU ARE ALL GOOD YOU CAN SIT DOWN.

WE WILL GO TO PUBLIC COMMENT NOW.

WE HAVE THREE SPEAKER CARDS.

ALSO, IF THERE IS ANYONE ONLINE, RAISE YOUR HAND NOW AND I WILL CALL ON YOU AFTER WE HEAR FROM EVERYONE IN PERSON.

SO THE FIRST PERSON I WILL CALL ON IS REBECCA GIBBERT.

COME ON UP TO THE PODIUM.

I DON'T SEE ANY ONLINE.

IF YOU ARE ON LINE PLEASE RAISE YOUR HAND NOW SO I CAN GET A SENSE OF HOW MANY PEOPLE ARE HERE.

I'M NOT SEEING ANY, SO I WILL STICK TO, YOU HAVE TWO MINUTES.

>> THANK YOU.

THANK YOU, ZAB FOR MEETING TONIGHT.

I DON'T KNOW -- I JUST NEED TO BE CLOSER OKAY.

THANK YOU FOR LISTENING TO MY REMARKS.

I'M REBECCA GEBHARDT, I LIVE AT 1814 PARKER STREET, ONE PROPERTY WEST OF THE CARLETON PROPERTY BUT ON THE NEXT STREET OVER.

AND I'VE OWNED THAT PROPERTY SINCE 2005 AND I'VE ENJOYED IMPROVING IT, RAISED SIX KIDS THERE, THEY ALL LAUNCHED.

I LIVE IN THE UPPER UNIT, IT'S A DUPLEX, WITH MY HUSBAND AND MY MOTHER-IN-LAW LIVES IN THE LOWER UNIT.

I'M HERE TO OPPOSE THE CARLETON STREET REQUEST FOR A VARIANCE.

AND I SUPPORT THE STAFF RECOMMENDATION TO DENY THE VARIANCE.

THE REASON THAT I'M NOT SUPPORTIVE, THERE ARE A COUPLE.

FIRST THE PROPERTY IS ALREADY SIGNIFICANTLY DENSER THAN THE
NEIGHBORHOOD.

THAN THE SURROUNDING NEIGHBORHOOD.

AS YOU HEARD THREE TWO-STORY HOUSES WERE BUILT ON THAT LOT WHICH
FORMERLY HAD A SINGLE FAMILY DWELLING AND ACCESSORY STRUCTURE.

I GENERALLY SUPPORT INCREASED DENSITY IN BERKELEY, BUT
INCREASING THE DENSITY OF THIS PARTICULAR LOT EVEN FURTHER BY
GOING UP JUST FEELS PRETTY EXTREME.

IN PARTICULAR, I FEEL LIKE WE ARE ALREADY IMPACTED BECAUSE THESE
HOUSES ARE MUCH CLOSER THAN THE OTHER HOUSES WERE TO US, AND ARE
HIGHER.

AND THERE'S A BIG BLOCK OF THEM, BECAUSE EVERYTHING IS TWO
STORY, THE NEW HEIGHT UNIT, IF APPROVED WOULD TOWER OVER THE
SURROUNDING HOUSES AND YARDS.

AND FOR ME, SINCE I'M ON THE UPPER FLOOR WITH MY HUSBAND,
THERE'S KIND OF A PRIVACY CONSIDERATION.

THE EXPERIENCE OF OUR KIND OF LIVING IN THAT HOUSE AND LOOKING
AND LIVING ON THAT SIDE OF THE HOUSE WILL SIGNIFICANTLY CHANGE.
OUR LIGHT WILL CHANGE, AND OUR PRIVACY WILL CHANGE.

SO I JUST WANTED TO -- I DIDN'T SIGN AND I'M NOT SUPPORTIVE.

SO THANK YOU.

>> Vice Chair Gaffney: WONDERFUL.

THANK YOU SO MUCH.

ALL RIGHT, WE ARE GOING TO GO TO OUR NEXT SPEAKER.

SINLEA BROADERSON.

>> I'M A NEIGHBOR ON CARLETON.

I'M CYNTHIA BROADERTON, I'VE LIVED THERE 33 YEARS.

I'VE SEEN OUR NEIGHBORHOOD CHANGE.

WHEN I MOVED THERE IT WAS REALLY DIVERSE.

AND NOW IT'S PRETTY MUCH NON-DIVERSE AND I WAS DELIGHTED TO SEE
A FAMILY OF COLOR MOVE IN TO THE STRUCTURE.

I WAS ORIGINALLY AGAINST THE BUILDING BECAUSE I DIDN'T LIKE THE
PARKING, BUT THE PARKING HAS TURNED OUT TO BE FINE.

I LOVE THE FAMILY, THEY HAVE BEEN A WONDERFUL ADDITION TO OUR
NEIGHBORHOOD.

I SEE JAMIE, THE MOM, WORKING BEHIND A SCREEN BECAUSE THERE'S
NOT ENOUGH ROOM FOR A REGULAR OFFICE.

AND THEY NEED MORE ROOM.

THEY HAVE THREE KIDS THAT ARE GROWING.

I WOULD LOVE TO SEE THEM GROW UP.

I WOULD LOVE TO SEE THEM STAY IN THE NEIGHBORHOOD AND GROW UP.

I'M SURPRISED BY THE LAST PERSON BECAUSE SHE'S ON PARKER AND
THEY ARE TALKING ABOUT THE FRONT OF THE HOUSE HAVING THE
ADDITION.

I WOULD BE SURPRISED THAT WOULD IMPACT SOMEONE FROM PARKER STREET.

I ALSO WANTED TO SAY IT WAS ORIGINALLY TWO LOTS THAT LEN HOLD, MY NEIGHBOR BEFORE THIS WAS BUILT, IT WAS ORIGINALLY TWO LOTS AND ONE OF THE HOUSES BURNED SO THERE WAS ONLY ONE HOUSE LEFT ON A TWO-LOT CONFIGURATION BEFORE IT WAS TURNED INTO WHAT IT IS NOW, THE ONE LOT THAT IT IS NOW.

ANYWAY, I AM FOR THE ADDITION.

THANK YOU.

>> Vice Chair Gaffney: WONDERFUL.

THANK YOU SO MUCH.

SO FAR IT LOOKS LIKE WE ONLY HAVE ONE MORE SPEAKER IN PERSON.

THAT'S ANNA COSBY.

COME ON UP HERE.

YOU ARE READY.

IT LOOKS LIKE WE DID JUST GET AN ATTENDEE ONLINE, I WILL COME TO YOU NEXT.

REMEMBER IF YOU ARE ON LINE AND WOULD LIKE TO SPEAK, NOW IS THE TIME TO RAISE YOUR HAND.

ANNA, GO FOR IT.

>> MY NAME IS ANNA COSBY, I LIVE AT 1818 PARKER STREET.

I HAVE BASICALLY LIVED IN BERKELEY ALL MY LIFE.

SO THEIR HOUSE IS KITTY CORNER TO WHERE I LIVE ON PARKER.

I REMEMBER WHEN THE LOT BEHIND ME WAS JUST ONE HOUSE.

SO IF YOU APPROVE THEM BUILDING THIS EXTRA FLOOR, I'M ALREADY
LOOKING IN THEIR BACKYARD, LOOKING STRAIGHT.

I DON'T WANT TO SEE ALL OF THAT.

SO I WOULD APPRECIATE IF, IT'S JUST THE LOT IN ITSELF, YOU'VE
GOT THREE HOUSES THERE WHEN BEFORE IT WAS JUST ONE.

SO FOR ME, I WOULD PREFER THAT YOU DENY THIS BECAUSE IT'S
ALREADY TOO MUCH IN THAT LOT ALREADY.

AND SO BY YOU ADDING AN ADDITIONAL FLOOR ON TOP, IT'S GOING TO
BE HIGHER THAN ANYTHING ON PARKER AS WELL AS ON CARLETON STREET.
SO IT JUST DOESN'T MAKE ANY SENSE TO ME.

THANK YOU.

>> Vice Chair Gaffney: WONDERFUL.

THANK YOU SO MUCH.

ALL RIGHT, THOSE ARE ALL OF OUR GREEN CARDS FOR IN-PERSON.

I WILL MOVE TO ONLINE NOW.

WE HAVE ONE HAND, SHANA, I WILL ALLOW YOU TO TALK NOW.

>> CAN YOU HEAR ME NOW?

>> Vice Chair Gaffney: I CAN, YOU HAVE TWO MINUTES.

>> GREAT, I'M SHANA, I LIVE DIRECTLY ACROSS THE STREET FROM 1817
CARLETON.

THIS PROJECT WOULD HAVE NO IMPACT ON US.

EVEN THOUGH IT'S DIRECTLY ACROSS THE STREET FROM OUR HOUSE, I
SIT AND WORK IN AN UPSTAIRS OFFICE, BUT THERE'S A HUGE TREE.

SO I WOULDN'T EVEN SEE, EVEN IF IT WERE THREE STORIES I WOULDN'T EVEN SEE.

SO I THINK SPEAKING ONLY FROM OUR EXPERIENCE I THINK IT WOULD BE A FINE PROJECT FOR CARLETON STREET.

AND YOU KNOW WE LOVE HAVING JAMIE AND TEFA AS NEIGHBORS, IF THIS HELPS THEM STAY IN THE NEIGHBORHOOD THAT WORKS FOR US.

THAT'S KIND OF IT FOR MY COMMENT.

>> Vice Chair Gaffney: WONDERFUL.

THANK YOU SO MUCH.

ALL RIGHT, WELL IT LOOKS LIKE THAT WAS OUR ONLY HAND.

SO IF THAT IS THE CASE, I AM READY TO VOTE TO CLOSE THE PUBLIC HEARING.

WE COULD TAKE A VOICE VOTE FOR THAT.

>> Clerk: OKAY, I THINK TECHNICALLY CHAIR GAFFNEY DOES THIS.

>> Vice Chair Gaffney: IF ANYONE OPPOSES -- ANYONE IN FAVOR TO CLOSE THE PUBLIC HEARING, SAY AYE?

ANYONE OPPOSED SAY NAY.

ALL RIGHT, THE PUBLIC HEARING IS OFFICIALLY CLOSED.

THANK YOU FOR THAT.

ALL RIGHT.

NOW WE WILL GO TO COMMISSIONER COMMENTS.

ANYONE WOULD LIKE TO GO FIRST?

GO AHEAD.

>> D. Sanderson: I WANTED TO SAY THAT THE ISSUE TONIGHT IS ABOUT THE VARIANCE, NOT ABOUT THE PROJECT.

THE PROJECT IS A WONDERFUL PROJECT AND CLEARLY THE FAMILY NEEDS MORE SPACE.

BUT VARIANCES ARE VERY HARD TO GET APPROVED IN THE CITY OF BERKELEY.

RARELY DO WE APPROVE VARIANCES.

IT'S PARTLY BECAUSE IT HAS TO BE SOME VERY SPECIAL CIRCUMSTANCE THAT YOU DON'T FIND EVERYWHERE ELSE IN THE CITY.

TO VOTE THE VARIANCE DOWN HAS NO BEARING, IT SHOWS NOTHING ABOUT WHAT WE THINK ABOUT THE PROJECT.

IT'S ENTIRELY SEPARATE.

SO I JUST WANTED YOU TO UNDERSTAND THAT IF IT'S A GOOD PROJECT JUST SIT AND WAIT AND SEE WHAT MIDDLE HOUSING WILL DO AND YOU MAY HAVE AN OPPORTUNITY TO COME BACK AT A LATER TIME WHEN THE ZONING ORDINANCE HAS CHANGED.

BUT UNDER THE CURRENT ZONING ORDINANCE, IN ORDER TO WAIVE THE TWO STANDARDS YOU NEED WAIVED, THE ONLY WAY TO DO THAT IS BY APPROVING A VARIANCE AND UNFORTUNATELY, IN MY OPINION, YOU DON'T MEET THE REQUIREMENTS, THE FINDINGS FOR A VARIANCE.

BUT PLEASE DON'T THINK IT'S ANY -- I MEAN I APPRECIATE THE NEIGHBORS COMING OUT.

BUT THIS IS ABOUT THE VARIANCE, NOT ABOUT THE PROJECT PROPER.

SO THANK YOU.

>> Vice Chair Gaffney: THANK YOU, COMMISSIONER SANDERSON.

COMMISSIONER O'KEEFE?

>> S. O'Keefe: YEAH, I WILL BRIEFLY SECOND COMMISSIONER SANDERSON'S COMMENTS.

THEY ARE LAUGHING BECAUSE I'M KIND OF KNOWN AS THE ANTI-VARIANCE CRUSADER, SO YOU KNEW I WAS GOING TO SAY SOMETHING.

YOU SAID IT VERY WELL.

I WILL SAY IT BRIEFLY, THE PROJECT SEEMS GREAT, YOUR FAMILY IS LOVELY, I WISH YOU ALL THE BEST.

BUT I PERSONALLY ONLY VOTED YES ON ONE VARIANCE ON THE BOARD, IT WAS ONE THAT MET THIS VERY HIGH REQUIREMENTS.

THAT'S ALSO WHY I'M GOING TO VOTE NO ON THIS, THAT'S WHY.

I DO HOPE YOU FIGURE OUT YOUR SITUATION OR GET IT BUILT UNDER UPCOMING LAWS THAT HOPEFULLY PASS SOON.

WISH YOU THE BEST BUT I'M GOING TO VOTE NO.

>> Vice Chair Gaffney: SORRY, ANY OTHER COMMISSIONERS WANT TO SPEAK ON THIS?

COMMISSIONER YUNG?

>> B. Yung: YEAH, NOT TO ADD TOO MUCH TO THE CHORUS, I JUST WANT TO PROVIDE SOME CONTEXT WHY WE ARE HEADED IN THIS DIRECTION.

IN THE BEGINNING, THE EARTH WAS MADE.

AS TO HOW THAT HAPPENED I WILL LEAVE THAT UP TO THE LISTENERS DECISION MAKING AND THEN THE ARTICLES OF CONFEDERATION OCCURS, THE UNITED STATES, A BUNCH OF STATES INDEPENDENT NATIONS DECIDED

TO GET TOGETHER AND DRAFT A BUNCH OF RULES THAT OTHERWISE, IF YOU KNOW, THESE RULES WERE SILENT STATES WERE GIVEN WHAT ARE CALLED RESERVED POWERS. IN CALIFORNIA, THIS MEANS ANYTHING NOT EXPRESSLY STATED, THE STATE DELEGATES ALL POWERS, EXPRESSLY LAND USE AUTHORITY TO CITIES AND COUNTIES.

WE, THE CITY AND COUNTY THE MAIN THING THEY DO WITH THAT IS ZONING.

THOSE ARE THE RULE THAT'S DETERMINE WHAT YOU CAN AND CAN NOT DO. IN THIS CASE THEY SAID THOU SHALT BE ZONED R-2 AND THOU SHALT FOLLOW THOSE RULES.

WE ARE A QUASI JUDICIAL BODY, WE HAVE TO MAKE FINDINGS CONTAINED IN OUR CODE THAT REFLECT THE ZONING CODE ESTABLISHED BY THE LEGISLATIVE DECISION MAKING OF OUR CITY COUNCIL.

SO THOSE ARE THE CONSTRAINTS UNDER WHICH WE OPERATE.

IT REALLY MAKES ME FEEL BAD TO RULE IN A DIRECTION THAT DOESN'T ALLOW SOMEONE TO DO WHAT THEY WANT AND EXPAND AND MAKE THEIR HOUSING MORE FAMILY-FRIENDLY.

THESE ARE THE CONSTRAINTS WHICH WE OPERATE IN.

I HOPE THAT MADE A LITTLE BIT MORE SENSE.

SO THANK YOU.

>> Vice Chair Gaffney: COMMISSIONER O'KEEFE?

>> S. O'Keefe: I WANT TO ADD ONE MORE THING, WHICH IS, THIS IS THE REASON I'M SO ANTI-VARIANCE.

AS HE MENTIONED, WE ARE QUASI JUDICIAL, SO IF WE DID APPROVE THIS, WE WOULD BE OPENING THE DOOR FOR ANYONE ELSE WITH A REALLY GREAT STORY AND A REALLY COMPELLING PROJECT TO ALSO DEMAND AN EXCEPTION TO THE LAW.

WE CAN'T HAVE THAT.

WE ARE HOLDING ON TO THE RULE OF LAW HERE.

AND THAT'S THE SPIRIT AT LEAST WITH WHICH I WILL BE VOTING.

>> Vice Chair Gaffney: ALL RIGHT, THANK, ALL COMMISSIONERS. AND YES I COMPLETELY AGREE WITH EVERYONE AND EVERYTHING STATED.

YOUR FAMILY IS LOVELY AND WE ARE HAPPY TO HAVE YOU HERE AND WE HOPE IN THE FUTURE YOU ARE ABLE, NOT HAVE TO COME BACK FOR THIS, BUT YOU KNOW, IT'S NOT -- JUST A VARIANCE THING.

IS THERE ANY MOTIONS TO ENTERTAIN?

COMMISSIONER?

>> C. Kahn: I WOULD JUST LIKE TO ADD MY COMMENTS THAT THE PLEA ON THE PART OF THE FAMILY SOMETHING WITH MY FELLOW COMMISSIONERS I FEEL, I'M A FAMILY PERSON MYSELF.

AND I APPRECIATE YOUR NEED TO PROVIDE FOR YOUR FAMILY.

I THINK BRANDON'S IDEA OF AN A.D.U. MIGHT BE A WAY OUT FOR YOU. BUT I HAVE TO AGREE, AND I WANT TO SAY, UNLIKE MY FELLOW COMMISSIONER SHOSHANA HERE, I VOTED FOR EVERY VARIANCE UNTIL TONIGHT.

AND THAT'S BECAUSE THE FINDINGS AREN'T THERE.

AND WE ARE A JUDICIAL, NOT A LEGISLATIVE BODY.

I FEEL IF WE WERE TO VOTE FOR THIS TONIGHT, WE WOULD BE ESSENTIALLY BE TAKING THE POWERS OF THE COUNCIL AWAY FROM THEM. WE WOULD BE SAYING R-2 NOW CAN BE TALLER. SO I WILL HAVE TO VOTE AGAINST IT. AND I APOLOGIZE.

JOHN HAS DONE A GREAT JOB DESIGNING A BEAUTIFUL HOME FOR YOU, THE ORIGINAL HOME.

AND HIS REMARKABLE ABILITIES AS A DESIGNER HE HAS ACTUALLY DESIGNED A LOT OF HOUSE ON A RELATIVELY SMALL LOT.

HOPEFULLY MAYBE WITH THE A.D.U. YOU WILL HAVE A WAY TO DO SOMETHING THAT IS CONSISTENT WITH THE STATE AND MUNICIPAL CODE. AND THAT'S WHAT I WOULD RECOMMEND AS A POSSIBLE OPTION FOR YOU. I THINK BRANDON'S IDEA IS A VERY GOOD IDEA BUT I WILL HAVE TO VOTE AGAINST THIS TONIGHT AND I'M VERY SORRY TO SAY THAT. THANK YOU.

>> Vice Chair Gaffney: WOULD ANYONE LIKE TO MAKE A MOTION ONE WAY?

>> C. Kahn: I'LL MAKE A MOTION TO NOT APPROVE THE VARIANCE APPLICATION.

>> D. Sanderson: SECOND.

I SECOND THAT.

WHICH IS BASICALLY APPROVING THE STAFF RECOMMENDATION.

>> C. Kahn: I MOVE TO APPROVE THE STAFF RECOMMENDATION TO DENY THE VARIANCE, YES.

>> Vice Chair Gaffney: THANK YOU FOR THE CLARITY ON A CONFUSING SITUATION.

NOW WE CAN TAKE A ROLL CALL VOTE.

>> Clerk: THANK YOU, I HAVE A MOTION FROM COMMISSIONER KAHN AND SECOND FROM COMMISSIONER SANDERSON ON VARIANCE APPLICATION CP 2023 0168 TO DENY THE PROJECT, AS RECOMMENDED BY STAFF.

WHEN I CALL YOUR NAME PLEASE STATE YOUR VOTE.

>> CHAIRPERSON GAFFNEY?

>> Vice Chair Gaffney: YES.

>> COMMISSIONER SANDERSON?

>> D. Sanderson: YES.

>> COMMISSIONER YUNG?

>> B. Yung: YES.

>> COMMISSIONER KAHN?

>> C. Kahn: YES.

>> COMMISSIONER O'KEEFE?

>> S. O'Keefe: YES.

>> AND COMMISSIONER/ALSO CHAIRPERSON DUFFY?

>> Chair Duffy: YES.

>> Vice Chair Gaffney: ALL RIGHT.

THANK YOU.

IS THIS APPEALABLE TO COUNCIL?

>> Clerk: IT IS.

>> Vice Chair Gaffney: IT IS.

IT'S APPEALABLE TO COUNCIL.

AND YES, WE ARE SORRY IT IS NOT A FAVORABLE OUTCOME.

THANK YOU, COMMISSIONERS. I ALWAYS APPRECIATE HOW THOROUGH EVERYONE IS AND IT'S GREAT SERVING WITH YOU ALL.

AND THANK YOU FOR ALL YOUR PATIENCE FOR EVERYONE ON TENTH STREET.

>> Clerk: THANK YOU, CHAIR GAFFNEY.

COMMISSIONER KAHN WILL NOW BE HEADED OUT.

HE IS RECUSING HIMSELF.

ALL RIGHT, WELL FOR TENTH STREET, WE ARE GOING TO START WITH A STAFF PRESENTATION PER USUAL.

>> Vice Chair Gaffney: ALL RIGHT, LOOKS LIKE WE HAVE NILU ON HERE.

>> CAN YOU SEE MY SCREEN?

>> Vice Chair Gaffney: WE CAN, YES.

>> NILU KARIMZADEGAN: THE PROJECT BEFORE YOU IS AT 2600 TENTH STREET.

THIS IS AN APPEAL OF THE ZONING OFFICER'S DECISION TO APPROVE AN ADMINISTRATIVE USE PERMIT, ZP 2023-0031, TO CHANGE THE USE OF THREE TENANT SPACES, TOTAL OF 9,750 SQUARE FEET, FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT RESULTING IN A TOTAL OF 29,745 SQUARE FEET OF RESEARCH AND DEVELOPMENT SPACE IN A SEVEN-STORY BUILDING.

ZONING PERMITS REQUIRED ADMINISTRATIVE USE PERMIT PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 23.206.020.

AND A.U.P. TO CONSTRUCT NINE SPACES. THE PROJECT IS LOCATED, IT'S TAKING OVER A WHOLE BLOCK THAT IS LOCATED BETWEEN PARKER AND CARLETON STREETS AND NINTH AND TENTH STREETS.

IT'S LOCATED WITHIN THE MIXED USE LIGHT INDUSTRIAL DISTRICT OR ALSO KNOWN A MU-LI.

AS YOU CAN SEE IN THE FLOOR PLAN, THE PROPOSED AREA ATTACHED AND ON THE FIRST FLOOR IT INCLUDES UNITS 105 AND 106.

AND THE SECOND FLOOR IT INCLUDES UNIT 2Z 01.

THE BLUE AREA IS PREVIOUSLY CONVERTED TO RESEARCH AND DEVELOPMENT ON, UNDER A ZONING CERTIFICATE WHICH IS OVER A BY-RIGHT TYPE OF PERMIT.

I'M GOING TO PROVIDE SOME BACKGROUND ON THE HISTORY OF THE A.U.P. AND THE APPEAL LETTER POINTS.

ZONING OFFICER DECISION TO APPROVE THE A.U.P. WAS BASED ON ANALYSIS AND DETERMINATION THAT THE PROPOSED CHANGE USE FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT CONFORMS TO THE APPLICABLE PROVISIONS IN THE ZONING ORDINANCE, AND THE PROPOSED RESEARCH AND DEVELOPMENT USE IS CONSISTENT WITH THE PURPOSE OF THE DISTRICT, COMPLIES WITH THE WEST BERKELEY PLAN AND IS COMPATIBLE WITH THE SURROUNDING DEVELOPMENT.

WE RECEIVED AN APPEAL LETTER IN DECEMBER 2023.

THAT INCLUDED SIX POINTS.

THOSE POINTS ARE THE FOLLOWING:

ONE, THE EXISTING USE IS ARTS/CRAFTS STUDIO WHICH IS A PROTECTED NON-INDUSTRIAL USE.

TWO, A PREVIOUS STAFF REPORT HAS CALLED THE EXISTING MEDIA PRODUCTION USE A PROTECTED USE.

THREE, THIS CHANGE OF USE WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF THOSE WORKING AT 2600 TENTH STREET.

FOUR, THE CHANGE OF USE DOES NOT BETTER SERVE THE PURPOSES OF THE DISTRICT.

FIVE, THE CHANGE OF USE IS NOT CONSISTENT WITH TWO OF THE MU-LI DISTRICT PURPOSES AND SIX, THE PROPOSED PROJECT DOESN'T ABIDE BY THE WEST BERKELEY PLAN FOR THE PROTECTED ART USERS.

I HAVE PROVIDED DEFINITION FOR MEDIA PRODUCTION AND ARTS/CRAFTS STUDIO AND PROTECTED USES HERE.

IT'S LONG AND WORDY, I WON'T REPEAT IT UNLESS SOMEONE WANTS ME TO REPEAT IT.

