



Office of the City Manager

INFORMATION CALENDAR

November 12, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Director, Planning and Development Department  
 Subject: Denial of Request to Waive Fees, 2992 Adeline Street

INTRODUCTION

This report provides the City Council with information about the City Manager's recent decision to deny a request to waive land use fees. The Berkeley Municipal Code (BMC) requires that the City Manager provide such an update upon any decision to approve or deny a request to waive land use fees.

CURRENT SITUATION AND ITS EFFECTS

On September 3, 2019, Planning Department staff were advised of a formal request to waive fees associated with the planned installation of an awning on the sidewalk fronting 2992 Adeline Street, part of the Marie and Frederick A. Hoffman Building, a City of Berkeley landmark. Installation of awnings on historic landmarks requires a Structural Alteration Permit, upon review and approval of the Landmarks Preservation Commission, and is subject to an authorized fee for design review of \$868 to cover the costs involved.

The tenant of a floral shop/gallery at 2992 Adeline, Mr. Gilbert Herrera, requested that the City waive that fee in support of his efforts to beautify that area of Berkeley, across from the Ashby BART station. Mr. Herrera's request cited the following justifications:

- The awning at 2992 Adeline would add to the beautification and upkeep of the corner of Ashby and Adeline.
- The awning itself would cost an estimated \$2,300, by Mr. Herrera's estimate.
- Mr. Herrera stated that he lives on a limited income, and the \$868 in fees would be a significant obstacle to realizing this element of the area beautification effort.
- Mr. Herrera stated that work to beautify this area is a long-term personal commitment for him, on which he had already expended out-of-pocket costs.
- The property owner, Mr. Herrera's landlord, had given him permission to install the awning.

If approved, Mr. Herrera would still be subject to other relevant City fees, such as building permit fees, which are not subject to waiver requests except in limited circumstances pertaining to affordable housing projects.

The City Manager considered this request, and while expressing appreciation for Mr. Herrera's previous and ongoing work to beautify this part of Berkeley, denied the request to waive Land Use fees. The City Manager found that the request and the proposed project did not rise to the threshold of "a significant public service or benefit" as required in order to grant a fee waiver under the BMC.

Staff with the City's Office of Economic Development is aware of potential other funding opportunities that could support this request and will work with Mr. Herrera to identify other ways in which the City might support his goal of a more beautified street front in the area around his business at 2992 Adeline.

### BACKGROUND

Berkeley has not granted any waivers of Land Use fees since 2010, and only a few since 2000. Examples of projects which have received waivers include the Ed Roberts Campus at 2075 Adeline, which fosters collaboration and improved services and opportunities for people with disabilities (Use Permit fee waivers in 2001 and 2008, around \$25,000), the Biofuel Oasis at 1441 Ashby, which provides fuels and services to reduce the carbon footprint from transportation and other activities (Use Permit, EIR review, and Design Review waivers in 2008, around \$12,000), and the legalization of an existing unit of affordable housing at 2500 Hillegass (Use Permit in 2010, around \$2,600).

Berkeley Municipal Code Section 23B.24.040 describes the processes and requirements for payment, waiver, or refund of land use fees. It states in part:

C. In addition to seeking fee waivers under other provisions of the BMC, any applicant may file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer. The Director of Planning and Development shall forward the request to the City Manager. The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver.

### ENVIRONMENTAL SUSTAINABILITY

There are no sustainable development opportunities or costs associated with the subject of this informational report.

POSSIBLE FUTURE ACTION

If the Council wished to reconsider this fee waiver request, it could move this Information report to the Action calendar and set the matter for discussion. If granted, a budget allocation is required to reimburse the Permit Service Center fund for the waived fees.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

If approved, \$868 from the City's General Fund to reimburse the Permit Service Center Fund.

CONTACT PERSON

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