HOWEVER, THE SUMMARY OF THESE DEFINITIONS AND HOW THEY ARE DIFFERENT IS THAT ARTS AND CRAFTS STUDIO IS COMMONLY DIFFERENTIATED FROM MEDIA PRODUCTION BY SCALE AND PURPOSES OF THE ESTABLISHMENT UNDERSTOOD TO ENCOMPASS STUDIO SPACES FOR ART PRODUCTION AND PERFORMING ART INSTRUCTIONS, REHEARSAL STUDIOS, THEATER SPACES, MEDIA PRODUCTION USED BY CONTRAST ARE COMMERCIAL ARTS AND CRAFT, ARTS RELATED BUSINESS SERVICES INVOLVING VARIOUS MEDIA TYPES.

THE POINT ABOUT THE PROTECTED USES I WANT TO HIGHLIGHT HERE IS ARTS AND CRAFTS STUDIOS CLASSIFIEDS A PROTECTED NON-INDUSTRIAL USE IN THIS DISTRICT ONLY IF IT WAS LEGALLY ESTABLISHED AS OF JULY 6, 1989 AND IT EXISTS AS A SINGLE STAND-ALONE USE OR COMBINED WITH RESIDENTIAL USE IN A LIVE/WORK UNIT.

I HAVE PROVIDED FULL ANALYSIS, EVIDENCE AND CONCLUSIONS FOR ALL THE APPEAL POINTS IN THE STAFF REPORT.

AND I'M GOING TO GO OVER A SUMMARY OF THE POINTS.

APPEAL POINT #1: THE DESIGNATION OF THE EXISTING USE AS MEDIA PRODUCTION IS INCORRECT AND THIS USE MUST BE TREATED AS ARTS AND CRAFT STUDIO SUBJECT TO THE PROVISIONS FOR PROTECTED NON-INDUSTRIAL USE IN THE MU-LI DISTRICT.

STAFF EVALUATED THE PERMIT HISTORY AND DETERMINED AS OF JULY 6, 1989 WAS MEDIA USES WHICH IS NOT A PROTECTED MEDIA USE.

EVEN IF THE USE WERE CONSIDERED ARTS AND CRAFTS STUDIO IT WOULD STILL NOT BE A PROTECTED NON-INDUSTRIAL USE BECAUSE IT WAS NOT ESTABLISHED AS OF JULY 6, 1989 AND IT HAS NOT BEEN A SINGLE STAND-ALONE USE.

POINT #2: THE 2008 STAFF REPORT CONSIDERS MEDIA PRODUCTION AS A PROTECTED USE.

WHEREAS THE MOST RECENT A.U.P., THE A.U.P. IN FRONT OF YOU, DESCRIBES THE SAME USE AS A NON-PROTECTED INDUSTRIAL USE.

BASED ON THE STAFF RESEARCH AND ANALYSIS, THE EXISTING USE IS STILL BEST IDENTIFIED AS MEDIA PRODUCTION AND NOT CONSIDERED A PROTECTED NON-INDUSTRIAL USE BY THE CODE.

AND THE REFERENCE IN 2008 VARIANCE STAFF REPORT WAS MADE IN ERROR AND CANNOT SUPERSEDE THE APPLICABLE REQUIREMENTS AND DEFINITIONS PRESENT IN THE ZONING ORDINANCE TITLE 23 AND REQUIRED FINDINGS ARE MADE BASED ON THE CIRCUMSTANCES AT THE TIME A DECISION IS MADE ON AN APPLICATION.

APPEAL POINT #3: THE PROPOSED PROJECT WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF THOSE WORKING AT 2600 TENTH STREET BECAUSE THE CONVERSION OF MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT DIMINISHES THE ABILITY FOR ARTISTS TO COLLABORATE ON PROJECTS AND LIMITS THEIR CONTRIBUTION TO CITY.

THE PROPOSED PROJECT INCLUDES A CHANGE OF USE FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT WITHIN AN EXISTING BUILDING IN THE MU-LI DISTRICT WHERE LIGHT USE INDUSTRIAL USE IS ALLOWED.

RESEARCH AND DEVELOPMENT IS ALLOWED IN THIS DISTRICT AND THE PROPOSED PROJECT CONFORMS TO THE APPLICABLE DEVELOPMENT STANDARD.

APPEAL POINT #4, THE CHANGE OF USE DOES NOT BETTER SERVE THE PURPOSES OF THE DISTRICT AS REQUIRED BY THE TENANT SPACE RECONFIGURATION SECTION.

STAFF DIDN'T MAKE ANALYSIS FOR THIS APPEAL POINT BECAUSE THE FINDING REFERENCED IN THE APPEAL LETTER ARE IN REGARDS TO THE TENANT SPACE RECONFIGURATION.

SO IT DOESN'T APPLY TO THE CHANGE OF USE.

APPEAL POINT #5, THE CHANGE OF USE IS NOT CONSISTENT WITH THE FOLLOWING 2 MU-LI DISTRICT PURPOSES.

I'M GOING TO READ THOSE.

ENCOURAGE DEVELOPMENT OF A MIXED USE LIGHT INDUSTRIAL AREA FOR A RANGE OF COMPATIBLE USES AND THE SECOND ONE ENCOURAGE THE CREATION AND CONTINUATION OF WELL-PAID JOBS WHICH DO NOT REQUIRE ADVANCED DEGREES. APPELLANTS BELIEVE THERE'S PLENTY OF SPACE ALREADY DEDICATE TODAY RESEARCH AND DEVELOPMENT IN BERKELEY WHILE THERE'S NOT ENOUGH FOR ARTISTS AND FILMMAKERS AND MOST RESEARCH AND DEVELOPMENT JOBS REQUIRE ADVANCED DEGREES. IN WHICH STAFF RESPONDS TO BY SAYING THAT RESEARCH AND DEVELOPMENT IS CLASSIFIED AS AN INDUSTRIAL AND HEAVY COMMERCIAL USE AND IT IS COMPATIBLE WITH A RANGE OF USE THAT'S ARE ALLOWED WITHIN THE DISTRICT.

IT WOULD ALLOW A VARIETY OF RESEARCH AND DEVELOPMENT TENANTS. THEY MUST BASE THEIR DECISION ON THE REQUIRED FINDINGS AND CONSIDER THE PROPOSED LAND USE IN THEIR DECISIONS.

THEY MAY NOT DENY OR APPROVE A PROJECT BASED ON SPECULATION, UNSUBSTANTIATED OPINIONS OR THE LEVEL OF SUPPORT OR OPPOSITION

OF VARIOUS PARTIES REGARDING POTENTIAL ECONOMIC AND SOCIAL IMPACTS.

OH, SORRY.

AND APPEAL POINT #6, THE PROPOSED PROJECT DOESN'T ABIDE BY THE WEST BERKELEY PLANS GOALS AND POLICIES FOR THE PROTECTED ARTS USES AND IN PARTICULAR, GOAL #7, FOR ECONOMIC DEVELOPMENT AND WEST BERKELEY PLAN APPENDICES, APPENDIX B CULTURAL RESOURCES OF WEST BERKELEY ARE NOT SUPPORTED BY THE PROPOSED PROJECT.

THE EXISTING USE IS MEDIA PRODUCTION AND ANY CURRENT ARTS CRAFT STUDIO WOULD NOT MEET THE CRITERIA FOR A PROTECTED NON INDUSTRIAL USE.

THE PROPOSED PROJECT WHICH IS A LIGHT INDUSTRIAL MANUFACTURING USE WOULD NOT BE CONTRARY TO THE GOAL POLICY OR IMPLEMENTATION STRATEGY RAISED IN THE APPEAL.

DID I GO OVER ALL OF THE -- YES, SORRY.

SO RECOMMENDATION IS BECAUSE THIS PROJECT IS CONSISTENT WITH THE ZONING ORDINANCE AND GENERAL PLAN, AND WOULD HAVE MINIMAL IMPACT ON SURROUNDING PROPERTIES, STAFF RECOMMENDS THAT THE ZONING ADJUSTMENTS BOARD UPHOLD THE ZONING OFFICER DECISION AND APPROVE THE A.U.P. PER FINDINGS AND CONDITIONS.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

WONDERFUL.

THANK YOU SO MUCH.

NOW WE WILL GO TO THE APPELLANT.

THE APPELLANT WILL HAVE FIVE MINUTES. OH, SORRY, COMMISSIONER QUESTIONS, THANK YOU SO MUCH, STAFF.

YES?

COMMISSIONER SANDERSON?

>> D. Sanderson: CAN YOU TELL ME WHO OCCUPIES THESE THREE UNITS NOW?

ARE THEY VACANT?

>> NILU KARIMZADEGAN: THIS IS A GOOD QUESTION FOR THE APPLICANT. I BELIEVE THEY WERE, BUT I WANT TO CONFIRM IT.

>> D. Sanderson: OKAY, THANK YOU.

>> Vice Chair Gaffney: COMMISSIONER QULUNG?

-- YUNG?

>> B. Yung: SO THE ITEM BEFORE US NOW IS AN APPEAL.

SO I WANTED TO ASK, WE ARE MAKING A DECISION BASED ON THE CIRCUMSTANCES OF THE ORIGINAL ZONING -- THIS IS A BY-RIGHT DECISION?

>> NILU KARIMZADEGAN: SORRY IF WHAT I SAID WAS CONFUSING, THIS IS AN APPEAL OF THE A.U.P. WHICH WAS APPROVED BY THE ZONING OFFICER.

I JUST EXPLAINED THAT PRIOR TO THIS A.U.P., THERE WAS CONVERSION OF MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT UNDER A SEPARATE BY-RIGHT ZONING CERTIFICATE.

THAT HAPPENED BACK IN 2022.

THE BLUE AREA ON PLANS, THAT'S THE AREA.

>> I CAN ALSO HELP TO MAYBE CLARIFY TOO.

WITHIN THE MU-LI, THE RESEARCH AND DEVELOPMENT, THE A.U.P.

STANDARD IS A SIZE THRESHOLD.

SO ONCE YOU CROSS 20,000 SQUARE FEET OF RESEARCH AND DEVELOPMENT

IT REQUIRES AN A.U.P., WHICH IS WHY THE PREVIOUS APPROVAL WAS

JUST UNDER 20,000 -- 19,000 SOMETHING.

SO THIS 9700 SQUARE FOOT ADDITION PUTS IT OVER THE 20,000 SQUARE

FOOT THRESHOLD WHICH IS WHY IT NEEDED THE A DISCRETIONARY

APPROVAL.

>> B. Yung: SO THIS APPEAL IS FOR THE A.U.P. WHICH WAS

ORIGINALLY GRANTED BY THE ZONING OFFICER?

OH, OKAY.

THANK YOU.

ACTUALLY, JUST TO CLARIFY, WAS THE DECISION MADE BY THE ZONING

OFFICER ALSO A JUDICIAL ACT?

>> THE ZONING OFFICER DECISION IS A DISCRETIONARY DECISION.

SO ADMINISTRATIVE USE PERMITS, THE ZONING OFFICERS, THE REVIEW

AUTHORITY.

AND THEN FOR USE PERMITS, THE REVIEW AUTHORITY IS ZAB AND THEN

ZAB REVIEWS APPEALS OF THE ZONING OFFICER DECISIONS.

>> Vice Chair Gaffney: THANK YOU.

GOOD QUESTIONS.

ANY OTHER QUESTIONS FOR STAFF BEFORE WE MOVE ON?

OKAY.

>> Chair Duffy: I HAVE A QUESTION BECAUSE THIS IS VERY, I REMEMBER THIS LAST TIME WHEN IT CAME BEFORE US A LITTLE BIT DIFFERENTLY.

THERE'S NOT ONLY HISTORY BUT SPLITTING HAIRS AROUND DEFINITIONS AND CLARITY REQUIRED.

I HAD A QUESTION, THESE DEFINITIONS REALLY MATTER.

THEY WERE IN THE DEFINITION AND ON THE SCREEN BUT THEY WEREN'T READ AND I'VE READ THEM.

HAVE THOSE DEFINITIONS CHANGED SINCE -- WELL, WHEN IS THE LAST TIME, WAS IT 1999 THESE DEFINITIONS WERE BAKED INTO THE WEST BERKELEY PLAN?

IS THAT WHAT IT IS?

I HAVE JUST A QUESTION.

I SEE IT NOW.

>> Vice Chair Gaffney: DO YOU HAVE AN ANSWER, FEEL FREE?

>> NO, THEY IMPLEMENT THE WEST BERKELEY PLAN.

SO IT WAS AFTER 1999, I STARTED WITH THE CITY IN 2023 AND WAS PART OF THE EFFORT TO TRY TO COME TO SOME AGREEMENT ON WHAT THESE DEFINITIONS ARE.

SO THESE DEFINITIONS WERE WORKED OUT AFTER MANY HOURS OF CONVERSATIONS WITH WEBAIC AND OTHER INTERESTED PARTIES.

THE EFFORT MADE IN THE ZONING ORDINANCE TO COMPLY WITH THE WEST BERKELEY PLAN.

AND, AT THE TIME, YOU KNOW, WE, THIS WAS KIND OF A MEDIATED OUTCOME.

SO MY UNDERSTANDING AT THE TIME WAS WITH THIS LANGUAGE, EVERYONE WAS HAPPY WITH THESE DEFINITIONS.

SO YOU KNOW, OPINIONS MAY CHANGE OVER TIME.

BUT AT THE TIME, THESE WERE OUR MEDIATED SOLUTION TO TRY TO GET EVERYONE ON THE SAME PAGE.

>> Chair Duffy: I REALLY APPRECIATE THAT CLARITY, THANK YOU.

AND I GUESS, HERE'S A QUESTION, IF THE DEFINITIONS WERE TO CHANGE, DO THEY ONLY CHANGE, I GUESS THE VARIETY OF WAYS THEY MIGHT.

BUT DOES ONE, WHEN IS IT, WHEN THE PLAN IS REVISITED AND REPUBLISHED, IS THAT WHEN WE REVISIT DEFINITIONS AGAIN?

>> D. Sanderson: NO, IF SOMEONE WANTED TO CHANGE THESE DEFINITIONS IT WOULD BE A ZONING ORDINANCE MODIFICATION.

AND IT COULD CHANGE ONLY AS LONG AS IT WAS STILL CONSISTENT WITH THE WEST BERKELEY PLAN.

SO THE WEST BERKELEY PLAN DIDN'T PROVIDE ANYTHING LIKE THIS DETAIL.

IT'S A VERY ONE-SENTENCE DEFINITION THAT LEFT A LOT OF CONFUSION AND MISUNDERSTANDING.

SO THAT WAS THE IMPETUS TO CREATE THE DEFINITIONS TO PROVIDE MORE GUIDANCE ON WHAT WAS WHAT.

>> Chair Duffy: THANK YOU.

AND FOR ME, THIS IS A LEARNING MOMENT OF KNOWING THE POWER OF DEFINITIONS OF COURSE, AS MUCH AS THEY ALWAYS APPLY.

AT WHICH POINTS AND HOW THEN DO WE MAKE SURE THE CREATION OF NOT JUST DEFINITIONS BUT ALL THE DOCUMENTS, I'M JUST CURIOUS ABOUT WHEN THE PUBLIC PROCESS OCCURS, YOU KNOW?

ARE WE JUST, YEAH, THAT'S ALL.

I JUST WANTED TO PUT THAT OUT THERE.

>> D. Sanderson: ASK STAFF, BUT I DON'T BELIEVE IT'S AN ISSUE THAT'S BEFORE TO MODIFY THE ZONING ORDINANCE.

THERE'S NOT BEEN A REQUEST LATELY.

I MEAN SINCE THESE WERE ADOPTED EVERYBODY --

>> Chair Duffy: THIS IS IN THE ZONING ORDINANCE AND IT IS WHAT IT IS, IF THE ZONING ORDINANCE CHANGES IT'S A PUBLIC PROCESS, AND WE CHANGE DEFINITIONS AS WE WOULD ANYTHING ELSE IN THERE. APPRECIATE THAT.

THANK YOU.

JUST BEING CLEAR.

>> Vice Chair Gaffney: THANK YOU, COMMISSIONERS. IF WE HAVE NO MORE QUESTIONS FOR STAFF, NOW WE ARE FINALLY READY FOR HEARING FROM THE APPELLANT AND TO HAVE FIVE MINUTES. YOU ARE WELCOME TO SPLIT UP THE TIME HOWEVER YOU WANT BETWEEN APPELLANTS BUT FIVE MINUTES TOTAL.

>> BEFORE THAT I WAS ASKED I GIVE MY PHYSICAL DESCRIPTION FOR THOSE WHO ARE BLIND OR LOW VISION AND IT NOT COME OUT OF MY TIME.

THANK YOU, WE DO THAT IN ALL OUR MEETINGS AND THE DISABLED COMMUNITY.

MY NAME IS JIM LA BREKT, I'M AN OLDER WHITE GUY SITTING IN A CHAIR, I HAVE A MAROON SHIRT, GRAY HAIR AND BEARD AND MUSTACHE. I'M THE CO-DIRECTOR OF THE DOCUMENTARY CRIP CAMP (?) IF YOU HAVE SEEN IT, IT WAS OSCAR-NOMINATED.

IT WAS MADE IN THIS BUILDING.

AND WE'VE TALKED ABOUT DEFINITIONS AND SPLITTING HAIRS AND SUCH. I THINK WHEN WE THOUGHT ABOUT PRODUCTION, ESPECIALLY LET'S SAY 25 YEARS AGO THERE WAS A GREAT DEAL OF EQUIPMENT, WE HAD ALL THESE GREAT THINGS, THIS WAS A MUCH SMALLER FOOTPRINT.

I DON'T THINK OF IT AS BEING INDUSTRIAL, THIS IS AN ARTISTIC -- BUILDING IN 1996.

IT WAS CALLED BERKELEY SOUND ARTISTS FOR A VERY SPECIFIC REASON. AND THAT WAS MY BRAND.

SO I JUST WANT TO SAY THAT FILM MAKING IS A COLLABORATIVE ART. IT IS AN ARTISTIC ENDEAVOR, THERE IS CRAFT.

WE DO SPIT OUT SOMETHING THAT PEOPLE BUY, SO IT'S PRODUCTION. BUT YOU CANNOT UNDERESTIMATE THE ARTISTIC -- WE'RE NOT MAKING POTTERY HERE.

BUT WHAT IS THE DIFFERENCE?

WE ARE MAKING ART.

WE DON'T THINK OF EVERY SINGLE FILM AS ART.

BUT INDEED, I WANT TO TELL YOU THAT FILM MAKING HAS POWER THAT
LEGISLATION DOES NOT.

IT DOES NOT -- IT GETS INTO PEOPLE'S MINDS AND LIVING ROOMS.

>> THEY ARE COUNTING OUR MINUTES RIGHT NOW.

YOU WERE THINKING YOU WERE ABLE TO SPEAK BEFORE THE FIVE MINUTES
STARTED.

>> NO, I ONLY ASKED ABOUT THE VISUAL DESCRIPTION.

I WILL STOP.

>> I'M NOT ASKING YOU TO STOP BUT TIME TELLING EVERYBODY WE NEED
TO GET UP HERE.

>> [OFF MIC]

>> NO.

>> Clerk: AS A POINT OF CLARIFICATION, WHEN YOU AND I SPOKE YOU
MENTIONED HAVING A VISUAL DESCRIPTION, THE APPELLANT HAS FIVE
MINUTES COLLECTIVELY TO SPEAK AS A GROUP.

>> THERE'S AN EDUCATIONAL VALUE TO WHAT WE DO ALSO, WE BRING IN
A LOT OF APPRENTICES AND GRADUATE STUDENTS FROM U.C. BERKELEY.
THANK YOU.

>> Vice Chair Gaffney: THANK YOU.

>> HELLO, MY NAME IS NORMAN JED RIFE, I'VE BEEN A TENANT IN THAT
BUILDING SINCE FEBRUARY 1989.

THAT'S 34 YEARS I'VE BEEN ABLE TO MAKE MY LIVING AS A FILMMAKER AND ARTIST.

I'VE HAD 15 NATIONAL BROADCASTED DOCUMENTARIES, I CAME FROM TEXAS TO MAKE MY -- IN THE LAST TWO YEARS I MADE TWO OTHER FILMS, THE NINE LIVES OF BARBARA DANE AND FROM HERE FROM THERE WHICH WILL BE NATIONAL BROADCAST JULY 9 ON THE PBS SERIES VOICES. I FEEL WE ARE BEING -- I FEEL REALLY OFFENDED BY THE STAFF REPORT.

I FEEL THEY DON'T UNDERSTAND WHAT WE DO.

AND I FEEL LIKE WE ARE BEING PUT OUT OF BUSINESS, WHICH IS WHAT HAS HAPPENED SINCE WAREHAM HAS BOUGHT THE BUILDING.

>> MY NAME IS RICK AUERBACH, I'M THE STAFF OF WEST BERKELEY ARTS AND INDUSTRY COUNCIL.

I WANT TO RESPOND TO THE STAFF'S REPORT.

WE BELIEVE THAT ABSOLUTELY THESE SPACES ARE ART SPACES AND THEY ARE PROTECTED BY THE ORDINANCE.

I'M THE CO-AUTHOR OF THE ORDINANCE AND THE WEST BERKELEY PLAN. WE 100% INTENTIONALLY INCLUDED THE WORD FILMMAKERS SPECIFICALLY BECAUSE OF THE EXISTENCE OF THE FILMMAKERS IN THE FANTASY BUILDING.

THAT WAS THE INTENTION OF THE SUBCOMMITTEE THAT WROTE THAT ORDINANCE, THERE'S NO DOUBT ABOUT IT.

LATER ON, THERE WAS NO MEDIA PRODUCTION IN THE ZONING ORDINANCE AT THAT TIME.

THERE WAS NO OTHER MENTION OF FILM.

IT WAS CLEAR THIS WAS THE INTENTION.

AND YOU COULD SAY ART AND CRAFT STUDIO IS COMMONLY
DIFFERENTIATED FROM MEDIA PRODUCTION.

WHAT DOES THAT MEAN?

COMMONLY?

THIS WAS THE INTENTION OF THE PEOPLE WHO WROTE THIS.

I WAS INVITED BY THE ARTS COMMISSION IN 2008 TO REVISE THIS
DEFINITION.

I WAS PART OF THAT PROCESS.

WE ADDED A FEW THINGS ABOUT THE USE OF COMPUTER, BUT WE KEPT
FILMMAKERS IN THERE BECAUSE WE ALWAYS INTENDED AND THE ARTS AND
PLANNING COMMISSION ALWAYS INTENDED THESE FILMMAKERS TO BE
PROTECTED.

THIS VIOLATES THE WEST BERKELEY PLAN.

IT VIOLATES ECONOMIC GOAL #7.

PROTECT SMALL BUSINESSES, PARTICULARLY ARTS AND CRAFTS
BUSINESSES SO THEY CAN CONTINUE TO FLOURISH IN WEST BERKELEY.
ARTS AND CRAFTS BUSINESSES ARE KEY IN CREATING THE UNIQUE
CHARACTER OF THE WEST BERKELEY.

THE CITY DEVELOPED THE PROTECTIVE ZONING OF ARTS AND CRAFTS TO
PROTECT THESE BUSINESSES.

IT'S VITAL TO ENSURE IT IS GENERALLY PROTECTED FROM
DISPLACEMENT.

USE ALL AVAILABLE MECHANISMS INCLUDING ZONING TO ASSURE ARTISTS
REMAIN A VITAL PART OF WEST BERKELEY.

IT GOES ON AND ON.

I'M GOING TO CEDE MY TIME.

>> HI, REAL QUICK, VIVIAN KLEINMAN.

I HAVE BEEN THERE SINCE 1986.

THE AWARD, EUREKA FELLOWSHIP FOR ARTISTS BY THE -- FOUNDATION
IN SAN FRANCISCO.

SO BY DEFINITION OF THE FLYSACKER FOUNDATION, I AM AN ARTIST AND
A FILMMAKER.

I'M A FILM ARTIST.

THEY ARE ONE IN THE SAME.

I WILL STOP THERE.

>> Vice Chair Gaffney: THANK YOU.

>> I WOULD LIKE TO SAY THAT ON THE ISSUE OF --

>> Vice Chair Gaffney: YOU WILL HAVE A CHANCE FOR A REBUTTAL
AFTER THE APPLICANT GOES.

THERE WILL BE TWO MORE MINUTES YOU AND THE APPLICANT WILL GET.

I WOULD SAY THAT'S PROBABLY THE BEST TIME YOU WILL GET.

THANK YOU FOR STAY TOGETHER FIVE MINUTE TIME LIMIT.

THERE IS A LOT OF YOU AND IT'S NOT EASY SO WE APPRECIATE IT.

IT'S NOW TIME FOR -- DO WE DO QUESTIONS?

IF ANY COMMISSIONERS DO HAVE ANY QUESTIONS FOR THE APPELLANTS,
NOW YOU CAN FEEL FREE.

YEAH, COMMISSIONER SANDERSON?

>> D. Sanderson: SO WHEN I LOOK AT THE DEFINITIONS, AND I REMEMBER THE HAIR-PULLING NAIL-BITING WHATEVER PROCESS WE WENT THROUGH AT THE TIME.

SO ARE YOU SAYING THEN THAT MEDIA PRODUCTION IS A TYPE OF ART/CRAFT STUDIO?

SO THERE WAS A DISTINCTION AT THE TIME BETWEEN COMMERCIAL PRODUCTION AT THE TIME THE ART COMMUNITY SAID THAT'S NOT US. AND ART/CRAFT STUDIO.

WHAT I'M HEARING, I THINK, IS THAT THE DISTINCTION BETWEEN PRODUCTION AND STUDIO IS, HAS BECOME MERGED IN YOUR MINDS? WHETHER IT IS OR ISN'T.

I'M TRYING TO UNDERSTAND THE APPEAL.

YOU HAVE TO SPEAK AT THE MIC.

>> ALL ARTS AND CRAFTS ARE INVOLVED WITH SOME ASPECT OF PRODUCTION.

THEY ALL PRODUCE A PRODUCT.

WHETHER IT'S A PAINTING OR WHETHER IT'S A FILM.

WHEN WE WROTE THE ORDINANCE ORIGINALLY WE SAW FILMMAKERS AS USING THEIR ARTISTIC CRAFT TO CREATE AN ARTISTIC EXPRESSION, WHICH WAS A PRODUCTION OF A FILM.

OR IF SOUND WAS ALREADY INCLUDED IN THAT AND THE OTHER THINGS THAT WENT ALONG WITH IT.

WE WERE THINKING ABOUT, YOU KNOW, THIS CONCEPT OF MEDIA PRODUCTION BECAUSE IT DIDN'T EXIST IN THE ORDINANCE.

>> D. Sanderson: RIGHT, WE HAD TO ADD THAT DEFINITION.

>> RIGHT, THAT WAS ADDED MUCH LATER.

AND NO ONE HAS EVER BROUGHT THIS UP.

THIS IS A NEW CONCEPT THAT ALL OF THE SUDDEN FILMMAKERS AREN'T ARTISTS AND THEY DON'T DESERVE PROTECTION.

AND WE HAVE IDEAS WHY THIS IS BROUGHT UP NOW.

IT HASN'T BEEN BROUGHT UP IN ALL THESE YEARS, IT'S NEVER BEEN QUESTIONED.

AND THE ARTS COMMISSION ALWAYS INTENDED THEM TO BE PROTECTED.

THANK YOU.

>> S. O'Keefe: I HAVE A QUESTION OF THE APPELLANT.

CAN YOU PLEASE GIVE AN EXAMPLE, ANY OF YOU, OF A USE THAT WOULD BE MEDIA PRODUCTION, BUT WOULD NOT BE AN ART STUDIO?

I'M ALSO TRYING TO UNDERSTAND THIS DISTINCTION.

CAN SOMEONE COME UP.

GIVE US A SPECIFIC EXAMPLE, SO I CAN UNDERSTAND A MEDIA PRODUCTION BUT NOT ART STUDIO.

>> USING THE SAME EQUIPMENT, SAME EDITING SOFTWARE WOULD BE A CORPORATE INDUSTRIAL, A COMPANY THAT PRODUCES CORPORATE INDUSTRIALS, HOW TO SUCCEED IN DUCK HUNTING.

HOW TO SELECT A GREAT EMPLOYEE.

A PORTRAIT OF THE C.E.O.

YOU KNOW, --

>> S. O'Keefe: SO YOU ARE SAYING THIS PARTICULAR DEFINITION IN OUR CODE IS JUST SPECIFICALLY FOR CORPORATE TRAINING VIDEOS? THAT'S ONE EXAMPLE?

>> I'M SAYING AS FILMMAKERS WE DON'T HAVE SUCH A NARROW DEFINITION OF OURSELVES.

WE USE WORDS INTERCHANGEABLY, WE USE THE WORD ARTIST, FILMMAKER, MEDIA PRODUCTION, THEY ARE INTERCHANGEABLE.

BUT THERE'S ONE ASPECT OF MEDIA PRODUCTION THAT IS NOT THE ENTIRE DEFINITION OF THE WORD MEDIA PRODUCTION THAT WOULD BE CORPORATE INDUSTRIALS.

>> S. O'Keefe: I'M JUST TRYING TO UNDERSTAND, THIS MUST BE A PRETTY BIG CATEGORY IF IT'S ITS OWN DEFINITION AND TREATED SEPARATELY.

THANK YOU.

>> Vice Chair Gaffney: DO ANY OTHER COMMISSIONERS HAVE ANY QUESTIONS?

COMMISSIONER YUNG?

NO QUESTIONS.

LOOKS LIKE WE HAVE NO QUESTIONS FOR THE APPELLANT RIGHT NOW.

IT'S NOW TIME FOR FIVE MINUTES FOR THE APPLICANT.

AFTER THE APPLICANT GOES, YOU WILL HAVE FIVE MINUTES FOR REBUTTAL.

>> GOOD EVENING, THANK YOU FOR BEING HERE AND HAVING A QUORUM.

I'M LISA VOGEL, WITH WAREHAM.

I WANT TO THANK STAFF FOR THE DILIGENT WORK ON THE APPLICATION AND COMPREHENSIVE AND WELL-THOUGHT OUT REPORT THAT WAS PRESENTED TONIGHT.

I JUST WANT TO GIVE A LITTLE RECAP ON OUR CURRENT TENANT BASE AND OUR APPLICATION.

SO WE ARE PUTTING IN FOR AN ADDITIONAL 9,750 SQUARE FEET TO R & D.

WE HAVE BEEN TRYING TO LEASE THOSE SPACES SINCE 2018 ON THE GROUND FLOOR AND WE HAVE HAD NO VIABLE TENANTS.

CURRENTLY THE EXISTING MEDIA TENANTS SOME HERE TONIGHT, THANK YOU, RESIDE MAINLY ON THE THIRD, FOURTH AND SIXTH FLOOR OF THE BUILDINGS. THERE'S A DEEP CLUSTER OF THOSE.

I HAVE SIX SUITES AVAILABLE FOR ANY MEDIA PRODUCTION IN THE MARKET, I WOULD WELCOME MORE MEDIA PRODUCTION TO PLEASE COME AND JOIN OUR CLUSTER AT 2600 TENTH STREET.

I WILL HAVE TO SAY IN THE APPELLANTS, I SAW THERE WAS SOME WORDING WE WERE NOT SUPPORTING IN MEDIA PRODUCTION TENANTS. SINCE BUYING THE BUILDING WE KEPT FANTASY STUDIOS OPENED FOR TEN YEARS, AFTER SALZANS OPENED HIS COMPANY DOWN TO LOS ANGELES. WE WERE ONE OF THE FOUNDERS OF BERKELEY FILM FOUNDATION, ALONG WITH SALZAN'S COMPANY IN CITY OF BERKELEY.

SINCE THE FORMATION OF THAT FOUNDATION IN 2009 THERE'S BEEN ISSUED OVER \$2 MILLION GRANTS TO EAST BAY FILMMAKERS INCLUDING SOME OF OUR TENANTS AT 2600.

IN CONCLUSION WE APPRECIATE THE THOROUGHNESS OF THE REPORT, WE ASK IT SHOULD BE DENIED AND WE GET THE ADMINISTRATIVE USE PERMIT APPROVED.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

THANK YOU.

THERE IS NOW TIME FOR -- SORRY, QUESTIONS.

I'M FORGETTING THE QUESTIONS AGAIN.

COMMISSIONER SANDERSON?

>> D. Sanderson: SORRY, I KEEP HUGGING THE MIC.

ANYONE ELSE CAN --

>> Vice Chair Gaffney: APPRECIATE YOUR KNOWLEDGE.

>> D. Sanderson: THIS IS A QUESTION FOR THE APPLICANT.

SO RIGHT NOW THOSE SPACES ARE LABELS WHAT AND THEY ARE VACANT?

ARE YOU TRYING TO LEASE THEM AS ARTS AND CRAFTS?

WHAT ARE YOU ADVERTISING FOR?

>> RIGHT NOW IT'S MEDIA PRODUCTION AND WE ARE TRYING TO CONVERT THAT.

IT WOULD BE ARTS AND CRAFTS, I'M NOT REALLY SURE THE DEFINITION IS DIFFERENT.

>> D. Sanderson: SO IF MEDIA PRODUCTION -- BY MAKING THIS CHANGE TO R&D HOW DOES THAT CHANGE WHAT HAPPENS IN THAT PLACE?

>> IT WOULD BE RESEARCH AND DEVELOPMENT TENANT, MAYBE WAREHOUSE. I MEAN THERE JUST SEEMS TO BE A LITTLE MORE ACTIVITY IN THAT MARKET, ALTHOUGH I WILL SAY THE MARKET IS NOT VERY STRONG RIGHT NOW AS WE ALL KNOW.

BUT THERE'S DEFINITELY A BETTER CHANCE OF TRYING TO GET THAT 9,000 SQUARE FEET LEASED.

AGAIN I HAVE 8,000 SQUARE FEET, ALMOST THE SAME AMOUNT UPSTAIRS READY TO GO FOR MEDIA PRODUCTION.

>> D. Sanderson: SO MEDIA PRODUCTION AND ARTS AND CRAFT STUDIOS ARE WHAT YOU HAVE AVAILABLE THAT ARE NOT BEING PICKED UP?

>> CORRECT, RIGHT.

THERE'S 30 SPACES AND 8,000 SQUARE FEET.

>> D. Sanderson: IS THERE ANY, DO YOU HAVE ANY INFORMATION ON COMPARABLE RENTS OR LEASING COSTS FOR THOSE SPACES?

>> FOR THE MEDIA PRODUCTION SPACES?

>> D. Sanderson: UH-HUH.

>> YOU KNOW, WE DO A VERY FAIR DEAL, THEY ARE USUALLY NOT MARKET.

AND I LET THE TENANTS SPEAK TO THAT.

BUT WE UNDERSTAND THAT THE MEDIA PRODUCTION, THE FILMMAKERS, THE SOUND EDITORS ARE ON A TIGHT BUDGET THAT'S WHY THE SPACES ARE LIKE 200-300 SQUARE FEET.

THERE'S A FLOOR PLAN THAT MIGHT BE HELPFUL TO PULL IT UP JUST TO SEE WHAT A MEDIA PRODUCTION FLOOR LOOKS LIKE AND YOU CAN SEE ALL THE SPACES.

>> [OFF MIC]

>> YEAH.

>> [OFF MIC]

>> Vice Chair Gaffney: ALL RIGHT, YOU WILL HAVE TIME FOR REBUTTAL IN JUST A SECOND.

YOU ARE ALL GOOD?

ANY OTHER COMMISSIONERS HAVE QUESTIONS FOR THE APPLICANT AND WE WILL MOVE TO REBUTTAL?

OKAY, SOUNDS LIKE WE HAVE NO MORE QUESTIONS OF THE APPLICANT.

NOW ANYONE WHO WANTS TO REBUTTAL, YOU HAVE TWO MINUTES.

>> TO CLARIFY WHY THE SIXTH FLOOR IS EMPTY, THEY TOOK ALL OF THE FILMMAKERS OFF THE SIX FLOOR, ABOUT NINE OFFICES, NINE DIFFERENT FILMMAKERS WERE REMOVED FROM THE SIXTH FLOOR OR SQUISHED ON OTHER FLOORS OR PEOPLE DECLINED TO ACCEPT THOSE SPACES BECAUSE THEY WEREN'T AS NICE AS THE SIXTH FLOOR SO WHAT WE JUST HEARD WAS NOT TRUE.

FOR EXAMPLE, ON THE SIXTH FLOOR ACROSS THE HALL WAS A GAY NAMED ADRIAN VEREL, VETERAN OF THE U.S. MARINES. AFRICAN AMERICAN, HE RENTED AN OFFICE BECAUSE HE HAD A CURIOSITY IN FILM.

WE STARTED TALKING, I STARTED MENTORING HIM.

HE NOW IS THE GUEST ARTIST AT STANFORD UNIVERSITY'S ART AND DIVERSITY PROGRAM.

SO THANKS, I CAN'T SAY I PUT HIM THERE, BUT I CAN SAY THANKS TO THE INTERACTION WE HAD, HIS CAREER HELPED GET SHAPED.

>> AS TO THE DATE JULY 6, 1989 WE CONTEND THE SPACES AT ISSUE WERE ABSOLUTELY OCCUPIED BY PROTECTED ARTS USES AS OF THAT TIME AND WE HAVE EVIDENCE TO THAT EFFECT.

FROM THE MEDIA AND PEOPLE HERE WERE IN THE BUILDING AT THAT TIME, AND THEY KNOW WHO WAS OCCUPYING THAT.

IN CONTRADICTION TO STAFF'S DENIAL OF APPEAL, FANTASY FILMMAKERS CONTEND THE PROPOSED SCOPE OF THIS PERMIT WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA.

AND WOULD LEAD TO LOSS OF CRITICAL JOBS AND CULTURAL DIVERSITY AND VIOLATES IMPORTANT PROVISIONS OF THE BERKELEY MUNICIPAL CODE, WAREHAM HAS FOUR MILLION SQUARE FEET OF R&D SPACE IN THE EAST BAY, ONE MILLION IN BERKELEY.

THERE'S ANOTHER MILLION SQUARE FEET COMING ON FROM DEVELOPMENTS THAT HAVE JUST BEEN BUILT IN WEST BERKELEY.

THEY CONTEND THEY NEED THESE 2,000 SQUARE FEET FROM THE FILMMAKERS FOR R&D.

IT MAKES NO SENSE.

WE NEED THIS CULTURAL INSTITUTION TO MAINTAIN IN OUR CITY.

IT'S ICONIC, IT'S ONE OF THE MOST IMPORTANT ARTS BUILDING IN THE AREA.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

>> I JUST WANT YOU TO LOOK AT THE GROUND PLAN PLEASE, IF IT'S A VERY LARGE SPACE THAT DOES NOT SERVE OUR COMMUNITY.

WE ARE PRICED OUT OF THIS BUILDING.

AT LEAST WHAT WE WERE TOLD THEY WERE GOING TO OPEN UP TO LARGE SPACES. I JUST WANT YOU TO PLEASE LOOK AT THAT.

>> [OFF MIC]

>> Vice Chair Gaffney: THANK YOU SO MUCH.

THANK YOU.

DOES ANYONE HAVE ANY QUESTIONS, ANY FOLLOW-UP TO ANY OF THAT?

ALL RIGHT.

IT LOOKS LIKE WE DO NOT.

THE APPLICANT ALSO GETS A TWO MINUTE REBUTTAL OR YOU ALSO DON'T NEED TO TAKE IT.

>> I JUST WANT TO SHARE --

>> Vice Chair Gaffney: COME TO THE MICROPHONE.

>> THE THREE SPACES THAT WE ARE TALKING ABOUT, ONE OF THEM ON THE SECOND FLOOR HAS BEEN VACANT SINCE 2008.

NOBODY IN THE MEDIA PRODUCTION ARENA HAS WANTED IT.

ON THE GROUND FLOOR THEY HAVE BEEN VACANT SINCE 2018.

AND AGAIN, I WISH I HAD THE SLIDE.

I'VE GOT 30 SPACES TO LEASE RIGHT NOW TO ANY MEDIA PRODUCTION TENANTS AND I WOULD WELCOME THAT.

WE ARE VERY SUPPORTIVE OF THIS COMMUNITY AND WE ARE VERY THRILLED WE HAVE A BIG CLUSTER OF MEDIA PRODUCTION AND VERY, VERY TALENTED PEOPLE IN THE BUILDING.

THANK YOU.

>> Vice Chair Gaffney: IS THERE A SLIDE YOU WANTED TO BE SHARED?

IT LOOKS LIKE WE ARE GOING TO PULL THEM UP RIGHT NOW, I THINK.

THERE'S A LISA BULLWINKLE WHO RAISED HER HAND.

ARE YOU WITH EITHER THE APPLICANT OR APPELLANT?

OKAY.

PART OF PUBLIC COMMENT, PERFECT.

DON'T WORRY, ANYONE FROM PUBLIC COMMENT, WE WILL BE GETTING TO YOU SOON.

YOU HAVE A LITTLE MORE TIME.

>> THIS IS THE SIXTH FLOOR.

THE WHITE SPACES ARE CURRENTLY AVAILABLE.

THIS IS ON THE SIXTH FLOOR AND THERE'S ANOTHER PLAN FOR THE FOURTH FLOOR, THERE'S ONLY ON THE FOURTH FLOOR, THAT CLUSTER IS PRETTY TIGHT.

SO ALL THE PURPLE, IF YOU LOOK AT IT AS PURPLE IS LEASED.

AND WHERE YOU SEE THE WHITES OUTSIDE OF THE CONFERENCE ROOM ARE AVAILABLE TOO.

BETWEEN THE TWO FLOORS THERE'S 30 SPACES AND I WOULD LOVE TO FILL THEM.

THANK YOU.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT.

IF ALL THE COMMISSIONERS ARE DONE WITH THEIR QUESTIONS THEN?

LOOKS LIKE WE ARE ALL GOOD, WE WILL MOVE TO PUBLIC COMMENT NOW.

ANYONE ONLINE, IF YOU COULD PLEASE RAISE YOUR HAND IF YOU WOULD LIKE TO SPEAK.

JUST BASED ON THE SHEER NUMBER OF GREEN CARDS ALONE WE WILL HAVE TO DO ONE MINUTE PER SPEAKER.

I WILL GO FROM THE GREEN CARDS, IN-PERSON SPEAKERS FIRST AND THEN ONLINE.

THE FIRST SPEAKER WILL BE BETSY MORRIS, YOU WILL HAVE A MINUTE.

>> BETSY MORRIS, I'M A WHITE WOMAN WITH BLUE GLASSES WEARING A GRAY BLAZER AND I HAVE KIND OF BROWNISH-GRAYISH HAIR.

SO AS A LONG-TIME RESIDENT OF WEST BERKELEY, WHILE THE WEST BERKELEY PLAN WAS BEING DEVELOPED, I ACKNOWLEDGE I KNOW SO MUCH LESS OF THE DETAILS THAN WEBAIC AND RICK AUERBACH.

HE HAS DONE AN INCREDIBLE JOB, OR THEY HAVE DONE AN INCREDIBLE JOB OF ASSEMBLING INFORMATION, TO THE BEST OF MY KNOWLEDGE AS I READ IT, I SAID YEAH, THAT STRIKES TRUE.

THE IDEA WE HAVE HERE IN BERKELEY A UNIQUE CLUSTER OF INDEPENDENT FILMMAKERS, DOING INCREDIBLY CREATIVE WORK.

I RECOMMEND IT TO ANYONE, IT'S A FABULOUS, FABULOUS DOCUMENTARY.
AND I DIDN'T EVEN KNOW IT WAS BEING PRODUCED HERE IN BERKELEY.
SO THE IDEA WHEN I THINK OF IT EVER BEING QUESTIONED AS AN ARTS-
RELATED, YES, THERE ARE SUCH THINGS AS INDUSTRIAL ARTS AND
COMMERCIAL ARTS.

AND THEY PRODUCE VALUE FOR THIS CITY AS A PLACE FOR CREATIVE,
INDEPENDENT ARTISTS. NOW THE PIECE THAT REALLY FRUSTRATES ME, I
STILL DON'T GET IT, AND I RESPECT THAT WAREHAM HAS A
PROFESSIONAL HERE, WHY WOULD YOU, WITH A FAIRLY LARGE VACANCY
RATE GOING ON FOR R&D AND OFFICE SPACE IN THE EAST BAY, WHY
WOULD YOU THROW OUT, OR DISCOURAGE TENANTS WHO HAVE BEEN THERE A
LONG TIME BY RAISING THE RENTS SO EXCESSIVELY THAT THEY CAN NO
LONGER AFFORD IT.

>> Vice Chair Gaffney: I'M SORRY.

>> I UNDERSTAND THERE'S LEASING ISSUES I DON'T UNDERSTAND, BUT I
WANT TO SUPPORT THIS.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

WONDERFUL.

ALL RIGHT.

WE WILL NOW GO TO CLAIRE SHOWIT?

>> SO IS THIS ON?

GREAT.

HI, I'M CLAIRE SHONE, A RESIDENT OF BERKELEY.

I WORKED AT THE SALZANT FILM STRUCTURE, KNOWN AS THE FANTASY BUILDING FOR 18 YEARS WHEN SAUL OWNED THE BUILDING.

HE CREATED A WONDERFUL COMMUNITY THERE BY SUPPORTING OUR WORK, KEEPING OUR RENTS LOW.

AND FANTASY WAS A THRIVING PRODUCTIVE PLACE WHERE BEAUTIFUL, PROFOUND, AWARD-WINNING AND SOCIALLY RELEVANT MEDIA WAS MADE.

WHEN WAREHAM BOUGHT THE BUILDING IT WAS CLEAR FROM THE BEGINNING TO ALL OF US, THEY WANTED US OUT.

MY RENT WAS DOUBLED AND THEN TRIPLED OVER THAT.

AT PIKE COMMUNITY, WE JUST WANTED TO SIT DOWN AND TALK TO THEM ABOUT WHAT WAS GOING TO GO ON.

THEY REFUSED TO TALK TO US AS A GROUP.

INSTEAD THEY TRIED TO DIVIDE US, PICKING US OFF ONE BY ONE WITH SECRET DEALS, SOME OF US GETTING BETTER DEALS THAN OTHERS.

I WAS DRIVEN OUT OF THE BUILDING BY WAREHAM.

>> Vice Chair Gaffney: YOU ARE OUT OF TIME, ONE MORE SENTENCE.

>> AS WERE MANY OTHER MEDIA PRODUCERS AND I WAS VERY GRATEFUL FOR THE ONES WHO STAYED.

PLEASE DON'T LET WAREHAM TEAR DOWN THIS VITAL FILM COMMUNITY ANY FURTHER.

>> Vice Chair Gaffney: THANK YOU VERY MUCH.

I APPRECIATE EVERYONE, I KNOW THE ONE MINUTE IS HARD.

WE WILL GO TO JAMES LEBRECHT NOW.

NO?

THEN STEPHEN MOST.

>> HELLO, I'M AN OLD GUY WITH GLASSES AND GRAY HAIR WEARING A VEST.

I'M A FILMMAKER, DOCUMENTARY WRITER AND PRODUCER.

ALSO THE AUTHOR OF A BOOK CALLED "STORIES MAKE THE WORLD, REFLECTIONS ON STORYTELLING AND THE ART OF THE DOCUMENTARY."

AND IN THAT BOOK, WHICH WAS PUBLISHED IN 2017 ARE CHAPTERS ABOUT DOCUMENTARIES, SOME OF THEM AWARD-WINNING AND ACADEMY-AWARD NOMINATED THAT WERE MADE IN BERKELEY, INCLUDING BERKELEY IN THE 60s, FREEDOM ON MY MIND AND OTHERS.

AND I JUST WANT TO SAY THAT THE FILM MAKING COMMUNITY WHEN I MOVED NEAR IN 1987 WAS WIDELY RECOGNIZED AS THE CORE OF THE FILM MAKING COMMUNITY IN THE ENTIRE EAST BAY.

IT'S NOT JUST A MATTER OF HAVING GREAT ARTISTS AT THE FANTASY BUILDING.

THEIR WORKS SUPPORTED AN ECOSYSTEM OF DIRECTORS, PHOTOGRAPHERS, WRITERS --

THIS IS A GREAT BENEFIT NOT ONLY TO BERKELEY BUT ALSO TO THE WORLD AND THIS COMMUNITY NEEDS TO BE ALLOWED TO STAY.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT.

WE ARE GOING TO GO TO FRANK ZIMACONA?

>> HI, I HAVE PEPPERED HAIR, I THINK AND BLACK GLASSES.

HI, GOOD EVENING, I'M FRANK ZIMACONA.

I'M IN THE BUILDING.

I'VE BEEN THERE 13 YEARS, MULTI-CAMERA LIVE DIRECTOR.

I DO A LOT OF LIVE OPERAS, SYMPHONIES AND BALLETS AROUND THE COUNTRY.

BUT I'VE BEEN AT THE ZANT CENTER FOR 13 YEARS LIKE I SAID.

THE REALLY A UNIQUE PLACE.

WHY IS IT UNIQUE.

THERE'S A LOT OF EDITORS, PRODUCERS, SOUND MIXERS, DESIGNERS, WRITERS, EXECUTIVE PRODUCERS UNDER ONE ROOF.

I DON'T KNOW A CREATIVE HUB ANYWHERE THAT'S LIKE THIS IN NORTHERN CALIFORNIA OR EVEN IN THE U.S.

THERE'S MORE DOCUMENTARIES AND PROGRAMS BEING CREATED BY THIS COMMUNITY THAT MOST PUBLIC TV STATIONS AROUND THE COUNTRY.

IT'S A PLACE AND YOU HAVE HEARD IT, IT'S A PLACE OF COLLABORATION, A THINK-TANK FOR ARTISTS WHO COME AND SHARE THEIR WORK WITH EACH OTHER.

IT'S A GREAT THING, YOU COULD GO DOWN THE HALL TALK TO EACH OTHER ABOUT IDEAS, GET FEEDBACK AND THAT'S WHAT A COMMUNITY IS ALL ABOUT.

IT'S UNIQUE.

AND THAT'S THE UNIQUENESS OF THE ZANT CENTER OR FANTASY CENTER OR WHATEVER YOU WANT TO CALL IT.

BUT IT'S THERE AND IT'S UNIQUE.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT, WE WILL HAVE GREGORY SHARPEN UP NEXT.

>> MY NAME IS GREGORY SHARPEN, I'M LONG-HAIRED AND BEARDED AND SOMEWHAT DISREPUTABLE.

I'M AN EDITOR IN THE ZANTS BUILDING.

I HAVE BEEN THERE MORE DECADES THAN I CARE TO THINK ABOUT.

I WANT TO ADD ONTO THE IDEA OF IT BEING AN ARTISTIC COMMUNITY AND PEOPLE GOING DOWN THE HALL AND TALK WITH ONE ANOTHER.

AND HAVE ARTISTIC CONVERSATIONS, HAVE PHILOSOPHICAL CONVERSATIONS. HAVE AN INTERCHANGE THAT I THINK INEVITABLY MAKES ALL OF OUR WORK AND ALL OF OUR PRODUCTIONS AND EVERYTHING THAT MUCH BETTER BECAUSE IT IS A COMMUNITY OF US.

AND TO CHIP AWAY SLOWLY AT THAT BUILDING LIKE THE FACT THEY GOT RID OF THE FANTASY STUDIO, AUDIO STUDIOS IN THE BASEMENT STILL THAT HURTS ME A LOT.

BECAUSE I DID A LOT OF GOOD WORK IN THOSE STUDIOS. EACH CUT IS ANOTHER KIND OF BODY BLOW TO THE ARTISTIC COMMUNITY IN THE BUILDING.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT, WE ARE GOING TO GO TO JOHN KIRL NOW.

>> HELLO, I'M JOHN KIRL.

I WORKED IN THE SAW TOOTH BUILDING AS A CABINET MAKER FOR OVER 40 YEARS.

I WAS ONE OF THE PEOPLE WHO WERE AUTHORS OF THE WEST BERKELEY PLAN.

I WORKED VERY CLOSELY WITH WEBAIC ON THESE SPECIFIC ORDINANCES.
I HELPED WRITE THESE ORDINANCES. I'M HERE IN SUPPORT OF THE
FILMMAKERS. EVEN AT THAT TIME IN THE 1980s AND THE 1990s THEY
WERE ONE OF THE MOST IMPORTANT BUILDINGS IN WEST BERKELEY.
IF YOU WOULD HAVE SEEN WHAT WAS HAPPENING WHEN WE STARTED THE
WEST BERKELEY PLAN, DEVELOPERS WERE BRINGING ARTS AND CRAFTS
OUT, THEY WERE CHANGING EVERYTHING.
AND THIS WAS THE ONLY PLACE IN BERKELEY WHERE CRAFTS AND ARTISTS
COULD AFFORD TO WORK.
AND SO YOU TAKE THIS AWAY, IT'S LIKE BY CHANGING THE
DEFINITIONS, BY DOING ONE AT A TIME, YOU WIND UP GETTING RID OF
THE WHOLE THING.
I WILL ASK YOU TO RISE TO THIS OCCASION, BECAUSE THIS IS WHAT
YOU ARE HERE FOR.
TO CORRECT MISTAKE THAT'S ARE MADE BY BERKELEY STAFF AND THIS IS
A MISTAKE THAT IS OF GREAT IMPORTANCE TO THE WHOLE OF BERKELEY,
NOT JUST WEST BERKELEY, NOT JUST THE FILMMAKERS, NOT JUST THE
ARTISTS.
>> Vice Chair Gaffney: THANK YOU.
GOT TO WRAP IT UP.
>> IT'S GOING TO TOTALLY CHANGE THE WHOLE NATURE OF BERKELEY.
I URGE YOU TO RISE AND CORRECT THIS MISTAKE.
>> Vice Chair Gaffney: THANK YOU SO MUCH.
THANK YOU.

ALL RIGHT.

GEORGIA [INAUDIBLE]

>> HELLO, MY NAME IS GEORGIA AND I'M A PAINTER AND ILLUSTRATOR
AND A LIFE LONG RESIDENT OF WEST BERKELEY.

I WANT TO SPEAK IN FAVOR OF THE FILMMAKERS. JUST AS A LIFE LONG
RESIDENT OF BERKELEY AND A RESIDENT OF WEST BERKELEY ARTS
STRICT, FILMMAKERS AND SOUND ARTISTS HAVE ALWAYS BEEN A PART OF
OUR COMMUNITY.

THEY HAVE HELPED CREATE THE ARTS FABRIC IN BERKELEY AND THEY ARE
PART OF HOW WE ARE KNOWN, NOT JUST NATIONALLY BUT
INTERNATIONALLY.

WE HAVE INTERNATIONALLY-KNOWN FILMMAKERS RIGHT IN OUR CITY AND
THAT IS PART OF OUR CITY'S CHARACTER.

AND IT ALWAYS HAS BEEN.

I REALIZE THAT DEVELOPERS WILL ALWAYS WANT TO EARN MORE REVENUE
FROM THEIR SPACES BUT THERE'S A REASON THESE RESTRICTIONS EXIST.
IT ALLOWS ARTISTS TO WORK IN PLACES THEY WOULDN'T OTHERWISE
HAVE, AND CREATE THE CHARACTER OF OUR CITY WE REALLY SHOULD BE
PROTECTING, IT'S VERY VALUABLE AND IMPORTANT.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

THANK YOU ALL SO MUCH.

WONDERFUL.

HAVE WE DONE EVERYONE IN PERSON?

WE WILL MOVE ONLINE NOW, THE FIRST PERSON PATIENTLY WAITING
ONLINE, LISA BULLWINKLE, I WILL ALLOW YOU TO TALK NOW.
YOU CAN UNMUTE YOURSELF.

>> HI.

I'M LISA BULLWINKLE HERE SPEAKING AS A PRIVATE CITIZEN EVEN
THOUGH I'M ON THE ART COMMISSION AND HAVE CHAIR IT HAD FOR A FEW
YEARS, I WANT TO COMMEND RICK AUERBACH AND JOHN KIRL FOR THEIR
EXTREMELY WONDERFUL WORK GETTING ARTISTS HOUSED AND FED AND
ACKNOWLEDGED IN THE CITY OF BERKELEY.

THE BIG PICTURE HERE THIS IS ABOUT GENTRIFICATION.

IT'S LIKE DEATH BY A THOUSAND CUTS TO OUR ARTISTS IN THE CITY.
AND I HAVE WATCHED SO MANY OF OUR ART COLLECTIVES AND BUILDINGS
GET WIPE OUT AND DESTROYED AND THE DEVELOPMENT COME IN AND PUT
IN R&D THAT WE DON'T REALLY NEED.

WHAT WE NEED ARE SPACES FOR ARTISTS TO DO THEIR JOBS AND KEEP US
THE VIBRANT ART COMMUNITY.

THE STAFF HAS MADE A TERRIBLE ERROR IN THEIR LACK OF FORESIGHT
IN THE DEFINITION.

AND I THINK RICK IS RIGHT ON IN THAT WE REALLY NEED TO BE A
LITTLE BROADER HERE.

THE ARTS ARE IN TROUBLE, HELP US, KEEP THEM, SAVE THEM.

WE WANT BERKELEY TO BE VIBRANT, NOT JUST HAVE R&D EVERYWHERE IN
TOWN.

THANK YOU.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

>> WELL SAID, WELL SAID.

>> Vice Chair Gaffney: ALL RIGHT.

WE WILL NOW -- KELLY HAMMARGREN, YOU ARE UP NEXT.

YOU SHOULD BE ABLE TO TALK NOW.

>> THANK YOU.

AND I REMEMBER WHEN THIS BUILDING CAME TO COUNCIL TO TURN IT INTO R&D AND IT'S REALLY SUCH A GREAT TRAGEDY BECAUSE BERKELEY WAS, AT ONE TIME THE FILM CENTER.

IF YOU GO THE BROWSER GOOGLE THERE ARE STILL SITE THAT'S NAME BERKELEY AS AN ARTS CENTER BUT THAT'S REALLY DISAPPEARING.

I THINK FOR ALL THESE EMPTY SPACES YOU NEED TO LISTEN TO THE PERSON WHO SPOKE EARLIER ABOUT HER RENT BEING TRIPLED FOR A SPACE IN THAT BUILDING.

I JUST THINK THERE'S A LOT OF GAMING AND MANIPULATION GOING ON HERE, AND THIS IS REALLY SO SAD AND I WISH YOU WOULD STAND ON THE SIDE OF RECOGNIZING FILM AS ART, THANK YOU FLT.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

>> YEAH, AND I GUESS I COULD SAY THAT, AS THE FORMER EXHIBITIONS CHAIR FOR THE NORTHERN CALIFORNIA WOMEN'S CAUCUS FOR ART, WE CONSIDER FILM ART.

>> Vice Chair Gaffney: THANK YOU, KELLY.

APPRECIATE IT.

ALL RIGHT, UP NEXT WE HAVE BARBARA BOWMAN.

ALL RIGHT, YOU SHOULD BE ALLOWED TO TALK NOW IF YOU UNMUTE YOURSELF.

>> THANK YOU, CAN YOU HEAR ME?

>> Vice Chair Gaffney: A LITTLE TOO LOUDLY.

>> OKAY.

MY HUSBAND'S COMPUTER IS ON, WE WILL TURN IT OFF.

>> Vice Chair Gaffney: IT'S STILL A LITTLE LOUD, YOU CAN TALK A LITTLE QUIETER.

>> ARE YOU THERE?

>> Vice Chair Gaffney: YOU'RE GOOD, WE CAN DEFINITELY HEAR YOU.

>> I LIVE ON TENTH STREET A FEW BLOCKS FROM THE FANTASY BUILDING.

I'M HERE TO CONTEST TO NOT BEING MUCH OF A FILM BUFF BUT I'M A FAN OF THE WEST BERKELEY PLAN THAT PROTECT THESE TENANTS.

WRITTEN SUBMISSIONS AND I NEED NOT REITERATE THEM.

BUT I WAS THINKING TODAY ABOUT THIS AND I WAS REMINDED THE LAST TIME I ADDRESSED THE ZAB MEETING DEMOLISHED HOUSES --

NEGLECTED TO GET A PERMIT BASED ON THE IDEA IT IS EASIER TO GET FORGIVENESS THAN PERMISSION.

I COMMENTED THEN IF BERKELEY HAD A THREE-STRIKES LAW, WAREHAM WOULD HAVE BEEN BANNED FROM BERKELEY BY THEN.

IT NEVER OCCURRED TO ME THIS FEELS LIKE A ANOTHER WEST BERKELEY DEMOLITION TO ME.

EXCEPT THEY ACTUALLY ASKED PERMISSION THIS TIME AND THE TENANTS ARE ABLE TO FIGHT BACK.

I REALLY HOPE YOU WILL DECIDE IN FAVOR OF THE FILMMAKERS AND I ASK THAT YOU GIVE A FIRM NO TO THIS REQUEST FOR A REZONING. THANK YOU, THAT'S IT.

>> Vice Chair Gaffney: THANK YOU SO MUCH, BARBARA.

ALL RIGHT.

LOOKS LIKE WE HAVE ONLY ONE MORE HAND.

IF YOU WANT TO SPEAK PLEASE RAISE YOUR HAND NOW.

IF NOT, WE JUST HAVE ONE MORE.

AND SO DAVID, I'M GOING TO ALLOW YOU TO TALK NOW.

>> I'M DAVID BOWMAN AND I LIVE DOWN THE STREET ON TENTH --

[BREAKING UP]

>> Vice Chair Gaffney: DAVID, CAN I STOP YOU, IT'S VERY LOUD BUT I DON'T THINK IT'S YOU, IT'S SOMETHING WRONG WITH OUR SOUND. WE WILL PAUSE AND RESTART IT.

>> I'M DAVID BOWMAN AND I LIVE DOWN THE STREET --

>> Vice Chair Gaffney: HOLD ON, DON'T TALK FOR A SECOND, IT'S VERY LOUD.

>> I'M SORRY?

>> Vice Chair Gaffney: JUST A SECOND.

WE ARE HAVING SOME TECHNICAL DIFFICULTIES.

I WILL MUTE YOU FOR A SECOND BUT I PROMISE WE WILL BE HEARING FROM YOU IN A SECOND.

>> THANKS.

>> Vice Chair Gaffney: OKAY, DAVID WE ARE GOING TO HAVE YOU
SPEAK BUT SPEAK QUIETER THAN YOU THINK WE ARE HAVING TECHNICAL
DIFFICULTIES, TRY TO SPEAK A LITTLE SOFTER, I WILL TELL YOU IF
-- SO GO FOR IT AND I WILL LET YOU KNOW.

WE RESTARTED YOUR TIME.

>> HOW ABOUT NOW, IS THIS BETTER?

>> Vice Chair Gaffney: GO A LITTLE CLOSER TO THE MIC NOW, SORRY.
SPEAK A LITTLE LOUDER, I'M SORRY.

>> I'M DAVID BOWMAN, I LIVE DOWN THE STREET FROM TENTH STREET.

>> Vice Chair Gaffney: GO AHEAD.

>> I'M DAVID BOWMAN, I LIVE DOWN THE STREET ON TENTH STREET FROM
FANTASY, I WAS INVOLVED WITH RICK A LITTLE BIT -- WEST
BERKELEY PLAN, I WOULD JUST LIKE TO SAY [INDISCERNIBLE]
IT'S PROTECTED BY THE WEST BERKELEY PLAN -- BUT I SPENT
SEVERAL [INDISCERNIBLE]

IT WAS GREAT TO HAVE THAT KIND OF CAMARADERIE.

[INDISCERNIBLE]

SOUNDS LIKE YOU NEED TO LOWER THE RENT SO WE CAN LET SOME MORE
PEOPLE IN THERE, WHY DRIVE THEM OUT?

GOOD LUCK.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT, THANK YOU, DAVID.

ALL RIGHT, IT LOOKS LIKE WE HAVE ONE MORE LEFT, HOPEFULLY.

OUR SOUND SYSTEM IS OKAY?

I DON'T THINK THAT WAS US NECESSARILY.

SO CAMERON WOO, WE WILL ALLOW YOU TO TALK RIGHT NOW, LET'S SEE IF THIS WORKS.

CAMERON?

>> GOOD EVENING, HOW AM I DOING, CAN YOU HEAR ME?

>> Vice Chair Gaffney: GREAT, THANK YOU.

>> GREAT.

MY NAME IS CAMERON WOO, I'M ON THE CIVIC ARTS COMMISSION IN THE D.R.C.

I SPEAK TONIGHT AS A PRIVATE CITIZEN REPRESENTING ONLY MYSELF. I'M A LONG-TIME WEST BERKELEY RESIDENT LIVING A FEW BLOCKS AWAY FROM THE SAUL ZAENTS BUILDING CURRENTLY HOUSING A LARGE NUMBER OF FILMMAKERS, AS YOU KNOW.

I WOULD LIKE TO ADD MY SUPPORT KEEPING THEM THERE BY NOT ALLOWING THIS TO CHANGE TO R&D, LAB AND OFFICE SPACE.

THE FRUITS OF THESE CREATIVE FILMMAKERS HAVE WON NUMEROUS AWARDS.

I FEEL THEIR PRESENCE IN BERKELEY IS ESSENTIAL TO THE BAY AREA'S CREATIVE COMMUNITY.

BERKELEY AS A HAVEN FOR THOUGHTFUL SOCIALLY RELEVANT FILM MAKING.

THERE'S CURRENTLY A GLUT OF R&D SPACE IN THE BAY AREA.

BERKELEY IS BETTER OFF HOLDING ONTO THIS, RATHER THAN CONTINUING TO THIS GLUT.

PLEASE THINK OF THESE FACTORS WHEN CONSIDERING YOUR VOTE TONIGHT.

THANK YOU.

>> Vice Chair Gaffney: THANKS, CAMERON AND EVERYONE ELSE WHO SPOKE.

LOOKS LIKE WE HAVE NO MORE HANDS ON LINE.

WITH THAT I WILL MAKE A MOTION TO CLOSE THE PUBLIC HEARING AND WE WILL TAKE A VOICE VOTE.

SO ALL THOSE IN FAVOR OF CLOSING THE PUBLIC HEARING, SAY AYE.

ALL THOSE OPPOSED SAY NAY.

ALL RIGHT, THE PUBLIC HEARING PORTION IS OFFICIALLY CLOSED.

IT IS ALSO IS ABOUT 9:00 P.M. AND WE WILL NEED TO TAKE A TEN MINUTES CAPTIONER'S BREAK BECAUSE WE ARE LIVE CAPTIONED AND THEY NEED TO GET RESTED FOR A SECOND.

WE WILL MEET HERE AT 9:10 AND PICK UP RIGHT WHERE WE LEFT OFF.

SO THANK YOU, EVERYONE.

>> Vice Chair Gaffney:

>> Vice Chair Gaffney: IF EVERYONE CAN WRAP UP WHAT THEY ARE TALKING ABOUT AND GET BACK TO THEIR SEATS WE WILL GET STARTED.

CALLING THE MEETING TO ORDER FELLOW COMMISSIONERS. COME BACK.

ALL RIGHT.

WONDERFUL.

THANK YOU ALL FOR YOUR PATIENCE DURING OUR CAPTIONER'S BREAK.
SO AGAIN, NOW WE CLOSED THE PUBLIC HEARING AND WE HAVE HEARD
FROM ALL OF THE PUBLIC.

WE CAN START DELIBERATIONS HERE, WHICH I KNOW THERE ARE A LOT.
SO WHO WOULD LIKE TO KICK US OFF?

YEP?

COMMISSIONER YUNG?

>> B. Yung: IT'S SO WONDERFUL THAT WE IN THE CITY OF BERKELEY
ARE ABLE TO AIR OUT SO MANY OF OUR DECISION-MAKING PROCESSES IN
DISCRETIONARY PUBLIC FORUMS, WHAT A BETTER WAY TO LEARN ABOUT
CIVICS.

I ALSO, SO I MENTIONED THE FIFTH AMENDMENT EARLIER, THERE'S A
LOT OF THINGS GOING ON IN THERE.

ONE IS A RIGHT TO DUE PROCESS IN REGARDS TO LIFE, LIBERTY OR
PROPERTY.

THAT PROPERTY PIECE IS THE BASIS FOR HOW APPEALS HEARINGS
HAPPEN.

SO THAT IS TO SAY, IF YOU KNOW, SOMEONE WERE TO CHALLENGE THE
LEGALITY OF THE ZONING ADMINISTRATOR'S DECISION, THEY MUST FIRST
EXHAUST THEIR ADMINISTRATIVE REMEDIES, IN THIS CASE, THE APPEAL.
THE APPEAL IS A REVIEW OF THE INITIAL DECISION.

SO THE QUESTION BEFORE US TONIGHT ARE, GIVEN THE EVIDENCE BEFORE
US, WHAT IS THE REVIEW OF THE ORIGINAL DECISION?

MY OWN READING, MY OWN FINDING IS THAT I WOULD STAND BEHIND THE ORIGINAL DECISION GIVEN THE LANGUAGE OF THE ORDINANCE.

THE FACTS BEFORE US AND TO THE BEST THAT WE CAN, OUR APPLICATION TRUE TO THE LANGUAGE OF THE ORDINANCE.

I'LL POINT OUT KIND OF AN APPROACH TO HOW I LANDED THERE.

SO YOU KNOW, THE APPEAL BRINGS UP MANY POINTS.

I THINK THE ONE THAT'S MOST RELEVANT HAS TO DO WITH DETERMINING WHAT USE IS PRESENT.

SO YOU KNOW, STATUTORY INTERPRETATION, LET'S START TOP TO BOTTOM, RIGHT?

AN ESTABLISHMENT, ARTS/CRAFT STUDIO IS AN ESTABLISHMENT ENGAGED IN THE CREATION OF ARTS OR CRAFTS THAT REQUIRES ARTISTIC SKILL. IT WAS MENTIONED EARLIER THAT FILM MAKING, ART, IS MUCH MORE POWERFUL THAN GOVERNMENT.

I COMPLETELY AGREE, BECAUSE IN THIS CASE, YOU WOULD BE SCANT TO WANT TO AFFORD GOVERNMENT THE ABILITY ON ITS OWN WHAT AND WHAT DOES NOT REQUIRE ARTISTIC SKILL.

I'M HESITANT TO MAKE THAT JUDGMENT CALL HERE.

I THINK THERE ARE MANY WIDE RANGE OF THINGS.

ANY TYPE OF ANALYTIC WORK ANYONE CAN JUSTIFIABLY SAY REQUIRES ARTISTIC SKILL.

WITH THAT AMBIGUITY BEING STATED LET'S MOVE FORWARD.

SUCH ESTABLISHMENT MAY PARTICIPATE IN THE STUDIOS BUT [READING RAPIDLY]

FOR INCIDENTAL SELL OF GOODS MADE ON SITE.

YOU HAVE TWO VERBS, SHALL OR MAY.

MAY IS LESS BINDING, MORE OPEN-ENDED.

SO OPTION TO ENGAGE IN PERIODIC SALES --

THEY ALSO INCLUDE REHEARSAL SPACES NOT DESIGNED FOR PUBLIC PERFORMANCES.

THAT SEEMS TO BE THE CASE HERE FROM MY UNDERSTANDING.

AND THEN THERE'S A LIST OF EXAMPLES. OF INDIVIDUALS TYPICALLY ENGAGED IN THIS WORK THEY INCLUDE A LONG LIST OF TYPES OF PROFESSIONS INCLUDING FILMMAKERS AND PHOTOGRAPHERS.

THIS USE EXCLUDES ARCHITECTURAL LANDSCAPE SERVICES, INDUSTRIAL OR GRAPHIC DESIGN, COMPUTER SYSTEM, DESIGN SERVICES AND OTHER COMMERCIAL ACTIVITIES NORMALLY CONDUCTED IN AN OFFICE ENVIRONMENT.

FINALLY, THIS IS CONSIDERED A PROTECTED NON-INDUSTRIAL USE PROVIDED THAT THE USE WAS A LEGALLY ESTABLISHED, AS OF JULY 6, 1989 AND B, EXISTS AS A SINGLE STAND-ALONE USE OR COMBINED WITH RESIDENTIAL USE IN A LIVE/WORK UNIT, MEDIA PRODUCTION IS NOT A PROTECTED USE.

A FEW KEY THINGS, THE FIRST ONE, EXAMPLES OF INDIVIDUALS WHO ENGAGE IN THIS TYPE OF WORK.

A FILMMAKER IS AN EXAMPLE.

WE KNOW GIVEN THE EVIDENCE BEFORE US THAT THE MUSIC LABEL AND FILM PRODUCTION WAS AN INTEGRATED BUSINESS ENTERPRISE OF

WAREHOUSES, OFFICE AND RECORDING STUDIOS. IT WASN'T JUST FILMMAKERS. THERE WAS A RANGE OF ACTIVITIES HAPPENING AT THE SITE WHICH INCLUDED OFFICE AND WAREHOUSE TYPE ACTIVITIES. ADDITIONALLY, WE HAVE THE FACT THAT THE LAST CLAUSE OF THE DEFINITION STATES THAT AND THE USE EXISTS AS A SINGLE STAND-ALONE USE OR COMBINED WITH RESIDENTIAL LIVE/WORK UNIT OR DISJUNCTIVE SO EITHER/OR.

DID IT EXIST AS A SINGLE STAND-ALONE USE?

OR IS COMBINED WITH RESIDENTIAL USE IN A LIVE/WORK UNIT.

AS FAR AS WE KNOW WITH THE EVIDENCE BEFORE US TONIGHT, THERE WAS NO RESIDENTIAL.

MEDIA PRODUCTION IS NOT A PROTECTED USE.

IT ALSO FINALLY EXPLICITLY EXCLUDES MEDIA PRODUCTION.

SO GIVEN THE, THIS IS GENUINELY I WOULD SAY AMORPHOUS DEFINITION THAT WOULD WARRANT CAREFUL CONSIDERATION.

BUT GIVEN THE WEIGHING OF THE TWO DEFINITIONS, MY CONCLUSION IS AS FOLLOWS:

THE USE AS WE KNOW IT AS WAS ESTABLISHED IN 1989 IS ENTIRELY ENCOMPASSED WITHIN THE DEFINITION OF MEDIA PRODUCTION.

WHAT WAS OCCURRING AT THAT RELEVANT POINT IN TIME WAS PARTIALLY COVERED BY THE ARTS/CRAFT STUDIO, THEREFORE I WILL FIND AND AGREE WITH STAFF'S DETERMINATION.

>> Vice Chair Gaffney: COMMISSIONER SANDERSON?

>> D. Sanderson: WELL HERE GOES MY POINT.

I WAS AROUND WHEN WE DID THE DEFINITIONS, SO WERE A FEW OF YOU
IN THIS ROOM.

WE ARE ALL OLD NOW.

BUT I THINK IT'S CONFUSING.

IT IS, FIRST OF ALL, ARTS AND CRAFTS STUDIO MENTIONS FILM
MAKING.

I DON'T THINK YOU CAN THEREFORE CONCLUDE THAT MEDIA PRODUCTION
IS NOT ALSO ARTS AND CRAFTS. THAT'S MY FIRST DILEMMA.

AND SECOND, I BELIEVE THE SPACES, THESE WORK SPACES YOU SHOWED
ON THE FLOOR PLAN WERE -- OH, SORRY.

I WENT THE WRONG WAY.

THIS IS MY WAY.

WERE 200 SQUARE FEET, 230 SQUARE FEET.

THESE ARE A TENANT SPACE.

IN THE OTHER BUILDING WHOSE NAME I FORGOT, RICK MENTIONED OR
SOMEBODY MENTIONED, SAW-TOOTH BUILDING, THERE ARE 40-SOME-ODD
INDIVIDUAL SPACES IN THERE.

AND EACH OF THOSE SPACES HAD TO GET A BUSINESS LICENSE TO
OPERATE AS AN ARTS/CRAFT STUDIO IN THAT SPACE.

SO THEY ARE FREE-STANDING IN THAT THEY ARE SELF CONTAINED.

WE'RE NOT TALKING ABOUT THE WHOLE BUILDING. THE WHOLE BUILDING
HAS MULTIPLE USES IN IT.

WE ARE TALKING ABOUT THESE THREE TENANT SPACES. AND SO, I THINK, I HATE THIS, THIS IS AWFUL TO SAY, BUT IT SEEMS TO ME THEY ARE STAND-ALONE.

AND THAT THERE IS SOME OVERLAP.

I LOOKED AT THE DEFINITION FOR RESEARCH AND DEVELOPMENT AND IT'S ENTIRELY COMMERCIAL, IT HAS NOTHING TO DO WITH ART ANYWHERE.

I THINK AT THE TIME WHEN WE DID THE ARTS/CRAFTS DEFINITION, WE ADDED THE MEDIA DEFINITION, MEDIA PRODUCTION DEFINITION BECAUSE THERE WAS NO SUCH THING IN THE CODE.

WELL, WHAT DO I GO GET A BUSINESS LICENSE FOR IF IT'S NOT EVEN A RECOGNIZED USE IN THE CODE.

SO I'M VERY AMBIVALENT.

I SEE MORE OVERLAP BETWEEN MEDIA PRODUCTION AND ARTS/CRAFTS STUDIOS THAN MY COLLEAGUE DOES.

SO I'M STILL SITTING ON THE FENCE AND I'M GOING TO LISTEN TO WHAT OTHER PEOPLE HAVE TO SAY.

I DID HAVE ONE -- CAN I ASK A QUESTION?

>> Vice Chair Gaffney: CAN WE ASK A QUESTION WITHOUT REOPENING THE PUBLIC HEARING?

>> Clerk: YOU CAN ASK A QUESTION OF STAFF.

>> D. Sanderson: I WILL GO TO STAFF THEN AND NOT THE OWNER.

THE BUSINESS LICENSES LAST ISSUED FOR THESE THREE TENANT SPACES, CAN YOU TELL ME WHAT THEY ARE?

HAS ANYBODY LOOKED AT THE BUSINESS LICENSES FOR THESE LAST THREE TENANT SPACES?

AND THAT WILL TELL YOU THE LAST LEGAL USE.

>> SO WE DID DO PRETTY COMPREHENSIVE RESEARCH AND I DON'T HAVE THAT WITH ME HERE TONIGHT.

I THINK THE ISSUE AT HAND IS WHAT WAS THE ESTABLISHED USE IN THAT DATE IN 1989.

AND THE PERMITS FOR BOTH THE BUILDING, THE ORIGINAL CONSTRUCTION OF THE BUILDING AND THE ADDITION WERE -- SORRY, I'M GOING TO REFER TO THE STAFF REPORT.

>> D. Sanderson: WHERE ARE YOU?

>> I'M LOOKING AT PAGE 8.

>> D. Sanderson: OKAY.

>> SO IN 1971 IT CONTAINED THREE RECORDING STUDIOS. THEN EXPANDED INTO FILM PRODUCTION, KNOWN AS FANTASY FILMS.

THEN SAUL ZAENTS MEDIA CENTER OPENED IN 1980 WHICH HAD A MEDIA PRODUCTION CENTER AND FOURTH RECORDING STUDIO.

SO DURING THE TIME OF CONSTRUCTION IT WAS, AND THE SUBSEQUENT EXPANSIONS, IT WAS MEDIA PRODUCTION.

ADDITIONAL BUSINESS LICENSES WERE, STARTED TO BE GRANTED IN WHERE DID IT GO?

STARTED IN 1998, AFTER THE 1989 CUT-OFF FOR DETERMINING WHETHER OR NOT THE USE WAS PROTECTED.

>> D. Sanderson: THANK YOU, I'M THINKING.

GO ONTO SOMEONE ELSE.

>> Vice Chair Gaffney: OKAY, COMMISSIONER O'KEEFE?

>> S. O'Keefe: SO I THINK WE CAN ALL AGREE THERE'S AMBIGUITY
HERE.

IT SAYS THAT ART USES ARE PROTECTED, MEDIA PRODUCTION IS NOT.
THEN WHAT IS ART.

THE IDEA THAT THE GOVERNMENT CAN SAY WHAT AND WHAT ISN'T ART IS
WRONG AND I REJECT THAT.

I APPRECIATE A LOT OF THE ARGUMENTS HERE, WHAT I DO IS ART, WHY
WOULDN'T YOU CONSIDER IT TO BE ART, I DO CONSIDER IT TO BE ART
AND NO ONE SHOULD HAVE TO DEFEND THAT.

NO ARTIST SHOULD HAVE TO DEFEND THEIR WORK AS ART.

I REJECT THE IDEA WE HAVE TO DRAW A BOUNDARY AROUND THAT,
ESPECIALLY WHEN THERE'S AMBIGUITY.

SO, THERE'S THE SPIRIT OF THE LAW AND THE LETTER OF THE LAW,
OKAY.

I'M ACTUALLY USUALLY A LETTER OF THE LAW PERSON, I'M KIND OF
INTO THAT, AS I MENTIONED IN THE LAST ITEM.

BUT IN THIS CASE, THE LETTER OF THE LAW IS NOT VERY HELPFUL.

I THINK THE LETTER OF THE LAW IS KIND OF RIDICULOUS, HONESTLY,
AND IT CERTAINLY ALLOWS ROOM FOR US TO KIND OF LOOK ELSEWHERE.

SO LET'S LOOK AT THE SPIRIT OF THE LAW.

THE SPIRIT OF THE LAW SAYS THAT ESSENTIALLY YOU CAN'T KICK OUT ARTISTS. THAT'S THE SPIRIT, THAT'S WHY WE HAVE THE PROTECTED USE CLAUSE.

PLEASE DON'T KICK OUT ARTISTS, WE WANT TO PROTECT THAT.

THEY AREN'T SUPPORTED BY THE MARKET ECONOMY VERY WELL, THEY ARE VALUABLE IN OTHER WAYS, KEEP THEM.

THAT'S THE SPIRIT OF THE LAW.

SO I DO THINK THAT, WELL, STAY WITH ME, DON'T GET TOO EXCITED.

I DO THINK THIS IS A PROTECTED USE.

I WOULD ABSOLUTELY SAY THIS IS AN ARTS/CRAFTS STUDIO USE.

I'M NOT SURE ABOUT THE STAND-ALONE USE ISSUE.

THAT'S ALSO PART OF THE LAW AND THAT IS LESS AMBIGUOUS.

I WAS GOING TO SAY YES ON THAT.

I WANT THE SPIRIT OF THE LAW TO BE EVOKED BUT I NEED TO FIND LEGAL JUSTIFICATION.

SO I'M VERY OPEN TO ARGUMENTS THIS WAS A STAND-ALONE USE.

IF YOU DECIDE THAT --

>> D. Sanderson: THE REASON I THINK THESE ARE STAND-ALONE USES, IF YOU LOOK AT THE SAW-TOOTH BUILDING, WHICH HAS I DON'T KNOW HOW MANY ARTISTS IN IT, THEY HAVE INDIVIDUAL SPACES AND THEY HAVE SOME SHARED SPACES. BERKELEY WENT THROUGH A BIG TO-DO ABOUT 2010 OR SO BECAUSE A LOT OF THOSE PEOPLE, AND MOST PEOPLE IN WEST BERKELEY HAD NEVER GOTTEN BUSINESS LICENSES.

SO THERE WAS A TO-DO, IF YOU WANT TO KEEP THIS SPACE, YOU HAVE TO HAVE A BUSINESS LICENSE THAT SAYS YOU ARE AN ART/CRAFT STUDIO, SO EACH ONE OF THOSE ENTREPRENEURS IN THAT BUILDING HAD TO GET THEIR OWN INDIVIDUAL BUSINESS LICENSE FOR THAT SPACE. THEY DIDN'T GET A BUSINESS LICENSE FOR THE WHOLE BUILDING. BECAUSE I THINK THERE MAY HAVE BEEN SOME IN THERE THAT WEREN'T ARTS AND CRAFTS, THEY WERE OTHER THINGS. SO I THINK I'M USING THAT LOGIC TO SAY STAND-ALONE. IT DOESN'T MEAN IT HAS TO BE A LITTLE STAND-ALONE TINY BUILDING. IF IT DID, WE WOULD HAVE NO ARTS AND CRAFTS STUDIOS, VERY FEW. BUT IF WE GAVE BUSINESS LICENSES TO ARTS AND CRAFTS STUDIOS IN THE SAWTOOTH BUILDING AND WE LICENSED THEM AS ART AND CRAFTS STUDIOS, SO THEY WERE, IT WAS THE INDIVIDUAL USE IN THAT SQUARE FEET THAT WAS THE USE WAS ESTABLISHED. AND SO --

>> S. O'Keefe: SORRY, CAN I ASK, IS THERE PRECEDENT FOR ONE OF THOSE BUSINESSES BEING RECOGNIZED AS A PROTECTED USE BY ITSELF?

>> D. Sanderson: YEAH.

>> S. O'Keefe: DO WE HAVE THAT AND WAS IT CHALLENGED?

>> D. Sanderson: IT WASN'T CHALLENGED.

IT'S THE WAY THE PLANNING DEPARTMENT INTERPRETED THE ORDINANCE.

>> S. O'Keefe: IN THE CONTEXT OF PROTECTED USE?

>> D. Sanderson: YEAH.

WE SAID YOU'RE NOT PROTECTED, UNLESS YOU HAVE A BUSINESS LICENSE ESTABLISHING THIS AS A LEGAL USE.

AND YOU KNOW, PEOPLE HAD BEEN THERE FOR DECADES. BUT THAT'S WHY I THINK IT APPLIES.

WE CHANGE USE, WE DON'T APPLY IT TO THE WHOLE BUILDING. WE APPLY IT TO THAT CHUNK OF REAL ESTATE.

THAT LITTLE SPACE, SO.

>> S. O'Keefe: THAT MAKES A LOT OF SENSE TO ME.

I'M ALMOST CONVINCED.

I'M GOING TO KEEP LISTENING.

>> Chair Duffy: NOT TO TALK GENERALLY BUT TO TALK ABOUT STAND-ALONE USE I WOULD CONCUR IN THAT AS WELL.

THAT'S ONE OF THE MANY PROBLEMATIC PIECES OF TRYING TO DEFINE AND CATEGORIZE WHAT CREATIVE CLUSTERS OF AMAZING CREATORS DO. THERE'S NO SIMPLE WAY OF CODIFYING IT AND THAT'S THE DIFFICULTY HERE, BUT THAT STAND-ALONE USE, MY THOUGHT ALSO DOESN'T MEAN STAND-ALONE USE IN A STAND-ALONE BUILDING.

AND THAT ACTUALLY, IT IS ESSENTIAL FOR THE CREATIVE COMMUNITY TO CLUSTER AND TO FLEX AND TO BE VERY DIFFERENTIATED AND COLLABORATIVE IN THE MANY DIFFERENT WAYS THEY WORK AS INDIVIDUAL PEOPLE, EVEN UNDER ONE PARTICULAR LICENSE OR TEN PARTICULAR BUSINESS LICENSES.

SO THAT'S MY GENERAL TAKE TOO, I JUST APPRECIATE YOUR DEFINITION.

>> Vice Chair Gaffney: COMMISSIONER YUNG?

>> B. Yung: JUST A QUESTION FOR STAFF REAL QUICK.

DO WE KNOW WHAT, I MEAN I'M SURE THE ENTIRE ENTITLEMENTS PROCESS MIGHT HAVE BEEN DIFFERENT BACK THEN, BUT DO WE KNOW WHAT CONDITIONS/UNI PERMIT WERE APPLICABLE AT THAT TIME?

>> D. Sanderson: AT THE TIME WE HAD THIS DEFINITION AND THAT WAS IT.

THERE WAS NO OTHER LANGUAGE WE PULLED FROM SOMEWHERE.

IT UNFORTUNATELY -- WE HAD TO DO SOMETHING IN ORDER TO IMPLEMENT THE WEST BERKELEY PLAN.

WE COULDN'T JUST SAY LOOK, AND THIS WAS AS BEST WE COULD DO AT THE TIME OF THAT.

AND YOU KNOW, I CONFESS AT THE TIME IT DIDN'T, THERE WAS CLEARLY, THERE WERE CLEARLY OVERLAPPING ASPECTS.

BUT NOBODY COULD COME UP WITH ANY BETTER WORDS.

I MEAN WE PROBABLY COULD NOW IF WE THOUGHT ABOUT IT AND WE WATCHED HOW IT'S WORKED OVER TEN YEARS.

OR NOT WORKED.

I THINK IT'S INTERESTING THAT WE HAVEN'T, THIS HASN'T COME TO US BEFORE.

I MEAN I'VE ONLY BEEN HERE FOR A COUPLE YEARS, I GUESS.

I DON'T REMEMBER ANY OF THE ISSUE COMING UP OTHERWISE.

YOU ALL WHO HAVE BEEN ON THE ZAB LONGER WOULD REMEMBER THIS WHOLE DISCUSSION.

ANYWAY, I'M GOING TO SHUT UP.

>> Vice Chair Gaffney: NO, WE APPRECIATE YOUR FEEDBACK.

DOES ANYONE ELSE HAVE ANYTHING TO CONTINUE ADDING TO SUCH A
COMPLEX DISCUSSION?

ON STAND-ALONE USES.

ARE WE ANYWHERE TOWARDS A MOTION?

COMMISSIONER YUNG, WOULD YOU LIKE TO GO?

>> B. Yung: I WOULD LIKE TO MAKE A MOTION TO UPHOLD THE APPEAL
AS ITS PRESENTED.

>> S. O'Keefe: SECOND.

>> Vice Chair Gaffney: ALL RIGHT.

IS THERE ANY ALTERNATE MOTIONS, DISCUSSION ITEMS?

>> Chair Duffy: WE CAN DISCUSS THE MOTION.

>> Vice Chair Gaffney: COMMISSIONER YUNG?

>> B. Yung: JUST IN THE SPIRIT OF FLESHING OUT OUR LOGIC AS A
BODY, SO THE POINTS REGARDING A STAND-ALONE ARE REALLY VALID.
IT BEGS THE QUESTION.

SO IN THIS CASE, IF STAND-ALONE WERE TO NOT ENTAIL A SINGLE
OPERATION ON A SITE, IMAGINE A STAND-ALONE BUILDING WITH ONE
BUSINESS OPERATING IN IT, THEN I GUESS MY QUESTION IS, WHAT IS
THE INTERPRETATION?

AND IT SOUNDS LIKE THE INTERPRETATION WE ARE LANDING ON IS A
UNIT, YOU KNOW, FOR EXAMPLE, THE SAWTOOTH BUILDING.

HOWEVER, I STILL THINK THAT WOULD RENDER THE DEFINITION INTERNALLY INCONSISTENT IN THAT IT EXPLICITLY PERMITS LIVE/WORK, WHICH IN AND OF ITSELF IS A FORM OF A MIXED USE THAT SHARES THE SAME CONDITION SPACE.

SO I GUESS I'M STILL A LITTLE UNEASY WITH THE INTERPRETATION WE ARE LANDING AT.

>> D. Sanderson: LET ME ADD A LITTLE BACKGROUND ON LIVE/WORK. YOU CAN HAVE FOUR LIVE/WORK UNITS. EACH ONE GETS A SEPARATE BUSINESS LICENSE.

IT'S ABOUT WHO IS OPERATING IT AND WHAT ARE THEY DOING.

ANOTHER INDUSTRIAL CASES YOU HAVE A WHOLE BUILDING THAT'S, YOU KNOW, MAKING SAKE, I MEAN ALL OF THOSE PIECES OF ACTIVITIES ARE ALL AROUND MAKING SAKE.

SO THAT HAS A MANUFACTURING USE.

THAT'S ESTABLISHED ON THAT SITE.

SO LIVE/WORK, IT'S THE WORK PART THAT I THINK IS WHY IT WAS BROUGHT IN HERE AND THERE ARE SEVERAL PLACES WHERE LIVE/WORK HAS TO BE AN ARTS AND CRAFTS STUDIO.

YOU KNOW, WITH ALL THE BEST INTENTIONS TO PROTECT ARTS AND CRAFTS STUDIOS, IN ESSENCE TO TRY TO CHANGE THE COMPETITIVE RENTS OF ARTS AND CRAFTS STUDIOS VERSUS R&D, IT WAS AN EFFORT TO TRY TO PREVENT THE ARTS/CRAFTS STUDIOS FROM BEING SWALLOWED UP BY R&D WHICH AT THE TIME THERE SEEMED TO BE A BOTTOMLESS DEMAND. I'M NOT SURE THAT'S STILL TRUE ANY MORE.

BUT I THINK THE STAND-ALONE -- I MEAN, LAND USE IS ALL ABOUT WHO IS DOING WHAT, WHERE.

I DON'T CONTROL THE GUYS ACROSS THE HALL WHO MAY BE MAKING WIDGETS THAT ARE UGLY.

BUT I CAN CONTROL, IF I'M THE ARTIST, I CAN CONTROL WHAT HAPPENS IN MY SPACE.

SO I'M VERY COMFORTABLE SAYING THAT IT GOES BY THE SPACE.

IT DOES NOT GO BY THE BUILDING.

BECAUSE WE HAVE MANY BUILDINGS THAT HAVE MULTIPLE USES IN THEM, AND EACH ONE GETS A SEPARATE BUSINESS LICENSE FOR THEIR USE.

SO I'M GOING TO SHUT UP AGAIN.

>> S. O'Keefe: I'LL JUST JUMP IN AND SAY THAT MAKES PERFECT SENSE.

YOU HAVE 100% CONVINCED ME.

I THINK THAT'S EXACTLY RIGHT.

>> B. Yung: I WILL ADD, THE ONLY REASON I BROUGHT THAT UP IS WHEN WE APPROVE LIVE/WORK UNITS WE LITERALLY HAVE DIAGRAMS THAT SHOW WHAT PERCENTAGE OF THE SQUARE FOOTAGE ARE LIVE AND WORK. YOU CAN CONSIDER LIVE/WORK SLASH ALL THIS I GUESS UNDER THE SAME USE OF ART/CRAFT, JUST FOR MY OWN --

>> D. Sanderson: YOU HAVE TO GET A BUSINESS LICENSE FOR THE WHOLE [OFF MIC]

>> B. Yung: OKAY, LAST QUESTION.

SORRY.

IF WE ARE LANDING AT THIS PLACE, YOU KNOW, I THINK ONE QUESTION THAT'S WORTH IT TO ADDRESS OR MAKE SURE WE ARE GIVING SUFFICIENT ATTENTION TO IS, SO IF THIS IS THE CASE, IN WHAT EXAMPLE WOULD THERE BE A MEDIA PRODUCTION USE?

SINCE ART/CRAFT STUDIO, THE VERY LAST SENTENCE SAID MEDIA PRODUCTION IS NOT A PROTECTED USE.

SO THESE THINGS ARE MUTUALLY EXCLUSIVE.

WHAT TYPE OF USE.

>> S. O'Keefe: CORPORATE TRAINING VIDEOS. RIGHT?

I ASKED THAT QUESTION.

CORPORATE TRAINING VIDEOS. I ASKED THAT QUESTION, AND THAT'S THE ANSWER.

I GUESS.

MEDIA WITH NO ARTISTIC VALUE, WHATEVER THAT MEANS, RIGHT?

IF YOU COULD ESTABLISH THAT.

>> D. Sanderson: IT'S HARD FOR ME TO EVEN IMAGINE THERE'S NO ARTISTIC VALUE IN A TRAINING VIDEO.

YOU KNOW.

I GUESS WHERE I AM ON THIS IS IN THE PAST, THE CITY, I WOULD SAY LEANED TOWARD R&D BECAUSE THAT'S WHAT WE THOUGHT WAS GOING TO BRING IN THE ECONOMIC BENEFIT TO WEST BERKELEY.

BUT IT'S REALLY, AND I DON'T KNOW HOW -- I THINK THERE ARE OVERLAPPING DEFINITIONS.

WHICH PUT US IN A BIND.

AND I THINK TO GO BACK TO THE PURPOSE, AS LAID OUT IN THE WEST BERKELEY PLAN, AS A WAY TO DEAL WITH THAT AMBIGUITY MAKES PERFECTLY GOOD SENSE TO ME.

AND THAT'S THE WEST BERKELEY PLAN WAS ABOUT PROTECTING CERTAIN USES AND NOT PROTECTING OTHER USES.

SO I WILL SUPPORT THE MOTION.

>> Vice Chair Gaffney: ALL RIGHT.

THIS HAS BEEN A VERY INTERESTING DISCUSSION.

SO I GUESS EVEN TO KIND OF CLARIFY, WE ARE SAYING THAT THERE WAS MORE THAN, THERE WERE MULTIPLE USES BACK WHEN 19, WHEN WAS THAT, THE YEAR THIS WAS ESTABLISHED?

SO WE ARE SAYING, THE ONLY JUST TO PLAY DEVIL'S ADVOCATE ON THAT IT IS KIND OF SAYING HERE IS ONE BIG COMPANY, AT LEAST BACK AT THAT TIME, RATHER THAN A SERIES OF SMALLER COMPANIES OR DIFFERENT USES.

>> D. Sanderson: NO, I MEAN, MY REMEMBER OF SAUL ZAENTZ STUDIO, IT WAS STILL CLUSTERS OF INDIVIDUAL ARTISTS. I THINK IT WAS ALWAYS THAT WAY.

SO THEN THE PRESSURE ON THESE DEFINITIONS CAME BECAUSE SOMEONE WANTED TO CONVERT SOME OF THAT SPACE TO SOMETHING THAT WAS NOT ART-RELATED.

AND THERE WAS THIS BIG DISPUTE BETWEEN R&D AND ART AND HOW DO YOU ALLOW SOME R&D TO COME IN WITHOUT ALLOWING IT TO TAKE OVER.

SO THAT'S WHY YOU HAVE THE PERMIT STANDARDS, IF IT'S UP TO 20,000 SQUARE FEET, YOU CAN DO IT.

IF IT'S OVER, YOU NEED A USE PERMIT OR WHATEVER, WAS TO TRY TO STRIKE A BALANCE BETWEEN THOSE TWO COMPETING USES.

AND, ANYWAY.

>> Vice Chair Gaffney: THANK YOU, I REALLY APPRECIATE THAT CLARITY.

>> Chair Duffy: I WOULD JUST, AS THE MAKER OF THE MOTION, FIRST OF ALL, AND JUST SAY THANK YOU TO THE CREATIVE COMMUNITY IN WEST BERKELEY FOR ALL THAT YOU HAVE DONE, MUCH OF WHICH I DON'T KNOW, SOME OF WHICH I DO.

AND I FEEL VERY PROUD OF YOUR WORK, YOUR CULTURE WORK, THE RELEVANCE OF YOUR WORK.

AND I, ASIDE FROM THE CODEFICATION OF WHAT YOU MIGHT DO OR NOT DO, I JUST WANT TO SAY I APPRECIATE BEING IN THE PRESENCE OF YOUR WORK.

I APPRECIATE THE VALUE OF YOUR WORK, AND SOME OF WHAT I HAVE SEEN.

I REALLY FEEL LIKE FOR A COMMUNITY LIKE YOURS TO CONTINUE TO BE AS INFLUENTIAL AND AS CREATIVE, IT'S ESSENTIAL THAT THE MIXING AND THE COLLABORATION AND THE AMBIGUITY AROUND WHAT WE DO IS HOW WE SUCCEED, YOU KNOW, AS A CREATIVE CULTURE-MAKING GROUP.

SO I JUST APPRECIATE WHAT YOU DO.

AND I THINK, I'M NOT CAUGHT IN THE WEEDS OF TRYING TO CODIFY
WHAT YOU HAVE BEEN DOING ALREADY.

I BELIEVE FILM MAKING IS AN ART.

I BELIEVE YOUR WORK IS ART, AND I APPRECIATE YOUR WORK AS ART.

CODA SIDE, I JUST WANT TO SAY THAT.

AND THANK YOU.

>> S. O'Keefe: JUST TO COMMENT ON THE LAST COMMENT, ARTISTS ARE
WHAT MAKE BERKELEY AMAZING MORE THAN ANYTHING ELSE.

SO THANK YOU.

.

>> Vice Chair Gaffney: WONDERFUL, WE ARE READY FOR A ROLL CALL
VOTE.

>> Clerk: I HAVE A MOTION FROM CHAIRPERSON DUFFY AND
COMMISSIONER O'KEEFE TO UPHOLD THE APPEAL AND DENY THE
ADMINISTRATIVE USE PERMIT, FOR ZP 2023-0081.

WHEN I CALL YOUR NAME, PLEASE STATE YOUR VOTE.

ACTING CHAIRPERSON GAFFNEY?

>> Vice Chair Gaffney: YES.

>> Clerk: COMMISSIONER SANDER?
SON?

>> D. Sanderson: YES.

>> Clerk: COMMISSIONER YUNG?

>> B. Yung: NO.

IN THE MOST LOVING WAY POSSIBLE.

>> Clerk: COMMISSIONER O'KEEFE?

>> S. O'Keefe: YES.

>> Clerk: CHAIRPERSON DUFFY?

>> Chair Duffy: YES.

>> Clerk: THANK YOU.

JUST AS A REMINDER OF A QUORUM FOR A VOTE, THIS IS A COMMISSION
OF NINE SEATS AND THERE'S ONE VACANCY.

THAT BRINGS US DOWN TO EIGHT.

THREE HAVE APPROVED LEAVES OF ABSENCES, THAT BRINGS US DOWN TO
FIVE.

A QUORUM CONSTITUTES THREE.

>> D. Sanderson: SO WE HAVE A QUORUM BUT WE DON'T HAVE FIVE
VOTES FOR ACTION.

>> Clerk: YES.

SO THE QUORUM BRINGS US DOWN TO THREE AND THE VOTES NEEDED FOR
ACTION IS ALSO THREE.

>> Vice Chair Gaffney: ALL RIGHT.

SO, MOTION PASSES.

>> Chair Duffy: THREE IS A MAJORITY WITHIN FIVE.

>> Clerk: THAT IS CORRECT, THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

SO YEAH, THE MOTION PASSES.

>> Clerk: IT IS APPEALABLE TO THE CITY COUNCIL.

>> Vice Chair Gaffney: IT'S APPEALABLE TO THE CITY COUNCIL AS WELL.

AND YEAH, THANK YOU ALL FOR EVERYTHING.

AND THANK YOU FOR EVERYTHING YOU GUYS DO.

AND THANK YOU, EVERYONE ON THIS BOARD.

FOR THE GREAT DISCUSSION.

WE TOOK A LOT OF DIFFERENT TURNS.

>> S. O'Keefe: AND THANKS TO COMMISSIONER YUNG FOR KEEPING US HONEST.

APPRECIATE URANO-VOTE.

-- YOUR NO-VOTE.

IT WAS DICEY.

>> Chair Duffy: SUBCOMMITTEE REPORTS.

>> Vice Chair Gaffney: WE ARE ALMOST DONE.

ALL RIGHT.

WE DO HAVE SUBCOMMITTEE REPORTS.

I UNFORTUNATELY WAS NOT AT THE LAST DESIGN REVIEW AND IGOR IS NOT HERE, I SHOULD HAVE LOOKED IT UP BEFORE BUT I DID NOT.

>> Clerk: I'M SORRY, ACTING CHAIRPERSON GAFFNEY, I WOULD JUST LIKE TO ASK THE AUDIENCE, THANK YOU SO MUCH FOR THE EMOTION. IF YOU COULD JUST TAKE IT OUTSIDE SO WE CAN CONTINUE THE HEARING, THAT WOULD BE GREAT.

>> Vice Chair Gaffney: I CAN ALSO MAKE SURE TO REVIEW IT AND I WILL REPORT NEXT MEETING TO MAKE SURE YOU ARE ALL CLEAR ON WHAT HAPPENED.

YES, WHILE I WILL REVIEW THE MINUTES FROM OUR LAST DESIGN REVIEW AND GET BACK.

WELL, I GUESS I WILL CALL A MOTION TO ADJOURN.

>> Chair Duffy: WE HAVE STAFF COMMUNICATIONS.

>> Vice Chair Gaffney: I'M SO SORRY, STAFF.

>> Clerk: WE DO NOT HAVE ANY STAFF COMMUNICATIONS.

THANK YOU.

I GUESS I COULD JUST REMIND US ABOUT THE ALTERNATE POLICY.

THE CITY COUNCIL DID PASS A RESOLUTION THAT FOR ALTERNATES THEY NEED TO BE IDENTIFIED AT LEAST 48 HOURS IN ADVANCE.

UNFORTUNATELY SOME ALTERNATES WEREN'T ABLE TO ATTEND TONIGHT BECAUSE OF THAT.

IT IS A SHALL SO WE DON'T HAVE FLEXIBILITY.

>> D. Sanderson: I WANT TO CLARIFY THAT, IT'S WHEN THE CLERKS CLEAR THE PAPERWORK, HAS TO BE BEFORE 48 HOURS. SO WHEN I CALL MY APPOINTER, HE HAS TO GO TO THE CLERK'S OFFICE AND GET THROUGH ALL OF THAT BEFORE -- OKAY.

>> Clerk: YEAH, AND IT HAS TO BE COMMUNICATED AND MADE EFFECTIVE 48 HOURS IN ADVANCE.

>> Vice Chair Gaffney: OKAY, GREAT.

>> Chair Duffy: THANK YOU FOR CLARIFYING THAT.

I THINK THAT'S BECAUSE OF ME, BECAUSE THERE'S A CHAIN OF EVENTS THAT MUST NEED TO HAPPEN, RIGHT, IN ORDER.

AND SO I RECOGNIZE THAT.

AND I THANK YOU FOR YOUR WORK AND THE CLARIFICATION ON THAT.

I THINK THAT'S GREAT.

SORRY FOR THE TROUBLE.

>> Vice Chair Gaffney: THANKS FOR GETTING HERE.

WE APPRECIATED YOU COMING HERE.

>> Clerk: STAFF APPRECIATES YOUR COMMITMENT TO ATTENDING THE HEARING.

>> Chair Duffy: YEAH, HAPPY TO BE HERE.

>> Vice Chair Gaffney: AMAZING.

I'M GOING TO MAKE A MOTION TO ADJOURN.

SOMEONE SECOND.

>> Chair Duffy: SECOND.

>> Clerk: I HAVE A MOTION TO ADJOURN THIS MEETING FROM VICE CHAIR, ACTING CHAIR GAFFNEY AND CHAIRPERSON DUFFY.

A SECOND FROM CHAIRPERSON DUFFY.

WHEN I CALL YOUR NAME PLEASE STATE YOUR VOTE.

ACTING CHAIRPERSON GAFFNEY?

>> Vice Chair Gaffney: YES.

>> COMMISSIONER SANDERSON?

>> D. Sanderson: YES.

>> COMMISSIONER YUNG?

>> B. Yung: YES.

>> COMMISSIONER O'KEEFE?

>> S. O'Keefe: YES.

>> CHAIR DUFFY?

>> Chair Duffy: BEFORE I SAY YES I WANT TO SAY THANK YOU TO VICE
CHAIR GAFFNEY FOR HER LEADERSHIP FOR THIS MEETING.

I APPRECIATE THAT AND THANK YOU.

MY VOTE IS YES.

>> Clerk: THANK YOU.

THE MEETING IS ADJOURNED.

[ADJOURNED 9:49 P.M.]

APPENDIX B

CULTURAL RESOURCES OF WEST BERKELEY

West Berkeley is not generally thought of as Berkeley's cultural center, but there is a great deal of cultural life and activity here. West Berkeley's large spaces, relatively low rents, and ethnic diversity are among the factors which make it a good home for cultural activities. West Berkeley is an important locale for artists and craftspeople, for live music performances, and for ethnic restaurants and groceries, among other cultural resources. The historic buildings and areas of West Berkeley, and its parks and open spaces are also cultural resources which are discussed elsewhere in this Element. There are a wide variety of cultural resources, some of which not everyone would see as resources.

The strong community of artists and craftspeople which exists in West Berkeley is clearly such a resource. There are studios and worksites at locations such as the Kawneer Building (8th & Parker), the Nexus Institute (8th & Carleton), the Kala Institute (9th & Heinz), and other sites. Indeed, the East Bay Open Studio tour, which annually opens artists' private studios to the public listed no less than 26 West Berkeley venues and 59 individual studios in West Berkeley in 1992.

Live music is another West Berkeley cultural element. Current live music venues include Freight & Salvage (Addison E. of San Pablo) and Ashkenaz (San Pablo near Gilman) for folk music, Thunder Bay (Bolivar near Addison) and the 924 Gilman club for rock music, and Picante (6th near Gilman) for jazz. There have been live theatres in West Berkeley, but are none operating currently.

The written word is also represented in West Berkeley. The West Berkeley Branch of the Berkeley Public Library (University E. of San Pablo) sponsors a wide range of literary activities, including Spanish language book discussion groups. West Berkeley also houses the Niebyl-Proctor Marxist Library for Social Research in historic landmark Finn Hall. West Berkeley also has specialized bookstores in architecture—Builders' Booksource (4th St. N. of Hearst), ecology—Ecology Center (San Pablo S. of Dwight), and poetry—Small Press Distribution (San Pablo N. of Hearst).

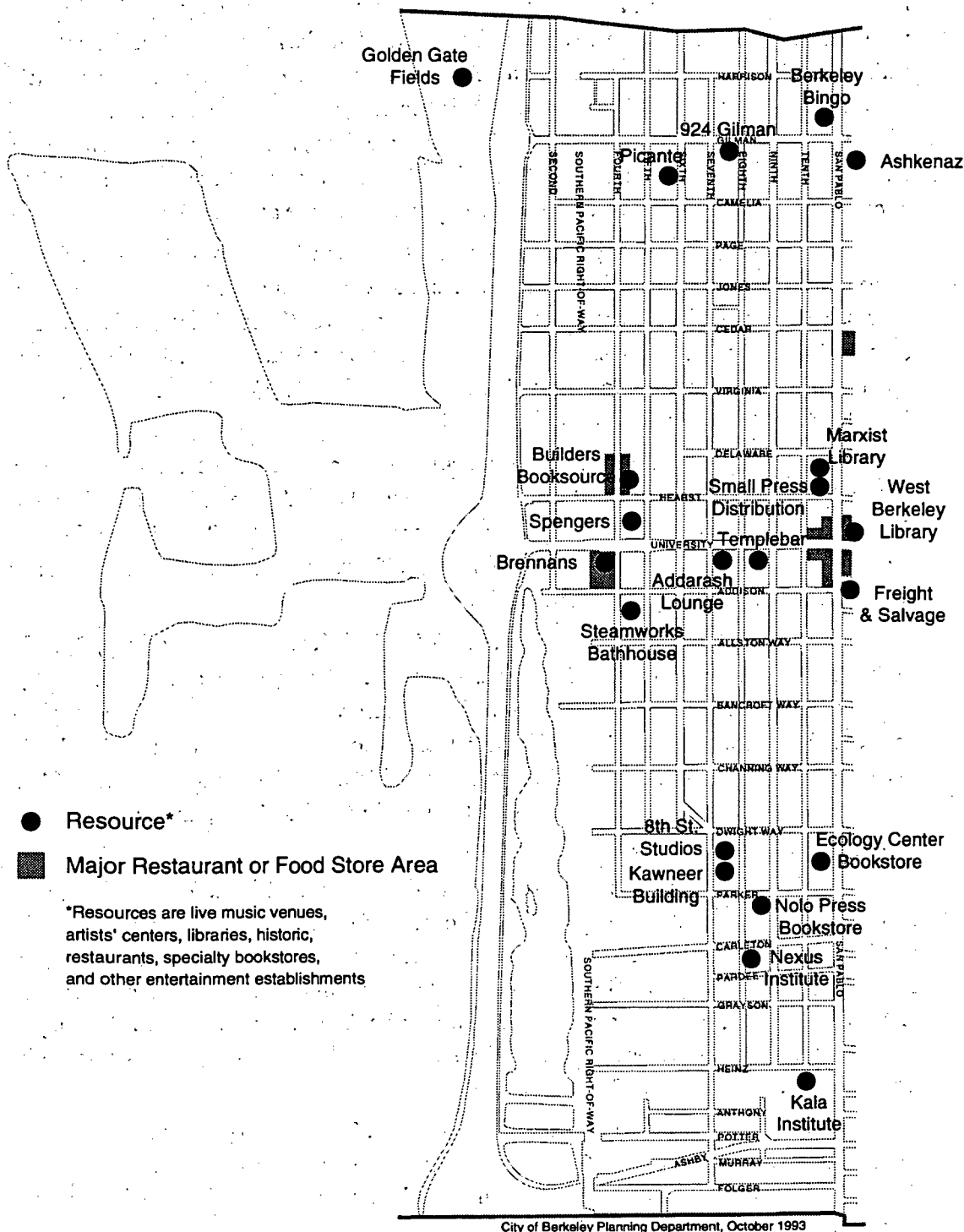
Culture is perhaps most often experienced in the form of food. The 57 eating and drinking places in West Berkeley include Afro-American, American, American Seafood, Californian, Cambodian, Caribbean, Chinese, Indian, Japanese, Mexican and other restaurants. West Berkeley food buyers can take advantage of groceries oriented to Caribbean, Indian, Middle Eastern, Thai and other cuisines. Some of West Berkeley's restaurants and bars—such as Spenger's and Brennan's—are longtime establishments which are themselves part of West Berkeley history.

West Berkeley is also home to gambling places. The Golden Gate Fields racetrack lies adjacent to the plan area at Gilman St. & West Frontage Rd., and is situated in both Albany and Berkeley. San Pablo north of Gilman is home to a bingo parlor which supports a number of charitable and religious groups.

There has been a public bathhouse in West Berkeley for decades.

In addition to being a locale where culture is enjoyed, it is also one where cultural products are created and produced. In addition to art and craft studios, there are also film, video, and record production companies in West Berkeley, at the Fantasy Building (10th & Carleton) and in other locations. West Berkeley is home to most of Berkeley's printing industry, and to some publishers, such as Nolo Press and Ten Speed Press.

Figure 1: Cultural Resources of West Berkeley, 1993



Permit #	Project Name	Permit Type	Status	Received Date	Unit #
BLR-2024-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	3/23/2024	
BLR-2024-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	3/21/2024	
BLR-2024-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/19/2024	
BLR-2024-019349	SCIENTIFIC ADVENTURES	Non Profit Organization License Renewal	Approved	3/4/2024	406
BLR-2024-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	3/1/2024	408
BLR-2024-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	2/28/2024	
BLR-2024-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	2/24/2024	
BLR-2024-011381	WILMER SOUND LLC	Entertainment Recreation License Renewal	Closed	2/22/2024	101
BLR-2024-011506	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	2/20/2024	305
BLR-2024-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	2/8/2024	
BLR-2024-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	2/7/2024	308
BLR-2024-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	2/2/2024	
BLR-2024-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	2/2/2024	
BLR-2024-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	1/22/2024	
BLR-2024-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/19/2024	
BLR-2024-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/16/2024	
BLR-2024-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	12/28/2023	
BLR-2024-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	12/20/2023	
BLR-2024-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	12/20/2023	
BLR-2024-010517	ACTIVATE GLOBAL, INC	Non Profit Organization License Renewal	Approved	12/14/2023	
PLN2023-0087	APPEAL: 2600 TENTH STREET - ZP2023-0031	Appeal	Under Review	12/4/2023	

BLA-2023-001516	SCIENTIFIC ADVENTURES	Non Profit Organization License Application	Open	11/29/2023	406
BL-019349	SCIENTIFIC ADVENTURES	Non Profit Organization Business License	Active	11/29/2023	406
BLR-2020-019349	SCIENTIFIC ADVENTURES	Non Profit Organization License Renewal	Approved	11/29/2023	406
BLR-2021-019349	SCIENTIFIC ADVENTURES	Non Profit Organization License Renewal	Approved	11/29/2023	406
BLR-2022-019349	SCIENTIFIC ADVENTURES	Non Profit Organization License Renewal	Approved	11/29/2023	406
BLR-2023-019349	SCIENTIFIC ADVENTURES	Non Profit Organization License Renewal	Approved	11/29/2023	406
ZCBL2023-0268	NorthStarr Media Group	Zoning Certificate Business License	Approved	7/20/2023	417
ZCBL2023-0167	Pizzicato Productions	Zoning Certificate Business License	Approved	5/1/2023	250
BLR-2023-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	3/31/2023	
BLR-2023-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	3/28/2023	
BLR-2023-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	3/24/2023	
BLR-2023-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/13/2023	
BLR-2023-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/13/2023	
BLR-2023-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	3/9/2023	
BLR-2023-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	3/9/2023	
BLR-2023-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	3/2/2023	308
BLR-2023-011506	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	2/28/2023	305
BLR-2023-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	2/28/2023	
ZP2023-0031	AUP - Change of Use 9,750 square feet from Media Production to R+D; up to 9 tenant suites	Zoning Permit	In Review	2/28/2023	
BLR-2023-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	2/7/2023	408
BLR-2023-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	2/3/2023	
BLR-2023-011381	WILMER SOUND LLC	Entertainment Recreation License Renewal	Approved	2/1/2023	101
BLR-2023-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/30/2023	
BLR-2023-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/30/2023	

BLR-2023-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	1/25/2023	
BLR-2023-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/18/2023	
BLR-2023-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Closed	1/14/2023	
BLR-2023-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/3/2023	
BLR-2023-010517	ACTIVATE GLOBAL, INC	Non Profit Organization License Renewal	Approved	12/19/2022	
ZCBL2022-0190	TBD	Zoning Certificate Business License	Approved	5/18/2022	
BLR-2022-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	4/26/2022	306
BLR-2022-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	4/16/2022	
BLR-2022-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	4/9/2022	
BLR-2022-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	4/5/2022	
BLR-2022-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	3/8/2022	
BLR-2022-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	3/3/2022	
BLR-2018-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	3/2/2022	631
BLR-2019-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	3/2/2022	631
BLR-2020-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	3/2/2022	631
BLR-2021-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	3/2/2022	631
BLR-2022-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	3/2/2022	631
BLR-2022-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	2/28/2022	
BLR-2022-011381	WILMER SOUND LLC	Entertainment Recreation License Renewal	Approved	2/28/2022	101
BLR-2022-025426	LEBRECHT PRODUCTIONS INC	Entertainment Recreation License Renewal	Approved	2/26/2022	
BLR-2022-011506	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	2/25/2022	305
BLR-2022-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	2/23/2022	

BLR-2022-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	2/22/2022	308
BLR-2022-012103	SQUISHY ROBOTICS INC	Professional SemiProfessional License Renewal	Approved	2/17/2022	308
BLR-2022-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	2/12/2022	
BLR-2022-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	2/10/2022	
BLR-2022-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	2/8/2022	413
BLR-2022-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	2/2/2022	
BLR-2022-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	1/29/2022	408
BLR-2022-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	1/27/2022	
BLR-2022-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	1/25/2022	
ZCBL2022-0023	Activate Global, Inc.	Zoning Certificate Business License	Approved	1/18/2022	300
BLR-2022-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/16/2022	
BLR-2022-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/4/2022	
BLR-2020-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	10/16/2021	500
BLR-2021-025426	LEBRECHT PRODUCTIONS INC	Entertainment Recreation License Renewal	Approved	9/28/2021	
BL-015088	PICTURESTARTEDIT LLC	Entertainment Recreation Business License	Unreported	5/30/2021	623
ZCBL2021-0131	PictureStartEdit	Zoning Certificate Business License	Approved	5/17/2021	623
BLA-2021-000486	PICTURESTARTEDIT LLC	Entertainment Recreation License Application	Approved	5/11/2021	623
ZCBL2021-0121		Zoning Certificate Business License	Approved	5/6/2021	
BLR-2021-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	4/14/2021	
BLR-2021-035127	LERMAN DAVID	Professional SemiProfessional License Renewal	Closed	4/13/2021	
BLR-2021-008281	EKO DEVICES INC	Retail Trade License Renewal	Approved	4/6/2021	
BLR-2021-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	3/25/2021	
BLR-2021-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/25/2021	
BLR-2021-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/24/2021	

BLR-2021-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	3/20/2021	
BLR-2021-011381	WILMER SOUND LLC	Entertainment Recreation License Renewal	Approved	3/19/2021	101
BLR-2021-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	3/12/2021	408
BLR-2021-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	3/9/2021	308
BLR-2021-002099	BAY AREA ECONOMICS	Professional SemiProfessional License Renewal	Approved	3/1/2021	300
BLR-2021-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	2/27/2021	
BLR-2021-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	2/26/2021	
BLR-2021-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	2/24/2021	
BLR-2021-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	2/24/2021	
BLR-2021-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	2/20/2021	
BLR-2021-053875	GV BERKELEY LLC	Retail Trade License Renewal	Closed	2/20/2021	
BLR-2021-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	2/19/2021	413
BLR-2021-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	2/16/2021	
BLR-2021-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	2/3/2021	
BLR-2021-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	2/3/2021	
BLR-2021-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/19/2021	
BLR-2021-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/14/2021	
BLR-2021-011506	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/7/2021	305
BLR-2020-003842	A12 INC	Professional SemiProfessional License Renewal	Approved	5/4/2020	616
BLR-2020-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Closed	4/29/2020	
BLR-2020-003532	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters License Renewal	Delinquent	4/20/2020	
BLR-2020-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	4/8/2020	

BLR-2020-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	4/2/2020	308
BLR-2020-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	4/2/2020	
BLR-2020-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	4/1/2020	
BLR-2020-025426	LEBRECHT PRODUCTIONS INC	Entertainment Recreation License Renewal	Approved	3/31/2020	
BLR-2020-011506	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	3/27/2020	305
BLR-2020-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	3/23/2020	
BLR-2020-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	3/23/2020	
BLR-2020-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	3/19/2020	
BLR-2020-011381	WILMER SOUND LLC	Entertainment Recreation License Renewal	Approved	3/9/2020	101
BLR-2020-002099	BAY AREA ECONOMICS	Professional SemiProfessional License Renewal	Approved	3/4/2020	300
BLR-2020-008281	EKO DEVICES INC	Retail Trade License Renewal	Approved	3/2/2020	
BLR-2020-035127	LERMAN DAVID	Professional SemiProfessional License Renewal	Approved	2/27/2020	
BLR-2020-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	2/27/2020	
BLR-2020-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	2/25/2020	
BLR-2020-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	2/10/2020	
BLR-2020-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	2/8/2020	
BLR-2020-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	2/4/2020	413
BLR-2020-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	2/1/2020	
BLR-2020-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	1/16/2020	408
BLR-2020-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	1/16/2020	
BLR-2020-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/15/2020	
BLR-2020-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/15/2020	
BLR-2020-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/7/2020	

BLR-2020-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/7/2020	
BLR-2020-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/4/2020	
BLA-2019-001221	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Application	Approved	8/20/2019	413
BLR-2016-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	8/20/2019	413
BLR-2017-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	8/20/2019	413
BLR-2018-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	8/20/2019	413
BLR--012753	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	8/20/2019	413
BLR-2019-012398	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Renewal	Approved	8/20/2019	413
ZCBL2019-0367	2600 Tenth Street #305, 311, 312	Zoning Certificate Business License	Approved	7/30/2019	305
ZP2019-0090		Zoning Permit	Withdrawn	5/17/2019	
BLR-2019-035127	LERMAN DAVID	Professional SemiProfessional License Renewal	Approved	4/25/2019	
BLR-2019-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	4/25/2019	
BLR-2019-003532	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters License Renewal	Approved	4/2/2019	
BLR-2019-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	3/22/2019	308
BLR-2019-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	3/21/2019	
BLR-2019-025426	LEBRECHT PRODUCTIONS INC	Entertainment Recreation License Renewal	Approved	3/19/2019	
BL-011506	BERKELEY SOUND ARTISTS	Entertainment Recreation Business License	Active	3/19/2019	305
BLR-2019-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/18/2019	
BLR-2019-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	3/14/2019	
BLR-2019-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Renewal	Closed	3/11/2019	
BL-011381	WILMER SOUND LLC	Entertainment Recreation Business License	Closed	3/10/2019	101
BLR-2019-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	3/9/2019	

BLR-2019-002099	BAY AREA ECONOMICS	Professional SemiProfessional License Renewal	Approved	3/6/2019	300
BLR-2019-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/5/2019	
BLR-2019-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	3/1/2019	
BLR-2019-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	2/28/2019	
BLR-2019-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	2/27/2019	
BLR-2019-003842	A12 INC	Professional SemiProfessional License Renewal	Approved	2/20/2019	616
BLR-2019-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	2/15/2019	500
BLR-2019-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	2/14/2019	
BLR-2019-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	2/11/2019	
BLR-2019-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	2/8/2019	
BLR-2019-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	2/6/2019	
ZCBL2019-0048	WILMER SOUND LLC	Zoning Certificate Business License	Approved	1/31/2019	101
BLA-2019-000126	WILMER SOUND LLC	Entertainment Recreation License Application	Approved	1/24/2019	101
BLR-2019-008281	EKO DEVICES INC	Retail Trade License Renewal	Approved	1/17/2019	
BLR-2019-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	1/12/2019	408
BLR-2019-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/12/2019	
BLR-2019-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	1/12/2019	
BLR-2019-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/7/2019	
BLR-2019-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/7/2019	
BLR-2019-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/4/2019	
BLR-2019-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	12/26/2018	
BL-010517	ACTIVATE GLOBAL, INC	Non Profit Organization Business License	Active	10/21/2018	
PLN2018-0042		Zoning Research Letter	Closed	9/26/2018	
BLR-2016-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/4/2018	
BLR-2017-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/4/2018	

BLR-2018-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/4/2018	
BLR-2019-002935	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License Renewal	Closed	6/12/2018	
BLR-2018-008281	EKO DEVICES INC	Retail Trade License Renewal	Approved	4/20/2018	
BLR-2018-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	4/2/2018	
BLR-2018-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	4/2/2018	
BLR-2018-035127	LERMAN DAVID	Professional SemiProfessional License Renewal	Approved	3/28/2018	
BLR-2018-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	3/27/2018	
BLR-2018-002658	REGIMMUNE INC	Professional SemiProfessional License Renewal	Approved	3/24/2018	604
BLR-2018-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/24/2018	
BLR-2018-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Renewal	Approved	3/23/2018	
BLR-2018-003842	A12 INC	Professional SemiProfessional License Renewal	Approved	3/23/2018	616
BLR-2018-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	3/23/2018	
BLR-2018-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	3/22/2018	308
BLR-2018-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	3/20/2018	
BLR-2018-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	3/19/2018	
BLR-2018-003532	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters License Renewal	Approved	3/16/2018	
BLR-2018-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	3/14/2018	
BLR-2018-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	3/10/2018	500
BLR-2018-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	3/9/2018	
BLR-2018-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	2/23/2018	
BLR-2018-002099	BAY AREA ECONOMICS	Professional SemiProfessional License Renewal	Approved	2/23/2018	300
BLR-2018-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	2/23/2018	

BLR-2018-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	2/20/2018	
BLR-2018-002935	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License Renewal	Approved	2/17/2018	
BLR-2018-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	2/15/2018	
BLR-2018-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	2/8/2018	
BLR-2018-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	2/2/2018	
BLR-2018-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	2/2/2018	408
BLR-2018-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	2/2/2018	
BLR-2018-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/24/2018	
BLR-2016-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	1/16/2018	
BLR-2017-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	1/16/2018	
BLR-2018-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	1/16/2018	
BLR-2018-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/9/2018	
BLR-2018-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	12/19/2017	
BL-008281	EKO DEVICES INC	Retail Trade Business License	Unreported	10/11/2017	
ZCBL2017-0329	Law Office of David A. Wolf	Zoning Certificate Business License	Approved	8/22/2017	Suite 410
BLA-2017-001072	BERKELEY FILM FOUNDATION	Non Profit Organization License Application	Approved	8/21/2017	408
BL-008002	BERKELEY FILM FOUNDATION	Non Profit Organization Business License	Active	8/21/2017	408
BLR-2017-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	8/21/2017	408
BLR-2016-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	8/21/2017	408
BLR-2015-008002	BERKELEY FILM FOUNDATION	Non Profit Organization License Renewal	Approved	8/21/2017	408
BLR-2017-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	4/12/2017	500
BLR-2017-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	3/28/2017	
BLR-2017-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	3/27/2017	
BLR-2017-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/22/2017	
BLR-2017-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	3/20/2017	

BLR-2017-035127	LERMAN DAVID	Professional SemiProfessional License Renewal	Approved	3/20/2017	
BLA-2017-000365	EKO DEVICES INC	Retail Trade License Application	Approved	3/10/2017	
BLR-2017-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/10/2017	
BLR-2017-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	3/10/2017	
BLR-2015-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	3/10/2017	
BLR-2017-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	3/10/2017	
BLR-2016-002184	AVID TECHNOLOGY INC	Professional SemiProfessional License Renewal	Approved	3/10/2017	
BLR-2017-003842	A12 INC	Professional SemiProfessional License Renewal	Approved	3/8/2017	616
BLR-2017-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	3/7/2017	
BLR-2017-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Renewal	Approved	3/3/2017	
BLR-2017-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	3/2/2017	
BLR-2017-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	2/28/2017	
BLR-2017-002099	BAY AREA ECONOMICS	Professional SemiProfessional License Renewal	Approved	2/24/2017	300
BLR-2017-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	2/24/2017	
BLR-2017-002935	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License Renewal	Approved	2/24/2017	
BLR-2017-005311	KUKU STUDIOS INC	Entertainment Recreation License Renewal	Approved	2/24/2017	308
BLR-2017-003532	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters License Renewal	Approved	2/18/2017	
BLR-2017-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	2/18/2017	
BLR-2017-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	2/18/2017	
BLR-2017-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	2/16/2017	
BLR-2017-052639	IPFOLIO CORPORATION	Professional SemiProfessional License Renewal	Approved	2/16/2017	

BLR-2017-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	2/11/2017	
BLR-2017-002658	REGIMMUNE INC	Professional SemiProfessional License Renewal	Approved	2/3/2017	604
BLR-2017-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/30/2017	
BLR-2017-044146	FRAME BY FRAME PRODUCTIONS	Wholesale Trade License Renewal	Approved	1/20/2017	602
BLR--002043	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	1/19/2017	410
BLR-2016-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Approved	1/19/2017	410
BLR-2017-000244	AFFINITY CAPITAL ADVISORS LLC	Professional SemiProfessional License Renewal	Approved	1/19/2017	424
BL-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional Business License	Unreported	1/17/2017	631
BLR-2017-006787	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Renewal	Delinquent	1/17/2017	410
BLR-2017-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/5/2017	
BLA-2016-001388	COAST MASTERING	Entertainment Recreation License Application	In Review	10/6/2016	101
BL-005311	KUKU STUDIOS INC	Entertainment Recreation Business License	Active	4/10/2016	308
ZCBL2016-0109		Zoning Certificate Business License	Approved	3/23/2016	308
BLR-2016-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	3/22/2016	
BLR-2016-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	3/17/2016	
BLR-2016-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/17/2016	
BLR-2016-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	3/16/2016	
BLR-2016-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	3/15/2016	
BLR-2016-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Renewal	Approved	3/12/2016	
BLR-2016-002099	BAY AREA ECONOMICS	Professional SemiProfessional License Renewal	Approved	3/11/2016	300
BLA-2016-000373	KUKU STUDIOS INC	Entertainment Recreation License Application	Approved	3/8/2016	308
BLR-2016-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	3/4/2016	

BLR-2016-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/4/2016	
BLR-2016-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	3/2/2016	
BLR-2016-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	3/2/2016	
BLR-2016-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	3/1/2016	
BLR-2016-003842	A12, INC	Professional SemiProfessional License Renewal	Approved	3/1/2016	616
BLA-2016-000319	YOUNG PEOPLE'S SYMPHONY ORCHESTRA	Non Profit Organization License Application	In Review	3/1/2016	413
BLA-2016-000320	LAW OFFICE OF DAVID A WOLF	Professional SemiProfessional License Application	In Review	3/1/2016	410
BLR-2016-003532	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters License Renewal	Approved	2/26/2016	
BLR-2016-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	2/25/2016	
BLR-2016-002935	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License Renewal	Approved	2/25/2016	
BLR-2016-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	2/23/2016	
BLR-2016-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	2/19/2016	
BLR-2016-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	1/29/2016	500
BLR-2016-044146	FRAME BY FRAME PRODUCTIONS	Wholesale Trade License Renewal	Approved	1/22/2016	602
BLR-2016-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/20/2016	
BLR-2016-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/20/2016	
BLR-2016-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	1/16/2016	
BLR-2016-000244	AFFINITY CAPITAL ADVISORS LLC	Professional SemiProfessional License Renewal	Approved	1/15/2016	424
BLR-2016-002658	REGIMMUNE INC	Professional SemiProfessional License Renewal	Approved	1/15/2016	604
BLR-2016-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/12/2016	
BLR-2016-029896	SNITOW/KAUFMAN PRODUCTIONS, INC	Non Profit Organization License Renewal	Approved	12/30/2015	
BLR-2014-049861	OPEN'HOOD INC	Non Profit Organization License Renewal	Approved	12/17/2015	
BLR-2015-049861	OPEN'HOOD INC	Non Profit Organization License Renewal	Approved	12/17/2015	
BLR-2012-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/10/2015	

BLR-2013-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/10/2015	
BLR-2014-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/10/2015	
BLR-2015-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	9/10/2015	
BL-003842	A12 INC	Professional SemiProfessional Business License	Closed	8/6/2015	616
BLR-2015-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	7/21/2015	
BL-003532	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters Business License	Delinquent	6/18/2015	
ZCBL2015-0247	Tavistock Restaurants, LLC	Zoning Certificate Business License	Approved	6/5/2015	
BLA-2015-000782	TAVISTOCK RESTAURANT COLLECTION	Administrative Headquarters License Application	Approved	5/22/2015	
ZCBL2015-0216	A12	Zoning Certificate Business License	Approved	5/12/2015	616
BLR-2015-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	4/23/2015	500
BLR-2015-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	3/24/2015	
BLR-2015-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Renewal	Approved	3/23/2015	
BLR-2015-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	3/20/2015	
BLR-2015-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/20/2015	
BLA-2015-000420	A12, INC	Professional SemiProfessional License Application	Approved	3/16/2015	616
BLR-2015-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	3/13/2015	
BL-002935	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License	Closed	3/13/2015	
BLR-2015-002935	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License Renewal	Approved	3/13/2015	
BLR-2015-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	3/12/2015	
BLA-2015-000368	TAVISTOCK RESTAURANT COLLECTION	Retail Trade License Application	Void	3/6/2015	
BLR-2015-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/6/2015	
BLR-2015-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	3/5/2015	
BLR-2015-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	3/3/2015	

ZCBL2015-0106	Tavistock Restaurant Collection	Zoning Certificate Business License	Denied	2/27/2015	
BLR-2015-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	2/26/2015	
BLR-2015-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	2/24/2015	
BLR-2015-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	2/20/2015	
BLR-2015-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	2/12/2015	
BLR-2015-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/30/2015	
ZCBL2015-0027		Zoning Certificate Business License	Approved	1/23/2015	602
ZCBL2015-0022	REGIMMUNE INC	Zoning Certificate Business License	Approved	1/21/2015	604
BLR-2015-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/21/2015	
BLA-2015-000098	REGIMMUNE INC	Professional SemiProfessional License Application	Approved	1/21/2015	604
BLR-2015-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	1/15/2015	
BLR-2015-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/12/2015	
BLR-2015-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/7/2015	
BLR-2015-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	12/11/2014	
BL-002184	AVID TECHNOLOGY INC	Professional SemiProfessional Business License	Active	10/30/2014	
ZCBL2014-0349	AVID TECHNOLOGY INC	Zoning Certificate Business License	Approved	10/14/2014	
BLA-2014-001361	AVID TECHNOLOGY INC	Professional SemiProfessional License Application	Approved	10/2/2014	
BLR-2015-040112	TURING	Professional SemiProfessional License Renewal	Approved	9/2/2014	
BLR-2014-052934	COLORFLOW INC	Professional SemiProfessional License Renewal	Approved	9/2/2014	
BL-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional Business License	Closed	6/11/2014	500
BLR-2014-001397	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Renewal	Approved	6/11/2014	500
BLA-2014-000807	TEXAS SARATOGA MANAGEMENT LLC	Business Personal Repair Services License Application	Approved	6/4/2014	
BLA-2014-000658	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Application	Approved	5/9/2014	

BL-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License	Closed	5/9/2014	
BLR-2014-001158	PIXAR CHILD DEVELOPMENT CENTER	Business Personal Repair Services License Renewal	Approved	5/9/2014	
BLR-2014-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	4/21/2014	
BLR-2014-044146	FRAME BY FRAME PRODUCTIONS	Wholesale Trade License Renewal	Approved	4/21/2014	
BLR-2014-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	4/8/2014	
BLR-2014-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	4/8/2014	
BLR-2014-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	4/4/2014	
BLR-2014-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	3/31/2014	
BLR-2014-000244	AFFINITY CAPITAL ADVISORS LLC	Professional SemiProfessional License Renewal	Approved	3/28/2014	424
BLR-2014-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	3/24/2014	
BLR-2014-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	3/21/2014	
BLR-2014-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	3/18/2014	
BLR-2014-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	3/17/2014	
BLR-2014-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	3/11/2014	
BLR-2014-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	3/10/2014	
BLR-2014-040112	TURING	Professional SemiProfessional License Renewal	Approved	3/10/2014	
BLR-2014-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	3/6/2014	
BLR-2014-052639	IPFOLIO CORPORATION	Professional SemiProfessional License Renewal	Approved	3/5/2014	
BLR-2014-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	2/26/2014	
BLR-2014-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	2/25/2014	
BLR-2014-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	2/24/2014	
BLR-2014-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	2/14/2014	

BLR-2014-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/29/2014	
BLR-2014-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/22/2014	
BLR-2014-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/9/2014	
BLR-2014-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/9/2014	
ZCBL2013-0392	AFFINITY CAPITAL ADVISORS LLC	Zoning Certificate Business License	Approved	10/23/2013	424
BLA-2013-000224	AFFINITY CAPITAL ADVISORS LLC	Professional SemiProfessional License Application	Approved	10/15/2013	424
BLA-2013-000045	OPTIMUM ENERGY DESIGN	Professional SemiProfessional License Application	Approved	9/11/2013	500
BL-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation Business License	Closed	1/1/2013	
BL-017843	CATTICUS CORP	Non Profit Organization Business License	Active	1/1/2013	
BL-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization Business License	Unreported	1/1/2013	
BL-025426	LEBRECHT PRODUCTIONS INC	Entertainment Recreation Business License	Unreported	1/1/2013	
BL-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization Business License	Active	1/1/2013	
BL-030387	SEARCHLIGHT FILMS	Entertainment Recreation Business License	Active	1/1/2013	
BL-031651	SIGNIFYIN WORKS	Non Profit Organization Business License	Active	1/1/2013	
BL-035127	LERMAN DAVID	Professional SemiProfessional Business License	Closed	1/1/2013	
BL-038895	JED RIFFE FILMS LLC	Entertainment Recreation Business License	Active	1/1/2013	
BL-039613	BERKELEY MEDIA LLC	Professional SemiProfessional Business License	Active	1/1/2013	
BL-040112	TURING	Professional SemiProfessional Business License	Closed	1/1/2013	
BL-044146	FRAME BY FRAME PRODUCTIONS	Wholesale Trade Business License	Closed	1/1/2013	602
BL-044830	2600 TENTH STREET LLC	Rental of Real Property Business License	Active	1/1/2013	
BL-047661	ZD FILMS	Professional SemiProfessional Business License	Active	1/1/2013	
BL-047964	RL & ASSOCIATES INC	Retail Trade Business License	Closed	1/1/2013	
BL-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional Business License	Active	1/1/2013	
BL-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization Business License	Closed	1/1/2013	
BL-048921	BEYOND THE ARC	Professional SemiProfessional Business License	Closed	1/1/2013	

BL-049861	OPEN'HOOD INC	Non Profit Organization Business License	Closed	1/1/2013	
BL-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation Business License	Active	1/1/2013	
BL-050184	SWAN ENTERTAINMENT	Entertainment Recreation Business License	Active	1/1/2013	
BL-050809	LIVE WIRED PRODUCTIONS	Entertainment Recreation Business License	Unreported	1/1/2013	
BL-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters Business License	Closed	1/1/2013	
BL-051486	KNOWLES SOLAR INC	Construction or Contractor Business License	Unreported	1/1/2013	
BL-051907	NU REALITY PRODUCTIONS	Entertainment Recreation Business License	Unreported	1/1/2013	
BL-052213	SMARTGIRL PRODUCTIONS LLC	Entertainment Recreation Business License	Unreported	1/1/2013	
BL-052639	IPFOLIO CORPORATION	Professional SemiProfessional Business License	Unreported	1/1/2013	
BL-052934	COLORFLOW INC	Professional SemiProfessional Business License	Closed	1/1/2013	
BL-052976	WLC ARCHITECTS INC	Professional SemiProfessional Business License	Active	1/1/2013	
BL-053875	GV BERKELEY LLC	Retail Trade Business License	Closed	1/1/2013	
BLR-2013-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2013	

BLR-2013-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2013	
BLR-2013-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2013	
BLR-2013-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	1/1/2013	
BLR-2013-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	1/1/2013	
BLR-2013-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/1/2013	
BLR-2013-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	1/1/2013	
BLR-2013-049861	OPEN'HOOD INC	Non Profit Organization License Renewal	Approved	1/1/2013	
BLR-2013-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-050809	LIVE WIRED PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters License Renewal	Approved	1/1/2013	
BLR-2013-051486	KNOWLES SOLAR INC	Construction or Contractor License Renewal	Approved	1/1/2013	
BLR-2013-051907	NU REALITY PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-052213	SMARTGIRL PRODUCTIONS LLC	Entertainment Recreation License Renewal	Approved	1/1/2013	
BLR-2013-052934	COLORFLOW INC	Professional SemiProfessional License Renewal	Approved	1/1/2013	
BLR-2013-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	1/1/2013	
BLR-2013-053875	GV BERKELEY LLC	Retail Trade License Renewal	Approved	1/1/2013	
BL-046054	PROMISES FILM COMPANY	Non Profit Organization Business License	Unreported	1/1/2012	
BL-053765	MASSEY PLUGINS INC	Professional SemiProfessional Business License	Delinquent	1/1/2012	
BLR-2012-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2012	
BLR-2012-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2012	

BLR-2012-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2012	
BLR-2012-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2012	
BLR-2012-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2012	
BLR-2012-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2012	
BLR-2012-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	1/1/2012	
BLR-2012-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	1/1/2012	
BLR-2012-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-049861	OPEN'HOOD INC	Non Profit Organization License Renewal	Approved	1/1/2012	
BLR-2012-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-050809	LIVE WIRED PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters License Renewal	Approved	1/1/2012	
BLR-2012-051486	KNOWLES SOLAR INC	Construction or Contractor License Renewal	Approved	1/1/2012	
BLR-2012-051907	NU REALITY PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2012	
BLR-2012-052213	SMARTGIRL PRODUCTIONS LLC	Entertainment Recreation License Renewal	Approved	1/1/2012	

BLR-2012-052934	COLORFLOW INC	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-052976	WLC ARCHITECTS INC	Professional SemiProfessional License Renewal	Approved	1/1/2012	
BLR-2012-046054	PROMISES FILM COMPANY	Non Profit Organization License Renewal	Approved	1/1/2012	
MODUP2011-0015		MOD Use Permit Standard	Approved	10/19/2011	
BL-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization Business License	Active	1/1/2011	
BL-017904	JEWISH FILM FESTIVAL	Non Profit Organization Business License	Unreported	1/1/2011	
BL-041798	BERKELEY DIGITALFILM INSTITUTE	Professional SemiProfessional Business License	Unreported	1/1/2011	
BLR-2011-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2011	
BLR-2011-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2011	
BLR-2011-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2011	
BLR-2011-046054	PROMISES FILM COMPANY	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	1/1/2011	
BLR-2011-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	1/1/2011	
BLR-2011-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/1/2011	
BLR-2011-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	1/1/2011	

BLR-2011-049861	OPEN'HOOD INC	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-049871	ZAMACONA PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-050809	LIVE WIRED PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2011	
BLR-2011-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters License Renewal	Approved	1/1/2011	
BLR-2011-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2011-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2011	
BLR-2010-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2010	
BLR-2010-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2010	
BLR-2010-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2010	
BLR-2010-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2010	
BLR-2010-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2010	
BLR-2010-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2010	
BLR-2010-041798	BERKELEY DIGITALFILM INSTITUTE	Professional SemiProfessional License Renewal	Approved	1/1/2010	
BLR-2010-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2010	
BLR-2010-046054	PROMISES FILM COMPANY	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	1/1/2010	
BLR-2010-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	1/1/2010	

BLR-2010-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/1/2010	
BLR-2010-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	1/1/2010	
BLR-2010-048921	BEYOND THE ARC	Professional SemiProfessional License Renewal	Approved	1/1/2010	
BLR-2010-050184	SWAN ENTERTAINMENT	Entertainment Recreation License Renewal	Approved	1/1/2010	
BLR-2010-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters License Renewal	Approved	1/1/2010	
BL-029840	IRIS FILMS	Non Profit Organization Business License	Unreported	1/1/2009	
BLR-2009-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2009	
BLR-2009-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2009	
BLR-2009-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2009	
BLR-2009-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2009	
BLR-2009-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2009	
BLR-2009-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2009	
BLR-2009-041798	BERKELEY DIGITALFILM INSTITUTE	Professional SemiProfessional License Renewal	Approved	1/1/2009	
BLR-2009-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2009	
BLR-2009-046054	PROMISES FILM COMPANY	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-047661	ZD FILMS	Professional SemiProfessional License Renewal	Approved	1/1/2009	
BLR-2009-047964	RL & ASSOCIATES INC	Retail Trade License Renewal	Approved	1/1/2009	

BLR-2009-047996	NORTHSTARR MEDIA GROUP	Professional SemiProfessional License Renewal	Approved	1/1/2009	
BLR-2009-048144	BUDDHIST FILM FOUNDATION INC	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2009-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters License Renewal	Approved	1/1/2009	
BLR-2009-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2009	
BLR-2008-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2008	
BLR-2008-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2008	
BLR-2008-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2008	
BLR-2008-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2008	
BLR-2008-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2008	
BLR-2008-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2008	
BLR-2008-041798	BERKELEY DIGITALFILM INSTITUTE	Professional SemiProfessional License Renewal	Approved	1/1/2008	
BLR-2008-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2008	
BLR-2008-046054	PROMISES FILM COMPANY	Non Profit Organization License Renewal	Approved	1/1/2008	
BLR-2008-051425	EQUIPE CONTAINER SERVICES INC	Administrative Headquarters License Renewal	Approved	1/1/2008	
UP2007-0132		Use Permit Standard	Approved	11/13/2007	
BL-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional Business License	Unreported	1/1/2007	
BL-042938	OBAY MEDIA	Entertainment Recreation Business License	Unreported	1/1/2007	

BLR-2007-005036	CONCORD MUSIC GROUP INC	Entertainment Recreation License Renewal	Approved	1/1/2007	
BLR-2007-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-025426	BERKELEY SOUND ARTISTS	Entertainment Recreation License Renewal	Approved	1/1/2007	
BLR-2007-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2007	
BLR-2007-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2007	
BLR-2007-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2007	
BLR-2007-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2007	
BLR-2007-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2007	
BLR-2007-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2007	
BLR-2007-041798	BERKELEY DIGITALFILM INSTITUTE	Entertainment Recreation License Renewal	Approved	1/1/2007	
BLR-2007-044830	2600 TENTH STREET LLC	Rental of Real Property License Renewal	Approved	1/1/2007	
BLR-2007-042938	OBAY MEDIA	Entertainment Recreation License Renewal	Approved	1/1/2007	
BL-029867	INSIGHT PRODUCTIONS	Entertainment Recreation Business License	Unreported	1/1/2006	
BL-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation Business License	Unreported	1/1/2006	
BLR-2006-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2006	
BLR-2006-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2006	
BLR-2006-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2006	
BLR-2006-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2006	
BLR-2006-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2006	
BLR-2006-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2006	

BLR-2006-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2006	
BLR-2006-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2006	
BLR-2006-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2006	
BLR-2006-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2006	
BLR-2006-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2006	
BLR-2006-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2006	
BLR-2006-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2006	
BLR-2006-040112	TURING	Professional SemiProfessional License Renewal	Approved	1/1/2006	
BLR-2006-041798	BERKELEY DIGITALFILM INSTITUTE	Entertainment Recreation License Renewal	Approved	1/1/2006	
BLR-2006-042938	OBAY MEDIA	Entertainment Recreation License Renewal	Approved	1/1/2006	
BLR-2006-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2006	
BLR-2006-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2006	
BL-030034	MONTELL ASSOCIATES	Entertainment Recreation Business License	Delinquent	1/1/2005	
BL-034844	GEM THEATRES-IDEAS	Entertainment Recreation Business License	Delinquent	1/1/2005	
BLR-2005-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2005	
BLR-2005-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2005	
BLR-2005-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2005	

BLR-2005-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2005	
BLR-2005-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2005	
BLR-2005-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2005	
BLR-2005-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2005	
BLR-2005-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2005	
BLR-2005-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2005	
BLR-2005-041798	BERKELEY DIGITALFILM INSTITUTE	Entertainment Recreation License Renewal	Approved	1/1/2005	
BL-009986	OSBORNE/MC GRAW-HILL	Manufacturing Business License	Closed	1/1/2004	
BL-039093	KARSH JONATHAN **MB**	Entertainment Recreation Business License	Unreported	1/1/2004	
BL-039272	KROEBER ANN **MB**	Business Personal Repair Services License	Delinquent	1/1/2004	
BL-039646	HALVONIK PAUL N	Professional SemiProfessional Business License	Unreported	1/1/2004	
BLR-2004-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2004	
BLR-2004-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2004	
BLR-2004-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2004	
BLR-2004-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2004	

BLR-2004-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2004	
BLR-2004-030034	MONTELL ASSOCIATES	Entertainment Recreation License Renewal	Approved	1/1/2004	
BLR-2004-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2004	
BLR-2004-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2004	
BLR-2004-034844	GEM THEATRES-IDEAS	Entertainment Recreation License Renewal	Approved	1/1/2004	
BLR-2004-038895	JED RIFFE FILMS LLC	Entertainment Recreation License Renewal	Approved	1/1/2004	
BLR-2004-039613	BERKELEY MEDIA LLC	Professional SemiProfessional License Renewal	Approved	1/1/2004	
BLR-2004-039093	KARSH JONATHAN **MB**	Entertainment Recreation License Renewal	Approved	1/1/2004	
BLR-2004-039646	HALVONIK PAUL N	Professional SemiProfessional License Renewal	Approved	1/1/2004	
AUP2003-0142		Administrative Use Permit		9/22/2003	
BLR-2003-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2003	
BLR-2003-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/2003	
BLR-2003-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2003	
BLR-2003-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2003	
BLR-2003-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2003	
BLR-2003-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2003	
BLR-2003-030034	MONTELL ASSOCIATES	Entertainment Recreation License Renewal	Approved	1/1/2003	

BLR-2003-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2003	
BLR-2003-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2003	
BLR-2003-034844	GEM THEATRES-IDEAS	Entertainment Recreation License Renewal	Approved	1/1/2003	
BLR-2003-039093	KARSH JONATHAN **MB**	Entertainment Recreation License Renewal	Approved	1/1/2003	
BLR-2003-039646	HALVONIK PAUL N	Professional SemiProfessional License Renewal	Approved	1/1/2003	
BL-030177	INDEPENDENT PRODUCERS SERVICES	Non Profit Organization Business License	Unreported	1/1/2002	
BLR-2002-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2002	
BLR-2002-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/2002	
BLR-2002-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2002	
BLR-2002-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2002	
BLR-2002-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2002	
BLR-2002-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2002	
BLR-2002-030034	MONTELL ASSOCIATES	Entertainment Recreation License Renewal	Approved	1/1/2002	
BLR-2002-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2002	
BLR-2002-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2002	
BLR-2002-034844	GEM THEATRES-IDEAS	Entertainment Recreation License Renewal	Approved	1/1/2002	
BLR-2002-039272	KROEBER ANN **MB**	Business Personal Repair Services License Renewal	Approved	1/1/2002	

BLR-2001-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2001	
BLR-2001-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/2001	
BLR-2001-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2001	
BLR-2001-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2001	
BLR-2001-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2001	
BLR-2001-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/2001	
BLR-2001-030034	MONTELL ASSOCIATES	Entertainment Recreation License Renewal	Approved	1/1/2001	
BLR-2001-030177	INDEPENDENT PRODUCERS SERVICES	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2001	
BLR-2001-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2001	
BLR-2001-034844	GEM THEATRES-IDEAS	Entertainment Recreation License Renewal	Approved	1/1/2001	
BLR-2001-039272	KROEBER ANN **MB**	Business Personal Repair Services License Renewal	Approved	1/1/2001	
BLR-2001-040112	TURING	Entertainment Recreation License Renewal	Approved	1/1/2001	
BLR-2000-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/2000	
BLR-2000-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/2000	
BLR-2000-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/2000	

BLR-2000-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2000	
BLR-2000-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/2000	
BLR-2000-029994	JACOBS, KAREN FOLGER	Business Personal Repair Services License Renewal	Approved	1/1/2000	
BLR-2000-030034	MONTELL ASSOCIATES	Entertainment Recreation License Renewal	Approved	1/1/2000	
BLR-2000-030177	INDEPENDENT PRODUCERS SERVICES	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/2000	
BLR-2000-031651	SIGNIFYIN WORKS	Non Profit Organization License Renewal	Approved	1/1/2000	
BLR-2000-039272	KROEBER ANN **MB**	Business Personal Repair Services License Renewal	Approved	1/1/2000	
BLR-1999-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/1999	
BLR-1999-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1999	
BLR-1999-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/1999	
BLR-1999-029840	IRIS FILMS	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-029865	CULTURAL RESEARCH & COMM.	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/1999	
BLR-1999-029896	SNITOW/KAUFMAN PRODUCTIONS,INC	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/1999	
BLR-1999-029994	JACOBS, KAREN FOLGER	Business Personal Repair Services License Renewal	Approved	1/1/1999	
BLR-1999-030034	MONTELL ASSOCIATES	Entertainment Recreation License Renewal	Approved	1/1/1999	

BLR-1999-030177	INDEPENDENT PRODUCERS SERVICES	Non Profit Organization License Renewal	Approved	1/1/1999	
BLR-1999-030387	SEARCHLIGHT FILMS	Entertainment Recreation License Renewal	Approved	1/1/1999	
BLR-1998-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/1998	
BLR-1998-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1998	
BLR-1998-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/1998	
BLR-1998-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/1998	
BLR-1998-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1998	
BLR-1998-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/1998	
BLR-1998-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/1998	
BLR-1998-029867	INSIGHT PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/1998	
BLR-1998-029993	GOLDSMITH PRODUCTIONS	Entertainment Recreation License Renewal	Approved	1/1/1998	
BLR-1998-029994	JACOBS, KAREN FOLGER	Professional SemiProfessional License Renewal	Approved	1/1/1998	
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BLR-1997-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/1997	
BLR-1997-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1997	
BLR-1997-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/1997	
BLR-1997-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/1997	
BLR-1997-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1997	
BLR-1997-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/1997	
BLR-1997-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/1997	
BLR-1996-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/1996	
BLR-1996-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1996	
BLR-1996-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/1996	
BLR-1996-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/1996	
BLR-1996-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1996	
BLR-1996-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/1996	
BLR-1996-025426	BERKELEY SOUND ARTISTS	Manufacturing License Renewal	Approved	1/1/1996	

BLR-1995-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/1995	
BLR-1995-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1995	
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BLR-1994-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1994	
BLR-1994-017904	JEWISH FILM FESTIVAL	Non Profit Organization License Renewal	Approved	1/1/1994	
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BLR-1993-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1993	
BLR-1993-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/1993	
BLR-1993-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/1993	
BLR-1993-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1993	
BLR-1993-017904	JEWISH FILM FESTIVAL	General Business License Renewal	Approved	1/1/1993	
BLR-1992-005036	CONCORD MUSIC GROUP INC	Business Personal Repair Services License Renewal	Approved	1/1/1992	
BLR-1992-009986	OSBORNE/MC GRAW-HILL	Manufacturing License Renewal	Approved	1/1/1992	
BLR-1992-017843	CATTICUS CORP	Non Profit Organization License Renewal	Approved	1/1/1992	
BLR-1992-017857	CLARITY FILM PRODUCTIONS	Non Profit Organization License Renewal	Approved	1/1/1992	
BLR-1992-017879	NEW IMAGES PRODUCTIONS INC	Non Profit Organization License Renewal	Approved	1/1/1992	
BLR-1992-017904	JEWISH FILM FESTIVAL	General Business License Renewal	Approved	1/1/1992	



Administrative Record

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley's Website
<http://www.berkeleyca.gov>

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

ZAB APPEAL: 2600 TENTH STREET, USE PERMIT #ZP2023-0031

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, JULY 30, 2024 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to **DENY Zoning Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,303 square feet of Research and Development space and to create six to nine tenant spaces, in a seven-story building on a 114,998 square-foot lot.**

The hearing will be held on, July 30, 2024 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Nilu Karimzadegan, Project Planner at (510) 981-7430 or email nkarimzadegan@berkeleyca.gov

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of July 18, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Mark Numainville, City Clerk

Mailed by: July 16, 2024

Noticed Pursuant to: Berkeley Municipal Code Section 23.404.040(B), Public Hearing Notice

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to*

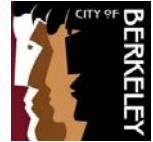
Attachment 9

approve or deny (Code Civ. Proc. § 1094.6(b)) or approve (Gov. Code 65009(c)(5) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

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



BERKELEY CITY AUDITOR

INFORMATION CALENDAR

July 30, 2024

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: City Auditor Fiscal Year 2025 Audit Plan

INTRODUCTION

The Berkeley City Charter requires the City Auditor to provide the City Council with a planned audit schedule by the beginning of each fiscal year (FY) and to notify the Council when audits are added. In deciding what to audit, our office considers suggestions from the City Manager, staff, the City Council, the Rent Stabilization Board, commissioners, and other community members. We examine risks that might prevent the City from reaching its goals, including strategic, financial, regulatory, operational, and reputational risks.

CURRENT SITUATION AND ITS EFFECTS

As required by the City Charter, we are notifying the Council of our annual audit plan. The following plan assumes being fully staffed to conduct these audits.

For FY 2025, we have identified areas we aim to address in the upcoming year:

- Homelessness (audit in progress)
- Food safety inspections (audit released July 10, 2024)
- Contracts
- Rent Stabilization Board
- Affordable Housing
- Follow-up on prior audit recommendations, including a follow-up audit of the City's leases
- Short-term projects
- Whistleblower Program

BACKGROUND

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The FY 2025 Audit Plan reflects our office's commitment to continuous improvement by enhancing the overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

ENVIRONMENTAL SUSTAINABILITY

This report is not associated with identifiable environmental effects or opportunities.

POSSIBLE FUTURE ACTION

Our future audit recommendations will address the risks that could prevent the City from providing efficient, effective, and equitable service delivery. We will be asking the Council to accept those recommendations and request that the City Manager report on their actions to implement them. We may also make recommendations requiring Council action.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Audit work can lead to new or enhanced revenue, cost recovery, and increased efficiency, with economic impact well beyond the audit costs. Long-range financial benefits of our audits include significant improvements to internal controls and service delivery.

Ensuring timely implementation of audit recommendations could result in additional savings and risk reduction, including fraud risk. Reducing fraud risk more than protects money; it builds trust in government. Maintaining a strong audit function and fiscal management will reduce future costs and enhance public trust.

CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. Audit Plan Fiscal Year 2025

Audit Plan Fiscal Year 2025

Inside

Letter from the Auditor

Planned Engagements

Plan Description

Audit Selection Process

Auditor's Authority



BERKELEY CITY AUDITOR

Letter from the Auditor



As the Berkeley City Auditor, I am pleased to present to you the audit plan for fiscal year (FY) 2025. This plan outlines the key areas of focus for the City Auditor's Office, including ongoing work, new initiatives, and the allocation of resources to ensure transparency, accountability, and effective governance.

Our office conducts performance audits of city functions, where we evaluate city programs to determine their effectiveness and compliance with local laws and regulations. Our goal with each audit is to ensure that the City is using taxpayer dollars efficiently and equitably to deliver high-quality services. We aim to initiate the engagements identified in the audit plan during the fiscal year. Our capacity to initiate and complete projects this fiscal year will depend on available resources.

In the past fiscal year, my office has achieved significant milestones, including issuing the audit *Spending Aligned with Ballot Measure FF and the City Is Improving Internal Processes*. We also made significant progress toward establishing our Whistleblower Program. Council passed amendments to Berkeley's Municipal Code Chapter 2.24 to authorize our office to establish a Whistleblower Program. As part of this effort, we contracted with an independent third-party hotline provider that will enable receiving confidential whistleblower reports from people who have information regarding fraud, waste, or abuse of City resources by Berkeley employees or officials.

Building upon these accomplishments, we have developed the FY 2025 audit plan to address areas of concern and further strengthen the governance of the City of Berkeley. In FY 2025, we will continue our ongoing audit of homelessness and release an audit of food safety inspections. We also plan to initiate new audits related to the Rent Stabilization Board, affordable housing, and contracts, depending on staff capacity.

We will continue to perform follow-up work on audit recommendations to determine if the City has properly implemented them. I will also continue to devote office resources to completing the launch of the Whistleblower Program. I believe that by incorporating the Whistleblower Program into our efforts to promote transparency and accountability, we can uncover potential misconduct, prevent future wrongdoing, and ultimately enhance the overall integrity of Berkeley government.

I am dedicated to upholding our mission of promoting transparency and accountability in Berkeley government. Together, with the implementation of the Whistleblower Program and our existing audit initiatives, we can strengthen transparency, accountability, and public trust in Berkeley government, fostering an environment where effective governance thrives. I remain committed to fostering strong relationships with city departments, officials, and community stakeholders to effectively carry out our mandate.

Respectfully,

JENNY WONG
City Auditor

Planned Engagements FY 2025

Rent Stabilization Board

The Auditor's office will conduct an audit examining the Rent Stabilization Board's finances or operations.

Affordable Housing

The Auditor's office will conduct an audit related to affordable housing.

Contracts

The Auditor's office will conduct an audit related to the City's contracting process.

Follow-Up

The Auditor's office will continue to track and follow up on all audit recommendations to determine if they are properly implemented. We will continue to publish an online public [dashboard](#) to increase transparency and accountability of the implementation status of open audit recommendations.¹ See page 4 for more details.

This process may lead to follow-up audits in areas where risks identified in the original audit have not been mitigated. In 2024, we plan to conduct a follow-up audit of the City's leases.

Short-Term Projects

In order to be responsive to the needs of the City and the public, we may engage in short-term projects to provide timely and relevant information and analysis to the City and community.

Ongoing Engagements

The Auditor's Office will continue our audit of homelessness and release our audit of food safety inspections.

Whistleblower Program Implementation and Anti-Fraud Focus

The Auditor's Office will implement a Whistleblower Program for employees and members of the public to report fraud, waste, or abuse by city departments, employees, or persons under contract with the City. This fiscal year we will focus on completing development of the program, including creating materials to educate staff and the public on fraud and the Whistleblower Program, and officially launching the program. See page 5 for more details.

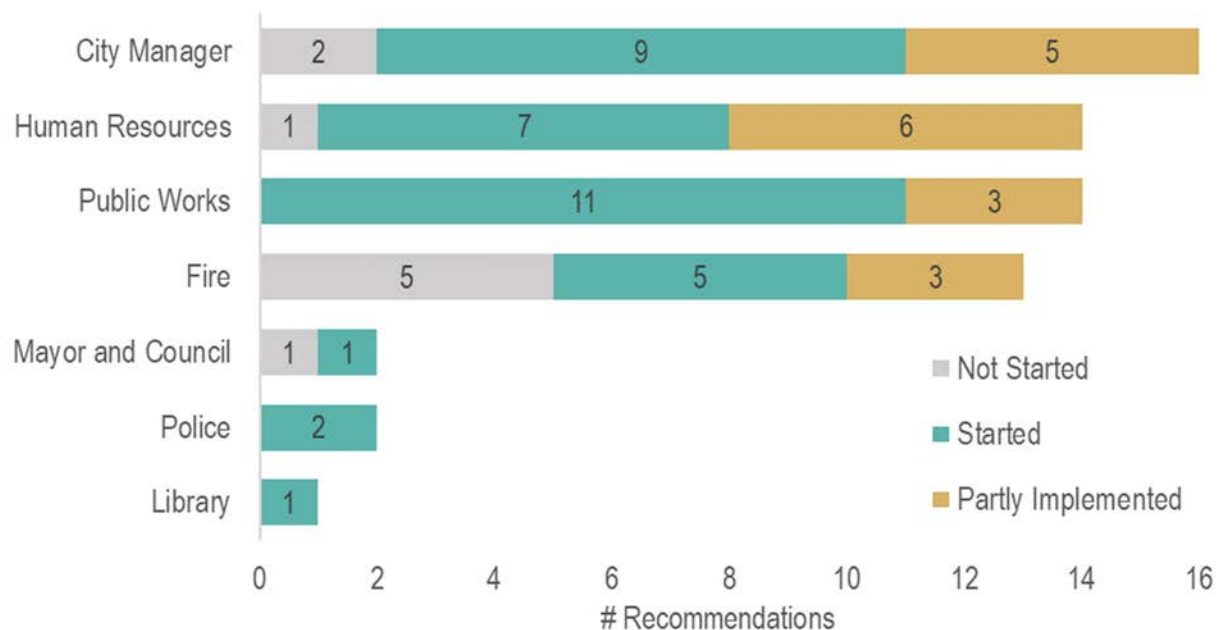
¹ City Auditor's Recommendation Dashboard—bit.ly/AuditRecDashboard

Follow-Up

In fiscal year 2025, the Auditor's Office will follow up on 62 open recommendations from 9 audits. We will use the following statuses to report on the implementation of audit recommendations:

- **Implemented:** auditee has addressed the audit risk by completely implementing the recommendation.
- **Partly implemented:** auditee has implemented 50 percent or more of the recommendation.
- **Started:** the auditee has started to address the recommendation but has not reached the 50 percent threshold.
- **Not started:** auditee has not yet taken action to implement the recommendation.
- **Dropped:** the auditee has accepted the risk to the City that the recommendation is meant to address and is unable or unwilling to implement the recommendation. Additionally, all open recommendations will be reported as dropped if they are not implemented within five years of audit issuance.

As of July 1st, 2024, there are 62 open recommendations from 9 audits across 7 departments.



Note: The graph only shows open recommendations our office is still following up on. Implemented and dropped recommendations are considered closed. The status for all recommendations is on our [dashboard](#).

Source: Berkeley City Auditor

Whistleblower Program

The Whistleblower Program will include a confidential hotline for reporting fraud, waste, and abuse in city government 24/7, 365 days of the year. This hotline will be available to all city employees, contractors, vendors, and residents. To protect whistleblowers, city policy protects city employees from retaliatory acts. This program will become available to the community when the hotline system is ready to take in reports.

Authority and Independence

State legislation encourages cities to specifically focus on fraud, waste, and/or misuse of city resources through whistleblower programs led by city auditors. In 2009, California Government Code Section 53087.6 enabled local government auditors to establish whistleblower programs and to provide whistleblower protections. Local auditors are authorized under Section 53087.6 to create whistleblower programs with the approval of their respective legislative bodies, and have discretion in how to operate their programs. In June, City Council adopted Ordinance No. 7,922 formally establishing the City Auditor's authority to receive and investigate whistleblower reports.

The Berkeley City Auditor maintains a level of structural independence well-suited for a whistleblower program, as they are elected by the public and do not report to the City Manager or Council. The City Auditor is well-positioned due to their role in providing objective information on the operations of government programs and helping ensure full accountability to the public.

Implementation Plan

	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5
Activity	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch
	Hire Whistleblower Program Manager	Determine appropriate methods and platforms for whistleblower reporting	Design a process for responding to and referring complaints	Develop written procedures and educational material	Receive and respond to complaints according to established procedures
Outcome	Determine funding needed for remaining steps of the implementation plan and ongoing operations	Design intake forms and procedures	Obtain necessary access rights to data systems for investigations	Disseminate educational materials	Develop mechanisms for ongoing assessments of program effectiveness including the development of metrics to benchmark across time or against similar organizations
	Resources	Reporting Mechanism	Response Mechanism	Education and Awareness	Program Launch
	Staff and funding secured to successfully manage program	Multiple channels for employees and outside parties to report complaints 24 hours a day, 365 days of the year	Ability to prioritize, investigate, refer, and follow up on complaints received	Potential whistleblowers understand how the program works, why it is important, and how they will be supported	A more accountable Berkeley government through the prevention and investigation of suspected fraud, waste, and abuse.

Plan Description

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of city programs and activities. The Fiscal Year 2025 Audit Plan reflects the office's steadfast commitment to continuous improvement by enhancing the overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

Auditing Under the City Charter

The Charter provides that the Auditor shall have the authority to conduct:

- Performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards;
- Financial, compliance, efficiency and economy, and program results auditing; and
- Examinations of payrolls, bills, and other claims and demands made against the City.

The FY 2025 Audit Plan ensures broad audit coverage throughout the City while also addressing specific performance, financial, contractual, and system risks. Audit resources are limited, thus prohibiting one hundred percent coverage each year. This significant limiting factor is inherent in the concept of using risk assessment to help prioritize audits. According to the City Charter, the ultimate decision to perform any audit shall be at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

Audit Follow-Up Program

Audit follow-up activities are conducted for every audit to assess whether city personnel implemented the agreed-upon audit recommendations. The Auditor's Office issues follow-up audit reports to City Council on the status of our recommendations. We also maintain a public [dashboard](#) with the status of audit recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency, effectiveness, and equity of operations. Our expectation is that the City should take no more than two years to implement our audit recommendations, unless specified.

Focus on Integrity, Independence, Impact, and Equity

The concepts of integrity, independence, impact, and equity are core tenets of operations within the Berkeley City Auditor's Office. Although the Auditor operates independently from other city entities, Auditor Wong and staff meet regularly with the Mayor, City Council, city personnel, neighborhood groups, and civic leaders to solicit input regarding risks. The objective of this strategy is to improve services and stewardship of city resources, with a focus on ensuring equitable access and outcomes for the Berkeley community.

Audit Selection Process

Developing an annual Audit Plan is an iterative process, conducted by assembling ideas from a variety of internal and external stakeholders, examining a broad range of City programs and activities, and assessing risk factors together with additional considerations. This approach results in a diverse list of departments, programs, and activities that are examined to determine whether they are operating efficiently, effectively, and in accordance with the law and other requirements.

In developing a list of potential audits, ideas come from a variety of sources:

- Input from the community, elected officials, department staff, and City management;
- Assessment of operations and controls in previous audit reports;
- Assessment of citywide risks;
- Consideration of current local events, financial conditions, capital improvement projects, and public policy issues; and
- Consideration of risks identified in other government audits that could emerge in Berkeley.

Our office identifies and prioritizes potential audits and other assessments using a risk-based approach that examines a variety of factors that may expose the City to fraud, misuse of funds, waste, liability, or reputational harm. The following risk factors are used to determine the audits included in the audit plan:

- Perception of risk from management, City Council, the community, and audit staff;
- Economic factors such as financial impact, volume of transactions, number of personnel, and revenue generated;
- Changes in organization, management, key personnel, and information systems; and
- Time since last audit.

After the plan is finalized, new information may come to light; events, initiatives, priorities, and risks within the City may change. The flexible nature of the Audit Plan as a living document provides the ability to change course when it is in the best interest of the City.

Auditor's Authority

The Berkeley City Auditor's Office provides independent oversight of city operations. Audits, conducted by the Office, provide the City Manager, City Council, and the public with objective, timely, and accurate information about city program performance. By providing this information and making recommendations for improvement, the Office helps to hold government accountable in its stewardship of public resources. Berkeley City Charter, Section 61, establishes this independence and provides for the Auditor's general authority and duties. The Charter also establishes the duty to present a planned audit schedule to City Council at the beginning of each fiscal year.

Several key components serve as the cornerstone for Berkeley's auditing framework. These elements provide the Auditor with the independence that results in the office's ability to conduct high-impact audits.

Elected Auditor — The City of Berkeley has an elected Auditor who is independent from all other elected officials and City management.

Comprehensive Access — The City Charter and Municipal Code authorize the Auditor to have unrestricted access to all officials, employees, records, and reports maintained by the City, and to all external entities, records, and personnel related to contracted business interactions with the City.

Audit Response Requirements — City Municipal Code requires that City management formally respond to all audit findings and recommendations, establishing the Auditor's ability to work in conjunction with audited departments while maintaining independence.

Recommendation Follow-up Requirements — City Municipal Code establishes the Auditor's authority to follow-up on audit recommendations as practical to determine if the City Manager is implementing corrective action, and request periodic reports on the status of audit recommendations from city management. The Auditor determines the adequacy, effectiveness, and timeliness of management's actions to correct reported issues and recommendations.

Adherence to Professional Auditing Standards — As a requirement in the City Charter, the Auditor's Office conducts all audits in accordance with Generally Accepted Government Auditing Standards produced by the United States Government Accountability Office.

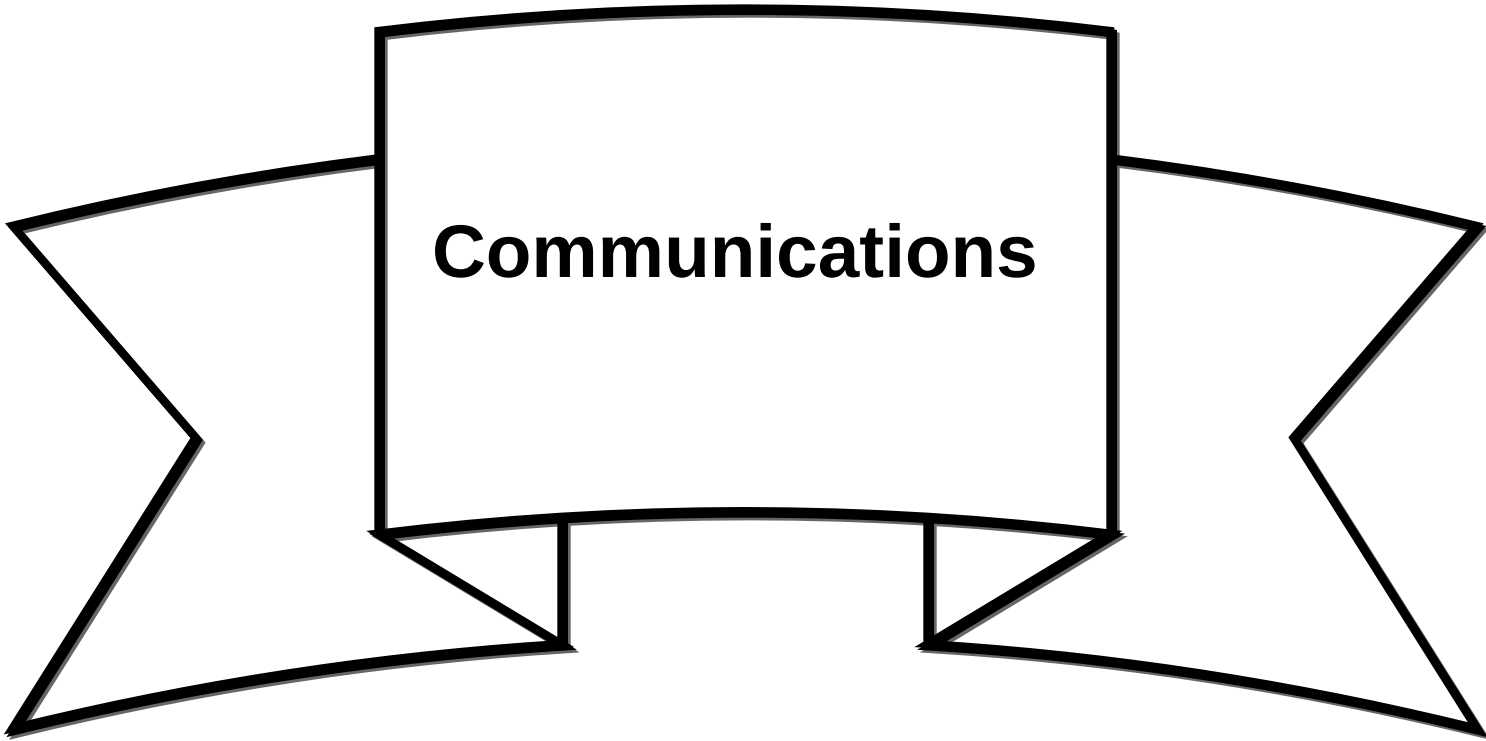


BERKELEY CITY AUDITOR

2180 Milvia Street, 3rd Floor, Berkeley, California 94704

510-981-6750

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



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

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF