



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, MAY 13, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: April 29, 2019**
2. **Review and Approve Draft Agendas:**
 - a. 5/28/19 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory Of**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

- None

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Tuesday, May 28, 2019

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### Additional items may be added to the draft agenda per Council Rules of Procedure.

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting. After the deadline for submission, residents must provide 10 copies of written communications to the City Clerk at the time of the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.*



#### 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 981-6418 (V) or 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.

\* \* \*

I hereby certify that the agenda for this special 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 May 9, 2019.

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

Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE  
SPECIAL MEETING MINUTES**

**BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES**

**MONDAY, APRIL 29, 2019**

**2:30 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

**Roll Call:** 2:30 p.m. All present.

**Public Comment** – 5 speakers.

**Review of Agendas**

**1. Approval of Minutes: April 15, 2019**

**Action:** M/S/C (Harrison/Wengraf) to approve the minutes of 4/15/19.

**Vote:** All Ayes.

**2. Review and Approve Draft Agendas:**

**a. 5/14/19 – 6:00 p.m. Regular City Council Meeting**

**Action:** M/S/C (Wengraf/Harrison) to approve the agenda of the 5/14/19 agenda with the changes noted below.

**Vote:** All Ayes.

- *Item Added – People’s Park (Robinson)*
- *Item Added – Missing Middle Budget Referral (Droste)*
- *Item Added – Traffic Calming Budget Referral (Wengraf)*
- *Item Added – Contract for Ambulance Transport (City Manager)*
- *Item 8 Carahsoft Contract (City Manager) – revisions added to reflect policy committee review*
- *Item 27 Support AB 539 (Arreguin) – Councilmembers Hahn and Bartlett added as co-sponsors*
- *Item 28 BOSS Relinquishment (Davila) – Councilmember Bartlett added as a co-sponsor*
- *Item 30 Rebuilding Together (Harrison) – Revised item submitted; Councilmember Wengraf and Mayor Arreguin added as co-sponsors*
- *Item 32 Himalayan Fair (Hahn) – Councilmembers Harrison and Davila added as co-sponsors*
- *Item 33 Support AB 38 (Wengraf) – Revised item submitted*
- *Item 44 Short Term Referrals (City Manager) – Item referred to the May 11, 2019 special meeting*
- *Item 45 Equal Pay Audit (COSOW) – Item held over to July 9, 2019 for companion report*
- *Item 47a/b/c Leonard Powell (HAC; Peace & Justice; City Manager) – Item held over to June 11, 2019*
- *Item 48 Socially Responsible Investment and Procurement (Peace & Justice) – Item held over to July 9, 2019 for companion report*

### Policy Committee Track Items

- Item 50 City Manager Evaluation (Arreguin) – 5/14/19 Consent Calendar
- Item 51 Inclement Weather Shelter (Davila) – 5/14/19 Action Calendar
- Item 52 Remediation Budget Referral (Davila) – 5/14/19 Action Calendar
- Item 53 Title IX (Davila) – Councilmembers Harrison, Hahn, and Wengraf added as co-sponsors; 5/14/19 Consent Calendar
- Item 54 Buy Clean California (Hahn) – Councilmembers Harrison and Davila added as co-sponsors; revised item submitted; 5/14/19 Consent Calendar

### Action Calendar Order

Item 34 – 39 Fee Public Hearings  
Item 40 Budget Public Hearing  
Item 41 One-Way Car Share  
Item 42 Residential Preferential Parking  
Item 43 ZAB Appeal  
Item 46a/b Fossil Fuel Free Berkeley  
Item 49a/b Grant Allocations  
Item 51 Inclement Weather Shelter  
Item 52 Budget Referral: Remediation

- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
  - Selected Item 25 regarding the Public Warning System
- 4. Adjournments In Memory Of**
  - Sue Hone, Former Berkeley Councilmember

### **Scheduling**

- 5. Council Worksessions Schedule** – received and filed
- 6. Council Referrals to Agenda Committee for Scheduling**
  - Schedule OED presentation for May 28, 2019
- 7. Land Use Calendar** – received and filed

## Referred Items for Review

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

- None

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:18 p.m.

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I hereby certify that this is a true and correct record of the Agenda and Rules Committee Meeting held on April 25, 2019.



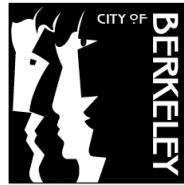
Mark Numainville, City Clerk

## Communications

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*





**DRAFT AGENDA****BERKELEY CITY COUNCIL MEETING****Tuesday, May 28, 2019****6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
 TELECONFERENCE LOCATION: 712 MORENO AVENUE, LOS ANGELES, CA 90049

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.*

*The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

**Preliminary Matters****Roll Call:**

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

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

**Public Comment on Non-Agenda Matters:** *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, 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 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. Speaker cards are not required for this second round of public comment on non-agenda matters.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

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

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

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

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

## Consent Calendar

- 1. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of April 2, 2019 (regular), April 23, 2019 (special and regular), April 29, 2019 (special closed), and April 30, 2019 (special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, 981-6900
  
- 2. Contract No. 10854 Amendment: Townsend Public Affairs, Inc. for Legislative and Funding Advocacy Strategy**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10854 with Townsend Public Affairs, Inc., contract No. 10854, for an ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by \$45,000, for an amount not-to-exceed \$90,000, and extending the contract from December 31, 2018 to June 30, 2020.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, City Manager's Office, 981-7000

## Consent Calendar

- 3. Assessments: Berkeley Tourism Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:  
1. Approving the Annual Report of FY19 and preliminary budget for FY20 for the Berkeley Tourism Business Improvement District (BTBID) as recommended by the BTBID Owners' Association; and  
2. Authorizing the City Manager to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, for \$650,000 of BTBID funds to support tourism marketing and promotion for the period of July 1, 2019 to June 30, 2020.  
**Financial Implications:** See report  
Contact: Jordan Klein, Economic Development, 981-7530
- 4. 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 FY 2019 and proposed budget for FY 2020, and declaring Council's intention to levy an annual assessment for the DPBID for FY 2020  
**Financial Implications:** See report  
Contact: Jordan Klein, Economic Development, 981-7530
- 5. 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 FY 2019 and proposed budget for FY 2020, and declaring Council's intention to levy an annual assessment for the NSBID for FY 2020  
**Financial Implications:** See report  
Contact: Jordan Klein, Economic Development, 981-7530
- 6. 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 FY 2019 and proposed budget for FY 2020, and declaring Council's intention to levy an annual assessment for the TBID for FY 2020.  
**Financial Implications:** See report  
Contact: Jordan Klein, Economic Development, 981-7530

## Consent Calendar

**7. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 28, 2019**

**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, 981-7300

**8. Notice of Appropriations Limit for Fiscal Year 2020**

**From: City Manager**

**Recommendation:** Adopt a Resolution providing notice that: 1) Council will adopt an appropriations limit for Fiscal Year 2020 at its meeting of June 25, 2019; and 2) the amount of the limit and the background material used in its calculation will be available for public review in the City Clerk's Office on or before June 10, 2019.

**Financial Implications:** See report

Contact: Henry Oyekanmi, Finance, 981-7300

**9. Contract No. 9821 Amendment: First Alarm & Security Patrol, Inc., dba First Security Services for Citywide Unarmed Security Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to increase the not-to-exceed value of Contract No. 9821 by \$365,792 from \$2,784,798 to \$3,150,590. The additional amount is required to fund continued services until October 31, 2019, which corresponds with the projected commencement date of a new contract for Citywide Unarmed Security Services, resulting from Request for Proposal (RFP) #19-11316-C scheduled to close May 30, 2019.

**Financial Implications:** See report

Contact: Henry Oyekanmi, Finance, 981-7300

**10. Contract: Pyro Spectaculars North, Inc. for fireworks for the Fourth of July and Winter on the Waterfront Special Events**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract with Pyro Spectaculars North, Inc. in the amount of \$82,500 for fireworks for the Fourth of July and Winter on the Waterfront special events in 2019, with an option for events in 2020 depending on the availability of funds.

**Financial Implications:** \$82,500.

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

## Consent Calendar

- 11. Contracts: As-needed Tree Services**  
**From: City Manager**  
**Recommendation:** Adopt four (4) Resolutions authorizing the City Manager to execute the following contracts, and any amendments, extensions, or other change orders for tree services as-needed, each for a period of May 29, 2019 to May 28, 2022:
1. Bay Area Tree Specialists, for an amount not to exceed \$200,000.
  2. Hamilton Tree Service, Inc., for an amount not to exceed \$200,000.
  3. The Professional Tree Care Company, for an amount not to exceed \$200,000.
  4. West Coast Arborists, Inc., for an amount not to exceed \$200,000.
- Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 12. Contract No. 10786 (117934-1) Amendment: Redwood Engineering for Parks Playground Surfacing and Pathway Repairs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10786 (117934-1) with Redwood Engineering Construction for parks playground surfacing and pathway repairs, increasing the amount by \$75,000 for an amended total amount not to exceed \$274,000.  
**Financial Implications:** \$274,000.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 13. Reject Bids and Negotiate in the Open Market for the Public Safety Building Envelope Repair Project, Specification No. 18-11263-C**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to reject bids and direct staff to negotiate in the open market for construction work associated with the Public Safety Building Envelope Repair Project, Specification No. 18-11263-C in accordance with Article XI, Public Works and Supplies, Section 67 (a.) of the City Charter.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300
- 14. Fire Prevention Inspections: Insufficient Resources Strain Code Compliance**  
**From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by December 3, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Fire Department. They have agreed to our findings and recommendations. Please see report for management's response.  
**Financial Implications:** See report  
Contact: Jenny Wong, Auditor, 981-6750

## Council Consent Items

- 15. Support of SB 48 – Right to Shelter**  
**From: Mayor Arreguin**  
**Recommendation:** Adopt a Resolution supporting SB 48 – Right to Shelter, introduced by State Senator Scott Wiener. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Wiener, and Assemblymember Buffy Wicks.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100
- 16. Support H.R. 40 – the Commission to Study and Develop Reparation Proposals for African-Americans Act**  
**From: Mayor Arreguin and Councilmembers Bartlett and Davila**  
**Recommendation:** Adopt a Resolution in support of H.R. 40 – the Commission to Study and Develop Reparation Proposals for African-Americans Act, introduced by Congressperson Sheila Jackson Lee. Send a copy of the Resolution to Senators Dianne Feinstein and Kamala Harris, Congresspersons Barbara Lee and Sheila Jackson Lee, and President Donald Trump.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100
- 17. Budget Referral: \$25,000 to the FY 2020-21 Budget Process for SupplyBank.Org to Expand School Supply Distribution**  
**From: Mayor Arreguin**  
**Recommendation:** Refer the following to the budget process: A request for \$25,000 to expand Berkeley school supply distribution and ensure every low-income Berkeley student has the appropriate school and dental supplies they need to be successful.  
**Financial Implications:** General Fund - \$25,000  
Contact: Jesse Arreguin, Mayor, 981-7100
- 18. Budget Referral: \$5,000 for the César Chávez Solar Calendar**  
**From: Mayor Arreguin**  
**Recommendation:** Refer to the FY2020-2021 budget process the allocation of \$5,000 to the Kala Art Institute for the purpose of maintaining the Solar Calendar/César Chávez Memorial.  
**Financial Implications:** General Fund - \$5,000  
Contact: Jesse Arreguin, Mayor, 981-7100
- 19. Budget Referral: \$80,000 to Support Technical Assistance for Succession Planning, Worker Cooperative Conversion and Development**  
**From: Mayor Arreguin**  
**Recommendation:** Refer to the budget process to extend the \$30,000 contract to Project Equity for two years and increase the amount to \$80,000 to support and build on the important work done to-date and expand the technical assistance beyond succession planning to include supporting new worker cooperative development.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100

## Council Consent Items

**20. Berkeley Juneteenth Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**

**From: Councilmembers Davila and Bartlett**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Councilmember Cheryl Davila, to support purchase of street-pole banners announcing the Berkeley Juneteenth Festival June 16, 2019, 11AM-7PM, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

**21. Budget Referral: Funding Stop Signs on Carleton and Fulton Street**

**From: Councilmember Bartlett**

**Recommendation:** That the Council refers to the budget process of funding a 4-way stop at the intersection of Carleton and Fulton.

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**22. Budget Referral: Funding for a Traffic Safety and Mitigation Study and Investments on Alcatraz Avenue**

**From: Councilmember Bartlett**

**Recommendation:** That the City Council refer to the budget process funding of a traffic safety and mitigation study for Alcatraz Avenue to address the high volume of traffic accidents along this roadway due to inadequate street lighting and traffic controls. This study will determine the best methods of controlling all forms of traffic to maximize the safety of motorists, pedestrians, and bicyclists.

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**23. Budget Referral: Funding for Street Lights Development at Martin Luther King Jr. Way and Stuart Street**

**From: Councilmember Bartlett and Mayor Arreguin**

**Recommendation:** That the Council refers to the budget process to fund traffic lights on Martin Luther King Jr. Way and Stuart Street in order to prevent auto-related accidents and traffic deaths and injuries.

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

## Council Consent Items

- 24. Budget Referral: “Berkeley Inclusion in Opportunity Index” - Funding Firm to Perform Availability Study to Achieve Equity in City Contracting**  
**From: Councilmembers Bartlett and Davila**  
**Recommendation:** That the Council refer to the 2019-2020 budget and allocate \$200,000 to fund Mason Tillman Associates Ltd (MTA) to perform an Availability Study to analyze the City’s use of local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 25. Oppose AB-1356 Cannabis: local jurisdictions: retail commercial cannabis activity (Ting)**  
**From: Councilmembers Wengraf, Hahn, Robinson, and Mayor Arreguin**  
**Recommendation:** Adopt a resolution in opposition to AB 1356 to Assemblymember Philip Ting with copies to the Chair of the Assembly Appropriations Committee Assemblymember Lorena Gonzalez, Assemblymember Buffy Wicks, Senator Nancy Skinner and Governor Gavin Newsom.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
- 26. Budget Referral: Paid Internship Program for Interns of City of Berkeley Councilmembers**  
**From: Councilmember Robinson**  
**Recommendation:** Refer to the budget process to consider an office allowance which would provide stipends to City of Berkeley interns.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, 981-7170
- 27. Support for Renters Rights Bills: SB 529, and AB 36, 724, 1481, and 1482**  
**From: Councilmember Robinson**  
**Recommendation:** Adopt a resolution supporting the Renters Rights Bills, which would strengthen tenant organizing rights, allow rent control on certain units, provide caps for rent-raising per year, protect against wrongful evictions, and create a registry of all California rental units.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, 981-7170



## Council Consent Items

**28. Support for SB 212 (Ranked Choice Voting) and SB 641 (Special Elections: Rank Choice Voting)**

**From: Councilmember Robinson**

**Recommendation:** Send a letter to Assemblymember Allen supporting SB 212, which would authorize a city, county, or local educational agency to conduct an election using ranked choice voting, and SB 641, which would authorize the Governor to require a special election to fill a vacancy in a congressional or legislative office using rank choice voting, if the jurisdiction is capable of using this voting method.

**Financial Implications:** None

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

**29. Support for ACA-6: Voting Rights for Parolees**

**From: Councilmember Robinson**

**Recommendation:** Adopt a resolution supporting ACA-6, which restores the right to vote to citizens on parole for the conviction of a felony.

**Financial Implications:** None

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Public Hearings

30. **Fiscal Year 2020 and Fiscal Year 2021 Proposed Budget Public Hearing #2**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing on the FY 2020 and FY 2021 Proposed Biennial Budget.  
**Financial Implications:** See FY 2020 and FY 2021 Proposed Biennial Budget  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000
31. **Rental Housing Safety Program Proposed Fee Increases**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution amending Resolution No. 67,985-N.S. to amend the master fee schedule for the Planning and Development Department to increase the Rental Housing Safety Program (RHSP) annual, reinspection and penalty fees in FY 2020 and Fiscal Year 2021.  
**Financial Implications:** See report  
Contact: Timothy Burroughs, Planning and Development, 981-7400
32. **Changes to the Planning and Development Department’s Master Fee Schedule**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution amending Resolution No. 67,985-N.S. approving revisions to the master fee schedule for Chapter D - Engineering and Chapter E - Traffic Engineering effective July 1, 2019, to increase the hourly rate for staff time not otherwise specified from \$153/hour to \$190/hour for the Engineering Division and from \$160/hour to \$200/hour for the Transportation Division.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300

## Action Calendar – Old Business

33. **Berkeley Economic Dashboards** (*Continued from March 26, 2019.*)  
**From: City Manager**  
Contact: Jordan Klein, Economic Development, 981-7530

## Action Calendar – New Business

34. **City Council Recommendations on the FY 2020 and FY 2021 Proposed Biennial Budget**  
**From: City Manager**  
**Recommendation:** Provide recommendations on the FY 2020 and FY 2021 Proposed Biennial Budget.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

## Action Calendar – New Business

- 35a. Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee.)*  
**From: Councilmembers Harrison, Davila, and Robinson**  
**Recommendation:** Refer to the City Manager to develop an ordinance on green stormwater infrastructure according to recommendations from the Facilities, Infrastructure, Transportation, and Environmental Sustainability Committee.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 35b. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee. Item contains supplemental materials.)*  
**From: Community Environmental Advisory Commission**  
**Recommendation:** Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.  
**Financial Implications:** See report  
Contact: Viviana Garcia, Commission Secretary, 981-7460

## Action Calendar – New Business

- 35c. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**  
*(Reviewed by the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee.)*  
**From: City Manager**  
**Recommendation:** Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.  
**Financial Implications:** See report  
Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300
- 36. Presentation: East Bay Municipal Utility District**  
**From: East Bay Municipal Utility District**  
Contact: East Bay Municipal Utility District, Office of Community Affairs, (866) 403-2683

## Council Action Items

37. **Development of the West Berkeley Service Center, 1900 6th Street, for Senior Housing with Supportive Services** *(Reviewed by the Land Use, Housing & Economic Development Committee)*

**From: Mayor Arreguin and Councilmembers Kesarwani, Wengraf, and Bartlett**

**Recommendation:** State the intent of the City Council that the West Berkeley Service Center property, 1900 6th Street, will be used for senior housing with on-site services consistent with Age Friendly Berkeley Plan recommendations, maximizing the number of affordable units.

The Berkeley Way Project, 2012 Berkeley Way, is the City's top affordable housing priority. The West Berkeley Service Center, as a City-owned property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to initiate the process of developing senior housing at the West Berkeley Service Center:

- a. Refer to the City Manager to conduct a basic analysis of the development potential for the West Berkeley Service Center site including build-out scenarios for a three-, four-, five-, six- and seven-story building at the site, using Mixed-Use Residential (MUR), West Berkeley Commercial (C-W), and Multiple-Family Residential (R-3) Development Standards. Each buildout scenario should reflect base project conditions, and conditions if a Density Bonus is granted including waivers and concessions, or if Use Permits are used to modify standards. The scenarios should also incorporate space on the ground floor for resident amenities, supportive social services, and community space. The results of the development scenarios will be presented to the City Council and Planning Commission.
- b. Refer to the Planning Commission to consider any modifications to the underlying zoning at the West Berkeley Service Center site to maximize the production of senior housing, including consideration of an overlay zone.
- c. Based on recommendations from the Health, Housing and Community Services Department, the Housing Advisory Commission, Measure O Bond Oversight Committee, Commission on Aging, and taking into consideration requirements and restrictions associated with potential funding sources, create recommendations to Council regarding levels of affordability, unit sizes, on-site services and other features to be included in a senior housing and social services development, including senior living housing types. These recommendations will be presented to the City Council to inform the issuance of an RFP.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – Policy Committee Track Items

**38. Tax Exemption on Federal Research Grants**

**From: Mayor Arreguin**

**Recommendation:** Adopt a first reading of an Ordinance to add a subsection to Berkeley Municipal Code Section 9.04.165 to create an exemption on the taxing of business gross receipts relating to federal research grants.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

**39. Direct City Manager to place a moratorium on enforcement of Ordinance No. 7632-N.S. (BMC Sections 14.48.160 and 14.48.170), “Miscellaneous Use of Streets and Sidewalks” / “Shared Sidewalk Policy” until a homeless response system is designed, created and implemented as stated in the “1000 Person Plan.”**

**From: Councilmember Davila**

**Recommendation:** Direct City Manager to place a moratorium on enforcement of Ordinance No. 7,632-N.S. (BMC Section 14.48.160 and 14.48.170) Miscellaneous Use of Streets and Sidewalks” / “Shared Sidewalk Policy” at homeless encampments until a homelessness response system is planned, created and implemented pursuant to research, findings, reports, and goals resulting from the “1000 Person Plan” report received by Council. This action is in fidelity to elements of the 2018 EveryOne Home Plan to End Homelessness adopted by Council on March 12, 2019, that clearly states at pg. 13, “Proposed Actions,” that protection of the dignity of people experiencing homelessness requires municipalities to repeal or stop enforcing policies that criminalize homelessness, and instead develop a humane and consistent response to the needs of unsheltered people.

**Financial Implications:** None

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

**40. Referral to the Public Works Department and the City Manager: Finishing the installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St.**

**From: Councilmember Bartlett**

**Recommendation:** Refer to the City Manager a request to finish the installation of sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer to the Public Works Department for its installation.

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

## Action Calendar – Policy Committee Track Items

- 41. Increase Staffing Level of Transportation Division to Expedite City’s Vision Zero Goal**  
**From: Councilmembers Bartlett and Droste**  
**Recommendation:** That the Council add six permanent positions to the Transportation Division as part of the city’s fiscal year 2020-2021 biennial budget. These positions should include 4 Engineers, a permanent Senior Planner (to coordinate Vision Zero), and an Administrative Professional. The Transportation Division needs increased staff capacity to deliver funded capital projects and work towards the City’s Vision Zero goal of eliminating fatal and severe injury collisions.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 42. Referral to Public Works Commission to Rename Harold Way to “Dalai Lama Way”**  
**From: Councilmember Harrison**  
**Recommendation:** Referral to the Public Works Commission requesting changing the name of Harold Way to “Dalai Lama Way” in recognition of the Dalai Lama’s contributions to world peace and in recognition of the Buddhist community center at Harold Way.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 43. Resolution in Support of Full Parity for Mental Health Patients and Clinicians at Kaiser Permanente**  
**From: Councilmembers Harrison and Davila**  
**Recommendation:** Adopt a resolution calling for full parity for mental health patients and clinicians at Kaiser Permanente and supporting the mental health clinicians in their contract negotiations.  
**Financial Implications:** None  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 44. Budget Referral: Solano Avenue Revitalization Plan**  
**From: Councilmember Hahn**  
**Recommendation:**  
1. Refer \$300,000 to the FY2020 - FY2021 Budget Process for the development of a two-part Solano Avenue “Master” Revitalization Plan; Part A for the Upper/Eastern end of Solano Avenue and Part B for mid-corridor blocks within the City of Berkeley, to coordinate with the City of Albany’s mid-corridor Solano Avenue Reconfiguration Plan.  
2. Direct the City Manager to send a letter to the City of Albany expressing Berkeley’s desire to collaborate on reconfiguration and revitalization plans for the mid-corridor portion of Solano Avenue, and to initiate plans for coordination.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, 981-7150

## Action Calendar – Policy Committee Track Items

- 45. Alternative Compliance Measures to Achieve Fire Safety in Existing Live/Work Spaces**  
**From: Councilmember Robinson**  
**Recommendation:** Refer to the City Manager to develop alternative code compliance measures for nontraditional live/work spaces, in order to improve residential safety without displacing existing communities. Given the current shortage of affordable housing, Staff should consider how to enact a policy of leniency towards existing structures which may not be in complete compliance with city permits. Staff should seek methods to incentivize incremental safety renovations without exposing communities to eviction concerns.  
**Financial Implications:** Staff time  
Contact: Rigel Robinson, Councilmember, District 7, 981-7170
- 46. Transition to Zero-Emission Refuse Trucks**  
**From: Councilmember Robinson**  
**Recommendation:** Refer to the City Manager to draft a plan to phase out diesel, biodiesel, and natural gas powered trucks in all fleets used for refuse collection (both City-owned and contracted) and replace them with zero-emission refuse trucks.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

## Information Reports

- 47. City Council Short Term Referral Process – Monthly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, 981-6900
- 48. Information Technology: Digital Strategic Plan (DSP), FUND\$ Replacement, and Website Update**  
**From: City Manager**  
Contact: Savita Chaudhary, Information Technology, 981-6500
- 49. Update on Concerns about Informational Kiosks and Accessibility, Obstacles**  
**From: Commission on Disability**  
Contact: Dominika Bednarska, Commission Secretary, 981-6300

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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



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

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

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

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

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

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

**COMMUNICATION ACCESS INFORMATION:**

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 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

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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 May 16, 2019.

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

Mark Numainville, City Clerk

CONSENT CALENDAR

May 28, 2019

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

RECOMMENDATION

We recommend City Council request that the City Manager report back by December 3, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Fire Department. They have agreed to our findings and recommendations. Please see report for management's response.

FISCAL IMPACTS OF RECOMMENDATION

The Berkeley Fire Department (Fire) may need funding if the staffing analysis that we recommend they complete shows that they need additional staffing to effectively manage their fire prevention inspection program. This cost could be at least offset by an increase in revenues from fees and administrative citations due to increased inspections. Fire can also increase its revenues by implementing a process to issue, track, and follow up on citations issued as we recommend.

CURRENT SITUATION AND ITS EFFECTS

Fire is not meeting the mandate to perform required fire prevention inspections and ensure property owners correct code violations. As of June 2018, the Department had nearly 2,500 open violations and had not inspected over 500 properties. Their ability to meet inspection mandates is impacted by the City's extensive code enforcement requirements and growth across the City without a corresponding staffing increase.

Fire's inspection database, RedAlert, does not contain a complete inventory of properties requiring inspections or complete code violation records, making it harder for staff to complete all mandated properties and follow up on code violations. Further, important controls over how users input data are not in place in that database. Such controls provide assurance that staff input data accurately and consistently so the Fire Prevention Unit has all the necessary information needed to perform inspections and address violations, particularly violations posing the most significant safety risks.

Fire staff need more support to be able to complete mandated inspections. Fire does not perform complete assessments to balance the competing priorities and target high-risk properties. Fire also does not have a sufficient plan for communicating between Prevention and

Suppression staff, and they do not provide enough training. Fire's communication with the public about the inspection program is not sufficient to help property owners know their responsibilities and options. Without better support, the already overburdened fire prevention program faces deeper challenges in completing the necessary work to keep the City safe.

We recommend that Fire analyze the impact of making changes to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections to align mandates with budgeted resources, and perform a workload analysis to quantify the staff needed now and in the future to comply with inspection requirements.

We also recommend that Fire management support the inspection program by coordinating work plans, use risk-assessment tools to identify high-risk properties, issue formal guidance for managing the program, develop a communication plan, create a public education program, and creating a process for managing administrative citations.

BACKGROUND

Fire prevention inspections help reduce the risk of fire. They also ensure that if a fire does occur, buildings are safer for residents evacuating and for firefighters entering the building. The Fire Prevention Unit has eight staff members, only three of whom are Fire Prevention Inspectors. They have not had a staffing increase since the Hills Fire of 1991. Since 1995, Fire Prevention has had to rely on Suppression staff to perform the majority of the inspections in between responding to fire and medical emergencies, and complying with training and equipment maintenance requirements.

ENVIRONMENTAL SUSTAINABILITY

Our office manages and stores audit workpapers and other documents electronically to significantly reduce our use of paper and ink.

RATIONALE FOR RECOMMENDATION

The Berkeley Fire Department's fire prevention inspection program is critical to keeping Berkeley safe for those who live, work, and visit the City. When high risk properties go uninspected and violations remain unresolved by property owners, the City exposes the public to fire risks that could have devastating effects.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

- 1: Audit Report: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance, issued May 9, 2019

Audit Report
May 9, 2019

Fire Prevention Inspections: Insufficient Resources Strain Code Compliance



BERKELEY CITY AUDITOR



Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

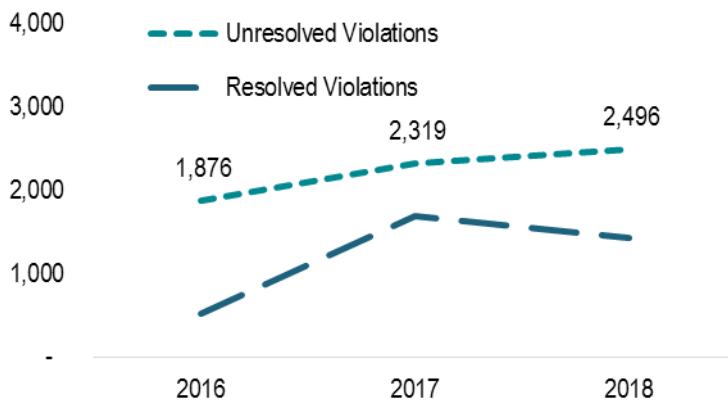
Report Highlights

May 9, 2019

Findings

1. The Fire Department is not meeting inspection mandates. In **fiscal year 2018, the Department’s unresolved violations** increased to nearly 2,500 and it did not inspect over 500 properties. Without increased staffing, the Department is strained by both City inspection requirements that go beyond **California’s requirements and the impacts of population growth.**
2. **The Fire Department’s database does not contain a complete** inventory of properties requiring inspections and lacks controls to ensure complete data.
3. The Fire Department staff need more support to be able to complete mandated inspections. Fire does not perform complete risk assessments or sufficiently communicate within the Department and with the community.

Increased Unresolved Violations, Fiscal Years 2016 to 2018



Source: Auditor analysis of Red Alert database

Why This Audit Is Important

The Berkeley Fire Department’s fire prevention inspection program is critical to keeping Berkeley safe. When properties go uninspected and open violations remain unresolved by property owners, the City exposes the public to fire risks that could have devastating effects.

Objectives

1. To what extent has the Fire Department met the mandated inspection requirements?
2. How does the Fire Department manage fire inspections?
3. What challenges within the Fire Department remain in fire inspections?

Recommendations

We recommend that the Fire Department analyze the impact of making changes to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections to align mandates with budgeted resources, and perform a workload analysis to quantify the staff needed now and in the future to comply with inspection requirements.

We also recommend that the Fire Department support the inspection program by coordinating work plans, using risk-assessment tools to identify high-risk properties, issuing formal guidance for managing the program, developing a communication plan, creating a public education program, and implementing a process for managing administrative citations.

The Fire Department agreed with our findings and recommendations.

For the full report, visit:
<http://www.cityofberkeley.info/auditor>

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Page 16	Fire Staff Do Not Have Enough Support to Get Inspections Done
Page 22	Appendix I—Methodology and Statement of Compliance
Page 25	Appendix II—Recommendations and Management Response

Introduction

In June 2018, the San Jose Mercury News released an exposé on fire prevention inspections in the Bay Area. The article reported that the City of Berkeley was not in compliance with state mandated fire prevention inspection requirements. An impetus for the article was the devastating Oakland Ghost Ship fire in December 2016 where 36 people died when a warehouse, illegally used for events, went up in flames. Berkeley cannot allow a similar tragedy to occur by failing to complete life-saving fire prevention inspections.

The Berkeley Fire Chief acknowledged in the article that mandated inspections were not getting done and asked our office to perform an audit. Despite resource constraints, we initiated an audit to understand the extent of this significant life and safety risk and what the Fire Department (Fire) needed to do to address it.

Objectives, Scope, and Methodology

This audit focused on identifying the problems with mandated fire prevention inspections and determining how Fire can better manage this important program to decrease risk. Our objectives were to determine:

1. To what extent has Fire met the mandated inspection requirements?
2. How does Fire manage fire inspections?
3. What challenges within Fire remain in fire inspections?

We examined fire prevention inspection records for fiscal years 2016 through 2018, performed interviews, conducted a survey, reviewed relevant California and Berkeley laws, and reviewed best practices to understand the program. For more information, see p. 22.

Background

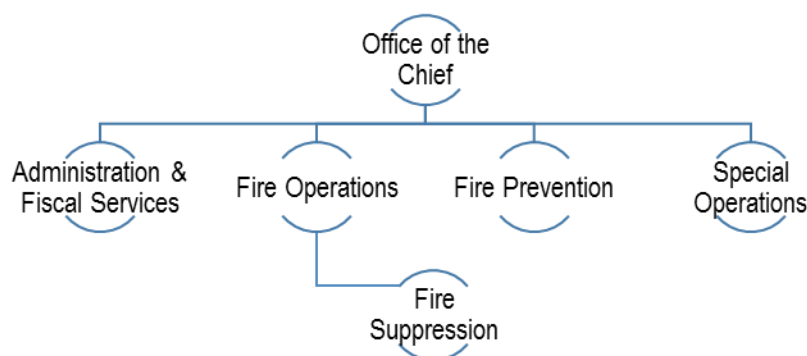
Fire prevention inspections help reduce the risk of fire. They also ensure that if a fire does occur, buildings are safer for residents evacuating and for firefighters entering the building. Fire prevention inspections examine a number of areas including:

- Exits are free from obstructions, do not lock, and are lighted
- Fire extinguishers are easy to access and have been serviced
- Flammable liquids and other hazardous materials have been properly stored
- Smoke and sprinkler systems are properly maintained
- Storage does not block sprinklers or escape routes, or provide fuel to a fire

The Berkeley Fire Department divides fire prevention inspection activities between the Fire Prevention (Prevention) and Fire Suppression (Suppression) Divisions (Figure 1). According to the Fire Chief, Prevention spends 30-40 percent of its time on inspections, which they must balance with other high-priority tasks. Their tasks include:

- Building plan reviews
- Code consultations
- Construction and building permit inspections
- Wildland-urban interface fire areas
- Citizen complaints
- Special permits for events or large parties
- Public education activities
- Group living accommodation inspections
- Inspections of large, complex, or high-risk buildings such as hospitals and schools

Figure 1: Berkeley Fire Department Organizational Chart



Source: City of Berkeley 2018-2019 Biennial Budget

The Fire Prevention Division reports directly to the Office of the Chief. Fire Prevention is overseen by the Fire Marshal and includes the Deputy Marshal, three Fire Prevention Inspectors, two Fire and Life Safety Plans Examiners, and an Assistant Management Analyst. Inspectors focus on field inspections, while Examiners focus on new construction plan reviews. Prevention uses a database system called Red Alert to record and track inspections and violations.

Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload

As of June 30, 2018, nearly 2,500 fire code violations were unresolved and over 500 properties were not inspected at all. Fire is not meeting the mandate to perform fire prevention inspections and make sure property owners correct code violations. **Fire's ability to meet City mandates is impacted by the City's extensive inspections requirements and growth across the City without a corresponding staffing increase. This puts the City at an increased risk since properties have known unresolved violations or haven't been inspected at all. This also means Fire cannot confidently state that residents and community members are working, shopping, and living in places that have mitigated the risk of fire.**

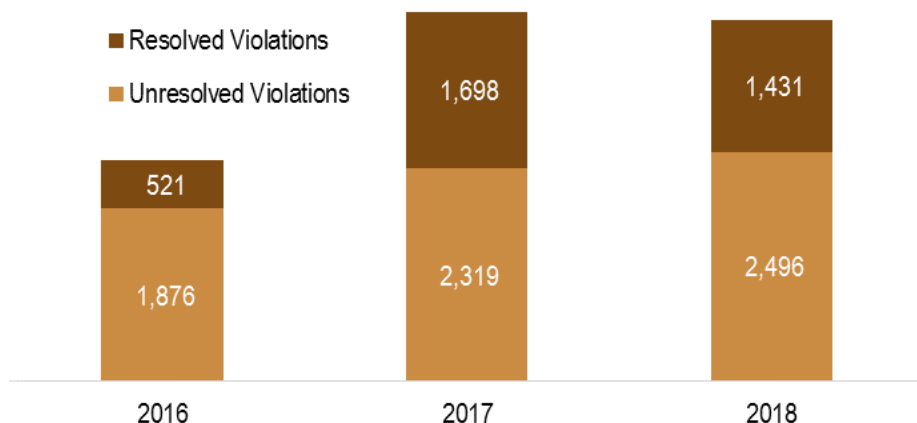
Fire is not closing violations or inspecting all properties.

Unresolved violations increased from 1,876 to 2,496 between fiscal years 2016 and 2018 (Figure 2). These unresolved violations are associated with between 1,200 and 1,300 properties throughout the City. Unresolved violations indicate that a property has at least one issue, and at times multiple issues, that increase the risk of fire, loss of property, and loss of life. When Fire performs an inspection and finds violations, they are required to perform reinspections to ensure the violations are addressed by the property owner to reduce risk of fire. The data detailing the types and severity of the unresolved violations was not reliable enough to ascertain the details of the violations, but the number of unresolved violations is growing. Sixty-four percent of violations issued in fiscal year 2018 alone remain unresolved.



The Fire Department issued 3,927 violations in fiscal year 2018. 2,496 remain unresolved.

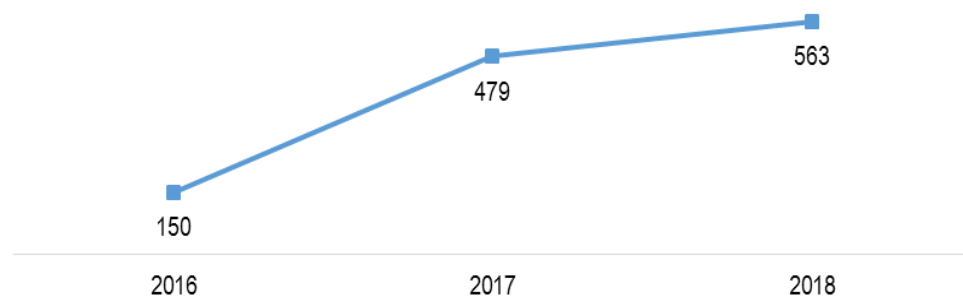
Figure 2: Unresolved Violations Increased from 1,876 to 2,496 in Fiscal Years 2016 to 2018



Source: Auditor analysis of Red Alert database

The number of uninspected properties has risen from 150 to 563, an increase of 275 percent, over the last three fiscal years (Figure 3). In fiscal year 2016, the number of uninspected properties was 1.9 percent of the total number of mandated inspections; by 2018 that had risen to 6.5 percent of all mandated inspections. While Fire closes most mandated inspections with no violations noted, there is an increase in the number of inspections that were not performed at all. This leaves the public vulnerable to increased fire risk.

Figure 3: Number of Uninspected Properties Increased Between Fiscal Years 2016 and 2018



Source: Auditor analysis of Red Alert database

City’s inspections code goes beyond state requirements.

Berkeley’s mandated fire prevention inspection requirements go well beyond those set by the California Fire Code, dramatically increasing Fire personnel’s workload. Not only does Berkeley require Fire to inspect more structures and properties than the state code, but it also requires that Fire inspect all

mandated properties every year. These additional requirements create a **workload burden that significantly limits Fire’s ability to perform all required inspections** and close unresolved violations. The Suppression staff we interviewed and surveyed pointed to the extensive requirements set forth by the City as a factor in being behind in closing violations and completing all inspections.

The California Fire Code, legislatively known as the California Building Standards Code, mandates most minimum fire safety requirements for new construction, existing buildings and facilities, and hazardous materials storage.¹ The California Health and Safety Code also includes relevant inspection mandates.² In 1973, Berkeley first adopted these codes, and additional requirements specific to Berkeley, into City law under the Berkeley Municipal Code (BMC). In 1982, Berkeley adopted into the BMC a local fire prevention inspections program that requires an additional number and types of inspections, and requires inspections to take place annually (Table 1).³
















Table 1: State and Local Mandated Fire Prevention Inspections

Inspection Requirement	California	Berkeley
All structures used for amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education.	✓ Frequency unspecified	✓ Required every year
All organized camps with program and facilities established for the primary purposes of providing an outdoor group living experience for five days or more during one or more seasons a year.	✓ Frequency unspecified	✓ Required every year
All buildings or structures used by more than six persons at any one time for educational purposes through the 12th grade.	✓ Frequency unspecified	✓ Required every year

¹ California Building Standards Code (Cal. Code Regs., Title 24) is available here: <https://www.dgs.ca.gov/BSC/Codes>

² California Health and Safety Code Division 13 is available here: <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=HSC>

³ Berkeley Municipal Code Chapters 12.50 and 19.48 are available at: <https://www.codepublishing.com/CA/Berkeley/>

Inspection Requirement	California	Berkeley
All buildings or structures in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted.	 Required every two years	 Required every year
All buildings or structures that store, handle, or use regulated hazardous materials.	 Frequency unspecified	 Required every year
All buildings used for sleeping purposes including hotels, motels, lodging houses, and apartment houses.	 Required every year	 Required every year
All high-rise structures with floors used for occupancy located more than 75 feet above the lowest floor level having building access.	 Required every year	 Required every year
All residential structures of three units or more.	 Required every year	 Required every year
All commercial buildings and properties.		 Required every year
All industrial buildings and properties.		 Required every year
All institutional buildings and properties.		 Required every year
All vacant buildings.		 Required every year
All vacant lots.		 Required every year

Source: 2016 California Fire Code and Berkeley Municipal Code

Berkeley grows, but Fire staffing may not be keeping up.

Berkeley's population grew almost nine percent in the ten years following the 2000 census. The Association of Bay Area Governments projects that the City's population will grow nearly 25 percent between 2010 and 2040. The resulting development can be seen all over the City as store fronts change hands and large multi-use developments rise to change the skyline. Prevention staffing has not grown to meet those demands, further exacerbating Fire's ability to meet city inspection mandates.

Berkeley's growth over the past decade has stretched Fire's resources.

Projected growth in the next 20 years means that the number of properties that require mandated inspections will stretch resources even more. Large, mixed-use developments put a further strain on Fire. It is more time consuming to review and approve life and safety plans for those structures, and it takes additional time and resources to respond to emergency calls at those buildings.

Fire Prevention has not seen an overall increase in authorized staffing since the Hills fire of 1991. In 1995, special funding for vegetation control in the hills ended. As a result, the Fire Marshal at the time restructured the Prevention Division, reducing staffing from 11.5 to 9.5 employees. Since then, Fire Prevention staffing has been further reduced and often averaged only four employees due to staff vacancies. Recently, Fire added three new positions in Fire Prevention. In July 2016, a new Examiner position was authorized. In July 2018, a new Inspector and a new Management Analyst were authorized. Fire stated that, while the new Inspector could help with some of the inspections backlog, this would not be enough to address all of the unresolved violations and uninspected properties.

Prevention's limited staffing has led to more reliance on Suppression to perform inspections. This is despite an increase in emergency calls in recent years and no changes in Suppression staffing since at least 2013. This puts a strain on Suppression's ability to perform all of their job functions, most of which are high-priority vital tasks like responding to 911 calls for service, maintaining fire and life safety equipment, and training. As a result, all of the 20 Suppression staff who responded to our survey stated that there were not enough people performing inspections to handle the workload.



As of July 2018, the Fire Prevention Division was budgeted for 8 FTEs:

- Fire Marshal
- Deputy Fire Marshal
- Sworn Fire Inspector
- Non-sworn Fire Inspector (2)
- Fire and Life Safety Plans Examiner (2)
- Assistant Management Analyst



All of the Suppression Staff who responded to our survey stated that there were not enough people performing inspections to handle the workload.

Despite experiencing a long-term staffing shortage, Fire has not done a complete workload analysis to understand its staffing needs. This impedes its ability to manage the inspection program in the short- and long-term, and to understand its resource needs. The City of Portland and the National Fire Protection Association indicate that, while it is a difficult task to ensure that a department performs all of their required inspections each year due to the higher level of competing priorities, fire departments can take steps to better manage prevention despite staff limitations. In particular, they recommend performing a workload analysis, even if it is high-level or a ballpark, to understand where there may be gaps in coverage between inspections needed and staff available to perform those inspections.⁴ Performing even a high-level workload analysis can help Fire understand where there are gaps in staffing and determine its future course of action to comply with inspection mandates.

Recommendations

To align the inspection mandates with the current and anticipated needs of the City, we recommend the Fire Department:

- 1.1** Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

To understand the gaps in staffing needed to perform current and anticipated inspections, we recommend the Fire Department:

- 1.2** Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

⁴ Portland's Fire and Rescue Department has taken effective actions on issues similar to those that Berkeley Fire is facing.

Fire Relies on Incomplete Data to Manage Inspections

Fire's inspection database, Red Alert, contains incomplete data, making it harder for staff to make sure that they are inspecting all mandated **properties and unresolved violations**. Fire's database does not automatically link with other City databases to ensure new properties and property changes are quickly and accurately reflected in Red Alert. Further, important controls over how users input data are not in place in Red Alert. Such controls provide assurance that staff input data accurately and consistently so Prevention has all the necessary information needed to perform inspections and resolve violations, particularly violations posing the most significant safety risks.

Fire does not have a complete inventory of properties requiring inspections.

Fire's database does not link to other City databases, which means that Fire does not have a complete inventory of all properties requiring inspection. Fire administrative staff reported that they manually enter new properties and changes to existing properties, such as a new address, new business name, or a change in business type, into Red Alert when they receive updates via interdepartmental mail or email from the Planning Department. Planning captures all data on new construction and changes to existing buildings and businesses in separate systems.

When Fire is not informed of new properties or changes to existing properties, those buildings may not be inspected as required. For example, we found that the new StoneFire Development on the corner of Milvia and University with 8,700 square feet of commercial space and 98 residential units was not included in Fire's database (Figure 4). StoneFire opened in August 2017 making it due for an annual mandated inspection in the fall of 2018.



The StoneFire Development with 8,700 square feet of commercial space and 98 residential units was not included in the Fire Department's inspection database.

Figure 4: StoneFire Development



Source: Johnson Lyman Architects

We found seven other large projects that were not in Fire’s database. After we alerted Fire to the issue, staff performed a labor-intensive manual reconciliation between Red Alert and the hard-copy memos sent out by the Planning Department. These memos identify property changes and new properties. As a result, Fire identified an additional 21 properties that require a fire prevention inspection. The new buildings were inspected prior to being occupied. However, because these properties were not included in Fire’s database, they have not since been inspected for compliance with fire prevention codes as required by City mandate. Because Fire’s database does not link to other City databases, there could be even more properties that have not been inspected since the City’s building landscape has changed dramatically over the years.

The Fire database lacks controls to reduce user error and ensure complete data.

Fire’s database does not automatically restrict how users input data, leading to errors and missing information that Fire relies on to monitor whether properties are inspected and violations are resolved. Automated controls help database users enter data systematically, capture required data, and protect records from unauthorized changes. For example, users can be required to



Seven other large projects were not included in the Fire Department’s database.

enter specific data in a field in order to save the record or only select from a **list or menu of options. Because of the lack of controls, there's a risk of missing or incomplete data that ultimately affects Fire's ability to perform inspections,** monitor properties used for specific purposes, and follow-up on critical code violations.

Throughout Fire's database, we found fields that users were not required to complete to save the inspection record, including fields that listed the property's complete address, the business name, and the inspecting individual's unit, shift, and name. We also found that the drop-down menus for inspection type, inspection status, and violation status fields allowed a user to select a blank option and still save the record. All of these fields are vital for Fire's record keeping to provide complete and accurate information to Prevention and Suppression staff.

We found similar issues with four fields used to record code violations: code number, code description, violation description, and violation location. In each case, users can leave a field blank or replace standard text with other, less specific information. For example, the code description field is intended to be the formal language of the code that is in violation but staff do not always input that information. We saw 196 examples of other text in the code **description field such as "See open violations" or "See inspection from before."** This removes the ability to easily search records, identify issues, and effectively manage the entire inspections program. Additionally, in 1,043 cases over the three years of our scope, the field reserved for the code number was either blank or did not directly reference a part of the fire code. That greatly **impacts a firefighter or inspector's ability to perform comprehensive** reinspections to close unresolved violations. It also impacts Fire management's ability to monitor and review the fire prevention inspection program.



Every field in the Fire Department's database is vital for them to capture complete and accurate information about a property.

Recommendations

To ensure complete and accurate inspection records, we recommend the Fire Department:

- 2.1** Develop a process, in consultation with Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.
- 2.2** **Work with both the database's software vendor and the** Information Technology Department to strengthen controls over the database, including:
 - Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
 - Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the code violation numbers and violation description fields.

Fire Staff Do Not Have Enough Support to Get Inspections Done

Fire staff need more support to be able to complete mandated inspections. Fire does not sufficiently take resource constraints, competing priorities, and risk factors into account when planning and assigning inspections. Fire also does not have a sufficient plan for communicating between Prevention and Suppression, nor do they provide enough training to those performing **inspections. Fire's communication with the public about the inspection** program is neither complete nor consistent enough to help property owners know the options available to them. Without better support, the already overburdened fire prevention inspections program faces deeper challenges in completing the necessary work to keep the City safe.

Inspection assignments do not take competing priorities and risk into account.

Suppression staff have a number of important competing priorities that are not fully taken into consideration when Prevention assigns inspections. They perform all of the fire and medical calls in the City; are required to maintain extensive training in firefighting and emergency medical services; and perform most of the mandated inspections.

Prevention is in charge of the program, including assigning inspections to the Captains of the 27 Fire Suppression Companies. In 2018, that ranged from 235 to 310 for each Company. About every three months, the Fire Marshal sends out an email to Battalion Chiefs, the Deputy Chief, and the Chief detailing how many inspections each Company has completed and how many remain. The **Fire Marshal also occasionally reports these numbers during Fire's command** staff weekly meetings, attended by all staff members with a rank of Battalion Chief or higher.

Company Captains are assigned other divisional tasks, such as purchasing, **maintaining, and testing Fire staff's personal protective gear. They also** regularly have a new rookie firefighter in their Company who requires additional training and guidance. Even though fire prevention inspections are very important for mitigating the risk of fire, Suppression staff face the challenge of finding time to conduct inspections in between all of their other vital tasks.



A Fire Company is a single emergency response unit and its personnel. In Berkeley, a company is made up of three individuals on a fire engine or a truck: a fire captain and two firefighters.

Consequently, many Captains focus on completing inspections as quickly as possible rather than spending time focusing on high-risk properties or properties with long-standing issues. Of the 20 Captains that replied to our confidential survey, 55 percent replied that they do not conduct reinspections in a timely manner. One Captain reported in our survey that inspection assignments come out during one of their busy times of year, which makes **managing workload and the Company's morale difficult.**

Fire does not sufficiently take risk factors into consideration when assigning inspections to Companies, despite resources constraints and competing priorities. Instead, inspections are assigned to Companies geographically based on the location of their fire station. The National Fire Protection Association and professional fire publications like *Firehouse* indicate that, while it is difficult to perform all of the required inspections each year due to the significant competing priorities, cities can address resource limitations using a risk-based approach to inspection assignments. By assessing pending inspections and unresolved code violations by risk such as community demographics, socio-economics, geographical features, building use, and hazards present, cities are able to address the more significant risks with their limited staff and time. Risk assessments can start off as high-level and over time build to become more robust. For example, identifying properties with numerous violations or a history of violations, or high-risk facilities based on occupancy type is a simple yet effective high-level approach to conducting a risk-based assessment.

Captains told us in interviews that they do not have an opportunity to provide input to Prevention on high-risk properties in their service area. These are properties that Suppression staff would like to focus time and resources on to enforce compliance. One Captain said that he uses risk factors to prioritize his **own company's inspections, but he still has to get all of his assigned** inspections completed, even if a high-risk inspection took longer to close. He **said that if he spends "too much time" closing a high-risk property**, he falls behind in completing his other inspections and tasks.



70%

percent of the Captain we surveyed said their Firefighters have too many things to focus on to prioritize inspections.



Cities can address resource limitations by using a risk-based approach to inspection assignments.

Fire Management and Prevention do not regularly communicate with Suppression about inspections.

Fire Management does not regularly communicate with Suppression about the importance of the Fire Prevention inspection program. Doing so would **strengthen Fire's ability to perform inspections efficiently and effectively.** The inspection program is managed by Fire Prevention, but Suppression, which takes direction from the Office of the Chief, is assigned the largest portion of mandated inspections. However, there is no regular formal or informal communication plan between Prevention and Suppression that acknowledges the barriers to effective communication in Fire. As a result, there is little communication between the two divisions.

Coordinating how to communicate with over a hundred people on varying schedules stationed across the City is a challenge, but can be accomplished with better communication between those doing the work and those in charge of it. The Fire Marshal attends the weekly command staff meetings with Suppression management, but there is little face-to-face interaction between Fire Prevention and the Companies tasked with performing the work. By comparison, Portland Fire uses both formal and informal methods to communicate with staff, including a weekly video address from the Chief. This varied communication style has led to bolstered motivation and respect through the large department, translating to more efficient and effective work.

Fire's guidance for the inspection program lacks sufficient detail for communicating and coordinating efforts. The General Order for fire prevention inspections has not been revised since 2011. It does not address the overall importance of performing the inspections, describe communication protocols between the Prevention and Suppression divisions, or identify resources for Suppression to use while performing inspections. Fire uses General Orders to communicate policy changes and department-wide initiatives to staff. By not updating the General Order for the prevention program, the department has indicated a lack of management support for the **program's needs.**



The Fire Department's guidance for the inspection program lacks sufficient detail for communicating and coordinating efforts.

Firefighters do not receive hands-on training on performing inspections.

Firefighters do not receive the training they say they need to perform fire prevention inspections. Fire provides only a 4-hour classroom-based training to update firefighters on the changes to the database, including any fire code or process changes. We heard from Captains, both in interviews and in our survey, that this is not what is needed in the field. The National Fire Protection Association recommends that fire departments provide Suppression crews with help, including practical trainings, to increase the quality, efficiency, and consistency of the inspections.

During interviews, some firefighters said that they specifically need training in a real-world environment on how to communicate with property owners during the inspection process, use best practices for managing the workload, and perform inspections in an efficient but effective manner. All Captains complete a 40-hour Fire Inspections and Investigations course, including 29.5 hours of lecture and 3.5 hours of testing. However, in our survey of Captains, only 40 percent stated that they received adequate training to understand their responsibilities for performing inspections and to do their job well. Sixty-five percent of Captains surveyed said that they would like to receive additional training in performing inspections. Adding consistent, hands-on training using experienced Suppression staff will allow Fire to provide real-world training on how to perform inspections in the community.

Fire does not educate property owners about the importance of inspections.

According to Prevention staff, capacity limitations lead to their inability to sufficiently educate the community about fire prevention inspections. This leaves property owners ill-informed about what inspections entail, how to remedy violations, and what the consequences are for noncompliance with fire codes. The National Fire Prevention Association and professional publications recommend that departments educate the community on the inspection **program and why it's important. By informing property owners of the** inspection program and how to identify and address common violations, Fire can perform inspections more efficiently and effectively. Conversely, when property owners lack information, it takes longer to perform inspections and there are more violations. Captains corroborated this when 55 percent of our



65% of

Captains surveyed said that they would like to receive additional training on performing inspections.

survey respondents stated that most people do not know why firefighters are there when they walk in the door to conduct inspections.

Fire’s lack of public information and education also impacts how the community sees inspections. Fire provides a valuable service and alerts property owners to violations that could impact the life and safety of those in their buildings. However, 70 percent of Captains we surveyed thought the community either did not appreciate, or were not sure if they appreciated the inspections. This may be a sign of the lack of public education around this program designed to reduce the risk of fire in the City.

Fire does not have a consistent process for enforcement.

Fire has an enforcement option but is not consistently using it to compel property owners to fix code violations. The administrative citation process is available to Fire Prevention staff and some Fire Suppression management to enforce violations. Administrative citations are a useful tool to require compliance from property owners with unresolved fire code violations.⁵ The City can levy fines of up to \$500 per violation per day of non-compliance and can place a lien on the property to recover those costs. According to Fire, they do not have the staff capacity to track the revenue collected as part of enforcement actions, which could help fund additional resources for the unit.

Fire also has the authority to “red tag” a building, deeming it too dangerous for people to inhabit. Other City divisions, such as Neighborhood Services, use the administrative citation process to bolster their enforcement capacity and target high-risk properties with numerous or long-standing violations.

According to the City’s Code Enforcement Supervisor, Neighborhood Services has seen an increased rate of compliance from property owners since staff have begun emphasizing the use of administrative citations.



Berkeley can levy fines of up to \$500 per code violation per day of non-compliance.

⁵ Berkeley Municipal Code sections 1.20 through 1.28 outline the citation process and those authorized to issue them.

Recommendations

To recognize competing priorities and address the most high-risk properties, we recommend:

- 3.1** The Fire Prevention Division coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.
- 3.2** The Fire Department create a risk-assessment plan to identify those properties that are most at risk of a fire.

To facilitate communication with and training for all employees that perform inspections, we recommend:

- 3.3** The Fire Chief issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.
- 3.4** The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.
- 3.5** The Fire Department revise fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

To strengthen public outreach and enforcement, we recommend the Fire Department:

- 3.6** Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.
- 3.7** Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

Appendix I—Methodology and Statement of Compliance

Methodology

We audited the Fire Department's fire prevention activities including processes for performing fire prevention inspections and reinspections, mandates regarding those processes, and inspection results for fiscal years 2016 to 2018. We did not specifically perform work around the designated Wildland-Urban Interface Fire Areas. We performed a risk assessment of the Fire Prevention Division's practices and procedures to identify potential internal control weakness and including fraud risks. While we did identify potential fraud risks, none were specific within context of our audit objective. We found control weaknesses within the context of our audit objectives that could prevent compliance with fire prevention inspection mandates: staffing capacity, incomplete data, and poor communication and coordination protocols. We designed our audit work accordingly. To accomplish our audit objective, we:

- Reviewed Berkeley Municipal Code sections 1.20, 1.28, 12.50, 19.28, and 19.48, and the California Fire Code to understand code inspection and citation requirements, and the variances between local and state codes. We focused on current requirements and did not investigate any proposed **legislative changes that could further impact Fire's workload.**
- Interviewed Fire Prevention, Administrative, and Suppression staff to gain an understanding of their processes for performing and managing inspections, and to obtain their professional perspective as to the constraints that they must work within and the process improvements that would address those constraints.
- Observed the sworn Fire Prevention Inspector performing inspections to understand the workflow of an inspector and the constraints they face in performing their work.
- Surveyed all 27 Fire Captains on their resource capacity, impressions of the fire prevention program, and needs to fully perform their work. Twenty responded.
- Reviewed historical Fire Department documents to understand trends in fire prevention workloads, priorities, funding, and staffing.
- Reviewed professional publications and major newspaper stories to understand the general issues facing fire departments and fire inspection programs.
- **Reviewed other municipalities' audits of fire prevention activities to understand how those audits were conducted and the challenges faced by those fire departments.**
- Analyzed the Red Alert database for violation and inspection trends, and input controls.

- Analyzed departmental reports, planning documents, and communications to understand how Fire manages the fire prevention program and communicates program needs and progress within work units and across the department.
- Reviewed best practices in the industry with respect to how other departments and professional organizations perform fire prevention inspections given limited time and staffing. We specifically relied on a comprehensive fire prevention report by the National Fire Protection Association as the primary standards organization for fire departments across the country. We also used a study of **the City of Portland, Oregon's fire department, which featured their improvements to manage their** fire prevention program more effectively and efficiently when faced with similar challenges as Berkeley.

Data Reliability

We assessed the reliability of the Red Alert data by interviewing data system managers and owners; examining the data for completeness, consistency, and appropriateness; and reviewing system manuals. We found that some data fields were reliable for our purposes while others were not. We amended our audit work accordingly and limited the use of Red Alert data to those fields we found sufficiently reliable. We cited the critical data weaknesses in our findings and conclusions and made recommendations for addressing those weaknesses.

Red Alert data are stored in two separate datasets: inspections and violations. Both use drop-down menus to populate fields and we determined those were reliable for use in our analysis. The status field in the inspection dataset, which identifies whether an inspection has been completed, scheduled, or resulted in a violation, was populated as expected in nearly 100 percent of all records. For our scope, fiscal years 2016, 2017, and 2018, the field was blank in only 0.95, 2.75, and 1.3 percent of the records, respectively, and all populated fields contained a selection from the dropdown menu as expected. We, therefore, determined that the data were sufficiently reliable for the purpose of quantifying the volume of uninspected properties.

Similarly, the violations dataset uses a drop-down menu to indicate whether a cited violation has been resolved or remains unresolved by the property owner. That field was populated as expected in nearly 100 percent of all records. For our scope, fiscal years 2016-2018, the field was blank in only three of 10,344 records, and all populated fields contained a selection from the dropdown menu as expected. We, therefore, determined that the data were sufficiently reliable for the purpose of quantifying the unresolved property violations.

In both datasets, we found that other fields were either left blank too often and/or contained data unsuitable for analysis, e.g., asterisks and references to other records. We, therefore, determined that we could not rely on those data fields for more extensive analysis on the number of uninspected properties by property type; the common types of violations; and the unresolved violations by property type. We also could not reliably

quantify the more severe types of violations that remain unresolved.

Additionally, the City's land management and business license data systems do not have the data fields needed to readily identify properties requiring annual fire prevention inspections. Therefore, we did not plan our work to match properties across platforms to identify properties missing from Red Alert. We limited our **assessment to focus on the lack of an automated process between Red Alert and the City's building permitting** system that leads to a cumbersome, manual process for communicating new construction and building changes to Fire Prevention.

We relied on US Census population and ABAG population predictions to understand population growth trends in Berkeley. We considered both organizations to be known, reliable sources and, therefore, their data to be sufficiently reliable for our purposes. We recognized both the US Census and ABAG offer slightly differing predictive data. However, the purpose of our predictions is to give readers a general understanding of future impact with an understanding that actual population growth will be different.

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 II—Recommendations and Management Response

City Management agreed to our findings, conclusions, and recommendations. In our meetings with Fire Department management, they described their current and planned actions to address our audit **recommendations. We found those verbal responses reasonable. Below is the Fire Department’s initial** corrective action plan and proposed implementation dates. As part of the follow-up process, the Berkeley City Auditor will be actively engaging with the Fire Department every six months to assess the process they are making towards complete implementation.

1.1 Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

Proposed Implementation Plan: Fire needs to research the history and rationale for the local adoption of an annual commercial inspection program. Based on the research results, Fire will evaluate the risk versus benefits of the type and frequency of fire prevention inspection that are not mandated by the state laws.

Proposed Implementation Date: April 1, 2020

1.2 Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

Proposed Implementation Plan: The current Fire Prevention staff cannot complete some essential tasks to maintain a fire safe city. A consultant or other Fire Department staff providing that the resource is available would be best to conduct a comprehensive workload analysis for Fire Prevention.

Proposed Implementation Date: April 1, 2020

2.1 Develop a process, in consultation with the Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.

Proposed Implementation Plan: Fire has been working with Information Technology (IT) as well as the Planning Department for the past couple of years. The newly implemented software, Accela, used by the Planning Department has its share of issues communicating with the current fire record management software, Red Alert that the Fire Department has been using. There are similar communicating issues between FUND\$ and Red Alert as experienced **with the implementation of Finance Department’s ERMA software. With support from IT, Fire** is currently seeking a software that can communicate with the software used by the Planning and Finance Department.

Proposed Implementation Date: July 1, 2021

2.2 Work with both the database's software vendor and the Information Technology Department to strengthen controls over the database, including:

- Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
- Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the violation code numbers and violation description fields.

Proposed Implementation Plan: IT renewed the technical support contract with the software vendor in 2018. Fire Prevention will reach out to Red Alert to determine their ability to customize fields within the software. Additionally, Fire and IT are actively reviewing available software that can meet the needs of Fire and is compatible with software used by the other city departments.

Proposed Implementation Date: January 1, 2020

3.1 The Fire Prevention Division coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.

Proposed Implementation Plan: Coordination of the workplan of suppression units will improve with the updated General Order giving clear expectations of inspection policy and procedure. Issues that arise due to the emergency response nature of suppression work will be coordinated across divisions.

Proposed Implementation Date: October 1, 2019

3.2 The Fire Department create a risk-assessment plan to identify those properties that are most at risk of a fire.

Proposed Implementation Plan: Fire Prevention has begun assigning inspections based on occupancy type and state mandated requirements. This basic level of risk assessment is improving compliance and prioritization. A longer term more holistic risk assessment requires algorithms that analyze data that include fire history, various socio-economic indicators, and occupancy type. The Fire Chief is researching the resources needed to conduct such **assessments using other cities' programs as models.**

3.3 The Fire Chief issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.

Proposed Implementation Plan: The Fire Chief will revise the General Order to stress the importance and the expectations of Fire Prevention Inspections to the Suppression personnel.

Proposed Implementation Date: October 1, 2019

3.4 The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.

Proposed Implementation Plan: Beginning in March, Fire Prevention started issuing completion status of the annual inspection to the Battalion Chiefs and Captains with copy to the Fire Chief and Deputy Chief at the beginning of each month. In the long term, with the revised General Order, the designated Shift Fire Inspector will take on a more active role as a resource to guide the suppression staff on conducting annual inspections.

Proposed Implementation Date: October 1, 2019

3.5 The Fire Department revise the fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

Proposed Implementation Plan: The revised General Order shall clearly spell out training requirements and expectations of the Suppression Staff. Training Division shall allocate more time for the Suppression staff to be trained on Fire Prevention Inspections. The designated Shift Fire Inspector can provide hands on training to the Suppression staff in the field as needed. Also, Officers Academy shall include a fire prevention inspection module.

Proposed Implementation Date: October 1, 2019

3.6 Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.

Proposed Implementation Plan: Short term: The Fire Department is participating in the **City's efforts in revamping the website. It will include additional Fire Prevention and Public Education materials. The Fire Department's Office of Emergency Services will be preparing a comprehensive Wildfire Safety packet to all property owners.** Due to current staffing limitations, there is no capacity to engage in full time public education. Funding for additional staff will be considered in the budget process.

Proposed Implementation Date: July 1, 2020

3.7 Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

Proposed Implementation Plan: The Fire Department will review internal policies and procedures then update the Fire Prevention General Order. The Fire Department will make every effort to coordinate **this policy with policies from the City Attorney's office and other city** enforcement units such as Code Enforcement, Environmental Health, Building and Safety, Housing Code Enforcement, etc. to ensure a common experience for the public.

Proposed Implementation Date: July 1, 2020

Mission Statement

Promoting transparency and accountability in Berkeley government.

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Office of the Mayor

CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Mayor Jesse Arreguín
 Subject: Support of SB 48 – Right to Shelter

RECOMMENDATION

Adopt a Resolution supporting SB 48 – Right to Shelter, introduced by State Senator Scott Wiener. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Wiener, and Assemblymember Buffy Wicks.

BACKGROUND

It is undeniable that California is in a homeless crisis. While the state accounts for around 15% of the country's population, it is home to about a quarter of the country's homeless population. According to the Public Policy Institute of California, California is home to about half of the nation's unsheltered homeless population, showing that California is far behind other states in its ability to provide shelters. In fact, as of 2018, 69% of California's homeless were unsheltered, compared to a nationwide average of 35%.

According to the 2017 EveryOne Home survey, Berkeley's homeless population was 972, with 68% being unsheltered. While the City has expanded the number of shelters and beds since 2017, a City report from March 2019 concludes that over the course of a year, up to 2,000 people experience homelessness of some duration in Berkeley. In January 2016, the Berkeley City Council declared a Homeless Shelter Crisis (Resolution No. 67,357-N.S.) which waived permitting requirements to the creation of new shelters among other points. The declaration was renewed in October 2017 (Resolution No. 68,206–N.S.), extending it to January 2020. In February 2019, the Council voted to call upon the State of California to declare a statewide homeless crisis (Resolution No. 68.792-N.S.).

A recent high profile battle over the creation of shelters took place in San Francisco, where opponents of the proposed Embarcadero Navigation Center raised over \$100k on GoFundMe to fight the project (only to be outdone by a competing GoFundMe by supporters of the project). While the San Francisco Port Commission unanimously approved the project on April 23rd, nearby condo owners are threatening litigation to stop the project going forward. This example highlights the painful divisions in society on how to deal with the homeless crisis and shows the major hurdles that can take place to move forward on the creation of new shelters.

SB 48, introduced by State Senator Scott Wiener, would allow for by-right approval of shelters. Beyond being in compliance with state and local building and health and safety codes, such shelters must allow for the storage of possessions, allow individuals to remain with partners and pets, provide accommodations for those with disabilities, and provide services to connect people with permanent housing. Additionally, the bill would prohibit the use of parking requirements for shelters.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

The creation of more emergency shelters would reduce the number of people living on the streets, therefore reducing the environmental health impacts associated with such conditions.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 48
- 3: SB 48 Factsheet

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

IN SUPPORT OF SB 48 – RIGHT TO SHELTER

WHEREAS, despite accounting for around 15% of the country’s population, California is home to about a quarter of the nation’s homeless population and half of the unsheltered homeless population; and

WHEREAS, in 2018, 69% of California’s homeless population was unsheltered, compared to a nationwide average of 35%, showing that California is far behind other states in its ability to provide shelters; and

WHEREAS, in January 2016, the Berkeley City Council approved Resolution No. 67,357-N.S., declaring a Homeless Shelter Crisis which waived permitting requirements to the creation of new shelters among other points; and

WHEREAS, this declaration was renewed in October 2017 under Resolution No. 68,206–N.S., extending it to January 2020; and

WHEREAS, in February 2019, the Council approved Resolution No. 68.792-N.S., calling upon the State of California to declare a statewide homeless crisis; and

WHEREAS, the opening of new shelters to provide reprieve to the state’s growing homeless population has come across challenges, most notably the fight to open San Francisco’s largest navigation shelter at the Embarcadero; and

WHEREAS, the struggle to open up new shelters shows that major hurdles are in place which must be addressed in order to meet the needs of the unsheltered population; and

WHEREAS, SB 48, introduced by State Senator Scott Wiener, would allow for by-right approval of shelters; and

WHEREAS, such shelters must allow for the storage of possessions, allow individuals to remain with partners and pets, provide accommodations for those with disabilities, and provide services to connect people with permanent housing; and

WHEREAS, SB 48 would ensure that shelters are available throughout the entire state, creating a geographically equitable approach while addressing the needs of the unsheltered population.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 48 – Right to Shelter.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Wiener, and Assemblymember Buffy Wicks.

AMENDED IN SENATE APRIL 29, 2019
AMENDED IN SENATE MARCH 25, 2019
AMENDED IN SENATE MARCH 6, 2019

SENATE BILL

No. 48

Introduced by Senator Wiener

December 3, 2018

An act to amend Section 65583 of, and to add *and repeal* Article 12 (commencing with Section 65660) ~~to~~ of Chapter 3 of Division 1 of Title 7 of, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as amended, Wiener. Interim ~~housing~~ *shelter* intervention developments.

(1) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city that includes a housing element. Existing law requires that the housing element identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and to make adequate provision for the existing and projected needs of all economic segments of a community. ~~Existing law requires that supportive housing be a use by right, as defined, in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development meets specified requirements.~~

This bill would revise the requirements of the housing element, as described above, in connection with the identification of zones where emergency shelters are allowed as a permitted use with a conditional use or other discretionary permit. The bill would generally require that

emergency shelters be in areas that allow residential use, including mixed-use areas, but would permit designation in industrial zones if a local government can demonstrate that the zone is connected to specified amenities and services. The bill would remove the authorization granted to local government to require off-street parking, as specified, in connection with standards applied to emergency shelters. The bill would require that zones where emergency shelters are allowed include sites that meet at least one of certain prescribed standards.

(2) The Planning and Zoning Law requires that supportive housing be a use by right, as defined, in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development meets specified requirements.

This bill would require that an interim shelter intervention development be a use by right, as defined, *in areas zoned for mixed uses* if it meets specified requirements. The bill would define “interim shelter intervention” as housing or shelter in which a resident may live temporarily while waiting to move into permanent housing. The bill would authorize these developments to include recuperative or respite care, motel vouchers, navigation centers, transitional housing, and emergency shelters. The *bill would define the term “use by right” in this context—would to mean that the local government’s review of the interim shelter intervention may not impose certain requirements, such as a conditional use permit or other discretionary local government review or approval could not be imposed on an interim shelter intervention if it meets specified requirements. approval.* The bill would require that an interim shelter intervention development meet state and local health and safety requirements and state and local building codes and, among other things, that it allow for the presence of partners, pets, and the storage of possessions. The bill also would require that an interim shelter intervention development provide privacy, accommodations for people with ~~disabilities~~, *disabilities* and services to connect people to permanent housing. The bill would prohibit a local jurisdiction from imposing parking requirements on an interim shelter intervention development.

The bill would prescribe requirements for notifying a developer that its application for an interim housing intervention is complete and for the local jurisdiction to complete its review of the application. The bill would declare that interim housing intervention developments are essential tools for alleviating the homelessness crisis in this state and

are a matter of statewide concern and thus applicable to charter cities.

~~The bill would make legislative findings and declarations.~~

~~The bill would repeal these provisions as of January 1, 2027.~~

~~By~~

(3) By increasing the duties of local planning officials, this bill would impose a state-mandated local program.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Homelessness in California is no longer confined to urban
4 corridors. It pervades both urban and rural communities across the
5 state and puts stress on local resources, from emergency rooms to
6 mental health and social services programs to jails.

7 (b) California has a growing homelessness crisis. Homelessness
8 is a diverse problem, but one glaring aspect of the problem is the
9 number of unsheltered homeless in our state. California accounts
10 for about one-half of all unsheltered homeless in the nation, despite
11 having about 15 percent of our nation’s homeless population.
12 Further, of the 130,000 homeless people living in California, 69
13 percent are unsheltered.

14 (c) The homelessness crisis is driven by the lack of affordable
15 rental housing for people with lower incomes. The state recognizes
16 that while shelter solves sleep, only permanent housing solves
17 homelessness.

18 (d) People experiencing homelessness deserve to be treated with
19 dignity and respect, and to have access to decent, affordable places
20 to live. Interim interventions, like shelters and navigation centers,
21 allow people to access services more easily and connect to
22 permanent housing. Therefore, it is the intention of the Legislature
23 to create permanent solutions for California’s homeless population
24 by promoting interim housing intervention developments that

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1 provide residents both shelter and access to the services necessary
2 to get permanent housing.

3 SEC. 2. Section 65583 of the Government Code is amended
4 to read:

5 65583. The housing element shall consist of an identification
6 and analysis of existing and projected housing needs and a
7 statement of goals, policies, quantified objectives, financial
8 resources, and scheduled programs for the preservation,
9 improvement, and development of housing. The housing element
10 shall identify adequate sites for housing, including rental housing,
11 factory-built housing, mobilehomes, and emergency shelters, and
12 shall make adequate provision for the existing and projected needs
13 of all economic segments of the community. The element shall
14 contain all of the following:

15 (a) An assessment of housing needs and an inventory of
16 resources and constraints relevant to the meeting of these needs.
17 The assessment and inventory shall include all of the following:

18 (1) An analysis of population and employment trends and
19 documentation of projections and a quantification of the locality's
20 existing and projected housing needs for all income levels,
21 including extremely low income households, as defined in
22 subdivision (b) of Section 50105 and Section 50106 of the Health
23 and Safety Code. These existing and projected needs shall include
24 the locality's share of the regional housing need in accordance
25 with Section 65584. Local agencies shall calculate the subset of
26 very low income households allotted under Section 65584 that
27 qualify as extremely low income households. The local agency
28 may either use available census data to calculate the percentage
29 of very low income households that qualify as extremely low
30 income households or presume that 50 percent of the very low
31 income households qualify as extremely low income households.
32 The number of extremely low income households and very low
33 income households shall equal the jurisdiction's allocation of very
34 low income households pursuant to Section 65584.

35 (2) An analysis and documentation of household characteristics,
36 including level of payment compared to ability to pay, housing
37 characteristics, including overcrowding, and housing stock
38 condition.

39 (3) An inventory of land suitable and available for residential
40 development, including vacant sites and sites having realistic and

1 demonstrated potential for redevelopment during the planning
2 period to meet the locality's housing need for a designated income
3 level, and an analysis of the relationship of zoning and public
4 facilities and services to these sites.

5 (4) (A) The identification of a zone or zones within zones that
6 allow residential use, including mixed-use areas, where emergency
7 shelters are allowed as a permitted use without a conditional use
8 or other discretionary permit. A local government may designate
9 zones for emergency shelters in an industrial zone if the local
10 government demonstrates that the zone is connected to amenities
11 and services that serve people experiencing homelessness. Shelters
12 shall include other interim interventions, including, but not limited
13 to, navigation centers, bridge housing, and respite or recuperative
14 care. The identified zone or zones shall include sufficient capacity
15 to accommodate the need for emergency shelter identified in
16 paragraph (7), except that each local government shall identify a
17 zone or zones that can accommodate at least one year-round
18 emergency shelter. If the local government cannot identify a zone
19 or zones with sufficient capacity, the local government shall include
20 a program to amend its zoning ordinance to meet the requirements
21 of this paragraph within one year of the adoption of the housing
22 element. The local government may identify additional zones
23 where emergency shelters are permitted with a conditional use
24 permit. The local government shall also demonstrate that existing
25 or proposed permit processing, development, and management
26 standards are objective and encourage and facilitate the
27 development of, or conversion to, emergency shelters. Emergency
28 shelters shall only be subject to those development and
29 management standards that apply to residential or commercial
30 development within the same zone except that minimum parking
31 requirements shall not be imposed. A local government may apply
32 the following written, objective standards to emergency shelters:

33 (i) The maximum number of beds or persons permitted to be
34 served nightly by the facility.

35 (ii) The size and location of exterior and interior onsite waiting
36 and client intake areas.

37 (iii) The provision of onsite management.

38 (iv) The proximity to other emergency shelters, provided that
39 emergency shelters are not required to be more than 300 feet apart.

40 (v) The length of stay.

1 (vi) Lighting.
2 (vii) Security during hours that the emergency shelter is in
3 operation.

4 (B) The permit processing, development, and management
5 standards applied under this paragraph shall not be deemed to be
6 discretionary acts within the meaning of the California
7 Environmental Quality Act (Division 13 (commencing with Section
8 21000) of the Public Resources Code).

9 (C) A local government that can demonstrate to the satisfaction
10 of the department the existence of one or more emergency shelters
11 either within its jurisdiction or pursuant to a multijurisdictional
12 agreement that can accommodate that jurisdiction's need for
13 emergency shelter identified in paragraph (7) may comply with
14 the zoning requirements of subparagraph (A) by identifying a zone
15 or zones where new emergency shelters are allowed with a
16 conditional use permit.

17 (D) A local government with an existing ordinance or ordinances
18 that comply with this paragraph shall not be required to take
19 additional action to identify zones for emergency shelters. The
20 housing element must only describe how existing ordinances,
21 policies, and standards are consistent with the requirements of this
22 paragraph.

23 (E) A zone or zones where emergency shelters are allowed, as
24 described in subparagraph (A), shall include sites that meet at least
25 one of the following standards:

- 26 (i) Vacant sites zoned for residential use.
- 27 (ii) Vacant sites zoned for nonresidential use that allows
28 residential development. Shelters may be permitted in a vacant
29 industrial zone if the local government can demonstrate how the
30 zone is connected to amenities and services that serve people
31 experiencing homelessness.
- 32 (iii) A nonvacant site, provided that a description is provided
33 of the use of each property at the time it is identified with an
34 analysis of how the local jurisdiction will ensure the site is adequate
35 for use as a shelter, while meeting all of the state and local health,
36 safety, habitability, and building requirements necessary for any
37 other residential development.

38 (5) An analysis of potential and actual governmental constraints
39 upon the maintenance, improvement, or development of housing
40 for all income levels, including the types of housing identified in

1 paragraph (1) of subdivision (c), and for persons with disabilities
2 as identified in the analysis pursuant to paragraph (7), including
3 land use controls, building codes and their enforcement, site
4 improvements, fees and other exactions required of developers,
5 local processing and permit procedures, and any locally adopted
6 ordinances that directly impact the cost and supply of residential
7 development. The analysis shall also demonstrate local efforts to
8 remove governmental constraints that hinder the locality from
9 meeting its share of the regional housing need in accordance with
10 Section 65584 and from meeting the need for housing for persons
11 with disabilities, supportive housing, transitional housing, and
12 emergency shelters identified pursuant to paragraph (7).

13 (6) An analysis of potential and actual nongovernmental
14 constraints upon the maintenance, improvement, or development
15 of housing for all income levels, including the availability of
16 financing, the price of land, the cost of construction, the requests
17 to develop housing at densities below those anticipated in the
18 analysis required by subdivision (c) of Section 65583.2, and the
19 length of time between receiving approval for a housing
20 development and submittal of an application for building permits
21 for that housing development that hinder the construction of a
22 locality's share of the regional housing need in accordance with
23 Section 65584. The analysis shall also demonstrate local efforts
24 to remove nongovernmental constraints that create a gap between
25 the locality's planning for the development of housing for all
26 income levels and the construction of that housing.

27 (7) An analysis of any special housing needs, such as those of
28 the elderly; persons with disabilities, including a developmental
29 disability, as defined in Section 4512 of the Welfare and
30 Institutions Code; large families; farmworkers; families with female
31 heads of households; and families and persons in need of
32 emergency shelter. The need for emergency shelter shall be
33 assessed based on annual and seasonal need. The need for
34 emergency shelter may be reduced by the number of supportive
35 housing units that are identified in an adopted 10-year plan to end
36 chronic homelessness and that are either vacant or for which
37 funding has been identified to allow construction during the
38 planning period. An analysis of special housing needs by a city or
39 county may include an analysis of the need for frequent user
40 coordinated care housing services.

1 (8) An analysis of opportunities for energy conservation with
2 respect to residential development. Cities and counties are
3 encouraged to include weatherization and energy efficiency
4 improvements as part of publicly subsidized housing rehabilitation
5 projects. This may include energy efficiency measures that
6 encompass the building envelope, its heating and cooling systems,
7 and its electrical system.

8 (9) An analysis of existing assisted housing developments that
9 are eligible to change from low-income housing uses during the
10 next 10 years due to termination of subsidy contracts, mortgage
11 prepayment, or expiration of restrictions on use. “Assisted housing
12 developments,” for the purpose of this section, shall mean
13 multifamily rental housing that receives governmental assistance
14 under federal programs listed in subdivision (a) of Section
15 65863.10, state and local multifamily revenue bond programs,
16 local redevelopment programs, the federal Community
17 Development Block Grant Program, or local in-lieu fees. “Assisted
18 housing developments” shall also include multifamily rental units
19 that were developed pursuant to a local inclusionary housing
20 program or used to qualify for a density bonus pursuant to Section
21 65916.

22 (A) The analysis shall include a listing of each development by
23 project name and address, the type of governmental assistance
24 received, the earliest possible date of change from low-income
25 use, and the total number of elderly and nonelderly units that could
26 be lost from the locality’s low-income housing stock in each year
27 during the 10-year period. For purposes of state and federally
28 funded projects, the analysis required by this subparagraph need
29 only contain information available on a statewide basis.

30 (B) The analysis shall estimate the total cost of producing new
31 rental housing that is comparable in size and rent levels, to replace
32 the units that could change from low-income use, and an estimated
33 cost of preserving the assisted housing developments. This cost
34 analysis for replacement housing may be done aggregately for
35 each five-year period and does not have to contain a
36 project-by-project cost estimate.

37 (C) The analysis shall identify public and private nonprofit
38 corporations known to the local government that have legal and
39 managerial capacity to acquire and manage these housing
40 developments.

1 (D) The analysis shall identify and consider the use of all federal,
2 state, and local financing and subsidy programs that can be used
3 to preserve, for lower income households, the assisted housing
4 developments, identified in this paragraph, including, but not
5 limited to, federal Community Development Block Grant Program
6 funds, tax increment funds received by a redevelopment agency
7 of the community, and administrative fees received by a housing
8 authority operating within the community. In considering the use
9 of these financing and subsidy programs, the analysis shall identify
10 the amounts of funds under each available program that have not
11 been legally obligated for other purposes and that could be
12 available for use in preserving assisted housing developments.

13 (b) (1) A statement of the community's goals, quantified
14 objectives, and policies relative to the maintenance, preservation,
15 improvement, and development of housing.

16 (2) It is recognized that the total housing needs identified
17 pursuant to subdivision (a) may exceed available resources and
18 the community's ability to satisfy this need within the content of
19 the general plan requirements outlined in Article 5 (commencing
20 with Section 65300). Under these circumstances, the quantified
21 objectives need not be identical to the total housing needs. The
22 quantified objectives shall establish the maximum number of
23 housing units by income category, including extremely low income,
24 that can be constructed, rehabilitated, and conserved over a
25 five-year time period.

26 (c) A program that sets forth a schedule of actions during the
27 planning period, each with a timeline for implementation, that may
28 recognize that certain programs are ongoing, such that there will
29 be beneficial impacts of the programs within the planning period,
30 that the local government is undertaking or intends to undertake
31 to implement the policies and achieve the goals and objectives of
32 the housing element through the administration of land use and
33 development controls, the provision of regulatory concessions and
34 incentives, the utilization of appropriate federal and state financing
35 and subsidy programs when available, and the utilization of moneys
36 in a low- and moderate-income housing fund of an agency if the
37 locality has established a redevelopment project area pursuant to
38 the Community Redevelopment Law (Division 24 (commencing
39 with Section 33000) of the Health and Safety Code). In order to
40 make adequate provision for the housing needs of all economic

1 segments of the community, the program shall do all of the
2 following:

3 (1) Identify actions that will be taken to make sites available
4 during the planning period with appropriate zoning and
5 development standards and with services and facilities to
6 accommodate that portion of the city's or county's share of the
7 regional housing need for each income level that could not be
8 accommodated on sites identified in the inventory completed
9 pursuant to paragraph (3) of subdivision (a) without rezoning, and
10 to comply with the requirements of Section 65584.09. Sites shall
11 be identified as needed to facilitate and encourage the development
12 of a variety of types of housing for all income levels, including
13 multifamily rental housing, factory-built housing, mobilehomes,
14 housing for agricultural employees, supportive housing,
15 single-room occupancy units, emergency shelters, and transitional
16 housing.

17 (A) Where the inventory of sites, pursuant to paragraph (3) of
18 subdivision (a), does not identify adequate sites to accommodate
19 the need for groups of all household income levels pursuant to
20 Section 65584, rezoning of those sites, including adoption of
21 minimum density and development standards, for jurisdictions
22 with an eight-year housing element planning period pursuant to
23 Section 65588, shall be completed no later than three years after
24 either the date the housing element is adopted pursuant to
25 subdivision (f) of Section 65585 or the date that is 90 days after
26 receipt of comments from the department pursuant to subdivision
27 (b) of Section 65585, whichever is earlier, unless the deadline is
28 extended pursuant to subdivision (f). Notwithstanding the
29 foregoing, for a local government that fails to adopt a housing
30 element within 120 days of the statutory deadline in Section 65588
31 for adoption of the housing element, rezoning of those sites,
32 including adoption of minimum density and development standards,
33 shall be completed no later than three years and 120 days from the
34 statutory deadline in Section 65588 for adoption of the housing
35 element.

36 (B) Where the inventory of sites, pursuant to paragraph (3) of
37 subdivision (a), does not identify adequate sites to accommodate
38 the need for groups of all household income levels pursuant to
39 Section 65584, the program shall identify sites that can be
40 developed for housing within the planning period pursuant to

1 subdivision (h) of Section 65583.2. The identification of sites shall
2 include all components specified in Section 65583.2.

3 (C) Where the inventory of sites pursuant to paragraph (3) of
4 subdivision (a) does not identify adequate sites to accommodate
5 the need for farmworker housing, the program shall provide for
6 sufficient sites to meet the need with zoning that permits
7 farmworker housing use by right, including density and
8 development standards that could accommodate and facilitate the
9 feasibility of the development of farmworker housing for low- and
10 very low income households.

11 (2) Assist in the development of adequate housing to meet the
12 needs of extremely low, very low, low-, and moderate-income
13 households.

14 (3) Address and, where appropriate and legally possible, remove
15 governmental and nongovernmental constraints to the maintenance,
16 improvement, and development of housing, including housing for
17 all income levels and housing for persons with disabilities. The
18 program shall remove constraints to, and provide reasonable
19 accommodations for housing designed for, intended for occupancy
20 by, or with supportive services for, persons with disabilities.
21 Transitional housing and supportive housing shall be considered
22 a residential use of property and shall be subject only to those
23 restrictions that apply to other residential dwellings of the same
24 type in the same zone. Supportive housing, as defined in Section
25 65650, shall be a use by right in all zones where multifamily and
26 mixed uses are permitted, as provided in Article 11 (commencing
27 with Section 65650).

28 (4) Conserve and improve the condition of the existing
29 affordable housing stock, which may include addressing ways to
30 mitigate the loss of dwelling units demolished by public or private
31 action.

32 (5) Promote and affirmatively further fair housing opportunities
33 and promote housing throughout the community or communities
34 for all persons regardless of race, religion, sex, marital status,
35 ancestry, national origin, color, familial status, or disability, and
36 other characteristics protected by the California Fair Employment
37 and Housing Act (Part 2.8 (commencing with Section 12900) of
38 Division 3 of Title 2), Section 65008, and any other state and
39 federal fair housing and planning law.

1 (6) Preserve for lower income households the assisted housing
2 developments identified pursuant to paragraph (9) of subdivision
3 (a). The program for preservation of the assisted housing
4 developments shall utilize, to the extent necessary, all available
5 federal, state, and local financing and subsidy programs identified
6 in paragraph (9) of subdivision (a), except where a community has
7 other urgent needs for which alternative funding sources are not
8 available. The program may include strategies that involve local
9 regulation and technical assistance.

10 (7) Include an identification of the agencies and officials
11 responsible for the implementation of the various actions and the
12 means by which consistency will be achieved with other general
13 plan elements and community goals.

14 (8) Include a diligent effort by the local government to achieve
15 public participation of all economic segments of the community
16 in the development of the housing element, and the program shall
17 describe this effort.

18 (9) (A) Affirmatively further fair housing in accordance with
19 Chapter 15 (commencing with Section 8899.50) of Division 1 of
20 Title 2. The program shall include an assessment of fair housing
21 in the jurisdiction that shall include all of the following
22 components:

23 (i) A summary of fair housing issues in the jurisdiction and an
24 assessment of the jurisdiction's fair housing enforcement and fair
25 housing outreach capacity.

26 (ii) An analysis of available federal, state, and local data and
27 knowledge to identify integration and segregation patterns and
28 trends, racially or ethnically concentrated areas of poverty,
29 disparities in access to opportunity, and disproportionate housing
30 needs within the jurisdiction, including displacement risk.

31 (iii) An assessment of the contributing factors for the fair
32 housing issues identified under clause (ii).

33 (iv) An identification of the jurisdiction's fair housing priorities
34 and goals, giving highest priority to those factors identified in
35 clause (iii) that limit or deny fair housing choice or access to
36 opportunity, or negatively impact fair housing or civil rights
37 compliance, and identifying the metrics and milestones for
38 determining what fair housing results will be achieved.

39 (v) Strategies and actions to implement those priorities and
40 goals, which may include, but are not limited to, enhancing

1 mobility strategies and encouraging development of new affordable
2 housing in areas of opportunity, as well as place-based strategies
3 to encourage community revitalization, including preservation of
4 existing affordable housing, and protecting existing residents from
5 displacement.

6 (B) A jurisdiction that completes or revises an assessment of
7 fair housing pursuant to Subpart A (commencing with Section
8 5.150) of Part 5 of Subtitle A of Title 24 of the Code of Federal
9 Regulations, as published in Volume 80 of the Federal Register,
10 Number 136, page 42272, dated July 16, 2015, or an analysis of
11 impediments to fair housing choice in accordance with the
12 requirements of Section 91.225 of Title 24 of the Code of Federal
13 Regulations in effect prior to August 17, 2015, may incorporate
14 relevant portions of that assessment or revised assessment of fair
15 housing or analysis or revised analysis of impediments to fair
16 housing into its housing element.

17 (C) The requirements of this paragraph shall apply to housing
18 elements due to be revised pursuant to Section 65588 on or after
19 January 1, 2021.

20 (d) (1) A local government may satisfy all or part of its
21 requirement to identify a zone or zones suitable for the
22 development of emergency shelters pursuant to paragraph (4) of
23 subdivision (a) by adopting and implementing a multijurisdictional
24 agreement, with a maximum of two other adjacent communities,
25 that requires the participating jurisdictions to develop at least one
26 year-round emergency shelter within two years of the beginning
27 of the planning period.

28 (2) The agreement shall allocate a portion of the new shelter
29 capacity to each jurisdiction as credit toward its emergency shelter
30 need, and each jurisdiction shall describe how the capacity was
31 allocated as part of its housing element.

32 (3) Each member jurisdiction of a multijurisdictional agreement
33 shall describe in its housing element all of the following:

34 (A) How the joint facility will meet the jurisdiction's emergency
35 shelter need.

36 (B) The jurisdiction's contribution to the facility for both the
37 development and ongoing operation and management of the
38 facility.

39 (C) The amount and source of the funding that the jurisdiction
40 contributes to the facility.

1 (4) The aggregate capacity claimed by the participating
2 jurisdictions in their housing elements shall not exceed the actual
3 capacity of the shelter.

4 (e) Except as otherwise provided in this article, amendments to
5 this article that alter the required content of a housing element
6 shall apply to both of the following:

7 (1) A housing element or housing element amendment prepared
8 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
9 when a city, county, or city and county submits a draft to the
10 department for review pursuant to Section 65585 more than 90
11 days after the effective date of the amendment to this section.

12 (2) Any housing element or housing element amendment
13 prepared pursuant to subdivision (e) of Section 65588 or Section
14 65584.02, when the city, county, or city and county fails to submit
15 the first draft to the department before the due date specified in
16 Section 65588 or 65584.02.

17 (f) The deadline for completing required rezoning pursuant to
18 subparagraph (A) of paragraph (1) of subdivision (c) shall be
19 extended by one year if the local government has completed the
20 rezoning at densities sufficient to accommodate at least 75 percent
21 of the units for low- and very low income households and if the
22 legislative body at the conclusion of a public hearing determines,
23 based upon substantial evidence, that any of the following
24 circumstances exist:

25 (1) The local government has been unable to complete the
26 rezoning because of the action or inaction beyond the control of
27 the local government of any other state, federal, or local agency.

28 (2) The local government is unable to complete the rezoning
29 because of infrastructure deficiencies due to fiscal or regulatory
30 constraints.

31 (3) The local government must undertake a major revision to
32 its general plan in order to accommodate the housing-related
33 policies of a sustainable communities strategy or an alternative
34 planning strategy adopted pursuant to Section 65080.

35 The resolution and the findings shall be transmitted to the
36 department together with a detailed budget and schedule for
37 preparation and adoption of the required rezonings, including plans
38 for citizen participation and expected interim action. The schedule
39 shall provide for adoption of the required rezoning within one year
40 of the adoption of the resolution.

1 (g) (1) If a local government fails to complete the rezoning by
2 the deadline provided in subparagraph (A) of paragraph (1) of
3 subdivision (c), as it may be extended pursuant to subdivision (f),
4 except as provided in paragraph (2), a local government may not
5 disapprove a housing development project, nor require a
6 conditional use permit, planned unit development permit, or other
7 locally imposed discretionary permit, or impose a condition that
8 would render the project infeasible, if the housing development
9 project (A) is proposed to be located on a site required to be
10 rezoned pursuant to the program action required by that
11 subparagraph and (B) complies with applicable, objective general
12 plan and zoning standards and criteria, including design review
13 standards, described in the program action required by that
14 subparagraph. Any subdivision of sites shall be subject to the
15 Subdivision Map Act (Division 2 (commencing with Section
16 66410)). Design review shall not constitute a “project” for purposes
17 of Division 13 (commencing with Section 21000) of the Public
18 Resources Code.

19 (2) A local government may disapprove a housing development
20 described in paragraph (1) if it makes written findings supported
21 by substantial evidence on the record that both of the following
22 conditions exist:

23 (A) The housing development project would have a specific,
24 adverse impact upon the public health or safety unless the project
25 is disapproved or approved upon the condition that the project be
26 developed at a lower density. As used in this paragraph, a “specific,
27 adverse impact” means a significant, quantifiable, direct, and
28 unavoidable impact, based on objective, identified written public
29 health or safety standards, policies, or conditions as they existed
30 on the date the application was deemed complete.

31 (B) There is no feasible method to satisfactorily mitigate or
32 avoid the adverse impact identified pursuant to paragraph (1), other
33 than the disapproval of the housing development project or the
34 approval of the project upon the condition that it be developed at
35 a lower density.

36 (3) The applicant or any interested person may bring an action
37 to enforce this subdivision. If a court finds that the local agency
38 disapproved a project or conditioned its approval in violation of
39 this subdivision, the court shall issue an order or judgment
40 compelling compliance within 60 days. The court shall retain

1 jurisdiction to ensure that its order or judgment is carried out. If
 2 the court determines that its order or judgment has not been carried
 3 out within 60 days, the court may issue further orders to ensure
 4 that the purposes and policies of this subdivision are fulfilled. In
 5 any such action, the city, county, or city and county shall bear the
 6 burden of proof.

7 (4) For purposes of this subdivision, “housing development
 8 project” means a project to construct residential units for which
 9 the project developer provides sufficient legal commitments to the
 10 appropriate local agency to ensure the continued availability and
 11 use of at least 49 percent of the housing units for very low, low-,
 12 and moderate-income households with an affordable housing cost
 13 or affordable rent, as defined in Section 50052.5 or 50053 of the
 14 Health and Safety Code, respectively, for the period required by
 15 the applicable financing.

16 (h) An action to enforce the program actions of the housing
 17 element shall be brought pursuant to Section 1085 of the Code of
 18 Civil Procedure.

19 SEC. 3. Article 12 (commencing with Section 65660) is added
 20 to Chapter 3 of Division 1 of Title 7 of the Government Code, to
 21 read:

22
 23 Article 12. Interim Shelter Interventions

24
 25 65660. For purposes of this article:

26 (a) “Interim shelter intervention” means housing or shelter in
 27 which a resident may live temporarily while waiting to move into
 28 permanent housing. “Interim shelter intervention” shall be flexible
 29 to address the resident’s household needs and may include, but is
 30 not limited to, recuperative or respite care, motel vouchers,
 31 navigation centers, transitional housing used as an interim
 32 intervention, and emergency shelters. “Interim shelter intervention”
 33 shall not require a resident to pay more than 30 percent of the
 34 resident’s monthly household income for housing costs, shall be
 35 low barrier and culturally competent, and shall be focused on
 36 providing support for moving people out of crisis and into
 37 permanent housing as quickly as possible.

38 (b) “Use by right” has the meaning defined in subdivision (i)
 39 of Section 65583.2.

1 65662. (a) An interim shelter intervention development is a
 2 use by right in ~~zones where residential use is a permitted use,~~
 3 ~~including~~ areas zoned for mixed use, if it meets the requirements
 4 of this article. A local jurisdiction shall permit an interim shelter
 5 intervention development provided that the development meets
 6 the following requirements:

7 (1) It meets all applicable state and local health and safety
 8 requirements and state and local building codes.

9 (2) It allows for the presence of partners, pets, and the storage
 10 of possessions.

11 (3) It provides privacy.

12 (4) It has accommodations for people with disabilities.

13 (5) It offers services to connect people to permanent housing
 14 through a services plan that identifies services staffing.

15 (6) It is linked to a coordinated entry system, so that staff in the
 16 interim facility or staff who colocate in the facility, may conduct
 17 assessments and provide services to connect people to permanent
 18 housing. “Coordinated entry system” means a centralized or
 19 coordinated assessment system developed pursuant to Section
 20 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the
 21 Code of Federal Regulations, as those sections read on January 1,
 22 2020, and any related requirements, designed to coordinate program
 23 participant intake, assessment, and referrals.

24 (7) It is low-barrier and does not deny entry based on use of
 25 drugs or alcohol, a history of justice involvement or poor credit,
 26 or refusal to participate in services or a program.

27 (8) It complies otherwise with the core components of Housing
 28 First identified in Section 8255 of the Welfare & Institutions Code.

29 (9) *It has on-site staff, including a manager, at all times while*
 30 *the shelter is open.*

31 (b) A local jurisdiction shall not impose parking requirements
 32 on an interim housing intervention development.

33 65664. Within 30 days of receipt of an application for an
 34 interim housing intervention development, the local jurisdiction
 35 shall notify a developer whether the developer’s application is
 36 complete. Within 60 days of receipt of a completed application
 37 for an interim housing intervention development, the local
 38 jurisdiction shall complete its review of the application.

39 65666. The Legislature finds and declares that interim housing
 40 intervention developments are essential tools for alleviating the

SB 48

— 18 —

1 homelessness crisis in this state and are a matter of statewide
2 concern and not a municipal affair as that term is used in Section
3 5 of Article XI of the California Constitution. Therefore, this article
4 shall apply to all cities, including charter cities.

5 *65668. This article shall remain in effect only until January 1,*
6 *2027, and as of that date is repealed.*

7 SEC. 4. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.

O



Senator Scott Wiener, 11th Senate District

Senate Bill 48 – Right to Shelter

SUMMARY

SB 48 seeks to expand shelter access in California, as a means of ensuring homeless people have a safe place to be and as a way of helping homeless people transition off the streets and into permanent housing.

As we look at the issues impacting our state, the lack of access to shelter, services, and permanent housing for our unhoused residents is a place where we must do more. It should not depend on what city or county you live in. All of our residents deserve access to clean and safe shelter that will give them the opportunity to attain permanent housing or services they need.

BACKGROUND/EXISTING LAW

California has a growing homelessness crisis. Homelessness is a diverse problem, but one glaring aspect of the problem is the number of unsheltered homeless in our state. California accounts for about half of all unsheltered homeless in the nation, despite having about 15% of our nation's population.

We must do more to shelter our unhoused population - to ensure people have a safe and humane place to be, with a goal of transitioning people off the streets and into permanent housing.

While some California counties do a very good job sheltering homeless residents, in various counties, there are either no shelter beds at all, only a tiny number, only seasonally available shelter, or no shelter access specific to youth. Additionally, some counties leave over 75 percent of their homeless residents unsheltered. California's homeless population and the percentage of that population which is unsheltered remains the highest in the nation.

PROBLEM

The U.S. Department of Housing and Urban Development estimates that in 2017 California accounted for nearly half of all unsheltered people in the country (49% or 91,642 people). This means,

unequivocally, that California is failing to provide the services and resources necessary to care for thousands of people, night after night, year after year. Given the size of our homeless population, it is critical that the state play a role in ensuring all of our residents have access to shelter.

SOLUTION

SB 48, currently an intent bill, seeks to expand shelter access in California and to do so in a geographically equitable way.

SB 48 does *not* seek to establish a New York City-style ever-growing right to shelter, since an overly aggressive right to shelter can perpetuate homelessness and divert resources from permanent housing.

SB 48's goal is to expand shelter access and to ensure expanded shelter access dovetails with and complements California's paramount goal: to transition homeless people into permanent housing.

FOR MORE INFORMATION

Brayden Borcharding, *Legislative Director*
 Email: Brayden.Borcharding@sen.ca.gov
 Phone: (916) 651-4011



Office of the Mayor

CONSENT CALENDAR

May 28, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Bartlett and Davila

Subject: Support H.R. 40 – the Commission to Study and Develop Reparation Proposals for African-Americans Act

RECOMMENDATION

Adopt a Resolution in support of H.R. 40 – the Commission to Study and Develop Reparation Proposals for African-Americans Act, introduced by Congressperson Sheila Jackson Lee. Send a copy of the Resolution to Senators Dianne Feinstein and Kamala Harris, Congresspersons Barbara Lee and Sheila Jackson Lee, and President Donald Trump.

BACKGROUND

The first Africans to be captured and forced to work as slaves in the American colonies took place in 1619, with approximately 4,000,000 Africans and their descendants being enslaved in the colonies and the United States between 1619-1865. Slavery was constitutionally sanctioned by the United States government between 1789 and 1865, allowing for the inhumane suppression of their life, liberty, and cultural heritage. Even after the abolition of slavery after the end of the Civil War, federal, state and local laws such as Jim Crow, redlining and segregation has led to continual economic, educational and health hardships we see today. For example, African Americans make up 40% of the incarcerated population despite making up 13% of the country's population. The African American unemployment rate is double that of whites, and on average have 1/16th the wealth of white families.

H.R. 40, introduced by Congressperson Sheila Jackson Lee, calls for the creation of a commission to study and develop Reparation proposals for African Americans. Specifically, the commission will look into how slavery, both from the Trans-Atlantic and domestic "trades", along with the de jure and de facto discrimination faced by the African American community from the end of the Civil War to the present has impacted their livelihoods, and recommend appropriate remedies.

This proposal was originally introduced by Congressperson John Conyers in previous sessions of Congress, but he has since retired. While originally introduced in 1989, the idea has been gaining traction in recent years, and the once fringe topic is now becoming a mainstream conversation. In April, Senator Cory Booker introduced a companion bill to H.R. 40 in the Senate.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of H.R. 40

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

IN SUPPORT OF H.R. 40 – THE COMMISSION TO STUDY AND DEVELOP
REPARATION PROPOSALS FOR AFRICAN-AMERICANS ACT

WHEREAS, slavery was introduced to the American colonies in 1619, resulting in the enslavement of 4,000,000 Africans and their descendants between 1619 and the end of the Civil War in 1865; and

WHEREAS, slavery was constitutionally sanctioned by the United States government, allowing for the inhumane suppression of their life, liberty, and cultural heritage; and

WHEREAS, federal, state and local laws that were passed after the abolition of slavery, such as Jim Crow, redlining and segregation has led to continual economic, educational and health hardships we see today; and

WHEREAS, in 2018, African Americans made up 40% of the incarcerated population in the United States, despite making up 13% of the country's population; and

WHEREAS, the African American unemployment rate is double that of whites, and on average have 1/16th the wealth of white families; and

WHEREAS, there is growing momentum on the topic of reparations for the African American community as a result of the history of slavery and discrimination; and

WHEREAS, H.R. 40, introduced by Congressperson Sheila Jackson Lee, calls for the creation of a commission to study and develop Reparation proposals for African Americans; and

WHEREAS, the commission will look into how slavery, both from the Trans-Atlantic and domestic "trades", along with the de jure and de facto discrimination faced by the African American community from the end of the Civil War to the present has impacted their livelihoods, and recommend appropriate remedies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports H.R. 40 - the Commission to Study and Develop Reparation Proposals for African-Americans Act.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Senators Dianne Feinstein and Kamala Harris, Congresspersons Barbara Lee and Sheila Jackson Lee, and President Donald Trump.

116TH CONGRESS
1ST SESSION

H. R. 40

To address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2019

Ms. JACKSON LEE (for herself, Mr. SERRANO, Mr. COHEN, Mr. KHANNA, Mr. MEEKS, Ms. MOORE, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Mr. PAYNE, Ms. CLARKE of New York, Ms. JOHNSON of Texas, Mrs. BEATTY, Ms. SCHAKOWSKY, Mr. THOMPSON of Mississippi, Ms. LEE of California, Mr. GREEN of Texas, Ms. NORTON, Mr. RUSH, Mr. NADLER, Mr. DANNY K. DAVIS of Illinois, Mr. ENGEL, Mr. RICHMOND, Ms. BASS, and Mr. EVANS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans,

to make recommendations to the Congress on appropriate remedies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commission to Study
5 and Develop Reparation Proposals for African-Americans
6 Act”.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) approximately 4,000,000 Africans and their
10 descendants were enslaved in the United States and
11 colonies that became the United States from 1619 to
12 1865;

13 (2) the institution of slavery was constitu-
14 tionally and statutorily sanctioned by the Govern-
15 ment of the United States from 1789 through 1865;

16 (3) the slavery that flourished in the United
17 States constituted an immoral and inhumane depri-
18 vation of Africans’ life, liberty, African citizenship
19 rights, and cultural heritage, and denied them the
20 fruits of their own labor;

21 (4) a preponderance of scholarly, legal, commu-
22 nity evidentiary documentation and popular culture
23 markers constitute the basis for inquiry into the on-
24 going effects of the institution of slavery and its leg-

1 acy of persistent systemic structures of discrimina-
2 tion on living African-Americans and society in the
3 United States; and

4 (5) following the abolition of slavery the United
5 States Government, at the Federal, State, and local
6 level, continued to perpetuate, condone and often
7 profit from practices that continued to brutalize and
8 disadvantage African-Americans, including share
9 cropping, convict leasing, Jim Crow, redlining, un-
10 equal education, and disproportionate treatment at
11 the hands of the criminal justice system; and

12 (6) as a result of the historic and continued dis-
13 crimination, African-Americans continue to suffer
14 debilitating economic, educational, and health hard-
15 ships including but not limited to having nearly
16 1,000,000 black people incarcerated; an unemploy-
17 ment rate more than twice the current white unem-
18 ployment rate; and an average of less than $\frac{1}{16}$ of
19 the wealth of white families, a disparity which has
20 worsened, not improved over time.

21 (b) PURPOSE.—The purpose of this Act is to estab-
22 lish a commission to study and develop Reparation pro-
23 posals for African-Americans as a result of—

24 (1) the institution of slavery, including both the
25 Trans-Atlantic and the domestic “trade” which ex-

1 isted from 1565 in colonial Florida and from 1619
2 through 1865 within the other colonies that became
3 the United States, and which included the Federal
4 and State governments which constitutionally and
5 statutorily supported the institution of slavery;

6 (2) the de jure and de facto discrimination
7 against freed slaves and their descendants from the
8 end of the Civil War to the present, including eco-
9 nomic, political, educational, and social discrimina-
10 tion;

11 (3) the lingering negative effects of the institu-
12 tion of slavery and the discrimination described in
13 paragraphs (1) and (2) on living African-Americans
14 and on society in the United States;

15 (4) the manner in which textual and digital in-
16 structional resources and technologies are being used
17 to deny the inhumanity of slavery and the crime
18 against humanity of people of African descent in the
19 United States;

20 (5) the role of Northern complicity in the
21 Southern based institution of slavery;

22 (6) the direct benefits to societal institutions,
23 public and private, including higher education, cor-
24 porations, religious and associational;

1 (7) and thus, recommend appropriate ways to
2 educate the American public of the Commission’s
3 findings;

4 (8) and thus, recommend appropriate remedies
5 in consideration of the Commission’s findings on the
6 matters described in paragraphs (1), (2), (3), (4),
7 (5), and (6); and

8 (9) submit to the Congress the results of such
9 examination, together with such recommendations.

10 **SEC. 3. ESTABLISHMENT AND DUTIES.**

11 (a) ESTABLISHMENT.—There is established the Com-
12 mission to Study and Develop Reparation Proposals for
13 African-Americans (hereinafter in this Act referred to as
14 the “Commission”).

15 (b) DUTIES.—The Commission shall perform the fol-
16 lowing duties:

17 (1) Identify, compile and synthesize the relevant
18 corpus of evidentiary documentation of the institu-
19 tion of slavery which existed within the United
20 States and the colonies that became the United
21 States from 1619 through 1865. The Commission’s
22 documentation and examination shall include but not
23 be limited to the facts related to—

24 (A) the capture and procurement of Afri-
25 cans;

6

1 (B) the transport of Africans to the United
2 States and the colonies that became the United
3 States for the purpose of enslavement, including
4 their treatment during transport;

5 (C) the sale and acquisition of Africans as
6 chattel property in interstate and intrastate
7 commerce;

8 (D) the treatment of African slaves in the
9 colonies and the United States, including the
10 deprivation of their freedom, exploitation of
11 their labor, and destruction of their culture,
12 language, religion, and families; and

13 (E) the extensive denial of humanity, sex-
14 ual abuse and the chattelization of persons.

15 (2) The role which the Federal and State gov-
16 ernments of the United States supported the institu-
17 tion of slavery in constitutional and statutory provi-
18 sions, including the extent to which such govern-
19 ments prevented, opposed, or restricted efforts of
20 formerly enslaved Africans and their descendants to
21 repatriate to their homeland.

22 (3) The Federal and State laws that discrimi-
23 nated against formerly enslaved Africans and their
24 descendants who were deemed United States citizens
25 from 1868 to the present.

1 (4) The other forms of discrimination in the
2 public and private sectors against freed African
3 slaves and their descendants who were deemed
4 United States citizens from 1868 to the present, in-
5 cluding redlining, educational funding discrepancies,
6 and predatory financial practices.

7 (5) The lingering negative effects of the institu-
8 tion of slavery and the matters described in para-
9 graphs (1), (2), (3), (4), (5), and (6) on living Afri-
10 can-Americans and on society in the United States.

11 (6) Recommend appropriate ways to educate
12 the American public of the Commission's findings.

13 (7) Recommend appropriate remedies in consid-
14 eration of the Commission's findings on the matters
15 described in paragraphs (1), (2), (3), (4), (5), and
16 (6). In making such recommendations, the Commis-
17 sion shall address among other issues, the following
18 questions:

19 (A) How such recommendations comport
20 with international standards of remedy for
21 wrongs and injuries caused by the State, that
22 include full reparations and special measures,
23 as understood by various relevant international
24 protocols, laws, and findings.

1 (B) How the Government of the United
2 States will offer a formal apology on behalf of
3 the people of the United States for the per-
4 petration of gross human rights violations and
5 crimes against humanity on African slaves and
6 their descendants.

7 (C) How Federal laws and policies that
8 continue to disproportionately and negatively
9 affect African-Americans as a group, and those
10 that perpetuate the lingering effects, materially
11 and psycho-social, can be eliminated.

12 (D) How the injuries resulting from mat-
13 ters described in paragraphs (1), (2), (3), (4),
14 (5), and (6) can be reversed and provide appro-
15 priate policies, programs, projects and rec-
16 ommendations for the purpose of reversing the
17 injuries.

18 (E) How, in consideration of the Commis-
19 sion's findings, any form of compensation to the
20 descendants of enslaved African is calculated.

21 (F) What form of compensation should be
22 awarded, through what instrumentalities and
23 who should be eligible for such compensation.

24 (G) How, in consideration of the Commis-
25 sion's findings, any other forms of rehabilita-

1 tion or restitution to African descendants is
2 warranted and what the form and scope of
3 those measures should take.

4 (c) REPORT TO CONGRESS.—The Commission shall
5 submit a written report of its findings and recommenda-
6 tions to the Congress not later than the date which is one
7 year after the date of the first meeting of the Commission
8 held pursuant to section 4(c).

9 **SEC. 4. MEMBERSHIP.**

10 (a) NUMBER AND APPOINTMENT.—(1) The Commis-
11 sion shall be composed of 13 members, who shall be ap-
12 pointed, within 90 days after the date of enactment of this
13 Act, as follows:

14 (A) Three members shall be appointed by the
15 President.

16 (B) Three members shall be appointed by the
17 Speaker of the House of Representatives.

18 (C) One member shall be appointed by the
19 President pro tempore of the Senate.

20 (D) Six members shall be selected from the
21 major civil society and reparations organizations
22 that have historically championed the cause of
23 reparatory justice.

24 (2) All members of the Commission shall be persons
25 who are especially qualified to serve on the Commission

1 by virtue of their education, training, activism or experi-
2 ence, particularly in the field of African-American studies
3 and reparatory justice.

4 (b) TERMS.—The term of office for members shall
5 be for the life of the Commission. A vacancy in the Com-
6 mission shall not affect the powers of the Commission and
7 shall be filled in the same manner in which the original
8 appointment was made.

9 (c) FIRST MEETING.—The President shall call the
10 first meeting of the Commission within 120 days after the
11 date of the enactment of this Act or within 30 days after
12 the date on which legislation is enacted making appropria-
13 tions to carry out this Act, whichever date is later.

14 (d) QUORUM.—Seven members of the Commission
15 shall constitute a quorum, but a lesser number may hold
16 hearings.

17 (e) CHAIR AND VICE CHAIR.—The Commission shall
18 elect a Chair and Vice Chair from among its members.
19 The term of office of each shall be for the life of the Com-
20 mission.

21 (f) COMPENSATION.—(1) Except as provided in para-
22 graph (2), each member of the Commission shall receive
23 compensation at the daily equivalent of the annual rate
24 of basic pay payable for GS–18 of the General Schedule
25 under section 5332 of title 5, United States Code, for each

1 day, including travel time, during which he or she is en-
2 gaged in the actual performance of duties vested in the
3 Commission.

4 (2) A member of the Commission who is a full-time
5 officer or employee of the United States or a Member of
6 Congress shall receive no additional pay, allowances, or
7 benefits by reason of his or her service to the Commission.

8 (3) All members of the Commission shall be reim-
9 bursed for travel, subsistence, and other necessary ex-
10 penses incurred by them in the performance of their duties
11 to the extent authorized by chapter 57 of title 5, United
12 States Code.

13 **SEC. 5. POWERS OF THE COMMISSION.**

14 (a) HEARINGS AND SESSIONS.—The Commission
15 may, for the purpose of carrying out the provisions of this
16 Act, hold such hearings and sit and act at such times and
17 at such places in the United States, and request the at-
18 tendance and testimony of such witnesses and the produc-
19 tion of such books, records, correspondence, memoranda,
20 papers, and documents, as the Commission considers ap-
21 propriate. The Commission may invoke the aid of an ap-
22 propriate United States district court to require, by sub-
23 poena or otherwise, such attendance, testimony, or pro-
24 duction.

1 (b) POWERS OF SUBCOMMITTEES AND MEMBERS.—
2 Any subcommittee or member of the Commission may, if
3 authorized by the Commission, take any action which the
4 Commission is authorized to take by this section.

5 (c) OBTAINING OFFICIAL DATA.—The Commission
6 may acquire directly from the head of any department,
7 agency, or instrumentality of the executive branch of the
8 Government, available information which the Commission
9 considers useful in the discharge of its duties. All depart-
10 ments, agencies, and instrumentalities of the executive
11 branch of the Government shall cooperate with the Com-
12 mission with respect to such information and shall furnish
13 all information requested by the Commission to the extent
14 permitted by law.

15 **SEC. 6. ADMINISTRATIVE PROVISIONS.**

16 (a) STAFF.—The Commission may, without regard to
17 section 5311(b) of title 5, United States Code, appoint and
18 fix the compensation of such personnel as the Commission
19 considers appropriate.

20 (b) APPLICABILITY OF CERTAIN CIVIL SERVICE
21 LAWS.—The staff of the Commission may be appointed
22 without regard to the provisions of title 5, United States
23 Code, governing appointments in the competitive service,
24 and without regard to the provisions of chapter 51 and
25 subchapter III of chapter 53 of such title relating to classi-

1 fication and General Schedule pay rates, except that the
2 compensation of any employee of the Commission may not
3 exceed a rate equal to the annual rate of basic pay payable
4 for GS-18 of the General Schedule under section 5332
5 of title 5, United States Code.

6 (c) EXPERTS AND CONSULTANTS.—The Commission
7 may procure the services of experts and consultants in ac-
8 cordance with the provisions of section 3109(b) of title 5,
9 United States Code, but at rates for individuals not to
10 exceed the daily equivalent of the highest rate payable
11 under section 5332 of such title.

12 (d) ADMINISTRATIVE SUPPORT SERVICES.—The
13 Commission may enter into agreements with the Adminis-
14 trator of General Services for procurement of financial
15 and administrative services necessary for the discharge of
16 the duties of the Commission. Payment for such services
17 shall be made by reimbursement from funds of the Com-
18 mission in such amounts as may be agreed upon by the
19 Chairman of the Commission and the Administrator.

20 (e) CONTRACTS.—The Commission may—

21 (1) procure supplies, services, and property by
22 contract in accordance with applicable laws and reg-
23 ulations and to the extent or in such amounts as are
24 provided in appropriations Acts; and

14

1 (2) enter into contracts with departments,
2 agencies, and instrumentalities of the Federal Gov-
3 ernment, State agencies, and private firms, institu-
4 tions, and agencies, for the conduct of research or
5 surveys, the preparation of reports, and other activi-
6 ties necessary for the discharge of the duties of the
7 Commission, to the extent or in such amounts as are
8 provided in appropriations Acts.

9 **SEC. 7. TERMINATION.**

10 The Commission shall terminate 90 days after the
11 date on which the Commission submits its report to the
12 Congress under section 3(c).

13 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

14 To carry out the provisions of this Act, there are au-
15 thorized to be appropriated \$12,000,000.

○



Office of the Mayor

CONSENT CALENDAR

May 28, 2019

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Budget Referral: \$25,000 to the FY 2020-21 Budget Process for SupplyBank.Org to Expand School Supply Distribution

RECOMMENDATION

Refer the following to the budget process: A request for \$25,000 to expand Berkeley school supply distribution and ensure every low-income Berkeley student has the appropriate school and dental supplies they need to be successful.

BACKGROUND

The City of Berkeley has consistently funded the K to College program, now known as Supplybank.org, to provide Berkeley's low-income students school supplies and dental kits. Supplybank.org is an Oakland-based nonprofit organization founded by a group of UC Berkeley students that realized they could positively impact low-income and at-risk youth by purchasing school supplies directly from the manufacturers and strategically distributing them at key locations. Piloted in Berkeley in 2009, the program now reaches students in need in more than 300 school districts in California.

The mission of Supplybank.org is to provide homeless and other underserved children with the tangible resources they need to achieve. Supplybank.org operates the School Supply and Dental Kit Initiatives, intended for low-income students to help ensure that they are able to start the school year off on equal footing as their counterparts and provides the basic oral healthcare necessities: a toothbrush, toothpaste, and floss to ensure that oral health issues do not stand in the way of student's academic success.

The amount being requested is \$25,000, which is approximately 7% of the total project budget. Every dollar contributed by the City will also be matched by at least 100% by corporate partners, which is a commitment that has been made by Give Something Back Office Supplies' President and Founder Mike Hannigan.

FINANCIAL IMPLICATIONS

\$25,000 from the General Fund

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

Jesse Arreguín, Mayor 510-981-7100

Martin Luther King Jr. Civic Center Building • 2180 Milvia Street, 5th Floor, Berkeley, CA 94704 • Tel: (510) 981-7100
Fax: (510) 981-7199 • TDD: (510) 981-6903 • E-Mail: mayor@cityofberkeley.info • Web: www.jessearreguin.com



Office of the Mayor

CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
From: Mayor Jesse Arreguín
Subject: Budget Referral: \$5,000 for the César Chávez Solar Calendar

RECOMMENDATION

Refer to the FY2020-2021 budget process the allocation of \$5,000 to the Kala Art Institute for the purpose of maintaining the Solar Calendar/César Chávez Memorial.

BACKGROUND

The César Chávez Memorial Solar Calendar Project is meant to provide an outdoor classroom to study science, math and culture, as well as create a tranquil space for reflection in the midst of a busy urban environment. Central to the project is honoring the work, life, and values of César Chávez.

César Chávez Memorial Solar Calendar Project needs \$5,000 from the City to continue its maintenance of the site. It receives matching funds through other grants. For the Chávez/Huerta Commemorative Period of March 20th - April 10, 2020, they plan on creating a new design for the site as well as a museum-like mobile tour of the park and memorial. The Kala is the fiscal sponsor of the Solar Calendar – a César Chávez Memorial.

FINANCIAL IMPLICATIONS

\$5,000 from the General Fund.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-710



Office of the Mayor

CONSENT CALENDAR

May 28, 2019

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Budget Referral: \$80,000 to Support Technical Assistance for Succession Planning, Worker Cooperative Conversion and Development

RECOMMENDATION

Refer to the budget process to extend the \$30,000 contract to Project Equity for two years and increase the amount to \$80,000 to support and build on the important work done to-date and expand the technical assistance beyond succession planning to include supporting new worker cooperative development.

BACKGROUND

In 2018, the Office of Economic Development identified funding for a pilot to support technical assistance for worker cooperative conversion and succession planning¹. The contract moved forward and the work is being carried out by Project Equity. In February 2019, the council voted to “Refer to the budget process to continue the technical assistance process for Fiscal Years 2020-2021” but did not specify the amount². The work currently underway is described below. Expanding this contract amount to \$80,000 would allow for a contractor to, not only provide support for succession planning but, also support the development of new worker cooperatives.

Beginning in January 2019, OED has engaging Project Equity, a nonprofit organization that is dedicated to advancing worker cooperatives, to provide technical aid to businesses looking to transition to a worker-ownership model. OED is also working to increase staff capacity and knowledge of issues that specifically impact worker-owned cooperatives to provide more targeted assistance going forward. Project Equity will take a multi-phase approach to support Berkeley businesses interested in the worker cooperative ownership model.

First, they will conduct a business retention data study, to provide a better understanding of which of the City’s businesses are at risk of closure and may be candidates for conversion to worker ownership. Second, they’ll perform broad outreach and direct engagement to educate business owners about the worker cooperative model. OED will then subsidize the cost of working with up to four businesses to transition to worker ownership, including a feasibility study and transition plan.

¹ Jordan Klein ,[Economic Development Worksession: Small Business Support](#), January 16, 2018.

² [Annotated Agenda](#), Berkeley City Council Meeting February 26, 2019.

In addition, Project Equity will prepare a communications plan, outreach and intake materials, educational materials for economic development professionals and regulators, and training for City staff on the worker cooperative model. In February 2019, OED and Project Equity will host a free training for staff from the City of Berkeley, neighboring municipalities, and other partners on providing support for worker cooperatives and how traditional businesses can convert to co-ops. Particular attention will be paid to succession planning for business owners who are wishing to retire and may want to sell their business to their employees. The communications and outreach for the program has already benefited from local media coverage in the San Francisco Chronicle³ and Huffington Post⁴.

FINANCIAL IMPLICATIONS

\$80,000 annually to support business development and retention focused on worker cooperatives.

ENVIRONMENTAL SUSTAINABILITY

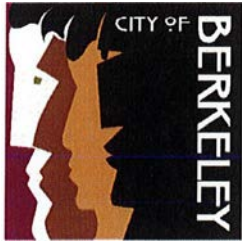
No adverse effects to the environment.

CONTACT PERSON

Jesse Arreguin, Mayor 510-981-7100

³ Otis Taylor Jr., [Nonprofit helps employees take hold of reins as business owners retire](#), San Francisco Chronicle, November 29, 2018.

⁴ Robert Raymond, [This City Has A Radical Plan To Get Rid Of Bosses](#), Huffington Post, May 2, 2019



Councilmember
Cheryl Davila
District 2

CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Ben Bartlett

Subject: Berkeley Juneteenth Festival: 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 Cheryl Davila, to support purchase of street-pole banners announcing the Berkeley Juneteenth Festival June 16, 2019, 11AM-7PM, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$500 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011 11 102 000 0000 000 411).

ENVIRONMENTAL SUSTAINABILITY

Providing community support for an uplifting, historical and cultural event that memorializes the end of a tragic era in U.S. and world history and celebrates the resurgence of African American peoples.

BACKGROUND

The Emancipation Proclamation, signed by President Lincoln on January 1, 1863, freed slaves in southern states during the Civil War. However, the good news did not reach slaves in Galveston, Texas until June 19, 1865. On this date, they celebrated the final execution of the Emancipation Proclamation. June 19th was shortened to JUNETEENTH, a portmanteau of "June" and "nineteenth". Former slaves flooded the streets and rejoiced. On this day, JUNETEENTH - African Americans were finally free! Lest we forget, the first Juneteenth celebration had a bittersweet tinge: celebrating freedom, but never forgetting the nightmare of slavery. JUNETEENTH became a tradition for African American communities in the south, and as they migrated to other parts of the US, the tradition of JUNETEENTH went with them. In 1986, R.D. Bonds, Sam Dyke and other members of the Adeline-Alcatraz Merchants Association, organized to promote the economic and social well-being of residents and small

businesses in South Berkeley, started Juneteenth in Berkeley, to highlight the Adeline Corridor, and promote community pride. Community cooperation was the objective. Berkeley Juneteenth Association, Inc. (BJAI), a nonprofit established in 1987, celebrated the first annual Berkeley Juneteenth Festival in 1987.

We are proposing that the City Council make a minimum grant of \$100 to the fund to purchase and mount banners announcing the 30th Annual Berkeley Juneteenth Festival on street-poles along Adeline Street between Alcatraz and Fairview Streets. The total estimated cost of the banners is \$5000.00.

CONTACT PERSON

Cheryl Davila, Councilmember District 2

510.981.7120

ATTACHMENTS: 1: Resolution

LINK: http://www.berkeleyjuneteenth.org/about_juneteenth.html

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has surplus funds in her office expenditure account (budget code 011 11 102 000 0000 000 411); and

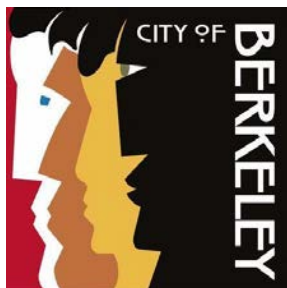
WHEREAS, a California non-profit tax-exempt corporation Berkeley Juneteenth Festival Committee, a community-serving non-profit is seeking donations of support the purchase of street pole banners to highlight the 30th Annual Berkeley Juneteenth Festival community event on June 16, 2019; and

WHEREAS, cultural events like Chinese New Year, Saint Patrick's Day, Cinco de Mayo, and Juneteenth, celebrate our diversity and unify us as a community so that we may come together to commemorate and honor our traditions; and

WHEREAS, Berkeley Juneteenth Cultural Celebrations (BJCC) through its sponsorship and development of the Berkeley Juneteenth Festival has provided us with the opportunity to celebrate African American music, culture, and traditions; and

WHEREAS, BJCC events such as the Juneteenth Festival events us to highlight contributions African Americans have made to our community and the fabric of America as a whole;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$500 per office shall be granted to the 30th Annual Berkeley Juneteenth Celebration Event.



Councilmember Ben Bartlett

City of Berkeley, District
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 Berkeley, CA 94704
 PHONE: 510-981-7130
 EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR

May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett
 Subject: Budget Referral: Funding Stop Signs on Carleton and Fulton Street

RECOMMENDATION

That the Council refers to the budget process of funding a 4-way stop at the intersection of Carleton and Fulton.

CURRENT SITUATION

This intersection does not have a 4-way stop sign which is creating many accidents. On April 1, 2019 an accident occurred which involved an 80 year old women and a young man. The women admitted she stopped, but thought it was a 4-way stop so she continued to drive. Many people do think the oncoming traffic has a stop sign as well which continues to create an unsafe intersection. The woman claimed she could not breathe and requested paramedics. A stop sign could prevent accidents like these from happening. Currently the total combined volume for vehicular, pedestrian, and bicycle traffic in one hour entering the intersection from both approaches exceeds the volume threshold of 200 vehicles per hour. However, the Transportation Division claims that the hourly volumes are unlikely to meet warrant thresholds at all hours of the day. This not only affects drivers but children as well. There is an elementary school bus stop on the corner in which many students cross this intersection where the cross traffic does not stop and there are no crosswalks. Many children are not completely aware of their surroundings and do not know when it is okay to cross. Neighbors constantly hear the screeching of brakes at the intersection.

BACKGROUND

The intersection exists at Carleton and Fulton street where pedestrians, cyclists and vehicles cross and the traffic increases significantly during peak commute hours of the day. This residential neighborhood is composed of families with young children and seniors who tend to avoid the intersection when possible. The traffic continues to increase which has exacerbated the situation.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Policies of criteria for the CA

The California Department of Transportation has certain criteria as guidelines for engineering a multi-way stop control.

ACTIONS/ALTERNATIVES CONSIDERED

OUTREACH OVERVIEW AND RESULTS

N/A.

RATIONALE FOR RECOMMENDATION

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

ENVIRONMENTAL SUSTAINABILITY

No environmental sustainability impact. Slower traffic and safer street crossings. No adverse effects to the environment

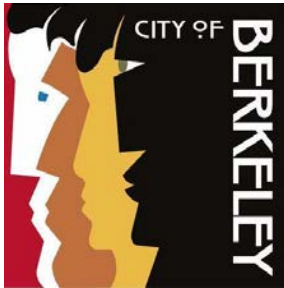
OUTCOMES AND EVALUATION

It is expected that the City of Berkeley will recognize the importance of funding a 4-way stop sign for the residents and children who live among these areas.

CONTACT PERSON

Councilmember Ben Bartlett
Sarah Cziska

510-981-7130
510-981-7131



Councilmember Ben Bartlett

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CONSENT CALENDAR
 May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett
 Subject: Budget Referral: Funding for a Traffic Safety and Mitigation Study and Investments on Alcatraz Avenue

RECOMMENDATION

That the City Council refer to the budget process funding of a traffic safety and mitigation study for Alcatraz Avenue to address the high volume of traffic accidents along this roadway due to inadequate street lighting and traffic controls. This study will determine the best methods of controlling all forms of traffic to maximize the safety of motorists, pedestrians, and bicyclists.

CURRENT SITUATION

Alcatraz Avenue, which intersects the major roadways Adeline Street and California Street, suffers from poor lighting and traffic controls resulting in a high number of traffic accidents. These accidents can be easily prevented with the installation of more streetlights and effective traffic signals or signage. However, to maximize the cost-effectiveness of these improvements, a study must first be made to determine the best placement and types of lights and signals to be used. Therefore it is necessary for the City Council to fund a traffic safety and mitigation study to better protect the residents and commuters moving through this area.

BACKGROUND

In February 2019, Councilmember Bartlett's office released a survey to residents and community members of South Berkeley to receive feedback on ideal locations for streetlight and traffic control upgrades and additions. One street that was named several times was Alcatraz Avenue, which lacks adequate lighting and intersects major roadways such as Sacramento Street and Adeline Street. These intersections have been specifically named by residents as sites of high volumes of accidents. Alcatraz

Avenue itself has been described as dark and poorly lit, making it a dangerous place to walk, bike, or drive at night.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

On December 11, 2012, Berkeley City Council adopted the Complete Streets Policy to guide future street design and repair activities. This policy outlined a comprehensive transportation network that allows safe and convenient travel along Berkeley's streets for bicyclists, pedestrians, and motorists.

In the resolution of the policy, it is stated that "the City of Berkeley expresses its commitment to creating and maintaining Complete Streets that provide safe, comfortable, and convenient travel along and across streets."¹ If the City of Berkeley is to uphold this commitment, then funding a traffic mitigation and safety study for Alcatraz Avenue is an ideal opportunity.

ACTIONS/ALTERNATIVES CONSIDERED

Alternative actions include directly installing street lights and traffic controls without a prior safety and traffic mitigation study. However, this would still require a budget referral and funding required may vary. Outcomes from this alternative may also be less effective than ones stemming from a study.

OUTREACH OVERVIEW AND RESULTS

District 3 constituents were given a survey to help determine where to install and improve street lights and traffic controls.

RATIONALE FOR RECOMMENDATION

Ever since Berkeley adopted the Complete Streets Policy, the City has been committed to developing an integrated transportation network to promote "safe, equitable, and convenient travel for all users while preserving flexibility...using the latest and best design guidelines and standards."²

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The Council should refer to the Transportation Division to create a plan for the enforcement and implementation of the study and future installation of traffic lights.

¹ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf

² https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf

FISCAL IMPACTS OF RECOMMENDATION

Staff time as well as costs associated with traffic mitigation study and installation of new lights and traffic controls.

ENVIRONMENTAL SUSTAINABILITY

A traffic mitigation and safety study can lead to more efficient traffic controls that not only make the roads safer but less congested as well, reducing the carbon footprint.

OUTCOMES AND EVALUATION

It is expected that the City of Berkeley will recognize the importance of funding a traffic safety and mitigation study on Alcatraz Avenue.

CONTACT PERSON

Councilmember Ben Bartlett
Brian Gan

510-981-7130
510-981-7131



Councilmember Ben Bartlett

City of Berkeley, District
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CONSENT CALENDAR
 May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett & Mayor Jesse Arreguin
 Subject: Budget Referral: Funding for Street Lights Development at Martin Luther King Jr. Way and Stuart Street

RECOMMENDATION

That the Council refers to the budget process to fund traffic lights on Martin Luther King Jr. Way and Stuart Street in order to prevent auto-related accidents and traffic deaths and injuries.

CURRENT SITUATION

There are currently no traffic lights at the intersection of MLK and Stuart. In addition, there are no funds allocated for improving street lighting and signs on the streets in our neighborhoods. Without street lights and visible walkways, auto-related accidents are more likely to occur throughout the City of Berkeley.

BACKGROUND

In February 2019, the District 3 Office released a street lights survey, which sought feedback from community members in the neighborhood on how to improve and where to install street lights and signs. We specifically asked survey respondents to list specific names of the cross streets that needed improvement and/or development. Out of all survey responses, the intersection at MLK and Stuart were repeated the most because of its severe lack of lighting which makes it difficult for drivers to see pedestrians at night.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

On December 11, 2013, the Council adopted a Complete Streets Policy, which aims to create and sustain “comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel along and across streets for all

users.”¹ These users include pedestrians, bicyclists, persons with disabilities, seniors, youth, families, and more.

In the resolution of the policy, it states that “the City of Berkeley expresses its commitment to creating and maintaining Complete Streets that provide safe, comfortable, and convenient travel along and across streets.”² If the City is committed to cultivating a culture of traffic safety that protects pedestrians from auto-related accidents, the Council should fund the installation of street lights at the intersection of MLK and Stuart.

ACTIONS/ALTERNATIVES CONSIDERED

Other alternatives include the installation of different types of street lights and signs. Instead of a generic traffic light, we can install hawk beacons or blinking pedestrian lights which will alert motorists. However, these other alternative street lights will still require a budget referral and the funding required may vary.

OUTREACH OVERVIEW AND RESULTS

Councilmember Bartlett has reached out to District 3 constituents in efforts to figure out where to install and improve street lights and signs through a community survey.

RATIONALE FOR RECOMMENDATION

Since December 11, 2012, the Council has committed to ensuring safe and convenient travel throughout the streets for all users. However, there have been many auto-related accidents within the City of Berkeley, especially intersections, like MLK and Stuart, that lack the necessary lighting and signs needed to create safer streets for pedestrians and drivers. The Council must uphold its commitment of cultivating a culture of traffic and pedestrian safety by referring to the budget process to fund the construction and implementation of street lights at the intersection of MLK and Stuart in order to prevent auto-related accidents from further occurring. By funding and constructing these lights (Same sentence as earlier)

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

¹ <https://www.cityofberkeley.info/completestreetspolicy/>

² https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf

The Council should refer to the Transportation Division to create a plan for the enforcement and implementation of traffic lights.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and costs associated with the traffic lights and its association. Estimate ____.

ENVIRONMENTAL SUSTAINABILITY

No environmental sustainability impact. Slower traffic.

OUTCOMES AND EVALUATION

It is expected that the Council will stay committed to cultivating a culture of traffic and pedestrian safety by reducing traffic deaths and injuries through the installation of traffic lights at the intersection of MLK and Stuart.

CONTACT PERSON

Councilmember Ben Bartlett
Katie Ly

510-981-7130
510-981-7131

City Council Complete Streets Policy Resolution

[https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3 -
_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf)

Berkeley Complete Streets Policy Website

<https://www.cityofberkeley.info/completestreetspolicy/>



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CONSENT CALENDAR

May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett and Cheryl Davila
 Subject: Budget Referral: "Berkeley Inclusion in Opportunity Index" - Funding Firm to Perform Availability Study to Achieve Equity in City Contracting

RECOMMENDATION

That the Council refer to the 2019-2020 budget and allocate \$200,000 to fund Mason Tillman Associates Ltd (MTA) to perform an Availability Study to analyze the City's use of local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods, and other services contracts.

CURRENT SITUATION

On January 24, 2017 Councilmembers Bartlett and Davila, along with former Councilmember Worthington, referred to the 2016-2017 budget and allocation to perform an Availability Study to analyze the City's use of local, small, emerging enterprises and other enterprises with barriers to access in City construction, architecture, engineering, professional services, goods and other services contracts.

Recommendations presented on June 13, 2017 included \$100,000 in FY 2018 for the Berkeley Inclusion in Opportunity Index, also referred to as the Availability Study.

On June 24, 2017, a FY 2018 and FY 2019 revised budget report was submitted to the City Council as agenda Item #47 by the Budget Manager. The report was revised to reflect the Mayor's Supplemental Budget.

Staff prepared Request for Proposal (RFP), Specification No. 18-11193-C, Availability Study for Affirmative Action in City Contracting which was released to the public in the spring of 2018. The RFP's intent was to identify and contract with a firm to conduct disparity and utilization analyses to assess the City's use of local, small, emerging, minority and women business enterprises in City construction, architecture, engineering, professional services, goods and other services contracts. Additionally, remediation recommendations to address any identified utilization gaps were requested as part of the scope of services. Specific outreach was made to 7 firms that participated in a similar request for proposal process with the City of Oakland. The RFP was posted on

the City's website and at the kiosk in front of Old City Hall. Six (6) firms submitted proposals in response to the RFP.

A panel comprised of City staff was convened to evaluate each proposal, conduct a rating and ranking process and identify the top ranked proposal. At the conclusion of the rating and ranking process the proposal submitted by Mason Tillman Associates Ltd (MTA) was deemed to provide the best overall value to the City, price and other factors considered. Particular strengths of the MTA proposal included:

- Extensive experience performing this type of work for states, cities and special districts and authorities, including the Cities of Oakland, Richmond and San Jose, San Francisco Bay Area Rapid Transit District, California High Speed Rail Authority, and Alameda County
- Clearly defined approach and proposed project plan with an estimated duration of 8 months from start to finish
- A detailing of data analysis tools and processes to be used, and
- Analysis of subcontractor awards.

BACKGROUND

The City of Berkeley and its residents have a longstanding commitment to diversity and to advancing the development of local businesses. Part of this commitment is to ensure that the City's procurement activities allow for contracting opportunities to be accessible to the entire local business community.

The purpose of an Availability Study would therefore be to examine the City's procurement activities and identify disparities in the awarding of contracts affecting local, small, emerging business enterprises and other enterprises with barriers to access. To the extent that disparities in the awarding of contracts exist, the City of Berkeley should undertake equity oriented remedies in its contracting practices. Alameda County and the City of Oakland have both performed Availability Studies, which allows these municipal entities to consider additional factors when awarding contracts and engage in more socially responsible contracting.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

To the extent disparities in the awarding of contracts exist, the City of Berkeley is barred by Proposition 209 from undertaking race conscious, gender-conscious and other affirmative action-related remedies without first conducting an Availability Study to identify discrimination. Such remedies may not be undertaken based on broad notions of equity or general allegations of discrimination, however, they are permitted if the City identifies specific disparities in the awarding of contracts.

Alameda County and the City of Oakland have both performed an Availability Study, which therefore allows them to consider additional factors and do more socially responsible contracting. The City of Berkeley must do the same to uphold its commitment to diversity.

OUTREACH OVERVIEW AND RESULTS

Councilmember Bartlett has reached out to City staff to conduct an RFP to determine which firm would be the most qualified to perform an Availability Study for affirmative action in city contracting. The results have ranked Mason Tillman Associates Ltd as the best firm to conduct the study for the City of Berkeley.

RATIONALE FOR RECOMMENDATION

The Availability Study will allow for contracting opportunities to be accessible to the entire local business community while empowering municipal entities to engage in more socially responsible contracting.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

To be determined.

FISCAL IMPACTS OF RECOMMENDATION

If passed, the financial resources necessary for funding the firm to conduct the Availability Study will be allocated from the FY2020 and FY2021 budget.

ENVIRONMENTAL SUSTAINABILITY

This proposal is aligned with the City's goal for Environmental Sustainability.

OUTCOMES AND EVALUATION

It is expected that the Council will maintain their longstanding commitment to diversity and to advancing the development of local businesses by referring to the 2019-2020 budget and allocate \$200,000 to fund a firm to conduct the Availability Study.

CONTACT PERSON

Councilmember Ben Bartlett	510-981-7130
Katie Ly	510-981-7131

https://www.cityofberkeley.info/uploadedFiles/Council_3/Level_3_-_General/BINDEX.pdf

City manager results: file:///C:/Users/bbartlett/Downloads/2019-05-14%20Item%2059%20Results%20of%20RFP%20for%20Availability%20Study.pdf



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Wengraf, Hahn, Robinson, and Mayor Arreguin
Subject: Oppose AB-1356 Cannabis: local jurisdictions: retail commercial cannabis activity (Ting)

RECOMMENDATION

Adopt a resolution in opposition to AB 1356 to Assemblymember Philip Ting with copies to the Chair of the Assembly Appropriations Committee Assemblymember Lorena Gonzalez, Assemblymember Buffy Wicks, Senator Nancy Skinner and Governor Gavin Newsom.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Under AB 1356, if more than 50 percent of the voters of a local jurisdiction voted in favor of Proposition 64, these local jurisdictions would be required to adopt a local licensing structure for retail commercial cannabis activity. More specifically, AB 1356 requires these cities to issue a minimum of one retail cannabis license for every four liquor licenses.

AB 1356 fundamentally erodes the local regulatory authority of cities and counties on commercial cannabis, and thereby completely subverts the intent of the voters who approved Proposition 64.

The City of Berkeley just completed a very lengthy and in-depth community process to determine the number, locations and regulations for cannabis related businesses.

If passed, AB 1356 would completely erode the local control of cities and counties to regulate brick and mortar retail cannabis shops in their communities.

ENVIRONMENTAL SUSTAINABILITY

No direct correlation

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments:

- 1: Resolution 2: AB 1356

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

OPPOSE AB-1356 (Ting)

WHEREAS, California voters approved Proposition 64 in 2018 which legalized cannabis and gave local jurisdictions regulatory authority over retail commercial cannabis activity; and

WHEREAS, AB 1356 takes away local authority by requiring cities to issue a minimum of one retail cannabis license for every four liquor licenses, if Proposition 64 passed by greater than 50% of the jurisdiction's vote; and

WHEREAS, AB 1356 subverts the intent of the voters who approved Proposition 64; and

WHEREAS, AB 1356 would completely erode the local control of cities and counties to regulate brick and mortar retail cannabis shops in their communities; and

WHEREAS, the City of Berkeley just completed a very lengthy and in-depth community process to determine the number, locations and regulations of cannabis related businesses.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it stands firmly in opposition to AB-1356.

BE IT FURTHER RESOLVED that this resolution be sent to Assemblymember Philip Ting, Chair of the Assembly Appropriations Committee Assemblymember Lorena Gonzalez, Assemblymember Buffy Wicks, Senator Nancy Skinner, and Governor Gavin Newsom.

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

No. 1356

Introduced by Assembly Member Ting

February 22, 2019

An act to amend Section 26200 of, and to add Section 26200.1 to, the Business and Professions Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, Ting. Cannabis: local jurisdictions: retail commercial cannabis activity. The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including retail commercial cannabis activity. MAUCRSA gives the Bureau of Cannabis Control in the Department of Consumer Affairs the power, duty, purpose, responsibility, and jurisdiction to regulate commercial cannabis activity in the state as provided by the act. MAUCRSA does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis businesses within that local jurisdiction.

This bill, if more than 50% of the electorate of a local jurisdiction voted in favor of AUMA, would require a local jurisdiction to issue a minimum number of local licenses authorizing ~~adult use or medicinal~~ *specified* retail cannabis commercial activity within that jurisdiction that would be permitted by a retailer license issued under MAUCRSA. The bill would require the minimum number of those local licenses required to be issued in that jurisdiction to be 25% of the number of currently active on-sale

general licenses for alcoholic beverage sales in that jurisdiction, as specified, unless the minimum number would result in a ratio greater than one local license for retail cannabis commercial activity for every 10,000 residents of the local jurisdiction, in which case the bill would require the ~~minium~~ *minimum* number to be determined by dividing the number of residents in the local jurisdiction by 10,000 and rounding down to the nearest whole number. The bill would authorize a local jurisdiction to impose a fee on licensees to cover the regulatory costs of issuing those local licenses. *The bill would exempt from these provisions a local jurisdiction that, on or before January 1, 2017, and until January 1, 2020, submitted to the electorate of the local jurisdiction a specified local ordinance or resolution relating to retail cannabis commercial activity that received a specified vote of the electorate.*

This bill would allow any local jurisdiction subject to the requirements of this bill that wants to establish a lower amount of these local licenses to submit an ordinance or other law, that clearly specifies the level of participation in the retail commercial cannabis market it would allow, to the electorate of that local jurisdiction at the next regularly scheduled local election following the operative date of this bill. The bill would provide that the local ordinance or other local law becomes effective if approved by more than 50% of its electorate. The bill would require the local jurisdiction to issue those licenses as otherwise required by this bill within a specified period of time if a local jurisdiction subject to the requirements of this bill does not submit a local ordinance or other local law regarding the lower amount of licenses to the electorate, or that local ordinance or other local law fails to receive more than 50% of the approval of the electorate voting on the issue. *The bill would provide that these provisions are prohibited from being construed to require a local jurisdiction to authorize adult-use retail cannabis commercial activity.* By imposing additional requirements on local jurisdictions the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

AUMA authorizes the Legislature to amend its provisions with a $\frac{2}{3}$ vote of both houses to further its purposes and intent.

This bill would declare that its provisions further the purposes and intent of AUMA.

DIGEST KEY

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 26200 of the Business and Professions Code is amended to read:

26200.

(a) (1) This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or

operation of one or more types of businesses licensed under this division within the local jurisdiction, except as provided in Section 26200.1.

(2) This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

(b) This division shall not be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing, permitting, or other authorization requirements.

(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the local jurisdiction. Within 10 days of notification, the bureau shall inform the relevant licensing authorities. Within 60 days of being so informed by the bureau, the relevant licensing authorities shall begin the process to determine whether a license issued to the licensee should be suspended or revoked pursuant to Chapter 3 (commencing with Section 26030).

(d) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this division and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall assume complete responsibility for any regulatory function pursuant to this division within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(e) (1) This division does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities, at a minimum, comply with all the following:

(A) The requirements of paragraphs (1) to (3), inclusive, of subdivision (g).

(B) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed under this division to engage in that activity.

(C) The activities are otherwise consistent with regulations promulgated and adopted by the bureau governing state temporary event licenses.

(D) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

(E) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the bureau a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event. If any changes occur in that list, the licensee shall provide the bureau with a final updated list to reflect those changes. A person shall not engage in the onsite retail sale of cannabis or cannabis products, or in any way participate in the event, who is not included in the list, including any updates, provided to the bureau.

(2) The bureau may impose a civil penalty on any person who violates this subdivision, or any regulations adopted by the bureau governing state temporary event licenses, in an amount up to three times the amount of the license fee for each violation, consistent with Sections 26018 and 26038.

(3) The bureau may require the event and all participants to cease operations without delay if in the opinion of the bureau or local law enforcement it is necessary to protect the immediate public health and safety of the people of the state. The bureau may also require the event organizer to immediately expel from the event any participant selling cannabis or cannabis products without a license from the bureau that authorizes the participant to sell cannabis or cannabis products. If the unlicensed participant does not leave the event, the bureau may require the event and all participants to cease operations immediately.

(4) The order by the bureau for the event to cease operations pursuant to paragraph (3) does not entitle the event organizer or any participant in the event to a hearing or an appeal of the decision. Chapter 3 (commencing with Section 490) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division shall not apply to the order by the bureau for the event to cease operations pursuant to paragraph (3).

(5) The smoking of cannabis or cannabis products at temporary events authorized pursuant to this subdivision is prohibited in locations where smoking is prohibited. For purposes of this section, "smoking" has the same meaning as defined in subdivision (c) of Section 22950.5.

(f) This division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

(g) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division if all of the following are met:

(1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

(2) Cannabis consumption is not visible from any public place or nonage-restricted area.

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(h) This division shall not be interpreted to supersede Section 6404.5 of the Labor Code.

SEC. 2.

Section 26200.1 is added to the Business and Professions Code, to read:

26200.1.

(a) (1) ~~Every~~ *Except as provided in subdivision (d),* a local jurisdiction shall comply with the requirements of this subdivision if more than 50 percent of the electorate of that local jurisdiction, as determined using election data from the Secretary of State, voted in favor of the Control, Regulate and Tax Adult Use of Marijuana Act of 2016, an initiative measure enacted as Proposition 64 at the November 8, 2016, statewide general election.

(2) A local jurisdiction described in paragraph (1) shall issue a minimum number of local licenses that authorize ~~adult use retail cannabis commercial activity or medicinal retail cannabis commercial activity~~ *activity, or a combination of medicinal retail cannabis commercial activity and adult-use retail cannabis commercial activity*, within the jurisdiction that would be permitted by a retailer license described in Section 26070, as determined by paragraph (3). A local jurisdiction may impose a fee on licensees to cover the regulatory costs of issuing those local licenses.

(3) (A) Except as provided in subparagraph (C), the minimum number of local licenses for retail cannabis commercial activity that a local jurisdiction is required to issue pursuant to paragraph (2) is 25 percent of the number of on-sale general license types for alcoholic beverage sales that are currently active in that jurisdiction, as determined pursuant to subparagraph (B).

(B) (i) (I) If the local jurisdiction is a city, the number of on-sale general licenses for alcoholic beverages shall be determined by adding all of the currently active licenses issued in the jurisdiction that are of a license type listed in subclause (II). If the local jurisdiction is a county, the number of on-sale general licenses for alcoholic beverages shall be determined by adding all of the currently active licenses issued in the unincorporated regions of the county that are of a license type listed in subclause (II).

(II) For purposes of subclause (I), the following on-sale general license types shall be counted: Types 47, 47D, 48, 48D, 57, 57D, 68, 70, 71, 71D, 75, ~~75D~~, *75D*, 78, and 78D.

(ii) The number determined in clause (i) shall be divided by four and rounded up to the nearest whole number using generally accepted mathematical rounding practices.

(iii) If the number of local licenses for retail commercial cannabis determined in clause (ii) would result in a ratio equal to, or fewer than, one local license for retail cannabis commercial activity for every

10,000 residents of the local jurisdiction, the number determined in clause (ii) shall be the minimum number of local licenses the jurisdiction is required to issue pursuant to paragraph (2).

(C) Notwithstanding subparagraphs (A) and (B), if the number of local licenses for retail commercial cannabis determined in clause (ii) of subparagraph (B) would result in a ratio greater than one local license for retail cannabis commercial activity for every 10,000 residents of the local jurisdiction, the minimum number of local licenses that the local jurisdiction is required to issue pursuant to paragraph (2) shall be determined by dividing the number of residents in the local jurisdiction by 10,000 and rounding down to the nearest whole number.

(b) Notwithstanding subdivision (a), a local jurisdiction described in paragraph (1) of subdivision (a) that wants to establish a lower amount of local licenses for retail cannabis commercial activity than required by subdivision (a) shall do all of the following:

(1) Create a local ordinance or other local law that clearly specifies the level of participation in the retail commercial cannabis market the local jurisdiction will allow.

(2) Submit that ordinance or other local law to the electorate of that local jurisdiction at the next regularly scheduled local election following the operative date of this section.

(3) If the ordinance or other local law is approved by more than 50 percent of the electorate of that local jurisdiction voting on the issue, then the new ordinance or other local law shall become effective in that local jurisdiction.

(c) If a local jurisdiction described in paragraph (1) of subdivision (a) does not submit a local ordinance or other local law to the electorate as described in subdivision (b), or that local ordinance or other local law fails to receive more than 50 percent of the approval of the electorate of that local jurisdiction voting on the issue as described in subdivision (b), then the local jurisdiction shall have 120 days after the next regularly scheduled local election following the operative date of this section to issue local licenses in compliance with subdivision (a).

(d) A local jurisdiction is exempt from this section if either of the following applies:

(1) On or after January 1, 2017, and until January 1, 2020, the local jurisdiction submitted to the electorate of the local jurisdiction a local ordinance or resolution that authorizes retail cannabis commercial activity, and a majority of the electorate voted not to approve the local ordinance or resolution.

(2) On or after January 1, 2017, and until January 1, 2020, the local jurisdiction submitted to the electorate of the local jurisdiction a local ordinance or resolution that prohibits retail cannabis commercial activity, and a majority of the electorate voted to approve the local ordinance or resolution.

~~(d)~~

(e) For purposes of this section, all of the following shall apply:

(1) "Electorate of a county" means the electorate of the unincorporated area of the county.

(2) "Local jurisdiction" means a city, county, or a city and a county.

(3) "Local license" means any license, permit, or other authorization from the local jurisdiction.

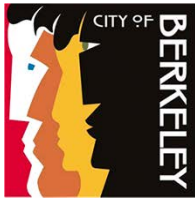
(f) This section shall not be construed to require a local jurisdiction to authorize adult-use retail cannabis commercial activity.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 4.

The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act as stated in subdivisions (u) and (x) of Section 3 of that act.



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson
 Subject: Budget Referral: Paid Internship Program for Interns of City of Berkeley Councilmembers

RECOMMENDATION

Refer to the budget process to consider an office allowance which would provide stipends to City of Berkeley interns.

BACKGROUND

Despite the fact that some interns work up to 10 hours per week, under current policy, city councilmember interns employed by the City of Berkeley are not paid for their contributions. Current interns serve city councilmembers by bringing a wide range of skills to assist the work of their office and offering an energetic outlook. While interns gain work-experience through this partnership, stipends could help supplement their contributions and increase equity.

Internships provide benefits to employers, who use interns to lower labor costs and screen trainees for potential job offers. City councilmember interns offer significant insight and lessen the labor of their offices.

As student debt continues to grow, it is less feasible for students to partake in unpaid internships in exchange for professional work experience. Students already face an average of \$37,172 in student debt, and as many as 69% of students claim they cannot afford to take an unpaid internship. Over 27 percent of Berkeley undergraduates qualify for the Pell Grant and most of these recipients are from families who make an income of less than \$30,000 a year.

Students oftentimes must choose between getting a job to financially assist their families and/or afford basic necessities and participating in an unpaid internship. Providing paid city councilmember internships to students has the potential to alleviate barriers, by providing more opportunities to first generation, low-income, or minority students, and create a more equitable workplace, by weakening the disproportional benefits in opportunity between financially advantaged and disadvantaged students.

This referral proposes to allocate \$1,500 per year to the offices of each Councilmember and \$3,000 for the office of the Mayor for intern stipends. While the specific allocation of those funds would be at the discretion of each Councilmember, that funding level is

intended to allow for \$500 for each of the Fall, Spring, and Summer academic semesters per Councilmember, and \$1,000 for the Office of the Mayor.

FINANCIAL IMPLICATIONS

The total cost of creating an office allowance to provide stipends would be approximately \$15,000 per year.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Aoife Megaw and Jihee Yoon, Interns to Councilmember Rigel Robinson



CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson
 Subject: Support for Renters Rights Bills: SB 529, and AB 36, 724, 1481, and 1482

RECOMMENDATION

Adopt a resolution supporting the Renters Rights Bills, which would strengthen tenant organizing rights, allow rent control on certain units, provide caps for rent-raising per year, protect against wrongful evictions, and create a registry of all California rental units.

BACKGROUND

Recently, State Senator Maria Durazo and Assemblymembers Richard Bloom, Buffy Wicks, Rob Bonta, and David Chiu introduced five items which together constitute a package aimed at strengthening tenant protections in California.

SB-529 (Durazo) establishes a right to organize, so that tenants can form tenants associations and speak out without fear of eviction or other retaliation. This bill strengthens existing protections by requiring landlords to state the reason for eviction.

In California, the 1995 Costa Hawkins Rental Housing Act limits the ability of city governments to control rent and rental restrictions. AB 36 (Bloom) will change current state law, softening the restrictions applied by Costa-Hawkins and allowing cities to pursue rent control measures on specific buildings.

AB-724 (Wicks) addresses the lack of any statewide registry on rental units. Currently, California has no system for requiring landlords to report how many units they own, and how much rent they charge. This leaves the responsibility of collecting this information to city officials, and leaves unincorporated areas without any rental reporting oversight. AB-724 would address these issues by legally requiring landlords to report this information to the state, giving the state data on rent hikes and tenant displacement, both in areas where local authorities do not share their information with the state and in unincorporated areas without rent boards.

AB-1481 (Bonta) would enact just-cause eviction protections throughout the state of California.

AB-1482 (Chiu) would set a statewide cap on rental increases per year, helping mitigate the effects of rental unit increases on tenants. According to Assemblymember Chiu, the

bill's author, "millions of Californians are just one rent increase away from becoming homeless."

Together, this package of five bills would enable a much wider swath of renters' protections.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Josh Lewis, Mars Svec-Burdick and Ronit Sholkoff, Interns to Councilmember Rigel Robinson

Attachments:

- 1: Letters to Senator Durazo, Assemblymember Wicks, Assemblymember Bloom, Assemblymember Bonta, Assemblymember Chiu
- 2: Bill Text: SB-529
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB529
- 3: Bill Text: AB-36
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB36
- 4: Bill Text: AB-724
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB724
- 5: Bill Text: AB-1481
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1481
- 6: Bill Text: AB-1482
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1482

May 6, 2019

The Honorable Maria Elena Durazo
California State Senate
State Capitol, Room 5066
Sacramento, CA 95814

**RE: SB 529, Durazo, Right to Organize/Protect Tenant Voices
Support from the Berkeley City Council**

Dear Senator Durazo:

The Berkeley City Council would like to convey support for your bill SB 529, which seeks to protect tenants' right to organize without fear of retaliation.

As you are aware, the shortage of affordable housing in the Bay Area and statewide has reached the level of a crisis. In order to protect California tenants and take step towards solving systemic housing issues, it is crucial for tenants to retain the ability to form associations and engage in collective bargaining.

Under current law, landlords may evict tenants without listing a cause, leaving an opportunity for unlawful, retaliatory evictions to take place. By seeking to close this loophole, your bill would ensure a greater level of accountability on the part of landowners, and help to promote a more equitable dynamic between owners and renters.

Ultimately, SB 529 seeks to remove the barriers to participation in California tenant associations, and thereby is an important step towards a fairer statewide housing market.

Thank you for introducing this important piece of legislation, and striving to uphold tenant organizing rights.

Respectfully,
The Berkeley City Council

CC: Senator Nancy Skinner
Assembly Member Buffy Wicks

May 6, 2019

The Honorable Buffy Wicks
Member of the Senate
State Capitol, Room 5160
Sacramento, CA 95814

**Re: AB 724 (Wicks)
Support from the Berkeley City Council**

Dear Assemblymember Wicks,

The Berkeley City Council would like to convey its full support for your bill AB 724, which addresses the lack of any statewide registry on rental units.

As you are aware, the shortage of affordable housing in the Bay Area and statewide has reached the level of a crisis. In order to protect California tenants and take step towards solving systemic housing issues, a greater level of transparency and data from the rental industry is needed.

Currently, California has no system for requiring landlords to report how many units they own, and how much rent they charge. This leaves the responsibility of collecting this information to city officials, and leaves unincorporated areas without any rental reporting oversight. By legally requiring landlords to report this information to the state, your bill would increase public understanding of rent hikes and tenant displacement, helping local and state organizations identify and mitigate concerning trends.

As proposed, your bill will empower state and local governments to be more effective in protecting renters, and thereby is an important step towards a fairer statewide housing market.

Thank you for introducing this important piece of legislation, and striving to help make the necessary reforms to mitigate the housing crisis.

Respectfully,
The Berkeley City Council

CC: Senator Nancy Skinner

May 6, 2019

The Honorable Richard Bloom
Member of the Assembly
State Capitol, Room 2003
Sacramento, CA 95814

Re: AB 36 (Bloom)
Support from the Berkeley City Council

Dear Assemblymember Bloom,

The Berkeley City Council would like to convey its full support for your bill AB 36, which relaxes Costa-Hawkins restrictions on local rent control measures.

As you are aware, the shortage of affordable housing in the Bay Area and statewide has reached the level of a crisis. In order to protect California tenants and take step towards solving systemic housing issues, it is necessary for local governments to have greater autonomy when considering mitigation of rent hikes.

Under current law, the 1995 Costa Hawkins Rental Housing Act limits the ability of city governments to control rent and rental restrictions. By softening Costa-Hawkins restrictions and allowing cities to pursue rent control measures on specific buildings, AB 36 would increase the ability of municipalities to respond more flexibly to the ongoing crisis of affordable housing.

Thank you for introducing AB-36, and striving to help cities and local governments mitigate rising rents and be more effective in protecting renters.

Respectfully,
The Berkeley City Council

CC: Senator Nancy Skinner
Assembly Member Buffy Wicks

May 6, 2019

The Honorable Rob Bonta
Member of the Assembly
State Capitol, Room 2148
Sacramento, CA 95814

Re: AB 1481 (Bonta)
Support from the Berkeley City Council

Dear Assemblymember Bonta,

The Berkeley City Council would like to convey its full support for your bill AB 1481, which strives to guard against wrongful evictions by enacting a statewide just cause for evictions law.

As you are aware, the shortage of affordable housing in the Bay Area and statewide has reached the level of a crisis. In order to protect California tenants and take step towards solving systemic housing issues, it is necessary to enact just-cause eviction protections throughout the state of California.

While the City of Berkeley already has a strong just cause eviction program, it is imperative that similar protections be spread to the rest of the renters of the state. Security in housing is essential for basic human fulfillment, and requiring a legitimate reason for eviction is a common sense measure that will vastly improve the lives of literally millions of people in California.

Thank you for introducing AB-1481. As proposed, this bill will instate critical reforms protecting renters and striving to help mitigate the housing crisis.

Respectfully,
The Berkeley City Council

CC: Senator Nancy Skinner
Assembly Member Buffy Wicks

May 6, 2019

The Honorable David Chiu
Member of the Assembly
State Capitol, Room 4112
Sacramento, CA 95814

Re: AB 1482 (Chiu)
Support from the Berkeley City Council

Dear Assemblymember Chiu,

The Berkeley City Council would like to convey its full support for your bill AB 1482, which strives to mitigate rent hikes.

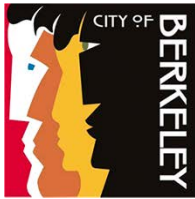
As you are aware, the shortage of affordable housing in the Bay Area and statewide has reached the level of a crisis. In order to protect California tenants and take step towards solving systemic housing issues, it is critical to initiate a state anti-rent gouging ordinance.

By prohibiting any annual change in rental cost which exceeds 5% plus the percentage change in the cost of living, AB 1482 ensures that no resident experiences consecutive or significant rent hikes at a level which effectively forces their relocation, and protects low income residents who may be one rent hike away from experiencing homelessness. Housing is a human right, and renters should have a greater degree of security against financial displacement.

As proposed, this bill will instate critical reforms to more effectively in protect renters and mitigate rising rents.

Respectfully,
The Berkeley City Council

CC: Senator Nancy Skinner
Assembly Member Buffy Wicks



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

2a.28

CONSENT CALENDAR
 May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson
 Subject: Support for SB 212 (Ranked Choice Voting) and SB 641 (Special Elections: Rank Choice Voting)

RECOMMENDATION

Send a letter to Assemblymember Allen supporting SB 212, which would authorize a city, county, or local educational agency to conduct an election using ranked choice voting, and SB 641, which would authorize the Governor to require a special election to fill a vacancy in a congressional or legislative office using rank choice voting, if the jurisdiction is capable of using this voting method.

BACKGROUND

Under current law, general law cities are provided with procedures with which election of candidates for elective offices, and are incapable of adopting alternative voting methods.

In multiple cities, ranked choice voting has led to greater voter participation. In 2017, four cities introduced ranked choice voting elections, and all cities had higher turnout than in prior elections.¹ Voters using ranked choice voting have been more satisfied with candidates' conduct.² According to exit polls, approximately eighty-four percent of voters who participated in ranked choice voting said the new RCV-formatted ballot was easy to complete.³

Voters who use ranked choice voting system overwhelmingly vote in favor of expanding the system.⁴ The City of Berkeley has been utilizing rank choice voting since 2010.⁵ In the Bay Area specifically, rank choice voting has eliminated costly runoff elections, given more wins to women and people of color, and increased voter turnout.⁶

This amendment would grant each local jurisdiction the authority to determine the best voting method for that jurisdiction, despite general law city status.

¹ https://www.fairvote.org/the_facts_of_ranked_choice_voting_voters_like_it_high_turnouts_are_trending

² Ibid.

³ Ibid.

⁴ https://www.fairvote.org/ranked_choice_voting_again_embraced_by_bay_area_voters_and_candidates

⁵ <https://www.cityofberkeley.info/rcv/>

⁶ https://www.fairvote.org/ranked_choice_voting_again_embraced_by_bay_area_voters_and_candidates

Existing law requires the Governor to call a special election by proclamation within 14 calendar days of a vacancy within a congressional or legislative office.

SB 641 would authorize the Governor to require that a special election be conducted by rank choice voting, if the affected jurisdiction are capable of conducting elections utilizing rank choice voting and the Secretary of State approves the rank choice voting method to be used.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Naomi Garcia, Intern of Councilmember Rigel Robinson

Attachments:

1: Letter of support to Senator Allen

2: Bill Text - SB 212

(https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB212)

3: Bill Text - SB 641

(<https://legiscan.com/CA/text/SB641/2019>)

The Honorable Ben Allen
Member of the Assembly
State Capitol, Room 5072
Sacramento, CA 95814

Re: SB 212 – Local Voting Methods and SB 641 – Special Elections

Dear Senator Allen,

The Berkeley City Council would like to convey its full support for SB 212 and SB 641.

In multiple cities including Berkeley, ranked choice voting has led to greater voter participation. In 2017, four cities introduced ranked choice voting elections, and all cities had higher turnout than in prior elections. Voters using ranked choice voting have been more satisfied with candidates' conduct. According to exit polls, approximately eighty-four percent of voters who participated in ranked choice voting said the new RCV-formatted ballot was easy to complete.

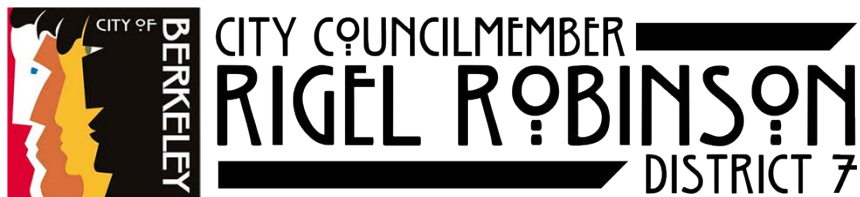
The City of Berkeley has been utilizing rank choice voting since 2010. In the Bay Area specifically, rank choice voting has eliminated runoff elections, given more wins to women and people of color, and increased voter turnout.

Both of these bills are great steps towards achieving a more representative electoral system.

Thank you for introducing these important pieces of legislation.

Sincerely,
The Berkeley City Council

CC: Senator Nancy Skinner
Assemblymember Buffy Wicks



CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Rigel Robinson
Subject: Support for ACA-6: Voting Rights for Parolees

RECOMMENDATION

Adopt a resolution supporting ACA-6, which restores the right to vote to citizens on parole for the conviction of a felony.

BACKGROUND

On January 28th, 2019, Assemblyman Kevin McCarty introduced the Free Vote Act, a plan which would restore voting rights to parolees. Currently in California, roughly 48,000 people cannot exercise their right to vote, solely because of their parole status.¹

Restoring voting rights to people on parole ensures a greater participation in civic life, and studies by groups such as the Brennan Center for Justice found that re-enfranchisement leads to decreased recidivism.²

Furthermore, disenfranchisement of former prisoners and parolees is part of a long, racist history of disenfranchising the black vote. In a separate study, the Sentencing Project found that African-Americans were disproportionately disenfranchised in states with similar laws.³

The attached resolution states the City of Berkeley's endorsement of the bill and subsequent ballot measure. Copies of the resolution should be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and the bill's author, Assemblymember Kevin McCarty.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with the City's climate and environmental goals.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

¹ <https://www.sacbee.com/news/politics-government/capitol-alert/article225198485.html>

² https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf

³ <https://www.sentencingproject.org/wp-content/uploads/2015/08/Felony-Disenfranchisement-Primer.pdf>

Ronit Sholkoff, Intern to Councilmember Rigel Robinson

Attachments:

1: Resolution

2: Bill Text – ACA 1:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA1

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

RESOLUTION IN SUPPORT OF ACA-6

WHEREAS, voting is a fundamental right and pillar of American democracy, and;

WHEREAS, the right to vote enables Americans to participate in civic life and increasing enfranchisement creates a stronger, more robust democracy; and

WHEREAS, under current law, approximately 48,000 people in California are legally barred from exercising their civic duty and fundamental right to vote as a citizen of the United States; and

WHEREAS, restrictions on voting rights reinforce a systemic, racist effort to restrict and disenfranchise voters of color and limit their power in the civic process; and

WHEREAS, restoring the right to vote to parolees supports their reintegration into society, reducing recidivism, and;

WHEREAS, ACA-6 (McCarty), also known as the Free Vote Act, will grant parolees the right to vote.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby endorses ACA-6 and the ballot measure that will result from its passage; and

BE IT FURTHER RESOLVED that the City of Berkeley may be listed as a supporter of said ballot measure by the official proponents of the measure; and

BE IT FURTHER RESOLVED that copies of this resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Assemblymember Kevin McCarty.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Harrison, Davila, and Robinson
 Subject: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects

RECOMMENDATION

Refer to the City Manager to develop an ordinance on green stormwater infrastructure according to recommendations from the Facilities, Infrastructure, Transportation, and Environmental Sustainability Committee.

POLICY COMMITTEE RECOMMENDATION

On May 2, 2019, the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to send the amended version of the Mayor's supplemental item to the Community Environmental Advisory Commission's report to the full Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND

Green Stormwater Infrastructure is a form of drainage control that uses permeable pavement, bioswales, green roofs, cisterns, and other rain catchment systems to filter and reuse rainwater. Berkeley has already implemented green stormwater infrastructure in strategic places around the City, including the permeable pavement on Allston Way and parts of Shattuck and bioswales across the City.

In September 2015 Mayor Arreguin wrote a referral to the Planning Commission and the Community Environmental Advisory Commission to develop an ordinance requiring large residential developments to incorporate green stormwater infrastructure into new projects. Following CEAC's referral response, Mayor Arreguin made some edits and referred the item to the Facilities and Infrastructure policy committee. After some deliberation and presentations from Planning staff on current and proposed green stormwater infrastructure projects in Berkeley, the committee made the following changes to the item as referred:

- Ask the City Manager to develop an ordinance mandating these regulations
- Remove the unit requirement for residential developments. Stormwater runoff is an environmental issue on large stretches of hardscape, and the number of units or height of the building do not have an effect.

- Develop infrastructure requirements while keeping in mind that State and Alameda County requirements are expected to expand very soon, and Berkeley ought to comply beyond the state and county requirements
- Allow developments to pay an in-lieu fee to fund green infrastructure elsewhere in the City if their project is between 5,000 and 10,000 square feet. Projects of 10,000 square feet or more produce enough hardscape to make green stormwater infrastructure needed onsite, but below 10,000 square feet there may be areas elsewhere in the City that are more strategic.

FINANCIAL IMPLICATIONS

Staff Time

ENVIRONMENTAL SUSTAINABILITY

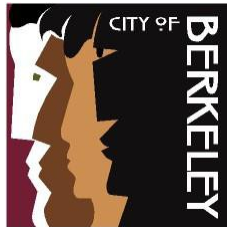
Green Stormwater Infrastructure is a necessity given California's historic drought and West Berkeley's flooding experiences during any sizeable storm. GSI helps in preserving the natural flow of storm runoff which is often obstructed in urban areas. GSI has the ability to retain water, prevent runoff which leads to flooding, and remove pollutants among other environmentally beneficial factors.

CONTACT PERSON

Kate Harrison, Councilmember, District 4 510-981-7140

Attachments:

1: Item Fa, December 11, 2018, with changes in Track Changes



Office of the Mayor

03a

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: December 11, 2018

Item Number: Fa

Item Description: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects

Submitted by: Mayor Jesse Arreguín

On September 15, 2015, the City Council referred Item 39 “Mandatory Green Stormwater Infrastructure in New Developments” to the City Manager, Planning Commission and Community Environmental Advisory Committee (see attachment). The proposal was modeled after ordinances adopted in San Francisco and Seattle requiring the instillation of stormwater infrastructure in larger projects.

The CEAC has brought its recommendations back to the City Council in response to this referral. Many of the recommendations proposed by CEAC are worth further study, however a key question is what projects should they apply to? My original referral only recommended that these requirements apply to projects of 100 units or more, or commercial developments that result in 5,000 square feet of new or replaced impervious surface.

I am proposing a modification to the CEAC recommendation as follows:

Refer to the City Manager ~~and Planning Commission~~ to develop measures an ordinance to incorporate Green Stormwater Infrastructure and water conservation features in new projects. The regulations should apply to large ~~residential developments of 50 units or more or commercial~~ developments that result in 5,000 square feet of new or replaced impervious surface. The City Manager and Planning Commission should consider the legislation adopted in San Francisco and Seattle and the following recommendations from the CEAC:

- Comply beyond the most recent State and Alameda County current requirements;

- Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;
- Establish site design measures that include minimizing impervious surfaces;
- Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff **if their property is between 5,000 and 10,000 square feet;**
- Require abatements for newly paved areas over a specific size;
- Make exceptions for properties that offer significantly below-market rent or sale prices;
- Incorporate these measures for private property with similar measures for Public Works [City projects], while coordinating with EBMUD, BUSD, UCB and LBNL.



Jesse Arreguín
City Councilmember, District 4

CONSENT CALENDAR
September 15, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Mandatory Green Stormwater Infrastructure in New Developments

RECOMMENDATION

Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

BACKGROUND

Green Stormwater Infrastructure (GSI) is a form of drainage control that uses infiltration, evapotranspiration, or stormwater reuse. Examples of this include permeable pavement, bio swales, green roofs, rain gardens, cisterns and other rain catchment systems.

Cities such as San Francisco and Seattle (which like Berkeley, are bordered by a body of water) have regulations requiring the treatment of stormwater onsite. In April 2010, San Francisco passed an ordinance requiring developments that disturb 5,000 square feet of surface to include stormwater management controls (San Francisco Public Works Code, Article 4.2, Section 147-147.6). Seattle's Stormwater Code (Seattle Municipal Code Section 22.800-22.808) requires the implementation of GSI on developments that add or replace 2,000 square feet of impervious surfaces to the maximum extent possible with the purpose of infiltration, retention, and dispersal.

The City of Berkeley has already taken some steps to promote the use of Green Infrastructure as a way to mitigate negative impacts to our City's watersheds. On June 23, 2009, the City Council passed Resolution No. 64,507, which implemented Bay-Friendly Landscaping policies under the Alameda County Waste Management Authority. The City also complies with the Alameda County Clean Water Program, as passed in Resolution No. 66,004 on February 5, 2013, which aims at reducing pollutants from urban storm runoff. In addition, Measure M funds have supported a number of publicly-funded green infrastructure projects throughout the city. However in order to make a measurable difference to reduce storm water runoff and to conserve water, and to better implement the city's adopted Watershed Management Plan, private developments should install green infrastructure features at the time of construction.

Requiring GSI in developments will help the City better achieve these goals and help mitigate environmental impacts on our watersheds and Bay.

FINANCIAL IMPLICATIONS

Staff Time

ENVIRONMENTAL SUSTAINABILITY

Green Stormwater Infrastructure is a necessity given California's historic drought and West Berkeley's flooding experiences during any sizeable storm. GSI helps in preserving the natural flow of storm runoff which is often obstructed in urban areas. GSI has the ability to retain water, prevent runoff which leads to flooding, and remove pollutants among other environmentally beneficial factors.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments:

- 1: San Francisco Public Works Code, Article 4.2, Section 147-147.6
- 2: Seattle Municipal Code Section 22.800-22.808

FILE NO. 100102

ORDINANCE NO.

1 [Requiring the Development and Maintenance of Stormwater Management Controls]

2

3 **Ordinance amending the San Francisco Public Works Code by repealing Article 4.2,**
4 **sections 140 -149.4, and adding Article 4.2, sections 147 -147.6, requiring the**
5 **development and maintenance of stormwater management controls for specified**
6 **activities that disturb 5,000 square feet or more of the ground surface, and are subject**
7 **to building, planning and subdivision approvals.**

8

9 Note: Additions are single-underline italics Times New Roman;
10 deletions are ~~strik-Othnm.gh italics Times, Vew Roman.~~
11 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Environmental Findings. The Planning Department has determined that the
14 actions contemplated in this Ordinance are in compliance with the California Environmental
15 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is
16 on file with the Clerk of the Board of Supervisors in File No. _____ 1_00_1_0_2 _____ and is
17 incorporated herein by reference.

18 Section 2. The San Francisco Public Works Code is hereby amended by repealing
19 Sections 140 - 149.4 of Article 4.2.

20 Section 3. The San Francisco Public Works Code is hereby amended by adding
21 Sections 147 -147.6, to Article 4.2, to readas follows:

22 Article 4.2. SEWER SYSTEM MANAGEMENT.

23 Section 147. Stormwater Management

24 (a) The intent of Sections 147 - 147.6 is to protect and enhance the water quality in the
25 City and County of San Francisco's sewer system, stormwater collection system and receiving

1' waters pursuant to, and consistent with Federal and State laws, lawful standards and orders
2' applicable to stormwater and urban runoff control, and the City's authority to manage and
31 operate its drainage systems.

4 (b) Urban runoff is a significant cause of pollution throughout California. Pollutants of
5 concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens,
6 oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic
7 aromatic hydrocarbons (PAHs), trash, and pesticides and herbicides.

81 (c) During urban development, two important changes occur. First, where no urban
9 development has previously occurred, natural vegetated pervious ground cover is converted
10 to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural
11 vegetated soil can both absorb rainwater and remove pollutants, providing a very effective
12 purification process. Because pavement and concrete can neither absorb water nor remove
13 pollutants, the natural purification characteristics of the land are lost. Second, urban
14 development creates new pollutant sources, including vehicle emissions, vehicle maintenance
15 wastes, pesticides, household hazardous wastes, pet wastes, trash, and other contaminants
16 that can be washed into the City's stormwater collection systems.

17 (d) A high percentage of impervious area correlates to a higher rate of stormwater
18 runoff, which generates greater pollutant loadings to the stormwater collection system,
19 resulting in turbid water, nutrient enrichment, bacterial contamination, toxic compounds,
20 temperature increases, and increases of trash or debris.

21 (e) When water quality impacts are considered during the planning stages of a project,
22 new development and redevelopment projects can more efficiently incorporate measures to
23 protect water quality.

24

25

1 (f) Sections 147 - 147.6 protect the health, safety and general welfare of the City's
2 residents by:

3 (1) minimizing increases in pollution caused by stormwater runoff from development
4 that would otherwise degrade local water quality;

5 (3) controlling the discharge to the City's sewer and drainage systems from spills,
6 dumping or disposal of pollutants; and

7 (4) reducing stormwater run-off rates, volume, and nonpoint source pollution
8 whenever possible, through stormwater management controls, and ensuring that
9 these management controls are safe and properly maintained.

10 Section 147.1. Definitions.

11 In addition to the definitions provided in section 119 of Article 4.1 of this Code, the
12 following definitions shall apply:

13 (a) Best management practices or "BMPs." Structural devices, measures, or programs
14 used to reduce pollution in stormwater runoff. BMPs manage the quantity and improve the
15 quality of stormwater runoff in accordance with the Guidelines and applicable state and
16 federal regulatory requirements.

17 (b) Department. The San Francisco Public Utilities Commission. With regard to
18 stormwater management in areas of the City under the jurisdiction of the Port Commission,
19 "Department" means the San Francisco Port Commission until the Port Commission adopts
20 its own standards and procedures.

21 (c) Development Project. Any activity disturbing 5,000 square feet or more of the
22 ground surface, measured cumulatively from the effective date of this Article. Activities that
23 disturb the ground surface include, but are not limited to, the construction, modification,
24 conversion, or alteration of any building or structure and associated grading, filling,

1 excavation, change in the existing topography, and the addition or replacement of impervious
2 surface. All sidewalks, parking, driveways, and landscaped and irrigated areas constructed in
3 conjunction with the Development Project are included in the project area. Development
4 Projects do not include interior remodeling projects, maintenance activities such as top-layer
5 grinding, repaving, and re-roofing, or modifications, conversions or alterations of buildings or
6 structures that does not increase the ground surface footprint of the building or structure.

7 (d) Development runoff requirements. The performance standards set forth in the
8 Guidelines to address both the construction and post-construction phase impacts of new
9 Development Projects on stormwater quality.

10 (e) General Manager. The General Manager of the Public Utilities Commission of the
11 City, or a designated representative of the General Manager. With regard to stormwater
12 management in areas of the City under the jurisdiction of the Port Commission, the Executive
13 Director of the San Francisco Port Commission or a designated representative of the
14 Executive Director shall have the same authority under this Article as the General Manager
15 until the Port Commission adopts it own standards and procedures regarding stormwater
16 management in all areas under Port Commission jurisdiction.

17 (f) Guidelines. The Stormwater Design Guidelines adopted by the San Francisco Public
18 Utilities Commission or the San Francisco Port Commission. The Guidelines contain
19 requirements pertaining to the type, design, sizing, and maintenance of post-construction
20 stormwater BMPs.

21 (g) Low Impact Design (LID). A stormwater management approach that promotes the
22 use of ecological and landscape-based systems that mimic pre-development drainage
23 patterns and hydrologic processes by increasing retention, detention, infiltration, and
24 treatment of stormwater at its source.

25

1 (h) Non-Stormwater Discharge. Any discharge to the City's Stormwater Collection
2 System that is not composed entirely of Stormwater.

3 (i) Pollutant. Any substance listed in sec. 119(aa) of Article 4.1 of the Public Works
4 Code or any substance described as a pollutant in the Guidelines.

5 U) Separate Stormwater/sewer System. Stormwater and sanitary sewage collection
6 facilities that convey, treat and discharge stormwater and sewage in separated catchbasins,
7 pipelines, treatment facilities, outfalls, and other facilities, and do not combine stormwater and
8 sewage in the same facilities.

9 (k) Stormwater. Water that originates from atmospheric moisture (rainfall or snowfall)
10 and that falls onto land, water or other surfaces.

11 (l) Stormwater Collection System. All City facilities operated by the San Francisco
12 Public Utilities Commission or the Port of San Francisco for collecting, transporting, treating
13 and disposing of stormwater. For purposes of this Article, the Stormwater Collection System
14 includes facilities owned and operated by public entities other than the City, where such
15 facilities direct stormwater into the Stormwater Collection System and are subject to the
16 jurisdiction of the San Francisco Public Utilities Commission or the Port of San Francisco as
17 defined by law, contract, or interjurisdictional agreement.

18 (m) Stormwater Control. A device designed to remove pollution in stormwater runoff
19 through detention, retention, filtration, direct plant uptake, or infiltration.

20 (n) Stormwater Control Plan. A plan that meets all applicable criteria, performance
21 standards and other requirements contained in this Article and the Guidelines.

22 Section 147.2. Stormwater Control Plan

23 (a) Development Projects. Every application for a Development Project, including, but
24 not limited to, a building or encroachment permit conditional use permit, variance, site permit,
25

1 or design review, shall be accompanied by a Stormwater Control Plan that meets the
21 stormwater control criteria provided by the Guidelines. No City department shall approve or
3 issue a conditional use permit, variance, site permit, design review approval, building or
4 encroachment permit unless and until a Stormwater Control Plan developed in accordance
5 with this Article and the Guidelines has been approved by the General Manager. All projects
6 subject to the stormwater management requirements of Chapter 13C of the San Francisco
7 Building Code shall comply with the requirements of the Guidelines.

8 (b) Subdivision Approvals.

9 (1) Parcel Map or Tentative Subdivision Map Conditions. The Director of Public
10 Works shall not approve a tentative subdivision map or a parcel map for any property unless
11 a condition is imposed requiring compliance with all applicable Stormwater Control Plans to
12 serve the potential uses of the property covered by the parcel map or tentative subdivision
13 map, as may be further specified in the provisions of this Article or the Guidelines.

14 (2) Subdivision Regulations. The Director of Public Works shall adopt regulations
15 as necessary, consistent with and in furtherance of this Article, to ensure that all subdividers
16 of property subject to the provisions of this ordinance provide a Stormwater Control Plan in
17 compliance with this Article and the Guidelines.

18 (3) Final Maps. The Director of Public Works shall not endorse and file a final map
19 for property within the boundaries of the City and County of San Francisco without first
20 determining whether:

21 (A) The subdivider has complied with the conditions imposed on the tentative
22 subdivision map or parcel map, pursuant to this Article and the Guidelines; and

1 (B) For any such conditions not fully satisfied prior to the recordation of the final
2 map, the subdivider has signed a certificate of agreement and/or improvement agreement, to
3 ensure compliance with such conditions.

4 (4) This Subsection (b) shall not apply to tentative subdivision maps or parcel
5 maps submitted solely for the purposes of condominium conversion, as defined in San
6 Francisco Subdivision Code Section 1308(d).

7 Sec. 147.3. Limitations and Prohibited Discharges.

8 (a) The establishment, use, maintenance or continuation of any unauthorized drainage
9 connections to the Stormwater Collection System is prohibited.

10 (b) The discharge of Pollutants and Non-stormwater Discharges into the stormwater
11 collection facilities located in the Separate Stormwater/sewer System portions of the
12 Stormwater Collection System is prohibited, except as provided in this section.

13 (c) The following discharges are exempt from the prohibitions set forth subsection (b)
14 above if the Regional Water Quality Control Board approves the exempted category under
15 section C. 11. of the City's NPDES permit: uncontaminated pumped groundwater, foundation
16 drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation
17 water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from
18 i potable water sources, water line and hydrant flushing, individual residential car washing,
19 | discharges or flows from emergency fire fighting activities, dechlorinated swimming pool
20 discharges.

21 Section 147.4. Compliance with Maintenance and Inspection Requirements.

22 (a) All Stormwater Controls shall be maintained according to the Guidelines and the
23 operation and maintenance plan included in the approved Stormwater Control Plan. The
24 person(s) or organization(s) responsible for maintenance shall be designated in the plan.

25

1 Those persons responsible for maintenance shall inspect the Stormwater Controls at least
2 annually and shall maintain the Stormwater Controls as required by the Guidelines and
3 described in the Stormwater Control Plan.

4 (b) Operation and Maintenance Inspection and Certificates. Every person who owns,
5 leases or operates any Stormwater Control or Controls must provide annual self-certification
6 for inspection and maintenance, as set forth in the Guidelines.

7 (c) The General Manager may perform routine or scheduled inspections, as may be
8 deemed necessary in the General Manager's sole discretion to carry out the intent of this
9 Article and the Guidelines, including, but not limited to, random sampling or sampling in areas
10 with evidence of Stormwater contamination, evidence of the discharge of Non-stormwater to
11 the Stormwater Collection System, or similar activities.

12 (d) Authority to Sample and Establish Sampling Devices. The General Manager may
13 require any person discharging Stormwater to the Stormwater Collection System to provide
14 devices or locations necessary to conduct sampling or metering operations.

15 (e) Notification of Spills. All persons in charge of the Stormwater Controls shall
16 provide immediate notification to the General Manager of any suspected, confirmed or
17 unconfirmed release of pollutants creating a risk of non-stormwater discharge into the
18 Stormwater Collection System. Such persons shall take all necessary steps to ensure the
19 detection and containment and clean up of such release. This notification requirement is in
20 addition to and not in lieu of other required notifications.

21 (f) Requirement to Test or Monitor. The General Manager may require that any person
22 responsible for Stormwater Controls undertake such monitoring activities or analysis and
23 furnish such reports as the General Manager may specify.

24 Section 147.5 Enforcement and Cost Reimbursement.

25

1 Any violation of this Article may be enforced by the General Manager pursuant to section 132
2 /of Article 4.1 of the Public Works Code. Persons violating any provision of this Article, the
3 | Guidelines, or department regulations may be subject to penalties and abatement in
4 accordance with the Guidelines and sections 133 and 134 of Article 4.1 of the Public Works
5 Code.

6 Section 147.6 Severability

7 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this
8 Article, is for any reason held to be unconstitutional, invalid or ineffective by any court of
9 competent jurisdiction, such decision shall not affect the validity or effectiveness of the
10 | remaining portions of this Article. The Board of Supervisors declares that it would have
11 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this
12 Article irrespective of the fact that any one or more sections, subsections, subdivisions,
13 paragraphs, sentences, clauses, or phrases could be declared unconstitutional, invalid or
14 ineffective.

17 APPROVED AS TO FORM:
18 DENNIS A. HERRERA, City Attorney

19 By: 
20 JOHN RODDY
21 Deputy City Attorney

241

25



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlet Place
San Francisco, CA 94102-4689

File Number: 100102

Date Passed: April 13, 2010

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, Sections 140 - 149.4, and adding Article 4.2, Sections 147 -147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

April 06, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi
Excused: 1 - Alioto-Pier


April 13, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 100102

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/13/2010 by the Board of Supervisors of the City and County of San Francisco.



Mayor Gavin Newsom

Angela Calvillo
Clerk of the Board

4/22/2010
Date approved

Subtitle VIII. - Stormwater Code^[17]

Footnotes:

--- (17) ---

Cross reference— For provisions regarding emergency control of drainage problems, mud flows and earth slides, see Chapter 10.06 of this Code.

Chapter 22.800 - TITLE, PURPOSE, SCOPE AND AUTHORITY

Sections:

22.800.010 - Title

This subtitle, comprised of Chapters 22.800 through 22.808, shall be known as the "Stormwater Code" and may be cited as such.

(Ord. 123105, § 2, 2009.)

22.800.020 - Purpose

- A. The provisions of this subtitle shall be liberally construed to accomplish its remedial purposes, which are:
1. Protect, to the greatest extent practicable, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;
 2. Protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;
 3. Protect receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging of groundwater, or endanger aquatic and benthic life within these receiving waters and receiving waters of the state;
 4. Meet the requirements of state and federal law and the City's municipal stormwater National Pollutant Discharge Elimination System ("NPDES") permit;
 5. To protect the functions and values of environmentally critical areas as required under the state's Growth Management Act and Shoreline Management Act;
 6. To protect the public drainage system from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity; and
 7. Fulfill the responsibilities of the City as trustee of the environment for future generations.
- B. It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public. This subtitle is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms.
- C. It is expressly acknowledged that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, the water quality protection measures in this subtitle are necessary to protect the health, safety and welfare of the residents of Seattle and the integrity of natural resources for the benefit of all and for the purposes of this subtitle. Such water quality protection measures are required under the federal Clean Water Act, 33 U.S.C. Section 1251, et seq., and in response to the obligations of the City's municipal

stormwater discharge permit, issued by the State of Washington under the federal National Pollutant Discharge Elimination System program.

(Ord. 123105, § 2, 2009.)

22.800.30 - Scope and Applicability

This subtitle applies to:

- A. All grading and drainage and erosion control, whether or not a permit is required;
- B. All land disturbing activities, whether or not a permit is required;
- C. All discharges directly or indirectly to a public drainage system;
- D. All discharges directly or indirectly into receiving waters within or contiguous to Seattle city limits;
- E. All new and existing land uses; and
- F. All real property.

(Ord. 123105, § 2, 2009.)

22.800.40 - Exemptions, Adjustments, and Exceptions

A. Exemptions.

- 1. The following land uses are exempt from the provisions of this subtitle:
 - a. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade; and
 - b. Forest practices regulated under Title 222 Washington Administrative Code, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses.
- 2. The following land disturbing activities are not required to comply with the specific minimum requirements listed below.
 - a. Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, and that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment), except as modified as follows:
 - 1) Installation of a new or replacement of an existing public drainage system, public combined sewer, or public sanitary sewer in the public right-of-way shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects) when these activities are implemented as publicly bid capital improvement projects funded by Seattle Public Utilities; and
 - 2) Installation of underground or overhead utility facilities that are integral with and contiguous to a road-related project shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects).
 - b. Road maintenance practices limited to the following activities are not required to comply with Section 22.805.060 (Minimum requirements for Roadway Projects), Section 22.805.080 (Minimum Requirements for Flow Control), or Section 22.805.090 (Minimum Requirements for Treatment):
 - 1) Pothole and square cut patching;
 - 2) Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

- 3) Shoulder grading;
 - 4) Reshaping or regrading drainage ditches;
 - 5) Crack sealing; and
 - 6) Vegetation maintenance.
3. Sites that produce no runoff as determined by a licensed civil engineer using a continuous runoff model approved by the Director are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control).
 4. When a portion of the site being developed discharges only to the public combined sewer, that portion is not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
 5. Residential activities are not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
 6. With respect to all state highway right-of-way under WSDOT control within the jurisdiction of the City of Seattle, WSDOT shall use the current, approved Highway Runoff Manual (HRM) for its existing and new facilities and rights-of-way, as addressed in WAC 173-270-030(1) and (2). Exceptions to this exemption, where more stringent stormwater management requirements apply, are addressed in WAC 173-270-030(3)(b) and (c).
 - a. When a state highway is located in the jurisdiction of a local government that is required by Ecology to use more stringent standards to protect the quality of receiving waters, WSDOT shall comply with the same standards to promote uniform stormwater management.
 - b. WSDOT shall comply with standards identified in watershed action plans for WSDOT rights-of-way, as required by WAC 400-12-570.
 - c. Other instances where more stringent local stormwater standards apply are projects subject to tribal government standards or to the stormwater management-related permit conditions imposed under Chapter 25.09 to protect environmentally critical areas and their buffers (under the Growth Management Act), an NPDES permit, or shoreline master programs (under the Shoreline Management Act). In addition, WSDOT shall comply with local jurisdiction stormwater standards when WSDOT elects, and is granted permission, to discharge stormwater runoff into a municipality's stormwater system or combined sewer system.
- B. Adjustments.
1. The Director may approve a request for adjustments to the requirements of this subtitle when the Director finds that:
 - a. The adjustment provides substantially equivalent environmental protection; and
 - b. The objectives of safety, function, environmental protection, and facility maintenance are met, based on sound engineering practices.
 2. During construction, the Director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be adjusted if physical conditions are discovered on the site that are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas.

3. A request by the applicant for adjustments shall be submitted to the Director for approval prior to implementation. The request shall be in writing and shall provide facts substantiating the requirements of subsection 22.805.080.B1, and if made during construction, the factors in subsection B2. Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the Director.

C. Exceptions.

1. The Director may approve a request for an exception to the requirements of this subtitle when the applicant demonstrates that the exception will not increase risks in the vicinity and/or downstream of the property to public health, safety and welfare, or to water quality, or to public and private property, and:
 - a. The requirement would cause a severe and unexpected financial hardship that outweighs the requirement's benefits, and the criteria for an adjustment cannot be met; or
 - b. The requirement would cause harm or a significant threat of harm to public health, safety and welfare, the environment, or public and private property, and the criteria for an adjustment cannot be met; or
 - c. The requirement is not technically feasible, and the criteria for an adjustment cannot be met; or
 - d. An emergency situation exists that necessitates approval of the exception.
2. An exception shall only be granted to the extent necessary to provide relief from the economic hardship, to alleviate the harm or threat of harm, to the degree that compliance with the requirement becomes technically feasible, or to perform the emergency work that the Director determines exists.
3. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met.
4. The Director may require an applicant to provide additional information at the applicant's expense, including, but not limited to an engineer's report or analysis.
5. When an exception is granted, the Director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.
6. Public notice of an application for an exception and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions, as set forth in Chapter 23.76.
7. The Director's decision shall be in writing with written findings of fact. Decisions approving an exception based on severe and unexpected economic hardship shall address all the factors in subsection 22.805.080.C.8.
8. An application for an exception on the grounds of severe and unexpected financial hardship must describe, at a minimum, all of the following:
 - a. The current, pre-project use of the site; and
 - b. How application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this current subtitle; and
 - c. The possible remaining uses of the site if the exception were not granted; and
 - d. The uses of the site that would have been allowed prior to the adoption of this subtitle; and

- e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this subtitle; and
 - f. The feasibility of the owner or developer to alter the project to apply the requirements of this subtitle.
9. In addition to rights under Chapter 3.02 of the Seattle Municipal Code, any person aggrieved by a Director's decision on an application for an exception may appeal to the Hearing Examiner's Office by filing an appeal, with the applicable filing fee, as set forth in Section 23.76.022. However, appeals of a Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall follow the required procedure established in Chapter 22.808 of this subtitle.
 10. The Hearing Examiner shall affirm the Director's determination on the exception unless the examiner finds the determination is clearly erroneous based on substantial evidence. The applicant for the exception shall have the burden of proof on all issues related to justifying the exception.
 11. The Director shall keep a record, including the Director's written findings of fact, on all approved requests for exceptions.

(Ord. [124758](#), § 1, 2015; Ord. 123105, § 2, 2009.)

22.800.050 - Potentially Hazardous Locations

- A. Any site on a list, register, or data base compiled by the United States Environmental Protection Agency or the Washington State Department of Ecology for investigation, cleanup, or other action regarding contamination under any federal or state environmental law shall be a potentially hazardous location under this subtitle. When EPA or Ecology removes the site from the list, register or data base, or when the Director of DPD determines the owner has otherwise established the contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.
- B. The following property may also be designated by the Director of DPD as potentially hazardous locations:
 1. Existing and/or abandoned solid waste disposal sites;
 2. Hazardous waste treatment, storage, or disposal facilities, all as defined by the federal Solid Waste Disposal Act, 42 U.S.C. section 6901, et seq.

(Ord. 123105, § 2, 2009.)

22.800.060 - Compliance With Other Laws

- A. The requirements of this subtitle are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this subtitle imposes requirements that are more protective of human health or the environment than those set forth elsewhere, the provisions of this subtitle shall prevail. When this subtitle imposes requirements that are less protective of human health or the environment than those set forth elsewhere, the provisions of the more protective requirements shall prevail.
- B. Approvals and permits granted under this subtitle are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this subtitle.
- C. Compliance with the provisions of this subtitle and of regulations and manuals adopted by the City in relation to this subtitle does not necessarily mitigate all impacts to the environment. Thus, compliance with this subtitle and related regulations and manuals should not be construed as mitigating all drainage water or other environmental impacts, and additional mitigation may be

required to protect the environment. The primary obligation for compliance with this subtitle, and for preventing environmental harm on or from property, is placed upon responsible parties as defined by this subtitle.

(Ord. 123105, § 2, 2009.)

22.800.070 - Minimum Requirements for City Agency Projects

A. Compliance. City agencies shall comply with all the requirements of this subtitle except as specified below:

1. City agencies are not required to obtain permits and approvals under this subtitle, other than inspections as set out in subsection B of this section, for work performed within a public right-of-way or for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation. Where the work occurs in a public right-of-way, it shall also comply with Seattle Municipal Code Title 15, Street and Sidewalk Use, including the applicable requirements to obtain permits or approvals.
2. A City agency project, as defined in Section 22.801.170, that is not required to obtain permit(s) and approval(s) per subsection 22.800.070.A.1 and meets all of the conditions set forth below, is not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment).
 - a. The project begins land disturbing activities within 18 months of the effective date of this subtitle, and;
 - b. The project complies with subsections 22.802.015.C.4, 22.802.016. B.1, and 22.802.016.B.2 of the Stormwater, Grading and Drainage Control Code that was made effective July 5, 2000 by Ordinance 119965, and
 - c. The project meets one or more of the following criteria:
 - 1) Project funding was appropriated as identified in Ordinance 122863 titled, "An ordinance adopting a budget, including a capital improvement program and a position list, for the City of Seattle for 2009"; or
 - 2) Project received or will receive voter approval of financing before January 1, 2009; or
 - 3) Project received or will receive funds based on grant application(s) submitted before January 1, 2009.

B. Inspection.

1. When the City conducts projects for which review and approval is required under Chapter 22.807 (Drainage Control Review and Application Requirements) the work shall be inspected by the City agency conducting the project or supervising the contract for the project. The inspector for the City agency shall be responsible for ascertaining that the grading and drainage control is done in a manner consistent with the requirements of this subtitle.
2. A City agency need not provide an inspector from its own agency provided either:
 - a. The work is inspected by an appropriate inspector from another City agency; or
 - b. The work is inspected by an appropriate inspector hired for that purpose by a City agency; or
 - c. The work is inspected by the licensed civil or geotechnical engineer who prepared the plans and specifications for the work; or
 - d. A permit or approval is obtained from the Director of DPD, and the work is inspected by the Director.

- C. Certification of Compliance. City agencies shall meet the same standards as non-City projects, except as provided in subsection 22.800.070.A, and shall certify that each individual project meets those standards.

(Ord. 123105, § 2, 2009.)

22.800.075 - Compliance by Public Agencies

Whether or not they are required to obtain permits or submit documents, public agencies are subject to the substantive requirements of this subtitle, unless adjustments or exceptions are granted as set forth in Section 22.800.040 (Exemptions, Adjustments, and Exceptions) or the requirements have been waived under subsection 22.807.020.A.3.

(Ord. 123105, § 2, 2009.)

22.800.080 - Authority

- A. For projects not conducted in the public right-of-way, the Director of DPD has authority regarding the provisions of this subtitle pertaining to grading, review of drainage control plans, and review of construction stormwater control plans, and has inspection and enforcement authority pertaining to temporary erosion and sediment control measures.
- B. The Director of SPU has authority regarding all other provisions of this subtitle pertaining to drainage water, drainage, and erosion control, including inspection and enforcement authority. The Director of SPU may delegate authority to the Director of DPD or the Director of Seattle Department of Transportation regarding the provisions of this subtitle pertaining to review of drainage control plans, review of erosion control plans, and inspection and enforcement authority pertaining to temporary erosion and sediment control measures for projects conducted in the public right-of-way.
- C. The Directors of DPD, SDOT and SPU are authorized to take actions necessary to implement the provisions and purposes of this subtitle in their respective spheres of authority to the extent allowed by law, including, but not limited to, the following: promulgating and amending rules and regulations, pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code; establishing and conducting inspection programs; establishing and conducting or, as set forth in Section 22.802.040, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage system, or receiving waters; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving, conditioning, or disapproving required submittals and applications for approvals and permits. The Directors are authorized to exercise their authority under this subtitle in a manner consistent with their legal obligations as determined by the courts or by statute.
- D. The Director of SPU is authorized to develop, review, or approve drainage basin plans for managing receiving waters, drainage water, and erosion within individual basins. A drainage basin plan may, when approved by the Director of SPU, be used to modify requirements of this subtitle, provided the level of protection for human health, safety and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. A drainage basin plan that modifies the minimum requirements of this subtitle at a drainage basin level must be reviewed and approved by Ecology and adopted by City ordinance.
- E. The Director of SPU is authorized, to the extent allowed by law, to develop, review, or approve an Integrated Drainage Plan as an equivalent means of complying with the requirements of this subtitle, in which the developer of a project voluntarily enters into an agreement with the Director of SPU to implement an Integrated Drainage Plan that is specific to one or more sites where best management practices are employed such that the cumulative effect on the discharge from the site(s) to the same receiving water is the same or better than that which would be achieved by a less integrated, site-by-site implementation of best management practices.
- F. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily contribute funds toward the construction of one

or more drainage control facilities that mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.

- G. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily construct one or more drainage control facilities at an alternative location, determined by the Director, to mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.
- H. If the Director of SPU determines that a discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, has exceeded, exceeds, or will exceed water quality standards at the point of assessment, or has caused or contributed, is causing or contributing, or will cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit, and cannot be adequately addressed by the required best management practices, then the Director of SPU has the authority, to the extent allowed by law, to issue an order under Chapter 22.808 requiring the responsible party to undertake more stringent or additional best management practices. These best management practices may include additional source control or structural best management practices or other actions necessary to cease the exceedance, the prohibited discharge, or causing or contributing to the known or likely violation of water quality standards in the receiving water or the known or likely violation of the City's municipal stormwater NPDES permit. Structural best management practices may include but shall not be limited to: drainage control facilities, structural source controls, treatment facilities, constructed facilities such as enclosures, covering and/or berming of container storage areas, and revised drainage systems. For existing discharges as opposed to new projects, the Director may allow 12 months to install a new flow control facility, structural source control, or treatment facility after the Director notifies the responsible party in writing of the Director's determination pursuant to this subsection and of the flow control facility, structural source control, or treatment facility that must be installed.
- I. Unless an adjustment per subsection 22.800.040.B or an exception per subsection 22.800.040.C is approved by the Director, an owner or occupant who is required, or who wishes, to connect to a public drainage system shall be required to extend the public drainage system if a public drainage system is not accessible within an abutting public area across the full frontage of the property.
- J. The Director of DPD has the authority, to the extent allowed by law, to require sites with addition or replacement of less than 5,000 square feet of impervious surface or with less than one acre of land disturbing activity to comply with the requirements set forth in Section 22.805.080 or Section 22.805.090 when necessary to accomplish the purposes of this subtitle. In making this determination, the Director of DPD may consider, but not be limited to, the following attributes of the site: location within an Environmentally Critical Area; proximity and tributary to an Environmentally Critical Area; and proximity and tributary to an area with known erosion or flooding problems.

(Ord. 123105, § 2, 2009.)

22.800.090 - City Not Liable

- A. Nothing contained in this subtitle is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this subtitle, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this subtitle, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this subtitle by its officers, employees or agents.
- B. The Director or any employee charged with the enforcement of this subtitle, acting in good faith and without malice on behalf of the City, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the City, or by reason of any act or omission in the discharge of these duties. Any suit brought against the Director of DPD, Director of SPU or other

employee because of an act or omission performed in the enforcement of any provisions of this subtitle, shall be defended by the City.

- C. Nothing in this subtitle shall impose any liability on the City or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes or contaminated soil.

(Ord. 123105, § 2, 2009.)

Chapter 22.801 - DEFINITIONS

Sections:

22.801.10 - General

For the purpose of this subtitle, the words listed in this chapter have the following meanings, unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this subtitle, shall be as defined in Washington Administrative Code Chapters 173-303, 173-304 and 173-340, the Seattle Building Code or the Seattle Fire Code, including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular.

(Ord. 123105, § 2, 2009.)

22.801.020 - "A"

"Agency" means any governmental entity or its subdivision.

"Agency, City" means "City agency" as defined in Section 25.09.520.

"Agency with jurisdiction" means those agencies with statutory authority to approve, condition or deny permits, such as the United States Environmental Protection Agency, the Washington State Department of Ecology or Public Health—Seattle & King County.

"Approved" means approved by the Director.

(Ord. 123668, § 1, 2011; Ord. 123105, § 2, 2009.)

22.801.030 - "B"

"Basin plan" means a plan to manage the quality and quantity of drainage water in a watershed or a drainage basin, including watershed action plans.

"Basic treatment facility" means a drainage control facility designed to reduce concentrations of total suspended solids in drainage water.

"Best management practice (BMP)" means a schedule of activities, prohibitions of practices, operational and maintenance procedures, structural facilities, or managerial practice or device that, when used singly or in combination, prevents, reduces, or treats contamination of drainage water, prevents or reduces soil erosion, or prevents or reduces other adverse effects of drainage water on receiving waters. When the Directors develop rules and/or manuals prescribing best management practices for particular purposes, whether or not those rules and/or manuals are adopted by ordinance, BMPs prescribed in the rules and/or manuals shall be the BMPs required for compliance with this subtitle.

"Building permit" means a document issued by the Department of Planning and Development authorizing construction or other specified activity in accordance with the Seattle Building Code (Chapter 22.100) or the Seattle Residential Code (Chapter 22.150).

(Ord. 123105, § 2, 2009.)

22.801.040 - "C"

"Capacity-constrained system" means a drainage system that the Director of SPU has determined to have inadequate capacity to carry drainage water.

"Cause or contribute to a violation" means and includes acts or omissions that create a violation, that increase the duration, extent or severity of a violation, or that aid or abet a violation.

"Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology.

"Civil engineer, licensed" means a person who is licensed by the State of Washington to practice civil engineering.

"City agency" means "City agency" as defined in Section 25.09.520.

"Combined sewer." See "public combined sewer."

"Construction Stormwater Control Plan" means a document that explains and illustrates the measures to be taken on the construction site to control pollutants on a construction project.

"Compaction" means the densification of earth material by mechanical means.

"Containment area" means the area designated for conducting pollution-generating activities for the purposes of implementing source controls or designing and installing source controls or treatment facilities.

"Contaminate" means the addition of sediment, any other pollutant or waste, or any illicit or prohibited discharge.

"Creek" means a Type 2-5 water as defined in WAC 222-16-031 and is used synonymously with "stream."

(Ord. 123105, § 2, 2009.)

22.801.050 - "D"

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the City, including, but not limited, to the following: costs of abating or correcting violations of this subtitle; fines or penalties the City incurs as a result of a violation of this subtitle; and costs to repair or clean the public drainage system as a result of a violation. For the purposes of this subtitle, damages do not include compensation to any person other than the City.

"Designated receiving water" means the Duwamish River, Puget Sound, Lake Washington, Lake Union, Elliott Bay, Portage Bay, Union Bay, the Lake Washington Ship Canal, and other receiving waters determined by the Director of SPU and approved by Ecology as having sufficient capacity to receive discharges of drainage water such that a site discharging to the designated receiving water is not required to implement flow control.

"Detention" means temporary storage of drainage water for the purpose of controlling the drainage discharge rate.

"Development" means land disturbing activity or the addition or replacement of impervious surface.

"Director" means the Director of the Department authorized to take a particular action, and the Director's designees, who may be employees of that department or another City department.

"Director of DPD" means the Director of the Department of Planning and Development of The City of Seattle and/or the designee of the Director of Planning and Development, who may be employees of that department or another City department.

"Director of SDOT" means the Director of Seattle Department of Transportation of The City of Seattle and/or the designee of the Director of Seattle Department of Transportation, who may be employees of that department or another City department.

"Director of SPU" means the Director of Seattle Public Utilities of The City of Seattle and/or the designee of the Director of Seattle Public Utilities, who may be employees of that department or another City department.

"Discharge point" means the location from which drainage water from a site is released.

"Discharge rate" means the rate at which drainage water is released from a site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

"DPD" means the Department of Planning and Development.

"Drainage basin" means the tributary area or subunit of a watershed through which drainage water is collected, regulated, transported, and discharged to receiving waters.

"Drainage control" means the management of drainage water. Drainage control is accomplished through one or more of the following: collecting, conveying, and discharging drainage water; controlling the discharge rate from a site; controlling the flow duration from a site; and separating, treating or preventing the introduction of pollutants.

"Drainage control facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the discharge rate, flow duration, quantity, and/or quality of drainage water.

"Drainage control plan" means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities.

"Drainage system" means a system intended to collect, convey and control release of only drainage water. The system may be either publicly or privately owned or operated, and the system may serve public or private property. It includes constructed and/or natural components such as pipes, ditches, culverts, streams, creeks, or drainage control facilities.

"Drainage water" means stormwater and all other discharges that are permissible per subsection 22.802.030.A.

(Ord. 123105, § 2, 2009.)

22.801.060 - "E"

"Earth material" means any rock, gravel, natural soil, fill, or re-sedimented soil, or any combination thereof, but does not include any solid waste as defined by RCW 70.95.

"Ecology" means the Washington State Department of Ecology.

"Effective impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

"Enhanced treatment facility" means a drainage control facility designed to reduce concentrations of dissolved metals in drainage water.

"Environmentally critical area" means an area designated in Section 25.09.020.

"EPA" means the United States Environmental Protection Agency.

"Erosion" means the wearing away of the ground surface as a result of mass wasting or of the movement of wind, water, ice, or other geological agents, including such processes as gravitational creep. Erosion also means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

"Excavation" means the mechanical removal of earth material.

"Exception" means relief from a requirement of this subtitle to a specific project.

(Ord. 123105, § 2, 2009.)

22.801.070 - "F"

"Fill" means a deposit of earth material placed by artificial means.

"Flow control" means controlling the discharge rate, flow duration, or both of drainage water from the site through means such as infiltration or detention.

"Flow control facility" means a drainage control facility for controlling the discharge rate, flow duration, or both of drainage water from a site.

"Flow-critical receiving water" means a surface water that is not a designated receiving water as defined in this subtitle.

"Flow duration" means the aggregate time that peak flows are at or above a particular flow rate of interest.

(Ord. 123105, § 2, 2009.)

22.801.080 - "G"

"Garbage" means putrescible waste.

"Geotechnical engineer" or "Geotechnical/civil engineer" means a professional civil engineer licensed by The State of Washington who has at least four years of professional experience as a geotechnical engineer, including experience with landslide evaluation.

"Grading" means excavation, filling, in-place ground modification, removal of roots or stumps that includes ground disturbance, stockpiling of earth materials, or any combination thereof, including the establishment of a grade following demolition of a structure.

"Green stormwater infrastructure" means a drainage control facility that uses infiltration, evapotranspiration, or stormwater reuse. Examples of green stormwater infrastructure include permeable pavement, bioretention facilities, and green roofs.

(Ord. 123105, § 2, 2009.)

22.801.090 - "H"

"High-use sites" means sites that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

1. An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;
2. An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;
3. An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);
4. A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(Ord. 123105, § 2, 2009.)

22.801.100 - "I"

"Impervious Surface" means any surface exposed to rainwater from which most water runs off. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, formal planters, parking lots or storage areas, concrete or asphalt paving, permeable paving, gravel surfaces subjected to vehicular traffic, compact gravel, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of

determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of stormwater modeling.

Impervious surface, replaced. See "replaced or replacement of impervious surface."

"Infiltration" means the downward movement of water from the surface to the subsoil.

"Infiltration facility" means a drainage control facility that temporarily stores, and then percolates drainage water into the underlying soil.

"Integrated Drainage Plan" means a plan developed, reviewed, and approved per subsection 22.800.080.E.

"Interflow" means that portion of rainfall and other precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface.

"Inspector" means a City inspector, their designee, or licensed civil engineer performing the inspection work required by this subtitle.

(Ord. 123105, § 2, 2009.)

22.801.110 - "J"

"Joint project" means a project that is both a parcel-based project and a roadway project.

(Ord. 123105, § 2, 2009.)

22.801.130 - "L"

"Land disturbing activity" means any activity that results in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, excavation, or addition of new or the replacement of impervious surface. Compaction, excluding hot asphalt mix, that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activities.

"Large project" means a project including 5,000 square feet or more of new impervious surface or replaced impervious surface, individually or combined, or one acre or more of land disturbing activity.

"Listed creek basins" means Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek.

(Ord. 123105, § 2, 2009.)

22.801.140 - "M"

"Master use permit" means a document issued by DPD giving permission for development or use of land or street right-of-way in accordance with Chapter 23.76.

"Maximum extent feasible" means the requirement is to be fully implemented, constrained only by the physical limitations of the site, practical considerations of engineering design, and reasonable considerations of financial costs and environmental impacts.

"Municipal stormwater NPDES permit" means the permit issued to the City under the federal Clean Water Act for public drainage systems within the City limits.

(Ord. 123105, § 2, 2009.)

22.801.150 - "N"

"Native vegetation" means "native vegetation" as defined in Section 25.09.520.

"Nutrient-critical receiving water" means a surface water or water segment that that has been listed as Category 5 (impaired) under Section 303(d) of the Clean Water Act for total phosphorus through the State of Washington's Water Quality Assessment program and approved by EPA.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act.

"NPDES permit" means an authorization, license or equivalent control document issued by the United States Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

(Ord. 123105, § 2, 2009.)

22.801.160 - "O"

"Oil control treatment facility" means a drainage control facility designed to reduce concentrations of oil in drainage water.

"Owner" means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee, and the owner's duly authorized agent.

(Ord. 123105, § 2, 2009.)

22.801.170 - "P"

"Parcel-based project" means any project that is not a roadway project, single-family residential project, sidewalk project, or trail project.

"Person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the State of Washington, political subdivision or agency of the State of Washington, public authority or other public body, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and the United States or any instrumentality thereof.

"Pervious surface" means a surface that is not impervious. See also, "impervious surface".

"Phosphorus treatment facility" means a drainage control facility designed to reduce concentrations of phosphorus in drainage water.

"Plan" means a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents, or a document consisting of checklists, steps, actions, schedules, or other contents that has been prepared pursuant to this subtitle, such as a drainage control plan, construction stormwater control plan, stormwater pollution prevention plan, and integrated drainage plan.

"Pollution-generating activity" means any activity that is regulated by the joint SPU/DPD Directors' Rule titled, "Source Control Technical Requirements Manual" or activities with similar impacts on drainage water. These activities include, but are not limited to: cleaning and washing activities; transfer of liquid or solid material; production and application activities; dust, soil, and sediment control; commercial animal care and handling; log sorting and handling; boat building, mooring, maintenance, and repair; logging and tree removal; mining and quarrying of sand, gravel, rock, peat, clay, and other materials; cleaning and maintenance of swimming pool and spas; deicing and anti-icing operations for airports and streets; maintenance and management of roof and building drains at manufacturing and commercial buildings; maintenance and operation of railroad yards; maintenance of public and utility corridors and facilities; and maintenance of roadside ditches.

"Pollution-generating impervious surface" means those impervious surfaces considered to be a significant source of pollutants in drainage water. Such surfaces include those that are subject to:

vehicular use; certain industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the drainage water. Examples include: erodible soils that are stockpiled; uncovered process wastes; manure; fertilizers; oily substances; ashes; kiln dust; and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads; unvegetated road shoulders; permeable pavement; bike lanes within the traveled lane of a roadway; driveways; parking lots; unfenced fire lanes; vehicular equipment storage yards; and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles; fenced fire lanes; and infrequently used maintenance access roads.

"Pollution-generating pervious surface" means any non-impervious surface subject to use of pesticides and fertilizers or loss of soil, and typically includes lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

"Pre-developed condition" means the vegetation and soil conditions that are used to determine the allowable post-development discharge peak flow rates and flow durations, such as pasture or forest.

"Project" means the addition or replacement of impervious surface or the undertaking of land disturbing activity on a site.

"Public combined sewer" means a publicly owned and maintained system which carries drainage water and wastewater and flows to a publicly owned treatment works.

"Public drainage system" means a drainage system owned or used by the City of Seattle.

"Public place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

"Public sanitary sewer" means the sanitary sewer that is owned or operated by a City agency.

"Public storm drain" means the part of a public drainage system that is wholly or partially piped, owned or operated by a City agency, and designed to carry only drainage water.

(Ord. 123105, § 2, 2009.)

22.801.190 - "R"

"Real property" means "real property" as defined in Section 3.110.

"Receiving water" means the surface water or wetland receiving drainage water.

"Repeat Violation" means a prior violation of this subtitle within the preceding five years that became a final order or decision of the Director or a court. The violation does not need to be the same nor occur on one site to be considered repeat.

"Replaced impervious surface" or "replacement of impervious surface" means for structures, the removal and replacement of impervious surface down to the foundation. For other impervious surface, the impervious surface that is removed down to earth material and a new impervious surface is installed.

"Responsible party" means all of the following persons:

1. Owners, operators, and occupants of property; and,
2. Any person causing or contributing to a violation of the provisions of this subtitle.

"Right-of-way" means "right-of-way" as defined in Section 23.84A.032.

"Roadway" means "roadway" as defined in Section 23.84A.032.

"Roadway project" means a project located in the public right-of-way, that involves the creation of a new or replacement of an existing roadway, or that involves the creation of new or replacement of existing impervious surface.

"Runoff" means the portion of rainfall or other precipitation that becomes surface flow and interflow.

(Ord. 123105, § 2, 2009.)

22.801.200 - "S"

"SPU" means Seattle Public Utilities.

"Sanitary sewer" means a system that conveys wastewater and is not designed to convey stormwater.

"SDOT" means the Seattle Department of Transportation.

"Service drain" means "service drain" as defined in Section 21.16.030.

"Side sewer" means "side sewer" as defined in Section 21.16.030.

"Sidewalk" means "sidewalk" as defined in Section 23.84A.036.

"Sidewalk project" means a project that exclusively involves the creation of a new or replacement of an existing sidewalk, including any associated planting strip, curb, or gutter.

"Single-family residential project" means a project, that constructs one Single-family Dwelling Unit per Section 23.44.006.A located in land classified as being Single-family Residential 9,600 (SF 9600), Single-family Residential 7,200 (SF 7200), or Single-family Residential 5,000 (SF 5000) per Section 23.30.010, and the total new plus replaced impervious surface is less than 10,000 square feet and the total new plus replaced pollution-generating impervious surface is less than 5,000 square feet.

"Site" means the lot or parcel, or portion of street, highway or other right-of-way, or contiguous combination thereof, where a permit for the addition or replacement of impervious surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For roadway projects, the length of the project site and the right-of-way boundaries define the site.

"Slope" means an inclined ground surface.

"Small project" means a project with:

1. Less than 5,000 square feet of new and replaced impervious surface; and
2. Less than one acre of land disturbing activities.

"SMC" means the Seattle Municipal Code.

"Soil" means naturally deposited non-rock earth materials.

"Solid waste" means "solid waste" as defined in Section 21.36.016.

"Source controls" mean structures or operations that prevent contaminants from coming in contact with drainage water through physical separation or careful management of activities that are known sources of pollution.

"Standard design" is a design pre-approved by the Director for drainage and erosion control available for use at a site with pre-defined characteristics.

"Storm drain" means both public storm drain and service drain.

"Stormwater" means that portion of precipitation and snowmelt that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a drainage system into a receiving water or a constructed infiltration facility.

"Stream" means a Type 2-5 water as defined in WAC 222-16-031. Used synonymously with "creek."

(Ord. 123105, § 2, 2009.)

22.801.210 - "T"

"Topsoil" means the weathered surface soil, including the organic layer, in which plants have most of their roots.

"Trail" means a path of travel for recreation and/or transportation within a park, natural environment, or corridor that is not classified as a highway, road, or street.

"Trail project" means a project that exclusively involves creating a new or replacement of an existing trail, and which does not contain pollution-generating impervious surfaces.

"Treatment facility" means a drainage control facility designed to remove pollutants from drainage water.

(Ord. 123105, § 2, 2009.)

22.801.220 - "U"

"Uncontaminated" means surface water or groundwater not containing sediment or other pollutants or contaminants above natural background levels and not containing pollutants or contaminants in levels greater than City-supplied drinking water when referring to potable water.

(Ord. 123105, § 2, 2009.)

22.801.230 - "V"

"Vegetation" means "vegetation" as defined in Section 25.09.520.

(Ord. 123105, § 2, 2009.)

22.801.240 - "W"

"Wastewater" means "wastewater" as defined in Section 21.16.030.

"Water Quality Standards" means Surface Water Quality Standards, Chapter 173-201A WAC, Ground Water Quality Standards, Chapter 173-200 WAC, and Sediment Management Standards, Chapter 173-204 WAC.

"Watercourse" means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks or sides, in which surface waters flow. Watercourse includes small lakes, bogs, streams, creeks, and intermittent artificial components (including ditches and culverts) but does not include designated receiving waters.

"Watershed" means a geographic region within which water drains into a particular river, stream, or other body of water.

"Wetland" means a wetland designated under Section 25.09.020.

"Wetland function" means the physical, biological, chemical, and geologic interactions among different components of the environment that occur within a wetland. Wetland functions can be grouped into three categories: functions that improve water quality; functions that change the water regime in a watershed, such as flood storage; and functions that provide habitat for plants and animals.

"Wetland values" means wetland processes, characteristics, or attributes that are considered to benefit society.

(Ord. 123105, § 2, 2009.)

Chapter 22.802 - PROHIBITED AND PERMISSIBLE DISCHARGES
Sections:

22.802.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 2, 2009.)

22.802.020 - Prohibited Discharges

- A. Prohibited Discharges. The following common substances are prohibited to enter, either directly or indirectly, a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, including but not limited to when entering via a service drain, overland flow, or as a result of a spill or deliberate dumping:
 - 1. acids;
 - 2. alkalis including cement wash water;
 - 3. ammonia;
 - 4. animal carcasses;
 - 5. antifreeze, oil, gasoline, grease and all other automotive and petroleum products;
 - 6. chemicals not normally found in uncontaminated water;
 - 7. chlorinated swimming pool or hot tub water;
 - 8. chlorine;
 - 9. commercial and household cleaning materials;
 - 10. detergent;
 - 11. dirt;
 - 12. domestic or sanitary sewage;
 - 13. drain cleaners;
 - 14. fertilizers;
 - 15. flammable or explosive materials;
 - 16. food and food waste;
 - 17. gravel.
 - 18. herbicides;
 - 19. human and animal waste;
 - 20. industrial process wastewater,
 - 21. ink;
 - 22. laundry waste;
 - 23. metals in excess of naturally occurring amounts, whether in liquid or solid form;

24. painting products;
 25. pesticides;
 26. sand;
 27. soap;
 28. solid waste;
 29. solvents and degreasers;
 30. steam-cleaning waste; and,
 31. yard waste.
- B. Prohibited Discharges to Public and Private Drainage System. Except as provided in Section 22.802.030, any discharge to a public drainage system or to a private drainage system that is not composed entirely of stormwater is prohibited.
- C. Prohibited Discharges to Receiving Waters. Except as provided in Section 22.802.030, any discharge, either directly or indirectly to receiving waters within or contiguous to Seattle city limits or to a public drainage system that is not composed entirely of stormwater is prohibited.

(Ord. 123105, § 2, 2009.)

22.802.30 - Permissible Discharges

Permissible Discharges to Drainage Systems and Receiving Waters. Discharges from the sources listed below are permissible discharges unless the Director of SPU determines that the type of discharge, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, whether singly or in combination with others, is causing or contributing to a violation of the City's NPDES stormwater permit or is causing or contributing to a water quality problem:

1. Discharges from potable water sources, including flushing of potable water lines, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH- adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage system;
2. Discharges from washing or rinsing of potable water storage reservoirs, dechlorinated as above;
3. Discharges from surface waters, including diverted stream flows;
4. Discharges of uncontaminated groundwater, including uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(2), uncontaminated pumped groundwater, and rising ground waters;
5. Discharges of air conditioning condensation;
6. Discharges from springs;
7. Discharges of uncontaminated water from crawl space pumps;
8. Discharges from lawn watering;
9. Discharges from irrigation runoff, including irrigation water from agricultural sources that is commingled with stormwater and that does not contain prohibited substances;
10. Discharges from riparian habitats and wetlands;
11. Discharges from approved footing drains and other subsurface drains or, where approval is not required, installed in compliance with this subtitle and rules promulgated pursuant to this subtitle;
12. Discharges from foundation drains;

13. Discharges from swimming pools, hot tubs, fountains, or similar aquatic recreation facilities and constructed water features, provided the discharges have been de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage control system;
 14. Discharges of street and sidewalk wash-water that does not use detergents or chemical additives;
 15. Discharges of water used to control dust;
 16. Discharges of water from routine external building washdown that does not use detergents or chemical additives;
 17. Discharges that are in compliance with a separate individual or general NPDES permit;
 18. Discharges that are from emergency fire fighting activities; and
 19. Other non-stormwater discharges, provided these discharges are in compliance with the requirements of an approved stormwater pollution prevention plan that addresses such discharges.
- B. Permissible Discharges to Sanitary Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a sanitary sewer if the discharging party demonstrates to the satisfaction of the Director of SPU that other methods of controlling pollutants in the discharge are not adequate or reasonable, the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the sanitary sewer. Connections to the sanitary sewer shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.
- C. Permissible Discharges to Public Combined Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a public combined sewer if the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the public combined sewers. Connections to the public combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.

(Ord. 123105, § 2, 2009.)

22.802.040 - Testing for Prohibited Discharges

When the Director of SPU has reason to believe that any discharge is a prohibited discharge, the Director of SPU may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to be a prohibited discharge on a recurring basis, the Director of SPU may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

(Ord. 123105, § 2, 2009.)

Chapter 22.803 - MINIMUM REQUIREMENTS FOR ALL DISCHARGES AND ALL REAL PROPERTY Sections:

22.803.010 - General

- A. All responsible parties are required to comply with this chapter, even where no development is occurring.

- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.803.020 - Minimum Requirements for All Discharges and Real Property

- A. Requirement to provide documentation. The owner is required to make plans, procedures, and schedules required by this subsection available to the Director of SPU when requested.
- B. Requirement to report spills, releases, or dumping. A responsible party is required to, at the earliest possible time, but in any case within 24 hours of discovery, report to the Director of SPU, a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage system, a private drainage system, or a receiving water. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.
- C. Requirements to maintain facilities. All treatment facilities, flow control facilities, drainage control facilities, and drainage systems shall be maintained as prescribed in rules promulgated by the Director in order for these facilities and systems to be kept in continuous working order.
- D. Requirements for disposal of waste from maintenance activities. Disposal of waste from maintenance of drainage control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, Chapter 173-303 WAC.
- E. Requirements to maintain records of installation and maintenance activities. When a drainage control facility is installed, the party having the facility installed shall make records of the installation and shall identify the party (or parties) responsible for maintenance and operations. The parties shall retain a continuous record of all maintenance and repair activities, and shall retain the records for at least ten years. If a transfer of ownership occurs, these records of installation, repair, and maintenance shall be transferred to the new property owner. These records shall be made available to the Director of SPU during inspection of the facility and at other reasonable times upon request of the Director of SPU.

(Ord. 123105, § 3, 2009.)

22.803.30 - Minimum Requirements for Source Controls for All Real Property

For all discharges, responsible parties shall implement and maintain source controls to prevent or minimize pollutants from leaving a site or property. Source controls that are required for all real property include, but are not limited to, the following, as further described in rules promulgated by the Director:

- A. Eliminate Illicit or Prohibited Connections to Storm Drains. It is the responsibility of the property owner to ensure that all plumbing connections are properly made and that only connections conveying stormwater or permissible discharges per Section 22.802.030 are connected to the drainage system.
- B. Perform Routine Maintenance for Stormwater Drainage System. All drainage system components, including, but not limited to catch basins, flow control facilities, treatment facilities, green stormwater infrastructure, and unimproved drainage pathways shall be kept in continuously working order.

- C. Dispose of Fluids and Wastes Properly. Solid and liquid wastes must be disposed of in a manner that minimizes the risk of contaminating stormwater.
- D. Proper Storage of Solid Wastes. Solid wastes must be stored of in a manner that minimizes the risk of contaminating stormwater.
- E. Spill Prevention and Cleanup. All property owners having the potential to spill pollutants shall take measures to the maximum extent feasible to prevent spills of pollutant and to properly clean up spills that may occur.
- F. Provide Oversight and Training for Staff. Train at least annually all employees responsible for the operation, maintenance, or inspection of BMPs.

(Ord. 123105, § 3, 2009.)

22.803.040 - Minimum Requirements for Source Controls For All Businesses and Public Entities

- A. Source controls shall be implemented, to the extent allowed by law, by all businesses and public entities for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in subsection 22.802.020.A through subsection 22.802.020.C, and to prevent contaminants from coming in contact with drainage water. Source controls include, but are not limited to, segregating or isolating wastes to prevent contact with drainage water; enclosing, covering, or containing the activity to prevent contact with drainage water; developing and implementing inspection and maintenance programs; sweeping; and taking management actions such as training employees on pollution prevention.
- B. Spill prevention shall be required for all businesses and public entities, as further defined in rules promulgated by the Director:
 - 1. Develop and implement plans and procedures to prevent spills and other accidental releases of materials that may contaminate drainage water. This requirement may be satisfied by a Stormwater Pollution Prevention Plan prepared in compliance with an NPDES industrial stormwater permit for the site; and
 - 2. Implement procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of drainage water; and
 - 3. Provide necessary containment and response equipment on-site, and training of personnel regarding the procedures and equipment to be used.

(Ord. 123105, § 3, 2009.)

Chapter 22.805 - MINIMUM REQUIREMENTS FOR ALL PROJECTS

Sections:

22.805.010 - General

- A. All projects are required to comply with this chapter, even where drainage control review is not required.
- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits,

cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.805.020 - Minimum requirements for all projects

- A. Minimum Requirements for Maintaining Natural Drainage Patterns. For all projects, natural drainage patterns shall be maintained and discharges shall occur at the natural location to the maximum extent feasible and consistent with subsection 22.805.020.B. Drainage water discharged from the site shall not cause a significant adverse impact to receiving waters or down-gradient properties. Drainage water retained on the site shall not cause significant adverse impact to up-gradient properties.
- B. Minimum Requirements for Discharge Point. The discharge point for drainage water from each site shall be selected using criteria that shall include, but not be limited to, preservation of natural drainage patterns and whether the capacity of the drainage system is adequate for the flow rate and volume. For those projects meeting the drainage review threshold, the proposed discharge point shall be identified in the drainage control plan required by this subtitle, for review and approval or disapproval by the Director.
- C. Minimum Requirements for Flood-prone Areas. On sites within flood prone areas, responsible parties are required to employ procedures to minimize the potential for flooding on the site and to minimize the potential for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Seattle Municipal Code and rules promulgated thereunder, including, but not limited to, Chapter 23.60 (Shoreline Master Program), Chapter 25.06 (Floodplain Development) and Chapter 25.09 (Environmentally Critical Areas) of the Seattle Municipal Code.
- D. Minimum Requirements for Construction Site Stormwater Pollution Prevention Control. Temporary and permanent construction controls shall be used to accomplish the following minimum requirements. All projects are required to meet each of the elements below or document why an element is not applicable. Additional controls may be required by the Director when minimum controls are not sufficient to prevent erosion or transport of sediment or other pollutants from the site.
 - 1. Mark Clearing Limits and Environmentally Critical Areas. Within the boundaries of the project site and prior to beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits, easements, setbacks, all environmentally critical areas and their buffers, and all trees, and drainage courses that are to be preserved within the construction area.
 - 2. Retain Top Layer. Within the boundaries of the project site, the duff layer, topsoil, and native vegetation, if there is any, shall be retained in an undisturbed state to the maximum extent feasible. If it is not feasible to retain the top layer in place, it should be stockpiled on-site, covered to prevent erosion, and replaced immediately upon completion of the ground disturbing activities to the maximum extent feasible.
 - 3. Establish Construction Access. Limit construction vehicle access, whenever possible, to one route. Stabilize access points and minimize tracking sediment onto public roads. Promptly remove any sediment tracked off site.
 - 4. Protect Downstream Properties and Receiving Waters. Protect properties and receiving waters downstream from the development sites from erosion due to increases in the volume, velocity, and peak flow rate of drainage water from the project site. If it is necessary to construct flow control facilities to meet this requirement, these facilities shall be functioning prior to implementation of other land disturbing activity. If permanent infiltration ponds are used to control flows during construction, these facilities shall be protected from siltation during the construction phase of the project.
 - 5. Prevent Erosion and Sediment Transport from the Site. Pass all drainage water from disturbed areas through a sediment trap, sediment pond, or other appropriate sediment removal BMP

before leaving the site or prior to discharge to an infiltration facility. Sediment controls intended to trap sediment on site shall be constructed as one of the first steps in grading and shall be functional before other land disturbing activities take place. BMPs intended to trap sedimentation shall be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

6. Prevent Erosion and Sediment Transport from the Site by Vehicles. Whenever construction vehicle access routes intersect paved roads, the transport of sediment onto the paved road shall be minimized. If sediment is transported onto a paved road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from paved roads by shoveling or sweeping and shall be transported to a controlled sediment disposal area. If sediment is tracked off site, roads shall be cleaned thoroughly at the end of each day, or at least twice daily during wet weather. Street washing is allowed only after sediment is removed and street wash wastewater shall be prevented from entering the public drainage system and receiving waters.
7. Stabilize Soils. Prevent on-site erosion by stabilizing all exposed and unworked soils, including stock piles and earthen structures such as dams, dikes, and diversions. From October 1 to April 30, no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed for more than seven days. Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast. Soil stockpiles shall be stabilized from erosion, protected with sediment trapping measures, and be located away from storm drain inlets, waterways, and drainage channels. Before the completion of the project, permanently stabilize all exposed soils that have been disturbed during construction.
8. Protect Slopes. Erosion from slopes shall be minimized. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Off-site stormwater run-on or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes, and/or swales. Pipe slope drains or protected channels shall be constructed at the top of slopes to collect drainage and prevent erosion. Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations. Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.
9. Protect Storm Drains. Prevent sediment from entering all storm drains, including ditches that receive drainage water from the project. Storm drain inlet protection devices shall be cleaned or removed and replaced as recommended by the product manufacturer, or more frequently if required to prevent failure of the device or flooding. Storm drain inlets made operable during construction shall be protected so that drainage water does not enter the drainage system without first being filtered or treated to remove sediments. Storm drain inlet protection devices shall be removed at the conclusion of the project. When manufactured storm drain inlet protection devices are not feasible, inlets and catch basins must be cleaned as necessary to prevent sediment from entering the drainage control system.
10. Stabilize Channels and Outlets. All temporary on-site drainage systems shall be designed, constructed, and stabilized to prevent erosion. Stabilization shall be provided at the outlets of all drainage systems that is adequate to prevent erosion of outlets, adjacent stream banks, slopes, and downstream reaches.
11. Control Pollutants. Measures shall be taken to control potential pollutants that include, but are not limited to, the following measures:
 - a. All pollutants, including sediment, waste materials, and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of drainage water and per all applicable disposal laws.
 - b. Containment, cover, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

- c. On-site fueling tanks shall include secondary containment.
 - d. Maintenance, fueling, and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into drainage water runoff shall be conducted using spill prevention and control measures.
 - e. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident.
 - f. Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the sanitary sewer or combined sewer system with approval of the Director of SPU. Temporary discharges or connections to the public sanitary and combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code).
 - g. Application of fertilizers and pesticides shall be conducted in a manner and at application rates that will not result in loss of chemical to drainage water. Manufacturers' label requirements for application rates and procedures shall be followed.
 - h. BMPs shall be used to prevent or treat contamination of drainage water by pH-modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Construction site operators may be required to adjust the pH of drainage water if necessary to prevent a violation of water quality standards. Construction site operators must obtain written approval from Ecology prior to using chemical treatment other than carbon dioxide (CO₂) or dry ice to adjust pH.
12. Control Dewatering. When dewatering devices discharge on site or to a public drainage system, dewatering devices shall discharge into a sediment trap, sediment pond, gently sloping vegetated area of sufficient length to remove sediment contamination, or other sediment removal BMP. Foundation, vault, and trench dewatering waters must be discharged into a controlled drainage system prior to discharge to a sediment trap or sediment pond. Clean, non-turbid dewatering water, such as well-point ground water, that is discharged to systems tributary to state surface waters must not cause erosion or flooding. Highly turbid or contaminated dewatering water shall be handled separately from drainage water. For any project with an excavation depth of 12 feet or more below the existing grade and for all large projects, dewatering flows must be determined and it must be verified that there is sufficient capacity in the public drainage system and public combined sewer prior to discharging.
 13. Maintain BMPs. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All temporary erosion and sediment controls shall be removed within five days after final site stabilization is achieved or after the temporary controls are no longer needed, whichever is later. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized.
 14. Inspect BMPs. BMPs shall be periodically inspected. For projects with 5,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity, site inspections shall be conducted by a Certified Erosion and Sediment Control Lead who shall be identified in the Construction Stormwater Control Plan and shall be present on-site or on-call at all times.
 15. Execute Construction Stormwater Control Plan. Construction site operators shall maintain, update, and implement their Construction Stormwater Control Plan. Construction site operators shall modify their Construction Stormwater Control Plan to maintain compliance whenever there is a change in design, construction, operation, or maintenance at the site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.

16. Minimize Open Trenches. In the construction of underground utility lines, where feasible, no more than 150 feet of trench shall be opened at one time, unless soil is replaced within the same working day, and where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches. Trench dewatering devices shall discharge into a sediment trap or sediment pond.
 17. Phase the Project. Development projects shall be phased to the maximum extent feasible in order to minimize the amount of land disturbing activity occurring at the same time and shall take into account seasonal work limitations.
 18. Install Permanent Flow Control and Water Quality Facilities. Development projects required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment) shall install permanent flow control and water quality facilities.
- E. Minimum Requirement to Amend Soils. Prior to completion of the project all new, replaced, and disturbed topsoil shall be amended with organic matter per rules promulgated by the Director to improve onsite management of drainage water flow and water quality.
 - F. Implement Green Stormwater Infrastructure. All Single-family residential projects and all other projects with 7,000 square feet or more of land disturbing activity or 2,000 square feet or more of new plus replaced impervious surface must implement green stormwater infrastructure to infiltrate, disperse, and retain drainage water onsite to the maximum extent feasible without causing flooding, landslide, or erosion impacts.
 - G. Protect Wetlands. All projects discharging into a wetland or its buffer, either directly or indirectly through a drainage system, shall prevent impacts to wetlands that would result in a net loss of functions or values.
 - H. Protect Streams and Creeks. All projects, including projects discharging directly to a stream or creek, or to a drainage system that discharges to a stream or creek, shall maintain the water quality in any affected stream or creek by selecting, designing, installing, and maintaining temporary and permanent controls.
 - I. Protect Shorelines. All projects discharging directly or indirectly through a drainage system into the Shoreline District as defined in Chapter 23.60A shall prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions as defined in WAC 173-26-020 (11).
 - J. Ensure Sufficient Capacity. All large projects, all projects with an excavation depth of 12 feet or more below the existing grade, and all projects with an excavation depth of less than 12 feet located in an area expected to have shallow groundwater depths shall ensure that sufficient capacity exists in the public drainage system and public combined sewer to carry existing and anticipated loads, including any flows from dewatering activities. Capacity analysis shall extend to at least ¼-mile from the discharge point of the site. Sites at which there is insufficient capacity may be required to install a flow control facility or improve the drainage system or public combined sewer to accommodate flow from the site. Unless approved otherwise by the Director as necessary to meet the purposes of this subtitle:
 1. Capacity analysis for discharges to the public drainage system shall be based on peak flows with a 4% annual probability (25-year recurrence interval); and
 2. Capacity analysis for discharges to the public combined sewer shall be based on peak flows with a 20% annual probability (5-year recurrence interval).
 - K. Install Source Control BMPs. Source control BMPs shall be installed for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in Section 22.802.020, and to prevent contaminants from coming in contact with drainage water. This requirement applies to the pollution-generating activities that are stationary or occur in one primary

location and to the portion of the site being developed. Examples of installed source controls include, but are not limited to, the following:

1. A roof, awning, or cover erected over the pollution-generating activity area;
 2. Ground surface treatment in the pollution-generating activity area to prevent interaction with, or breakdown of, materials used in conjunction with the pollution-generating activity;
 3. Containment of drainage from the pollution-generating activity to a closed sump or tank. Contents of such a sump or tank must be pumped or hauled by a waste handler, or treated prior to discharge to a public drainage system.
 4. Construct a berm or dike to enclose or contain the pollution-generating activities;
 5. Direct drainage from containment area of pollution-generating activity to a closed sump or tank for settling and appropriate disposal, or treat prior to discharging to a public drainage system;
 6. Pave, treat, or cover the containment area of pollution-generating activities with materials that will not interact with or break down in the presence of other materials used in conjunction with the pollution-generating activity; and
 7. Prevent precipitation from flowing or being blown onto containment areas of pollution-generating activities.
- L. Do not obstruct watercourses. Watercourses shall not be obstructed.
- M. Comply with Side Sewer Code.
1. All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage system, shall be considered side sewers and subject to Chapter 21.16 (Side Sewer Code), SPU Director's Rules promulgated under Title 21, and the design and installation specifications and permit requirements of SPU and DPD for side sewer and drainage systems.
 2. Side sewer permits and inspections shall be required for constructing, capping, altering, or repairing privately owned and operated drainage systems as provided for in Chapter 21.16. When the work is ready for inspection, the permittee shall notify the Director of DPD. If the work is not constructed according to the plans approved under this subtitle, Chapter 21.16, the SPU Director's Rules promulgated under Title 21, and SPU and DPD design and installation specifications, then SPU, after consulting with DPD, may issue a stop work order under Chapter 22.808 and require modifications as provided for in this subtitle and Chapter 21.16.

(Ord. [124105](#), § 7, 2013; Ord. 123105, § 3, 2009.)

22.805.030 - Minimum Requirements for Single-Family Residential Projects

All single-family residential projects shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

22.805.040 - Minimum Requirements for Trail and Sidewalk Projects

All trail and sidewalk projects with 2,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

22.805.050 - Minimum Requirements for Parcel-Based Projects

- A. Flow Control. Parcel-based projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.

1. Discharges to Wetlands. Parcel-based projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
 - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
 - b. The project converts $\frac{3}{4}$ -acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
2. Discharges to Listed Creek Basins. Parcel-based projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
 - 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
 - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.2.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Parcel-based projects discharging into a creek not listed in subsection 22.805.050.A.2 shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
 - 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.

- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.3.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
 - 4. Discharges to Small Lake Basins. Parcel-based projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
 - 5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, parcel-based projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
 - 6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.050.A.1 through subsection 22.805.050.A.5, parcel-based projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
- B. Treatment. Parcel-based projects not discharging to the public combined sewer shall comply with the minimum requirements for treatment contained in Section 22.805.090, to the extent allowed by law, if:
- 1. The total new plus replaced pollution-generating impervious surface is 5,000 square feet or more; or
 - 2. The total new plus replaced pollution-generating pervious surfaces is $\frac{3}{4}$ of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site.

(Ord. [124758](#), § 2, 2015; Ord. 123105, § 3, 2009.)

22.805.060 - Minimum Requirements for Roadway Projects

- A. Flow Control. Roadway projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.
- 1. Discharges to Wetlands. Roadway projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
 - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
 - b. The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
 - 2. Discharges to Listed Creek Basins. Roadway projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or

- 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.2.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Roadway projects discharging into a creek not listed in subsection 22.805.060.A.2 shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
 - 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
 - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.3.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
 4. Discharges to Small Lake Basins. Projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
 5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, roadway projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
 6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.060.A.1 through subsection 22.805.060.A.5, roadway projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
- B. Treatment. Roadway projects not discharging to the public combined sewer shall, to the extent allowed by law:

1. If the site has less than 35 percent existing impervious surface coverage, and the project's total new plus replaced pollution-generating impervious surface is 5,000 square feet or more, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface; and
2. If the site has greater than or equal to 35 percent existing impervious surface coverage and the project's total new pollution-generating impervious surface is 5,000 square feet or more, and
 - a. If the new pollution-generating impervious surface adds 50 percent or more to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; or
 - b. If the new pollution-generating impervious surface adds less than 50 percent to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; and
3. If the total new plus replaced pollution-generating pervious surfaces is three-quarters of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating pervious surface.

(Ord. [124758](#), § 3, 2015; Ord. 123105, § 3, 2009.)

22.805.070 - Minimum Requirements for Joint Parcel-Based and Roadway Projects

The parcel-based portion of joint projects shall comply with the minimum requirements for parcel-based projects contained in Section 22.805.050. The roadway portion of joint projects shall comply with the minimum requirements roadway projects contained in Section 22.805.060. The boundary of the public right-of-way shall form the boundary between the parcel and roadway portions of the joint project for purposes of determining applicable thresholds.

(Ord. 123105, § 3, 2009.)

22.805.080 - Minimum Requirements for Flow Control

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Flow control facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to receive flows from that portion of the site being developed. Post-development discharge determination must include flows from dewatering activities. All projects shall use green stormwater infrastructure to the maximum extent feasible to meet the minimum requirements. Flow control facilities that receive flows from less than that portion of the site being developed may be installed if the total new plus replaced impervious surface is less than 10,000 square feet, the project site uses only green stormwater infrastructure to meet the requirement, and the green stormwater infrastructure provides substantially equivalent environmental protection as facilities not using green stormwater infrastructure that receive flows from all of the portion of the site being developed.
 1. Wetland Protection Standard. All projects discharging to wetlands or their buffers shall protect the hydrologic conditions, vegetative community, and substrate characteristics of the wetlands and their buffers to protect the functions and values of the affected wetlands. The introduction of sediment, heat and other pollutants and contaminants into wetlands shall be minimized through the selection, design, installation, and maintenance of temporary and permanent controls. Discharges shall maintain existing flows to the extent necessary to protect the functions and values of the wetlands. Prior to authorizing new discharges to a wetland, alternative discharge

locations shall be evaluated and infiltration options outside the wetland shall be maximized unless doing so will adversely impact the functions and values of the affected wetlands. If one or more of the flow control requirements contained in 22.805.080.B.2 through 22.805.080.B.4 also apply to the project, an analysis shall be conducted to ensure that the functions and values of the affected wetland are protected before implementing these flow control requirements.

2. Pre-developed Forested Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed forested condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 50-year recurrence interval flow.
 3. Pre-developed Pasture Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed pasture condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 2-year recurrence interval flow.
 4. Peak Flow Control Standard. The post-development peak flow with a 4% annual probability (25-year recurrence flow) shall not exceed 0.4 cubic feet per second per acre. Additionally, the peak flow with a 50% annual probability (2-year recurrence flow) shall not exceed 0.15 cubic feet per second per acre.
- C. Inspection and Maintenance Schedule. Temporary and permanent flow control facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities in continuous working order.

(Ord. 123105, § 3, 2009.)

22.805.090 - Minimum Requirements for Treatment.

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Water quality treatment facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to treat flows from the pollution generating pervious and impervious surfaces on the site being developed. When stormwater flows from other areas, including non-pollution generating surfaces (e.g., roofs), dewatering activities, and offsite areas, cannot be separated or bypassed, treatment BMPs shall be designed for the entire area draining to the treatment facility. All projects shall use green stormwater infrastructure the maximum extent feasible to meet the minimum requirements.
 1. Runoff Volume. Stormwater treatment facilities shall be designed based on the stormwater runoff volume from the contributing area or a peak flow rate as follows:
 - a. The daily runoff volume at or below which 91 percent of the total runoff volume for the simulation period occurs, as determined using an approved continuous model. It is calculated as follows:
 - 1) Rank the daily runoff volumes from highest to lowest.
 - 2) Sum all the daily volumes and multiply by 0.09.
 - 3) Sequentially sum daily runoff volumes, starting with the highest value, until the total equals 9 percent of the total runoff volume. The last daily value added to the sum is defined as the water quality design volume.
 - b. Different design flow rates are required depending on whether a treatment facility will be located upstream or downstream of a detention facility:
 - 1) For facilities located upstream of detention or when detention is not required, the design flow rate is the flow rate at or below which 91 percent of the total runoff volume for the simulation period is treated, as determined using an approved continuous runoff model.

- 2) For facilities located downstream of detention, the design flow rate is the release rate from the detention facility that has a 50 percent annual probability of occurring in any given year (2-year recurrence interval), as determined using an approved continuous runoff model.
- c. Infiltration facilities designed for water quality treatment must infiltrate 91 percent of the total runoff volume as determined using an approved continuous runoff model. To prevent the onset of anaerobic conditions, an infiltration facility designed for water quality treatment purposes must be designed to drain the water quality design treatment volume (the 91st percentile, 24-hour volume) within 48 hours.
2. Basic Treatment. A basic treatment facility shall be required for all projects. The requirements of subsection 22.805.090 B3 (Oil Control Treatment), subsection 22.805.090 B4 (Phosphorus Treatment), subsection 22.805.090.B.5 (Enhanced Treatment) are in addition to this basic treatment requirement.
3. Oil Control Treatment. An oil control treatment facility shall be required for high-use sites, as defined in this subtitle.
4. Phosphorus Treatment. A phosphorus treatment facility shall be required for projects discharging into nutrient-critical receiving waters.
5. Enhanced Treatment. An enhanced treatment facility for reducing concentrations of dissolved metals shall be required for projects discharging to a fish-bearing stream or lake, and to waters or drainage systems that are tributary to fish-bearing streams, creeks, or lakes, if the project meets one of the following criteria:
 - a. For a parcel-based project, the total of new plus replaced pollution-generating impervious surface is 5,000 square feet or more, and the site is an industrial, commercial, or multi-family project.
 - b. For a roadway project, the project adds 5,000 square feet or more of pollution-generating impervious surface, and the site is either:
 - 1) A fully controlled or a partially controlled limited access highway with Annual Average Daily Traffic counts of 15,000 or more; or
 - 2) Any other road with an Annual Average Daily Traffic count of 7,500 or greater.
6. Discharges to Groundwater. Direct discharge of untreated drainage water from pollution-generating impervious surfaces to ground water is prohibited.
- C. Inspection and Maintenance Schedule. Temporary and permanent treatment facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities to be kept in continuous working order.

(Ord. 123105, § 3, 2009.)

Chapter 22.807 - DRAINAGE CONTROL REVIEW AND APPLICATION REQUIREMENTS

22.807.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.807.020 - Drainage control review and application requirements

- A. Thresholds for Drainage Control Review. Drainage control review and approval shall be required for any of the following:
1. Standard drainage control review and approval shall be required for the following:
 - a. Any land disturbing activity encompassing an area of seven hundred fifty (750) square feet or more;
 - b. Applications for either a master use permit or building permit that includes the cumulative addition of 750 square feet or more of land disturbing activity and/or new and replaced impervious surface;
 - c. Applications for which a grading permit or approval is required per SMC 22.170;
 - d. Applications for street use permits for the cumulative addition of 750 square feet or more of new and replaced impervious surface and land disturbing activity;
 - e. City public works projects or construction contracts, including contracts for day labor and other public works purchasing agreements, for the cumulative addition of 750 square feet or more of new and replaced impervious surface and/or land disturbing activity to the site, except for projects in a City-owned right-of-way and except for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation; or
 - f. Permit approvals and contracts that include any new or replaced impervious surface or any land disturbing activity on a site deemed a potentially hazardous location, as specified in Section 22.800.050 (Potentially Hazardous Locations);
 - g. Permit approvals that include any new impervious surface in a Category I peat settlement-prone area delineated pursuant to subsection 25.09.020; or
 - h. Whenever an exception to a requirement set forth in this subtitle or in a rule promulgated under this subtitle is desired, whether or not review and approval would otherwise be required, including but not limited to, alteration of natural drainage patterns or the obstruction of watercourses.
 2. Large project drainage control review and approval shall be required for projects that include:
 - a. Five thousand square feet or more of new plus replaced impervious surface;
 - b. One acre or more of land disturbing activity;
 - c. Conversion of $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped area;
 - d. Conversion of 2.5 acres or more of native vegetation to pasture.
 3. The City may, by interagency agreement signed by the Directors of SPU and DPD, waive the drainage and erosion control permit and document requirements for property owned by public entities, when discharges for the property do not enter the public drainage system or the public combined sewer system.
- B. Submittal Requirements for Drainage Control Review and Approval
1. Information Required for Standard Drainage Control Review. The following information shall be submitted to the Director for all projects for which drainage control review is required.
 - a. Standard Drainage Control Plan. A drainage control plan shall be submitted to the Director. Standard designs for drainage control facilities as set forth in rules promulgated by the Director may be used.
 - b. Construction Stormwater Control Plan. A construction stormwater control plan demonstrating controls sufficient to determine compliance with subsection 22.805.020.D

shall be submitted. The Director may approve a checklist in place of a plan, pursuant to rules promulgated by the Director.

- c. Memorandum of Drainage Control. The owner(s) of the site shall sign a "memorandum of drainage control" that has been prepared by the Director of SPU. Completion of the memorandum shall be a condition precedent to issuance of any permit or approval for which a drainage control plan is required. The applicant shall file the memorandum of drainage control with the King County Recorder's Office so as to become part of the King County real property records. The applicant shall give the Director of SPU proof of filing of the memorandum. The memorandum shall not be required when the drainage control facility will be owned and operated by the City. A memorandum of drainage control shall include:
 - 1) The legal description of the site;
 - 2) A summary of the terms of the drainage control plan, including any known limitations of the drainage control facilities, and an agreement by the owners to implement those terms;
 - 3) An agreement that the owner(s) shall inform future purchasers and other successors and assignees of the existence of the drainage control facilities and other elements of the drainage control plan, the limitations of the drainage control facilities, and of the requirements for continued inspection and maintenance of the drainage control facilities;
 - 4) The side sewer permit number and the date and name of the permit or approval for which the drainage control plan is required;
 - 5) Permission for the City to enter the property for inspection, monitoring, correction, and abatement purposes;
 - 6) An acknowledgment by the owner(s) that the City is not responsible for the adequacy or performance of the drainage control plan, and a waiver of any and all claims against the City for any harm, loss, or damage related to the plan, or to drainage or erosion on the property, except for claims arising from the City's sole negligence; and
 - 7) The owner(s)' signatures acknowledged by a notary public.
2. Information Required for Large Project Drainage Control Review. In addition to the submittal requirements for standard drainage control review, the following information is required for projects that include: one acre or more of land disturbing activities; 5,000 square feet or more of new and replaced impervious surface; conversion of $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped area; or conversion of 2.5 acres or more of native vegetation to pasture.
 - a. Comprehensive Drainage Control Plan. A comprehensive drainage control plan, in lieu of a standard drainage control plan, to comply with the requirements of this subtitle and rules promulgated hereunder and to accomplish the purposes of this subtitle shall be submitted with the permit application. It shall be prepared by a licensed civil engineer in accordance with standards adopted by the Director of DPD.
 - b. Inspection and Maintenance Schedule. A schedule shall be submitted that provides for inspection of temporary and permanent flow control facilities, treatment facilities, and source controls to comply with Section 22.805.080 (Minimum Requirements for Flow Control) and Section 22.805.090 (Minimum Requirements for Treatment).
 - c. Construction Stormwater Control Plan. A construction stormwater control plan prepared in accordance with subsection 22.805.020.D shall be submitted.
3. Applications for drainage control review and approval shall be prepared and submitted in accordance with provisions of this subsection, with Chapter 21.16 (Side Sewer Code) and with associated rules and regulations adopted jointly by the Directors of DPD and SPU.

4. The Director of DPD may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this subtitle and other laws and regulations, including but not limited to Chapter 25.09 (Regulations for Environmentally Critical Areas) and Chapter 23.60A. The Director of DPD may also require appropriate information about adjoining properties that may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.
 5. Where an applicant simultaneously applies for more than one of the permits listed in subsection 22.807.020.A for the same property, the application shall comply with the requirements for the permit that is the most detailed and complete.
- C. Authority to Review. The Director may approve those plans that comply with the provisions of this subtitle and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this subtitle. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. The Director may review and inspect activities subject to this subtitle and may require compliance regardless of whether review or approval is specifically required by this subsection. The Director may disapprove plans that do not comply with the provisions of this subtitle and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

(Ord. [124105](#), § 8, 2013; Ord. 123105, § 3, 2009.)

22.807.090 - Maintenance and Inspection

- A. Responsibility for Maintenance and Inspection. The owner and other responsible party shall maintain drainage control facilities, source controls, and other facilities required by this subtitle and by rules adopted hereunder to keep these facilities in continuous working order. The owner and other responsible party shall inspect permanent drainage control facilities temporary drainage control facilities, and other temporary best management practices or facilities on a schedule consistent with this subtitle and sufficient for the facilities to function at design capacity. The Director may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to ensure functioning at design capacity. The owner(s) shall inform future purchasers and other successors and assignees to the property of the existence of the drainage control facilities and the elements of the drainage control plan, the limitations of the drainage control facilities, and the requirements for continued inspection and maintenance of the drainage control facilities.
- B. Inspection by City. The Director of SPU may establish inspection programs to evaluate and, when required, enforce compliance with the requirements of this subtitle and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the City's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices.
- C. Entry for Inspection and Abatement Purposes.
 1. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage system, sanitary sewer or combined sewer, the property owner shall grant, per subsection 22.807.020.B.1.c (Memorandum of Drainage Control), the City the right to enter the

property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant subsection 22.807.090.B, and to enter the property when the City has a reasonable basis to believe that a violation of this subtitle is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this subtitle.

2. Existing Real Property and Discharges. Owners of property with existing discharges or land uses subject to this subtitle who are not installing a new drainage control facility or making a new connection between private property and a public drainage system, sanitary sewer or combined sewer, shall have the option to execute a permission form for the purposes described above when provided with the form by the Director of SPU.

(Ord. 123105, § 3, 2009.)

Chapter 22.808 - STORMWATER CODE ENFORCEMENT

22.808.010 - Violations

A. Civil Violations.

1. The following are civil violations of this subtitle, subject to a maximum civil penalty of up to \$5,000 per day for each violation.
 - a. General. It is a violation to not comply with any requirement of, or to act in a manner prohibited by, this subtitle, or a permit, approval, rule, manual, order, or Notice of Violation issued pursuant to this subtitle;
 - b. Aiding and Abetting. It is a violation to aid, abet, counsel, encourage, commend, incite, induce, hire or otherwise procure another person to violate this subtitle;
 - c. Alteration of Existing Drainage. It is a violation to alter existing drainage patterns which serve a tributary area of more than one acre without authorization or approval by the Director;
 - d. Obstruction of Watercourse. It is a violation to obstruct a watercourse without authorization or approval by the Director;
 - e. Dangerous Condition. It is a violation to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, drainage water, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property;
 - f. Interference. It is a violation for any person to interfere with or impede the correction of any violation, or compliance with any Notice of Violation, emergency order, stop work order, or the abatement of any nuisance;
 - g. Piecemeal of Projects. It is a violation for any person to knowingly divide a large project into a set of smaller projects specifically for the purpose of avoiding minimum requirements;
 - h. Altering a Posted Order. It is a violation for any person to remove, obscure, or mutilate any posted order of the Director, including a stop work or emergency order; and
 - i. Continuing Work. It is a violation for any work to be done after service or posting of a stop work order, except work necessary to perform the required corrective action, until authorization is given by the Director.

B. Criminal Violations.

1. The following are criminal violations, punishable upon conviction by a fine of not more than \$5,000 per violation or imprisonment for each violation for not more than 360 days, or both such fine and imprisonment:

- a. Failing to comply with a Notice of Violation or Director's order issued pursuant to this subtitle;
- b. Failing to comply with a court order;
- c. Tampering with or vandalizing any part of a drainage control facility or other best management practice, a public or private drainage system, monitoring or sampling equipment or records, or notices posted pursuant to this subtitle; and
- d. Anyone violating this subtitle who has had a judgment, final Director's order, or Director's review decision against them for a prior violation of this subtitle in the preceding five years.

(Ord. 123105, § 4, 2009.)

22.808.020 - Liability and Defenses of Responsible Parties

- A. Who Must Comply. It is the specific intent of this subtitle to place the obligation of complying with its requirements upon the responsible parties, as defined in subsection 22.801.190. The City and its agencies are intended to have the same obligation for compliance when the City is a responsible party. No provision of this subtitle is intended to impose any other duty upon the City or any of its officers or employees.
 1. Joint and Several Liability. Each responsible party is jointly and severally liable for a violation of this subtitle. The Director may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party.
 2. Allocation of Damages. In the event enforcement action is taken against more than one responsible party, recoverable damages, costs, and expenses may be allocated among the responsible parties by the court based upon the extent to which each responsible party's acts or omissions caused the violation. If this factor cannot be determined the court may consider:
 - a. Awareness of the violation;
 - b. Ability to correct the violation;
 - c. Ability to pay the damages, costs, and expenses;
 - d. Cooperation with government agencies;
 - e. Degree to which any impact or threatened impact on water or sediment quality, human health, the environment, or public or private property is related to acts or omissions by each responsible party;
 - f. Degree to which the responsible parties made good-faith efforts to avoid a violation or to mitigate its consequences; and
 - g. Other equitable factors.
- B. Defenses. A responsible party shall not be liable under this subtitle when the responsible party proves, by a preponderance of the evidence, one of the following:
 1. The violation was caused solely by an act of God;
 2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;
 3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. But, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant; or
 4. The responsible party implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls, and best management practices identified in rules promulgated by the Director or in manuals

published by the State Department of Ecology, or as otherwise identified and required of the responsible party by the Director in writing.

(Ord. 123105, § 4, 2009.)

22.808.025 - Right of Entry for Enforcement

With the consent of the owner or occupant of a building, premises, or property, or pursuant to a lawfully issued warrant, the Director may enter a building, premises, or property at any reasonable time to perform the duties imposed by this code.

(Ord. 123105, § 4, 2009.)

22.808.030 - Enforcement Actions

A. Investigation. The Director may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this subtitle.

B. Notice of Violation.

1. Issuance. The Director is authorized to issue a Notice of Violation to a responsible party, whenever the Director determines that a violation of this subtitle has occurred or is occurring. The Notice of Violation shall be considered an order of the Director.
2. Contents.
 - a. The Notice of Violation shall include the following information:
 - 1) A description of the violation and the action necessary to correct it;
 - 2) The date of the notice; and
 - 3) A deadline by which the action necessary to correct the violation must be completed.
 - b. A Notice of Violation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.
3. Service. The Director shall serve the notice upon a responsible party either by personal service, by first class mail, or by certified mail return receipt requested, to the party's last known address. If the address of the responsible party cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.
4. Nothing in this subtitle shall be deemed to obligate or require the Director to issue a Notice of Violation or order prior to the initiation of enforcement action by the City Attorney's Office pursuant to subsection 22.808.030.E.

C. Stop Work and Emergency Orders.

1. Stop Work Order. The Director may order work on a site stopped when he or she determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this subtitle or rules promulgated hereunder or to correct a violation of a permit or approval granted under this subtitle.
 - a. The stop work notice shall contain the following information:
 - 1) A description of the violation; and
 - 2) An order that the work be stopped until corrective action has been completed and approved by the Director.

- b. The stop work order shall be personally served on the responsible party or posted conspicuously on the premises.
 - 2. Emergency Order.
 - a. The Director may order a responsible party to take emergency corrective action and set a schedule for compliance and/or may require immediate compliance with an emergency order to correct when the Director determines that it is necessary to do so in order to obtain immediate compliance with or to correct a violation of any provision of this subtitle, or to correct a violation of a permit or approval granted under this subtitle.
 - b. An emergency order shall be personally served on the responsible party or posted conspicuously on the premises.
 - c. The Director is authorized to enter any property to investigate and correct a condition associated with grading, drainage, erosion control, drainage water, or a drainage control facility when it reasonably appears that the condition creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The Director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property, or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained. The cost of such emergency corrective action shall be collected as set forth in subsection 22.808.060.
 - 3. Director's Review of Stop Work and Emergency Order. A stop work order or emergency order shall be final and not subject to a Director's review.
- D. Review by Director.
- 1. A Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall be final and not subject to further appeal unless an aggrieved party requests in writing a review by the Director within ten days after service of the Notice of Violation, order or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.
 - 2. Following receipt of a request for review, the Director shall notify the requesting party, any persons served the Notice of Violation, order or invoice, and any person who has requested notice of the review, that the request for review has been received by the Director. Additional information for consideration as part of the review shall be submitted to the Director no later than 15 days after the written request for a review is mailed.
 - 3. The Director will review the basis for issuance of the Notice of Violation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Director may request clarification of information received and a site visit. After the review is completed, the Director may:
 - a. Sustain the Notice of Violation, order, or invoice;
 - b. Withdraw the Notice of Violation, order or invoice;
 - c. Continue the review to a date certain for receipt of additional information; or
 - d. Modify or amend the Notice of Violation, order, or invoice.
 - 4. The Director's decision shall become final and is not subject to further administrative appeal.
- E. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Violation, or fails to comply with a Director's order, the Director shall refer the matter to the City Attorney's Office for civil or criminal enforcement action. Civil actions to enforce a violation of this subtitle shall be exclusively in Municipal Court.
- F. Appeal to Superior Court. Because civil actions to enforce Title 22 are brought exclusively in Municipal Court, notices of violation, orders, and all other actions made under this chapter are not subject to judicial review under chapter 36.70C RCW. Instead, final decisions of the Municipal Court

on enforcement actions authorized by this chapter may be appealed under the Rules of Appeals of Decisions of Courts of Limited Jurisdiction.

- G. Filing of Notice or Order. A Notice of Violation, voluntary compliance agreement or an order issued by the Director or court, may be filed with the King County Recorder's Office.
- H. Change of Ownership. When a Notice of Violation, voluntary compliance agreement, or an order issued by the Director or court has been filed with the King County Recorder's Office, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

(Ord. 123105, § 4, 2009.)

22.808.040 - Voluntary Compliance Agreement

- A. Initiation. Either a responsible party or the Director may initiate negotiations for a voluntary compliance agreement at any time. Neither has any obligation to enter into any voluntary compliance agreement.
- B. Contents. A voluntary compliance agreement shall identify actions to be taken by the responsible party that will correct past or existing violations of this subtitle. The agreement may also identify actions to mitigate the impacts of violations. The agreement shall contain a schedule for completion of the corrective actions and any mitigating actions. The agreement shall contain a provision allowing the Director to inspect the premises to determine compliance with the agreement. The agreement shall provide that the responsible party agrees the City may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the City incurs in performing the actions, as set forth in Section 22.808.060.
- C. Effect of Agreement.
 - 1. A voluntary compliance agreement is a binding contract between the party executing it and the City. It is not enforceable by any other party. By entering into a voluntary compliance agreement, a responsible party waives the right to Director's Review of the Notice of Violation or order.
 - 2. Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred, or as otherwise provided for in a Notice of Violation or Director's order.
- D. Modification. The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and either Director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications.

(Ord. 123105, § 4, 2009.)

22.808.050 - Penalties and Damages

- A. Assessment of Penalties by the Director. The Director, after considering all available information, may assess a penalty for each violation of this subtitle based upon the Schedule of Civil Penalties.
- B. Schedule of Civil Penalties. The Director shall determine penalties as follows:
 - 1. Basic Penalty.

- a. **Maximum Penalty.** A violation of this subtitle is subject to a maximum civil penalty of up to \$5,000. Each day or portion thereof during which a violation of this subtitle exists is a separate violation of this subtitle.
- b. **Commencement Date.** The penalty shall commence on the date of the violation, unless otherwise provided for in a Notice of Violation or Director's order.
- c. **Assessment Matrix.** The penalty shall be assessed using a matrix of criteria and scored as defined in rules promulgated by the Director. The total score will equate with a penalty up to a maximum of \$5000 for each violation. The penalty shall be rated for severity by using the criteria listed below and by answering "No", "Possibly", "Probably", or "Definitely":
 - 1) Does the violation pose a public health risk;
 - 2) Does the violation cause environmental damage or adversely impact infrastructure;
 - 3) Was the responsible party willful or knowing of the violation;
 - 4) Was the responsible party unresponsive in correcting the violation;
 - 5) Was there improper operation or maintenance;
 - 6) Was there a failure to obtain necessary permits or approval;
 - 7) Does the violation provide economic benefit for non-compliance; and
 - 8) Was the violation a repeat violation.
- C. **Penalty for Significant Violation.** For violations causing significant harm to public health, safety, welfare, the environment, or private or public property, the Director may, as an alternative to the Basic Penalty, refer the matter to the City Attorney's Office for enforcement and request the City Attorney seek a penalty equivalent to the economic benefit the responsible party derived from the violation. Significant harm is damage or injury which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of the Basic Penalty and costs, expenses, or damages under this subtitle. Economic benefit may be determined by savings in costs realized by the responsible party, value received by the responsible party, increased income to the responsible party, increase in market value of property, or any other method reasonable under the circumstances.
- D. **Damages.** Whoever violates any of the provisions of this subtitle shall, in addition to any penalties provided for such violation, be liable for any: investigation cost, cost to correct or any other cost expense; loss or damage incurred by the City; plus a charge of 15% for administrative costs. This subtitle does not establish a cause of action that may be asserted by any party other than the City. Penalties, damages, costs and expenses may be recovered only by the City.
- E. **Effect of Payment of Penalties.** The responsible party named in a Notice of Violation or order is not relieved of the duty to correct the violation by paying civil penalties.

(Ord. 123105, § 4, 2009.)

22.808.060 - Collection of Costs and Penalties

- A. **Invoice and Demand for Payment of Investigation and Correction Costs.** The Director may issue an invoice and demand for payment of the City's costs and expenses when the Director has investigated or corrected a violation of this subtitle. The invoice shall include:
 - 1. The amount of the City's investigation and correction costs, which include, but are not limited to:
 - a. Billed cost including labor, administration, overhead, overtime, profit, taxes, and other related costs for a hired contractor to investigate and/or perform the abatement work;
 - b. Labor, administration, overhead, overtime, and other related costs for the City staff and crews to investigate and/or perform the abatement work;
 - c. Administrative costs to set up contracts and coordinate work;

- d. Time spent communicating with the responsible party, any other enforcing agencies, and the affected community;
 - e. Inspections for compliance with the Code, documentation of costs, and invoicing the responsible party;
 - f. Cost of equipment, materials, and supplies, including all related expenses for purchasing, renting, and leasing;
 - g. Laboratory costs and analytical expenses;
 - h. Cost of mobilization, disposal of materials, and cleanup, and
 - i. Any associated permit fees;
2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
 3. Notice that the responsible party may request a Director's review pursuant to subsection 22.808.030.D;
 4. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C; and
 5. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- B. Invoice and Demand for Payment of Civil Penalties. The Director may issue an invoice and demand for payment of civil penalties when the responsible party has failed to pay a penalty by the deadline in a Notice of Violation or order and has failed to request a Director's review or file an appeal within the required time periods established in subsection 22.808.030.D. The invoice shall include:
1. The amount of the penalty;
 2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
 3. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C and
 4. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- C. Collection Following a Judicial Review. If a court has issued an order or judgment imposing penalties, costs, damages, or expenses for a violation of this subtitle, and the court's order or judgment is not appealed within 30 days, the Director may:
1. Refer the matter to the City Attorney to initiate appropriate enforcement action;
 2. Refer, after consultation with the City Attorney, the matter to a collection agency; or
 3. Add a surcharge in the amount owed under the order to the bill for drainage and wastewater services to the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law or Section 21.33.110.

(Ord. 123105, § 4, 2009.)

22.808.070 - Public Nuisance

- A. Abatement Required. A public nuisance affecting drainage water, drainage, erosion control, grading and other public nuisances set forth in this subsection are violations of this subtitle. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

- B. **Dysfunctional Facility or Practice.** Any private drainage control facility or best management practice not installed or maintained as required by this subtitle, or otherwise found to be in a state of dysfunction creating a threat to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- C. **Obstruction of Watercourse.** Obstruction of a watercourse without authorization by the Director, and obstruction in such a manner as to increase the risk of flooding or erosion should a storm occur, is a public nuisance.
- D. **Dangerous Conditions.** Any condition relating to grading, drainage water, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a storm, to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- E. **Abatement by the City.** The Director is authorized, but not required to investigate a condition that the Director suspects of being a public nuisance under this subtitle, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the Director may summarily and without prior notice abate the condition. The Director shall give notice of the abatement to the responsible party as soon as reasonably possible after the abatement.
- F. **Collection of Abatement Costs.** The costs of abatement may be collected from the responsible party, including, a reasonable charge for attorney time, and a 15% surcharge for administrative expenses as set forth in subsection 22.808.050.D. Abatement costs and other damages, expenses and penalties collected by the City shall go into an abatement account for the department collecting the moneys. The money in the abatement account shall be used for abatements, investigations, and corrections of violations performed by the City. When the account is insufficient the Director may use other available funds.

(Ord. 123105, § 4, 2009.)

22.808.080 - Additional Relief

In addition to any remedy provided in this subtitle, the Director may seek any other legal or equitable remedy to enjoin any acts or practice or abate any condition that or will constitute a violation of this subtitle or a public nuisance.

(Ord. 123105, § 4, 2009.)

22.808.090 - Suspension or Revocation

Approvals or permits granted on the basis of inaccurate or misleading information may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this subsection, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or revoked, the Director may require the applicant take corrective action to bring the project into compliance with this subtitle by a deadline set by the Director, or may take other enforcement action.

(Ord. 123105, § 4, 2009.)

22.808.100 - Fees

Fees for grading permits, drainage control plan review and approvals shall be as identified in the Fee Subtitle, Subtitle IX of Title 22, Seattle Municipal Code. Fees for record-keeping or other activities pursuant to this subtitle shall, unless otherwise provided for in this subtitle, be prescribed by ordinance.

(Ord. 123105, § 4, 2009.)

22.808.110 - Financial Assurance and Covenants

As a condition precedent to issuance of any permit or approval provided for in this subtitle, the Director may require an applicant for a permit or approval to submit financial assurances as provided in this subsection.

A. Insurance.

1. The Director may require the property owners or contractor carry liability and property damage insurance naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks.
2. The Director may also require the property owner maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks. It shall cover a period of not more than ten years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the Director before issuing a certificate of occupancy or finalizing a permit for any single family dwelling or duplex.
3. The insurance policy shall provide that the City will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the Director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond.

- a. The Director may require that the property owners or contractor deliver to the Director for filing in the Office of the City Clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the Director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in The State of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be left in a safe condition. The bond shall also be conditioned that the site and nearby, adjacent or surrounding areas will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.
- b. The bond will be exonerated one year after a determination by the Director that the requirements of the permit or approval have been met. For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owners may elect to file a cash deposit or instrument of credit with the Director in an amount equal to that which would be required in the surety bond and in a form approved by the Director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The Director may require a covenant between the property owners and the City. The covenant shall be signed by the owners of the site and notarized prior to issuing any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the City. The covenant shall include:

- a. A legal description of the property;
 - b. A description of the property condition making this subsection applicable;
 - c. A statement that the owners of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
 - d. The application date, type, and number of the permit or approval for which the covenant is required; and
 - e. A statement waiving the right of the owners, the owners' heirs, successors and assigns, to assert any claim against the City by reason of or arising out of issuance of the permit or approval by the City for the development on the property, except only for such losses that may directly result from the sole negligence of the City.
2. The covenant shall be filed by the Director with the King County Recorder's Office, at the expense of the owners, so as to become part of the King County real property records.

(Ord. 123105, § 4, 2009.)

22.808.140 - Severability

The provisions of this subtitle are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this subtitle, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this subtitle or the validity of its application to other persons or circumstances.

(Ord. 116425 § 2(part), 1992.)



ACTION CALENDAR

January 22, 2019

(Continued from December 11, 2018)

To: Honorable Mayor and Members of the City Council
From: Community Environmental Advisory Commission (CEAC)
Submitted by: Michael Goldhaber, Chair, CEAC
Subject: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties

RECOMMENDATION

Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following:

- Comply beyond the State and Alameda County current requirements;
- Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;
- Establish site design measures that include minimizing impervious surfaces;
- Require homeowners to include flooding offsets in preparing properties for sale;
- Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;
- Require abatements for newly paved areas over a specific size;
- Make exceptions for properties that offer significantly below-market rent or sale prices;
- Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections.
- Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

SUMMARY

Current climate-change predictions for California suggest severe droughts combined with extreme storms, causing dangerous erosion, flooding, and increased Bay pollution. According to Berkeley's watershed management plan, in a 10-year storm or greater, both the Codornices and Potter Creek watersheds have a propensity to flood, and climate change increases the probability and severity of storms. BART and the city currently run pumps to mitigate the flow underground.

In order to prevent flooding, there is an urgent need for the City to offset impermeable surfaces and detain stormwater. Impermeable surfaces generate faster stormwater flows of more intensity (volume per duration), therefore creating greater flooding threats. In addition, stormwater flows carries trash, pathogens, pesticides, fertilizer, metals, motor vehicle related contaminants to the creeks and the Bay. Stormwater detention can help mitigate this pollution.

On June 14, 2018, the Commission voted to adopt the Mandatory and Recommended Green Storm Water Infrastructure in New and Existing Redevelopments and send them to council. [Motioned/Seconded: Hetzel/Kapla. Carried: Unanimously (Liz Varnhagen, Fred Hetzel, Robb Kapla, Michael Goldhaber (chair), Ben Gould, and Kristina Lim). Absent: Carla Ticconi, Holly Williams]

FISCAL IMPACTS OF RECOMMENDATION

If inspection fees are adequate, there should be no net costs to the City, except for staff time to firm up the plan. With widespread implementation of features that promote stormwater detention, treatment, and infiltration, overall flood damage within the City should decrease, which in turn could result in increased property values and higher tax revenues.

CURRENT SITUATION AND ITS EFFECTS

This report responds to Referral #2016-21, which originally appeared on the agenda of the September 15, 2015 Council meeting and was sponsored by then-Councilmember Arreguin.

The State stormwater discharge permit requires the City of Berkeley to use Low Impact Design (LID) and Green Infrastructure (GI) to comply with stormwater management requirements, which is in keeping with Berkeley's goals for promoting sustainable development.

Currently, the City does seem to be enforcing rules requiring mitigation when 2,500 square feet or more of new impermeable surface is added to a property. Required mitigation typically takes up an area of approximately 4% of the total new impermeable area and is therefore a very fair and feasible requirement. However, smaller areas, especially pavement, ought to require similar mitigation as they increase runoff.

At present, permits are not required for adding new pavement unless these impinge on the street-property boundary. As a result, the City and its inspectors are not aware of most small projects that add new pavement. Requiring permits for all (most) (re)paving over permeable surfaces will help ensure that the City is aware, can ask for appropriate mitigation, or can recommend permeable paving that will reduce runoff. Requiring permits for paving beyond a very small threshold area is an essential part of preventing the cumulative effects of increased stormwater runoff.

All these requirements can be met by using on- or off-site strategies to manage the quantity and quality of stormwater runoff. The approach integrates stormwater into the urban environment to achieve multiple goals. It reduces stormwater pollution and restores natural hydrologic function to the City's watersheds. It can also provide wildlife habitat and contribute to the gradual creation of a greener city.

A crucial aspect of identifying and implementing effective mitigation, also mandated by law, is within a comprehensive Watershed Management Plan, which we understand the City is committed to complete. This should include both water from private properties, the topic of this CEAC message, and the City's contributions from public properties including streets and parks.

BACKGROUND

A recent UCLA study ["Increasing precipitation volatility in twenty-first-century California", Daniel L. Swain, Baird Langenbrunner, J. David Neelin & Alex Hall, *Nature Climate Change* **8**, 427–433 (2018)] ... "found that over the next 40 years, the state will be 300 to 400 percent more likely to have a prolonged storm sequence as severe as the one that caused a now-legendary California flood more than 150 years ago.

"The Great Flood of 1862 filled valleys with feet of water and washed gold rush miners and their equipment out of the mountains. In the Central Valley, floodwaters stretched up to 300 miles long and as wide as 60 miles across." [*UCLA Newsroom*]

When there are heavy storms in Berkeley such as 10-year or greater, stormwater that is not absorbed runs downhill towards the Bay and collects in low elevation areas. As the movement of stormwater slows, it can result in flooding if drainage channels become overwhelmed, unless there are means of capturing the water for irrigation or other beneficial uses. It can also pick up pollutants that then will be carried into streams and eventually the Bay.

Urban development has caused two important changes in the nature and volume of stormwater. First, natural, vegetated permeable ground cover is converted to impermeable surfaces such as paved highways, streets, rooftops, and parking lots. Vegetated soil can both absorb rainwater and remove pollutants, providing a very effective natural purification process. This benefit is lost when pavement, or buildings are constructed. With the construction of more impermeable surface, stormwater runoff increases in intensity with higher flows of shorter duration, increasing the chance of overwhelming drainage channels and flooding in flood prone areas.

In addition, urban development creates pollution sources as urban population density increases. The contamination of urban stormwater comes from many and various sources including pathogens from both pet and human waste, solid waste from litter and trash, pesticides from both residential and commercial uses, fertilizers from

landscaping, and heavy metals and other contaminants from the operation of motor vehicles. All these pollutants and others can be deposited on paved surfaces, rooftops, and other impervious surfaces as fine airborne particles, thus yielding stormwater - runoff pollution that is unrelated to the activity associated with a given project site.

As a result of these two changes, stormwater discharges into the Bay from the developed urban area is significantly greater in volume, velocity and contaminants than the same area experienced prior to its conversion into an urban environment.

Additionally, increased flows and volumes of stormwater discharged from new impermeable surfaces resulting from new development and redevelopment can physically modify the natural aquatic ecosystems in our creeks, through bank erosion and deepening and widening of channels, elevating turbidity and sediment loads to the Bay.

Pollutants of concern in stormwater include heavy metals, excessive sediment production from erosion, petroleum hydrocarbons from sources such as motor vehicles, microbial pathogens of domestic sewage origin from illicit or accidental discharges, pesticides and herbicides, nutrients (from fertilizers), and trash.

Effective mitigation to offset the unpredictable and sometimes intense behavior of urban stormwater becomes increasingly necessary. Other cities, including San Francisco, Emeryville, and the North Bay Counties (Marin, Sonoma, Napa and Solano), as well as the Alameda County clean water program, of which the City of Berkeley is a member, have put together comprehensive requirements that are available as guides. Berkeley, given our pioneering status in green issues, should wish to be even more forward looking and develop our own comprehensive green infrastructure program. In addition, Berkeley should continue to work on a comprehensive water management plan, seeking input and cooperation from EBMUD, surrounding cities, UCB, LBNL and BUSD.

Berkeley's program should include requirements for construction projects to implement appropriate source control, site design, and stormwater treatment measures to address water quality, and to prevent increased intensity stormwater runoff volumes.

ENVIRONMENTAL SUSTAINABILITY

The proposed recommendation will improve the sustainability of new construction and redevelopment, increase the City's resiliency to climate change, 10-year storms, and flooding, while helping mitigate pollution from stormwater runoff.

RATIONALE FOR RECOMMENDATION

Berkeley's drought-storm cycle is likely to get worse as Climate change has more effecting the coming years and decades. Therefore, more efforts to control flooding and prevent pollution are needed. In addition, unless mitigated, increased paving on private property increases the stormwater runoff and related problems.

ALTERNATIVE ACTIONS CONSIDERED

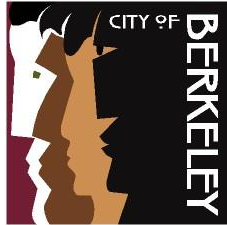
CEAC considered City Council Referral #2016-21 from September 15, 2015 to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

CITY MANAGER

See companion report.

CONTACT PERSON

Viviana Garcia, Secretary, Toxics, (510) 981 7460



Office of the Mayor

2a.35b

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: December 11, 2018

Item Number: Fa

Item Description: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects

Submitted by: Mayor Jesse Arreguín

On September 15, 2015, the City Council referred Item 39 “Mandatory Green Stormwater Infrastructure in New Developments” to the City Manager, Planning Commission and Community Environmental Advisory Committee (see attachment). The proposal was modeled after ordinances adopted in San Francisco and Seattle requiring the instillation of stormwater infrastructure in larger projects.

The CEAC has brought its recommendations back to the City Council in response to this referral. Many of the recommendations proposed by CEAC are worth further study, however a key question is what projects should they apply to? My original referral only recommended that these requirements apply to projects of 100 units or more, or commercial developments that result in 5,000 square feet of new or replaced impervious surface.

I am proposing a modification to the CEAC recommendation as follows:

Refer to the City Manager and Planning Commission to develop measures to incorporate Green Stormwater Infrastructure and water conservation features in new projects. The regulations should apply to large residential developments of 50 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface. The City Manager and Planning Commission should consider the legislation adopted in San Francisco and Seattle and the following recommendations from the CEAC:

- **Comply beyond the State and Alameda County current requirements;**

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7100 TDD: 510.981.6903 Fax: 510.981.7199
E-Mail: mayor@CityofBerkeley.info

- **Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;**
- **Establish site design measures that include minimizing impervious surfaces;**
- **Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;**
- **Require abatements for newly paved areas over a specific size;**
- **Make exceptions for properties that offer significantly below-market rent or sale prices;**
- **Incorporate these measures for private property with similar measures for Public Works [City projects], while coordinating with EBMUD, BUSD, UCB and LBNL.**



Jesse Arreguín
City Councilmember, District 4

CONSENT CALENDAR
September 15, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Mandatory Green Stormwater Infrastructure in New Developments

RECOMMENDATION

Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

BACKGROUND

Green Stormwater Infrastrucutre (GSI) is a form of drainage control that uses infiltration, evapotranspiration, or stormwater reuse. Examples of this include permeable pavement, bio swales, green roofs, rain gardens, cisterns and other rain catchment systems.

Cities such as San Francisco and Seattle (which like Berkeley, are bordered by a body of water) have regulations requiring the treatment of stormwater onsite. In April 2010, San Francisco passed an ordinance requiring developments that disturb 5,000 square feet of surface to include stormwater management controls (San Francisco Public Works Code, Article 4.2, Section 147-147.6). Seattle's Stormwater Code (Seattle Municipal Code Section 22.800-22.808) requires the implementation of GSI on developments that add or replace 2,000 square feet of impervious surfaces to the maximum extent possible with the purpose of infiltration, retention, and dispersal.

The City of Berkeley has already taken some steps to promote the use of Green Infrastructure as a way to mitigate negative impacts to our City's watersheds. On June 23, 2009, the City Council passed Resolution No. 64,507, which implemented Bay-Friendly Landscaping policies under the Alameda County Waste Management Authority. The City also complies with the Alameda County Clean Water Program, as passed in Resolution No. 66,004 on February 5, 2013, which aims at reducing pollutants from urban storm runoff. In addition, Measure M funds have supported a number of publicly-funded green infrastructure projects throughout the city. However in order to make a measurable difference to reduce storm water runoff and to conserve water, and to better implement the city's adopted Watershed Management Plan, private developments should install green infrastructure features at the time of construction.

Requiring GSI in developments will help the City better achieve these goals and help mitigate environmental impacts on our watersheds and Bay.

FINANCIAL IMPLICATIONS

Staff Time

ENVIRONMENTAL SUSTAINABILITY

Green Stormwater Infrastructure is a necessity given California's historic drought and West Berkeley's flooding experiences during any sizeable storm. GSI helps in preserving the natural flow of storm runoff which is often obstructed in urban areas. GSI has the ability to retain water, prevent runoff which leads to flooding, and remove pollutants among other environmentally beneficial factors.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments:

- 1: San Francisco Public Works Code, Article 4.2, Section 147-147.6
- 2: Seattle Municipal Code Section 22.800-22.808

83-10

FILE NO. 100102

ORDINANCE NO.

[Requiring the Development and Maintenance of Stormwater Management Controls]

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, sections 140 – 149.4, and adding Article 4.2, sections 147 – 147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 100102 and is incorporated herein by reference.

Section 2. The San Francisco Public Works Code is hereby amended by repealing Sections 140 – 149.4 of Article 4.2.

Section 3. The San Francisco Public Works Code is hereby amended by adding Sections 147 – 147.6, to Article 4.2, to read as follows:

Article 4.2. SEWER SYSTEM MANAGEMENT.

Section 147. Stormwater Management

(a) The intent of Sections 147 – 147.6 is to protect and enhance the water quality in the City and County of San Francisco's sewer system, stormwater collection system and receiving

1 waters pursuant to, and consistent with Federal and State laws, lawful standards and orders
2 applicable to stormwater and urban runoff control, and the City's authority to manage and
3 operate its drainage systems.

4 (b) Urban runoff is a significant cause of pollution throughout California. Pollutants of
5 concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens,
6 oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic
7 aromatic hydrocarbons (PAHs), trash, and pesticides and herbicides.

8 (c) During urban development, two important changes occur. First, where no urban
9 development has previously occurred, natural vegetated pervious ground cover is converted
10 to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural
11 vegetated soil can both absorb rainwater and remove pollutants, providing a very effective
12 purification process. Because pavement and concrete can neither absorb water nor remove
13 pollutants, the natural purification characteristics of the land are lost. Second, urban
14 development creates new pollutant sources, including vehicle emissions, vehicle maintenance
15 wastes, pesticides, household hazardous wastes, pet wastes, trash, and other contaminants
16 that can be washed into the City's stormwater collection systems.

17 (d) A high percentage of impervious area correlates to a higher rate of stormwater
18 runoff, which generates greater pollutant loadings to the stormwater collection system,
19 resulting in turbid water, nutrient enrichment, bacterial contamination, toxic compounds,
20 temperature increases, and increases of trash or debris.

21 (e) When water quality impacts are considered during the planning stages of a project,
22 new development and redevelopment projects can more efficiently incorporate measures to
23 protect water quality.
24
25

1 (f) Sections 147 – 147.6 protect the health, safety and general welfare of the City's
2 residents by:

3 (1) minimizing increases in pollution caused by stormwater runoff from development
4 that would otherwise degrade local water quality;

5 (3) controlling the discharge to the City's sewer and drainage systems from spills,
6 dumping or disposal of pollutants; and

7 (4) reducing stormwater run-off rates, volume, and nonpoint source pollution
8 whenever possible, through stormwater management controls, and ensuring that
9 these management controls are safe and properly maintained.

10 Section 147.1. Definitions.

11 In addition to the definitions provided in section 119 of Article 4.1 of this Code, the
12 following definitions shall apply:

13 (a) Best management practices or "BMPs." Structural devices, measures, or programs
14 used to reduce pollution in stormwater runoff. BMPs manage the quantity and improve the
15 quality of stormwater runoff in accordance with the Guidelines and applicable state and
16 federal regulatory requirements.

17 (b) Department. The San Francisco Public Utilities Commission. With regard to
18 stormwater management in areas of the City under the jurisdiction of the Port Commission,
19 "Department" means the San Francisco Port Commission until the Port Commission adopts
20 its own standards and procedures.

21 (c) Development Project. Any activity disturbing 5,000 square feet or more of the
22 ground surface, measured cumulatively from the effective date of this Article. Activities that
23 disturb the ground surface include, but are not limited to, the construction, modification,
24 conversion, or alteration of any building or structure and associated grading, filling,
25

1 excavation, change in the existing topography, and the addition or replacement of impervious
2 surface. All sidewalks, parking, driveways, and landscaped and irrigated areas constructed in
3 conjunction with the Development Project are included in the project area. Development
4 Projects do not include interior remodeling projects, maintenance activities such as top-layer
5 grinding, repaving, and re-roofing, or modifications, conversions or alterations of buildings or
6 structures that does not increase the ground surface footprint of the building or structure.

7 (d) Development runoff requirements. The performance standards set forth in the
8 Guidelines to address both the construction and post-construction phase impacts of new
9 Development Projects on stormwater quality.

10 (e) General Manager. The General Manager of the Public Utilities Commission of the
11 City, or a designated representative of the General Manager. With regard to stormwater
12 management in areas of the City under the jurisdiction of the Port Commission, the Executive
13 Director of the San Francisco Port Commission or a designated representative of the
14 Executive Director shall have the same authority under this Article as the General Manager
15 until the Port Commission adopts it own standards and procedures regarding stormwater
16 management in all areas under Port Commission jurisdiction.

17 (f) Guidelines. The Stormwater Design Guidelines adopted by the San Francisco Public
18 Utilities Commission or the San Francisco Port Commission. The Guidelines contain
19 requirements pertaining to the type, design, sizing, and maintenance of post-construction
20 stormwater BMPs.

21 (g) Low Impact Design (LID). A stormwater management approach that promotes the
22 use of ecological and landscape-based systems that mimic pre-development drainage
23 patterns and hydrologic processes by increasing retention, detention, infiltration, and
24 treatment of stormwater at its source.

1 (h) Non-Stormwater Discharge. Any discharge to the City's Stormwater Collection
2 System that is not composed entirely of Stormwater.

3 (i) Pollutant. Any substance listed in sec. 119(aa) of Article 4.1 of the Public Works
4 Code or any substance described as a pollutant in the Guidelines.

5 (j) Separate Stormwater/sewer System. Stormwater and sanitary sewage collection
6 facilities that convey, treat and discharge stormwater and sewage in separated catchbasins,
7 pipelines, treatment facilities, outfalls, and other facilities, and do not combine stormwater and
8 sewage in the same facilities.

9 (k) Stormwater. Water that originates from atmospheric moisture (rainfall or snowfall)
10 and that falls onto land, water or other surfaces.

11 (l) Stormwater Collection System. All City facilities operated by the San Francisco
12 Public Utilities Commission or the Port of San Francisco for collecting, transporting, treating
13 and disposing of stormwater. For purposes of this Article, the Stormwater Collection System
14 includes facilities owned and operated by public entities other than the City, where such
15 facilities direct stormwater into the Stormwater Collection System and are subject to the
16 jurisdiction of the San Francisco Public Utilities Commission or the Port of San Francisco as
17 defined by law, contract, or interjurisdictional agreement.

18 (m) Stormwater Control. A device designed to remove pollution in stormwater runoff
19 through detention, retention, filtration, direct plant uptake, or infiltration.

20 (n) Stormwater Control Plan. A plan that meets all applicable criteria, performance
21 standards and other requirements contained in this Article and the Guidelines.

22 Section 147.2. Stormwater Control Plan

23 (a) Development Projects. Every application for a Development Project , including, but
24 not limited to, a building or encroachment permit conditional use permit, variance, site permit,
25

1 or design review, shall be accompanied by a Stormwater Control Plan that meets the
2 stormwater control criteria provided by the Guidelines. No City department shall approve or
3 issue a conditional use permit, variance, site permit, design review approval, building or
4 encroachment permit unless and until a Stormwater Control Plan developed in accordance
5 with this Article and the Guidelines has been approved by the General Manager. All projects
6 subject to the stormwater management requirements of Chapter 13C of the San Francisco
7 Building Code shall comply with the requirements of the Guidelines.

8 (b) Subdivision Approvals.

9 (1) Parcel Map or Tentative Subdivision Map Conditions. The Director of Public
10 Works shall not approve a tentative subdivision map or a parcel map for any property unless
11 a condition is imposed requiring compliance with all applicable Stormwater Control Plans to
12 serve the potential uses of the property covered by the parcel map or tentative subdivision
13 map, as may be further specified in the provisions of this Article or the Guidelines.

14 (2) Subdivision Regulations. The Director of Public Works shall adopt regulations
15 as necessary, consistent with and in furtherance of this Article, to ensure that all subdividers
16 of property subject to the provisions of this ordinance provide a Stormwater Control Plan in
17 compliance with this Article and the Guidelines.

18 (3) Final Maps. The Director of Public Works shall not endorse and file a final map
19 for property within the boundaries of the City and County of San Francisco without first
20 determining whether:

21 (A) The subdivider has complied with the conditions imposed on the tentative
22 subdivision map or parcel map, pursuant to this Article and the Guidelines; and
23
24
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1 (B) For any such conditions not fully satisfied prior to the recordation of the final
2 map, the subdivider has signed a certificate of agreement and/or improvement agreement, to
3 ensure compliance with such conditions.

4 (4) This Subsection (b) shall not apply to tentative subdivision maps or parcel
5 maps submitted solely for the purposes of condominium conversion, as defined in San
6 Francisco Subdivision Code Section 1308(d).

7 Sec. 147.3. Limitations and Prohibited Discharges.

8 (a) The establishment, use, maintenance or continuation of any unauthorized drainage
9 connections to the Stormwater Collection System is prohibited.

10 (b) The discharge of Pollutants and Non-stormwater Discharges into the stormwater
11 collection facilities located in the Separate Stormwater/sewer System portions of the
12 Stormwater Collection System is prohibited, except as provided in this section.

13 (c) The following discharges are exempt from the prohibitions set forth subsection (b)
14 above if the Regional Water Quality Control Board approves the exempted category under
15 section C. 11. of the City's NPDES permit: uncontaminated pumped groundwater, foundation
16 drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation
17 water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from
18 potable water sources, water line and hydrant flushing, individual residential car washing,
19 discharges or flows from emergency fire fighting activities, dechlorinated swimming pool
20 discharges.

21 Section 147.4. Compliance with Maintenance and Inspection Requirements.

22 (a) All Stormwater Controls shall be maintained according to the Guidelines and the
23 operation and maintenance plan included in the approved Stormwater Control Plan. The
24 person(s) or organization(s) responsible for maintenance shall be designated in the plan.
25

1 Those persons responsible for maintenance shall inspect the Stormwater Controls at least
2 annually and shall maintain the Stormwater Controls as required by the Guidelines and
3 described in the Stormwater Control Plan.

4 (b) Operation and Maintenance Inspection and Certificates. Every person who owns,
5 leases or operates any Stormwater Control or Controls must provide annual self-certification
6 for inspection and maintenance, as set forth in the Guidelines.

7 (c) The General Manager may perform routine or scheduled inspections, as may be
8 deemed necessary in the General Manager's sole discretion to carry out the intent of this
9 Article and the Guidelines, including, but not limited to, random sampling or sampling in areas
10 with evidence of Stormwater contamination, evidence of the discharge of Non-stormwater to
11 the Stormwater Collection System, or similar activities.

12 (d) Authority to Sample and Establish Sampling Devices. The General Manager may
13 require any person discharging Stormwater to the Stormwater Collection System to provide
14 devices or locations necessary to conduct sampling or metering operations.

15 (e) Notification of Spills. All persons in charge of the Stormwater Controls shall
16 provide immediate notification to the General Manager of any suspected, confirmed or
17 unconfirmed release of pollutants creating a risk of non-stormwater discharge into the
18 Stormwater Collection System. Such persons shall take all necessary steps to ensure the
19 detection and containment and clean up of such release. This notification requirement is in
20 addition to and not in lieu of other required notifications.

21 (f) Requirement to Test or Monitor. The General Manager may require that any person
22 responsible for Stormwater Controls undertake such monitoring activities or analysis and
23 furnish such reports as the General Manager may specify.

24 Section 147.5 Enforcement and Cost Reimbursement.
25

1 Any violation of this Article may be enforced by the General Manager pursuant to section 132
2 of Article 4.1 of the Public Works Code. Persons violating any provision of this Article, the
3 Guidelines, or department regulations may be subject to penalties and abatement in
4 accordance with the Guidelines and sections 133 and 134 of Article 4.1 of the Public Works
5 Code.

6 Section 147.6 Severability

7 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this
8 Article, is for any reason held to be unconstitutional, invalid or ineffective by any court of
9 competent jurisdiction, such decision shall not affect the validity or effectiveness of the
10 remaining portions of this Article. The Board of Supervisors declares that it would have
11 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this
12 Article irrespective of the fact that any one or more sections, subsections, subdivisions,
13 paragraphs, sentences, clauses, or phrases could be declared unconstitutional, invalid or
14 ineffective.

17 APPROVED AS TO FORM:
18 DENNIS A. HERRERA, City Attorney

19 By: 
20 JOHN RODDY
21 Deputy City Attorney



City and County of San Francisco

Tails Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 100102

Date Passed: April 13, 2010

Ordinance amending the San Francisco Public Works Code by repealing Article 4.2, Sections 140 - 149.4, and adding Article 4.2, Sections 147 - 147.6, requiring the development and maintenance of stormwater management controls for specified activities that disturb 5,000 square feet or more of the ground surface, and are subject to building, planning and subdivision approvals.

April 06, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 10 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi
Excused: 1 - Alioto-Pier

April 13, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 100102

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/13/2010 by the Board of Supervisors of the City and County of San Francisco.

[Handwritten signature of Mayor Gavin Newsom]

Mayor Gavin Newsom

[Handwritten signature of Angela Calvillo]
Angela Calvillo
Clerk of the Board

4/22/2010
Date Approved

Subtitle VIII. - Stormwater Code^[17]

Footnotes:

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Cross reference— For provisions regarding emergency control of drainage problems, mud flows and earth slides, see Chapter 10.06 of this Code.

Chapter 22.800 - TITLE, PURPOSE, SCOPE AND AUTHORITY

Sections:

22.800.010 - Title

This subtitle, comprised of Chapters 22.800 through 22.808, shall be known as the "Stormwater Code" and may be cited as such.

(Ord. 123105, § 2, 2009.)

22.800.020 - Purpose

- A. The provisions of this subtitle shall be liberally construed to accomplish its remedial purposes, which are:
1. Protect, to the greatest extent practicable, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;
 2. Protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;
 3. Protect receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging of groundwater, or endanger aquatic and benthic life within these receiving waters and receiving waters of the state;
 4. Meet the requirements of state and federal law and the City's municipal stormwater National Pollutant Discharge Elimination System ("NPDES") permit;
 5. To protect the functions and values of environmentally critical areas as required under the state's Growth Management Act and Shoreline Management Act;
 6. To protect the public drainage system from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity; and
 7. Fulfill the responsibilities of the City as trustee of the environment for future generations.
- B. It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public. This subtitle is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms.
- C. It is expressly acknowledged that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, the water quality protection measures in this subtitle are necessary to protect the health, safety and welfare of the residents of Seattle and the integrity of natural resources for the benefit of all and for the purposes of this subtitle. Such water quality protection measures are required under the federal Clean Water Act, 33 U.S.C. Section 1251, et seq., and in response to the obligations of the City's municipal

stormwater discharge permit, issued by the State of Washington under the federal National Pollutant Discharge Elimination System program.

(Ord. 123105, § 2, 2009.)

22.800.030 - Scope and Applicability

This subtitle applies to:

- A. All grading and drainage and erosion control, whether or not a permit is required;
- B. All land disturbing activities, whether or not a permit is required;
- C. All discharges directly or indirectly to a public drainage system;
- D. All discharges directly or indirectly into receiving waters within or contiguous to Seattle city limits;
- E. All new and existing land uses; and
- F. All real property.

(Ord. 123105, § 2, 2009.)

22.800.040 - Exemptions, Adjustments, and Exceptions

A. Exemptions.

- 1. The following land uses are exempt from the provisions of this subtitle:
 - a. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade; and
 - b. Forest practices regulated under Title 222 Washington Administrative Code, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses.
- 2. The following land disturbing activities are not required to comply with the specific minimum requirements listed below.
 - a. Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, and that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment), except as modified as follows:
 - 1) Installation of a new or replacement of an existing public drainage system, public combined sewer, or public sanitary sewer in the public right-of-way shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects) when these activities are implemented as publicly bid capital improvement projects funded by Seattle Public Utilities; and
 - 2) Installation of underground or overhead utility facilities that are integral with and contiguous to a road-related project shall comply with Section 22.805.060 (Minimum requirements for Roadway Projects).
 - b. Road maintenance practices limited to the following activities are not required to comply with Section 22.805.060 (Minimum requirements for Roadway Projects), Section 22.805.080 (Minimum Requirements for Flow Control), or Section 22.805.090 (Minimum Requirements for Treatment):
 - 1) Pothole and square cut patching;
 - 2) Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

- 3) Shoulder grading;
 - 4) Reshaping or regrading drainage ditches;
 - 5) Crack sealing; and
 - 6) Vegetation maintenance.
3. Sites that produce no runoff as determined by a licensed civil engineer using a continuous runoff model approved by the Director are not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control).
 4. When a portion of the site being developed discharges only to the public combined sewer, that portion is not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
 5. Residential activities are not required to comply with the provision of subsection 22.805.020.K (Install Source Control BMPs) unless the Director determines that these activities pose a hazard to public health, safety or welfare; endanger any property; adversely affect the safety and operation of city right-of-way, utilities, or other property owned or maintained by the City; or adversely affect the functions and values of an environmentally critical area or buffer.
 6. With respect to all state highway right-of-way under WSDOT control within the jurisdiction of the City of Seattle, WSDOT shall use the current, approved Highway Runoff Manual (HRM) for its existing and new facilities and rights-of-way, as addressed in WAC 173-270-030(1) and (2). Exceptions to this exemption, where more stringent stormwater management requirements apply, are addressed in WAC 173-270-030(3)(b) and (c).
 - a. When a state highway is located in the jurisdiction of a local government that is required by Ecology to use more stringent standards to protect the quality of receiving waters, WSDOT shall comply with the same standards to promote uniform stormwater management.
 - b. WSDOT shall comply with standards identified in watershed action plans for WSDOT rights-of-way, as required by WAC 400-12-570.
 - c. Other instances where more stringent local stormwater standards apply are projects subject to tribal government standards or to the stormwater management-related permit conditions imposed under Chapter 25.09 to protect environmentally critical areas and their buffers (under the Growth Management Act), an NPDES permit, or shoreline master programs (under the Shoreline Management Act). In addition, WSDOT shall comply with local jurisdiction stormwater standards when WSDOT elects, and is granted permission, to discharge stormwater runoff into a municipality's stormwater system or combined sewer system.
- B. Adjustments.
1. The Director may approve a request for adjustments to the requirements of this subtitle when the Director finds that:
 - a. The adjustment provides substantially equivalent environmental protection; and
 - b. The objectives of safety, function, environmental protection, and facility maintenance are met, based on sound engineering practices.
 2. During construction, the Director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be adjusted if physical conditions are discovered on the site that are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas.

3. A request by the applicant for adjustments shall be submitted to the Director for approval prior to implementation. The request shall be in writing and shall provide facts substantiating the requirements of subsection 22.805.080.B1, and if made during construction, the factors in subsection B2. Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the Director.

C. Exceptions.

1. The Director may approve a request for an exception to the requirements of this subtitle when the applicant demonstrates that the exception will not increase risks in the vicinity and/or downstream of the property to public health, safety and welfare, or to water quality, or to public and private property, and:
 - a. The requirement would cause a severe and unexpected financial hardship that outweighs the requirement's benefits, and the criteria for an adjustment cannot be met; or
 - b. The requirement would cause harm or a significant threat of harm to public health, safety and welfare, the environment, or public and private property, and the criteria for an adjustment cannot be met; or
 - c. The requirement is not technically feasible, and the criteria for an adjustment cannot be met; or
 - d. An emergency situation exists that necessitates approval of the exception.
2. An exception shall only be granted to the extent necessary to provide relief from the economic hardship, to alleviate the harm or threat of harm, to the degree that compliance with the requirement becomes technically feasible, or to perform the emergency work that the Director determines exists.
3. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met.
4. The Director may require an applicant to provide additional information at the applicant's expense, including, but not limited to an engineer's report or analysis.
5. When an exception is granted, the Director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.
6. Public notice of an application for an exception and of the Director's decision on the application shall be provided in the manner prescribed for Type II land use decisions, as set forth in Chapter 23.76.
7. The Director's decision shall be in writing with written findings of fact. Decisions approving an exception based on severe and unexpected economic hardship shall address all the factors in subsection 22.805.080.C.8.
8. An application for an exception on the grounds of severe and unexpected financial hardship must describe, at a minimum, all of the following:
 - a. The current, pre-project use of the site; and
 - b. How application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this current subtitle; and
 - c. The possible remaining uses of the site if the exception were not granted; and
 - d. The uses of the site that would have been allowed prior to the adoption of this subtitle; and

- e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this subtitle; and
 - f. The feasibility of the owner or developer to alter the project to apply the requirements of this subtitle.
9. In addition to rights under Chapter 3.02 of the Seattle Municipal Code, any person aggrieved by a Director's decision on an application for an exception may appeal to the Hearing Examiner's Office by filing an appeal, with the applicable filing fee, as set forth in Section 23.76.022. However, appeals of a Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall follow the required procedure established in Chapter 22.808 of this subtitle.
10. The Hearing Examiner shall affirm the Director's determination on the exception unless the examiner finds the determination is clearly erroneous based on substantial evidence. The applicant for the exception shall have the burden of proof on all issues related to justifying the exception.
11. The Director shall keep a record, including the Director's written findings of fact, on all approved requests for exceptions.

(Ord. [124758](#), § 1, 2015; Ord. 123105, § 2, 2009.)

22.800.050 - Potentially Hazardous Locations

- A. Any site on a list, register, or data base compiled by the United States Environmental Protection Agency or the Washington State Department of Ecology for investigation, cleanup, or other action regarding contamination under any federal or state environmental law shall be a potentially hazardous location under this subtitle. When EPA or Ecology removes the site from the list, register or data base, or when the Director of DPD determines the owner has otherwise established the contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.
- B. The following property may also be designated by the Director of DPD as potentially hazardous locations:
- 1. Existing and/or abandoned solid waste disposal sites;
 - 2. Hazardous waste treatment, storage, or disposal facilities, all as defined by the federal Solid Waste Disposal Act, 42 U.S.C. section 6901, et seq.

(Ord. 123105, § 2, 2009.)

22.800.060 - Compliance With Other Laws

- A. The requirements of this subtitle are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this subtitle imposes requirements that are more protective of human health or the environment than those set forth elsewhere, the provisions of this subtitle shall prevail. When this subtitle imposes requirements that are less protective of human health or the environment than those set forth elsewhere, the provisions of the more protective requirements shall prevail.
- B. Approvals and permits granted under this subtitle are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this subtitle.
- C. Compliance with the provisions of this subtitle and of regulations and manuals adopted by the City in relation to this subtitle does not necessarily mitigate all impacts to the environment. Thus, compliance with this subtitle and related regulations and manuals should not be construed as mitigating all drainage water or other environmental impacts, and additional mitigation may be

required to protect the environment. The primary obligation for compliance with this subtitle, and for preventing environmental harm on or from property, is placed upon responsible parties as defined by this subtitle.

(Ord. 123105, § 2, 2009.)

22.800.070 - Minimum Requirements for City Agency Projects

A. Compliance. City agencies shall comply with all the requirements of this subtitle except as specified below:

1. City agencies are not required to obtain permits and approvals under this subtitle, other than inspections as set out in subsection B of this section, for work performed within a public right-of-way or for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation. Where the work occurs in a public right-of-way, it shall also comply with Seattle Municipal Code Title 15, Street and Sidewalk Use, including the applicable requirements to obtain permits or approvals.
2. A City agency project, as defined in Section 22.801.170, that is not required to obtain permit(s) and approval(s) per subsection 22.800.070.A.1 and meets all of the conditions set forth below, is not required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment).
 - a. The project begins land disturbing activities within 18 months of the effective date of this subtitle, and;
 - b. The project complies with subsections 22.802.015.C.4, 22.802.016. B.1, and 22.802.016.B.2 of the Stormwater, Grading and Drainage Control Code that was made effective July 5, 2000 by Ordinance 119965, and
 - c. The project meets one or more of the following criteria:
 - 1) Project funding was appropriated as identified in Ordinance 122863 titled, "An ordinance adopting a budget, including a capital improvement program and a position list, for the City of Seattle for 2009"; or
 - 2) Project received or will receive voter approval of financing before January 1, 2009; or
 - 3) Project received or will receive funds based on grant application(s) submitted before January 1, 2009.

B. Inspection.

1. When the City conducts projects for which review and approval is required under Chapter 22.807 (Drainage Control Review and Application Requirements) the work shall be inspected by the City agency conducting the project or supervising the contract for the project. The inspector for the City agency shall be responsible for ascertaining that the grading and drainage control is done in a manner consistent with the requirements of this subtitle.
2. A City agency need not provide an inspector from its own agency provided either:
 - a. The work is inspected by an appropriate inspector from another City agency; or
 - b. The work is inspected by an appropriate inspector hired for that purpose by a City agency; or
 - c. The work is inspected by the licensed civil or geotechnical engineer who prepared the plans and specifications for the work; or
 - d. A permit or approval is obtained from the Director of DPD, and the work is inspected by the Director.

- C. Certification of Compliance. City agencies shall meet the same standards as non-City projects, except as provided in subsection 22.800.070.A, and shall certify that each individual project meets those standards.

(Ord. 123105, § 2, 2009.)

22.800.075 - Compliance by Public Agencies

Whether or not they are required to obtain permits or submit documents, public agencies are subject to the substantive requirements of this subtitle, unless adjustments or exceptions are granted as set forth in Section 22.800.040 (Exemptions, Adjustments, and Exceptions) or the requirements have been waived under subsection 22.807.020.A.3.

(Ord. 123105, § 2, 2009.)

22.800.080 - Authority

- A. For projects not conducted in the public right-of-way, the Director of DPD has authority regarding the provisions of this subtitle pertaining to grading, review of drainage control plans, and review of construction stormwater control plans, and has inspection and enforcement authority pertaining to temporary erosion and sediment control measures.
- B. The Director of SPU has authority regarding all other provisions of this subtitle pertaining to drainage water, drainage, and erosion control, including inspection and enforcement authority. The Director of SPU may delegate authority to the Director of DPD or the Director of Seattle Department of Transportation regarding the provisions of this subtitle pertaining to review of drainage control plans, review of erosion control plans, and inspection and enforcement authority pertaining to temporary erosion and sediment control measures for projects conducted in the public right-of-way.
- C. The Directors of DPD, SDOT and SPU are authorized to take actions necessary to implement the provisions and purposes of this subtitle in their respective spheres of authority to the extent allowed by law, including, but not limited to, the following: promulgating and amending rules and regulations, pursuant to the Administrative Code, Chapter 3.02 of the Seattle Municipal Code; establishing and conducting inspection programs; establishing and conducting or, as set forth in Section 22.802.040, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage system, or receiving waters; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving, conditioning, or disapproving required submittals and applications for approvals and permits. The Directors are authorized to exercise their authority under this subtitle in a manner consistent with their legal obligations as determined by the courts or by statute.
- D. The Director of SPU is authorized to develop, review, or approve drainage basin plans for managing receiving waters, drainage water, and erosion within individual basins. A drainage basin plan may, when approved by the Director of SPU, be used to modify requirements of this subtitle, provided the level of protection for human health, safety and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. A drainage basin plan that modifies the minimum requirements of this subtitle at a drainage basin level must be reviewed and approved by Ecology and adopted by City ordinance.
- E. The Director of SPU is authorized, to the extent allowed by law, to develop, review, or approve an Integrated Drainage Plan as an equivalent means of complying with the requirements of this subtitle, in which the developer of a project voluntarily enters into an agreement with the Director of SPU to implement an Integrated Drainage Plan that is specific to one or more sites where best management practices are employed such that the cumulative effect on the discharge from the site(s) to the same receiving water is the same or better than that which would be achieved by a less integrated, site-by-site implementation of best management practices.
- F. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily contribute funds toward the construction of one

or more drainage control facilities that mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.

- G. The Director of SPU is authorized, to the extent allowed by law, to enter into an agreement with the developer of a project for the developer to voluntarily construct one or more drainage control facilities at an alternative location, determined by the Director, to mitigate the impacts to the same receiving water that have been identified as a consequence of the proposed development.
- H. If the Director of SPU determines that a discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, has exceeded, exceeds, or will exceed water quality standards at the point of assessment, or has caused or contributed, is causing or contributing, or will cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit, and cannot be adequately addressed by the required best management practices, then the Director of SPU has the authority, to the extent allowed by law, to issue an order under Chapter 22.808 requiring the responsible party to undertake more stringent or additional best management practices. These best management practices may include additional source control or structural best management practices or other actions necessary to cease the exceedance, the prohibited discharge, or causing or contributing to the known or likely violation of water quality standards in the receiving water or the known or likely violation of the City's municipal stormwater NPDES permit. Structural best management practices may include but shall not be limited to: drainage control facilities, structural source controls, treatment facilities, constructed facilities such as enclosures, covering and/or berming of container storage areas, and revised drainage systems. For existing discharges as opposed to new projects, the Director may allow 12 months to install a new flow control facility, structural source control, or treatment facility after the Director notifies the responsible party in writing of the Director's determination pursuant to this subsection and of the flow control facility, structural source control, or treatment facility that must be installed.
- I. Unless an adjustment per subsection 22.800.040.B or an exception per subsection 22.800.040.C is approved by the Director, an owner or occupant who is required, or who wishes, to connect to a public drainage system shall be required to extend the public drainage system if a public drainage system is not accessible within an abutting public area across the full frontage of the property.
- J. The Director of DPD has the authority, to the extent allowed by law, to require sites with addition or replacement of less than 5,000 square feet of impervious surface or with less than one acre of land disturbing activity to comply with the requirements set forth in Section 22.805.080 or Section 22.805.090 when necessary to accomplish the purposes of this subtitle. In making this determination, the Director of DPD may consider, but not be limited to, the following attributes of the site: location within an Environmentally Critical Area; proximity and tributary to an Environmentally Critical Area; and proximity and tributary to an area with known erosion or flooding problems.

(Ord. 123105, § 2, 2009.)

22.800.090 - City Not Liable

- A. Nothing contained in this subtitle is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this subtitle, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this subtitle, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this subtitle by its officers, employees or agents.
- B. The Director or any employee charged with the enforcement of this subtitle, acting in good faith and without malice on behalf of the City, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the City, or by reason of any act or omission in the discharge of these duties. Any suit brought against the Director of DPD, Director of SPU or other

employee because of an act or omission performed in the enforcement of any provisions of this subtitle, shall be defended by the City.

- C. Nothing in this subtitle shall impose any liability on the City or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes or contaminated soil.

(Ord. 123105, § 2, 2009.)

Chapter 22.801 - DEFINITIONS

Sections:

22.801.010 - General

For the purpose of this subtitle, the words listed in this chapter have the following meanings, unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this subtitle, shall be as defined in Washington Administrative Code Chapters 173-303, 173-304 and 173-340, the Seattle Building Code or the Seattle Fire Code, including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular.

(Ord. 123105, § 2, 2009.)

22.801.020 - "A"

"Agency" means any governmental entity or its subdivision.

"Agency, City" means "City agency" as defined in Section 25.09.520.

"Agency with jurisdiction" means those agencies with statutory authority to approve, condition or deny permits, such as the United States Environmental Protection Agency, the Washington State Department of Ecology or Public Health—Seattle & King County.

"Approved" means approved by the Director.

(Ord. 123668, § 1, 2011; Ord. 123105, § 2, 2009.)

22.801.030 - "B"

"Basin plan" means a plan to manage the quality and quantity of drainage water in a watershed or a drainage basin, including watershed action plans.

"Basic treatment facility" means a drainage control facility designed to reduce concentrations of total suspended solids in drainage water.

"Best management practice (BMP)" means a schedule of activities, prohibitions of practices, operational and maintenance procedures, structural facilities, or managerial practice or device that, when used singly or in combination, prevents, reduces, or treats contamination of drainage water, prevents or reduces soil erosion, or prevents or reduces other adverse effects of drainage water on receiving waters. When the Directors develop rules and/or manuals prescribing best management practices for particular purposes, whether or not those rules and/or manuals are adopted by ordinance, BMPs prescribed in the rules and/or manuals shall be the BMPs required for compliance with this subtitle.

"Building permit" means a document issued by the Department of Planning and Development authorizing construction or other specified activity in accordance with the Seattle Building Code (Chapter 22.100) or the Seattle Residential Code (Chapter 22.150).

(Ord. 123105, § 2, 2009.)

22.801.040 - "C"

"Capacity-constrained system" means a drainage system that the Director of SPU has determined to have inadequate capacity to carry drainage water.

"Cause or contribute to a violation" means and includes acts or omissions that create a violation, that increase the duration, extent or severity of a violation, or that aid or abet a violation.

"Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology.

"Civil engineer, licensed" means a person who is licensed by the State of Washington to practice civil engineering.

"City agency" means "City agency" as defined in Section 25.09.520.

"Combined sewer." See "public combined sewer."

"Construction Stormwater Control Plan" means a document that explains and illustrates the measures to be taken on the construction site to control pollutants on a construction project.

"Compaction" means the densification of earth material by mechanical means.

"Containment area" means the area designated for conducting pollution-generating activities for the purposes of implementing source controls or designing and installing source controls or treatment facilities.

"Contaminate" means the addition of sediment, any other pollutant or waste, or any illicit or prohibited discharge.

"Creek" means a Type 2-5 water as defined in WAC 222-16-031 and is used synonymously with "stream."

(Ord. 123105, § 2, 2009.)

22.801.050 - "D"

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the City, including, but not limited, to the following: costs of abating or correcting violations of this subtitle; fines or penalties the City incurs as a result of a violation of this subtitle; and costs to repair or clean the public drainage system as a result of a violation. For the purposes of this subtitle, damages do not include compensation to any person other than the City.

"Designated receiving water" means the Duwamish River, Puget Sound, Lake Washington, Lake Union, Elliott Bay, Portage Bay, Union Bay, the Lake Washington Ship Canal, and other receiving waters determined by the Director of SPU and approved by Ecology as having sufficient capacity to receive discharges of drainage water such that a site discharging to the designated receiving water is not required to implement flow control.

"Detention" means temporary storage of drainage water for the purpose of controlling the drainage discharge rate.

"Development" means land disturbing activity or the addition or replacement of impervious surface.

"Director" means the Director of the Department authorized to take a particular action, and the Director's designees, who may be employees of that department or another City department.

"Director of DPD" means the Director of the Department of Planning and Development of The City of Seattle and/or the designee of the Director of Planning and Development, who may be employees of that department or another City department.

"Director of SDOT" means the Director of Seattle Department of Transportation of The City of Seattle and/or the designee of the Director of Seattle Department of Transportation, who may be employees of that department or another City department.

"Director of SPU" means the Director of Seattle Public Utilities of The City of Seattle and/or the designee of the Director of Seattle Public Utilities, who may be employees of that department or another City department.

"Discharge point" means the location from which drainage water from a site is released.

"Discharge rate" means the rate at which drainage water is released from a site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

"DPD" means the Department of Planning and Development.

"Drainage basin" means the tributary area or subunit of a watershed through which drainage water is collected, regulated, transported, and discharged to receiving waters.

"Drainage control" means the management of drainage water. Drainage control is accomplished through one or more of the following: collecting, conveying, and discharging drainage water; controlling the discharge rate from a site; controlling the flow duration from a site; and separating, treating or preventing the introduction of pollutants.

"Drainage control facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the discharge rate, flow duration, quantity, and/or quality of drainage water.

"Drainage control plan" means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities.

"Drainage system" means a system intended to collect, convey and control release of only drainage water. The system may be either publicly or privately owned or operated, and the system may serve public or private property. It includes constructed and/or natural components such as pipes, ditches, culverts, streams, creeks, or drainage control facilities.

"Drainage water" means stormwater and all other discharges that are permissible per subsection 22.802.030.A.

(Ord. 123105, § 2, 2009.)

22.801.060 - "E"

"Earth material" means any rock, gravel, natural soil, fill, or re-sedimented soil, or any combination thereof, but does not include any solid waste as defined by RCW 70.95.

"Ecology" means the Washington State Department of Ecology.

"Effective impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

"Enhanced treatment facility" means a drainage control facility designed to reduce concentrations of dissolved metals in drainage water.

"Environmentally critical area" means an area designated in Section 25.09.020.

"EPA" means the United States Environmental Protection Agency.

"Erosion" means the wearing away of the ground surface as a result of mass wasting or of the movement of wind, water, ice, or other geological agents, including such processes as gravitational creep. Erosion also means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

"Excavation" means the mechanical removal of earth material.

"Exception" means relief from a requirement of this subtitle to a specific project.

(Ord. 123105, § 2, 2009.)

22.801.070 - "F"

"Fill" means a deposit of earth material placed by artificial means.

"Flow control" means controlling the discharge rate, flow duration, or both of drainage water from the site through means such as infiltration or detention.

"Flow control facility" means a drainage control facility for controlling the discharge rate, flow duration, or both of drainage water from a site.

"Flow-critical receiving water" means a surface water that is not a designated receiving water as defined in this subtitle.

"Flow duration" means the aggregate time that peak flows are at or above a particular flow rate of interest.

(Ord. 123105, § 2, 2009.)

22.801.080 - "G"

"Garbage" means putrescible waste.

"Geotechnical engineer" or "Geotechnical/civil engineer" means a professional civil engineer licensed by The State of Washington who has at least four years of professional experience as a geotechnical engineer, including experience with landslide evaluation.

"Grading" means excavation, filling, in-place ground modification, removal of roots or stumps that includes ground disturbance, stockpiling of earth materials, or any combination thereof, including the establishment of a grade following demolition of a structure.

"Green stormwater infrastructure" means a drainage control facility that uses infiltration, evapotranspiration, or stormwater reuse. Examples of green stormwater infrastructure include permeable pavement, bioretention facilities, and green roofs.

(Ord. 123105, § 2, 2009.)

22.801.090 - "H"

"High-use sites" means sites that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

1. An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;
2. An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;
3. An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);
4. A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(Ord. 123105, § 2, 2009.)

22.801.100 - "I"

"Impervious Surface" means any surface exposed to rainwater from which most water runs off. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, formal planters, parking lots or storage areas, concrete or asphalt paving, permeable paving, gravel surfaces subjected to vehicular traffic, compact gravel, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of

determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of stormwater modeling.

Impervious surface, replaced. See "replaced or replacement of impervious surface."

"Infiltration" means the downward movement of water from the surface to the subsoil.

"Infiltration facility" means a drainage control facility that temporarily stores, and then percolates drainage water into the underlying soil.

"Integrated Drainage Plan" means a plan developed, reviewed, and approved per subsection 22.800.080.E.

"Interflow" means that portion of rainfall and other precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface.

"Inspector" means a City inspector, their designee, or licensed civil engineer performing the inspection work required by this subtitle.

(Ord. 123105, § 2, 2009.)

22.801.110 - "J"

"Joint project" means a project that is both a parcel-based project and a roadway project.

(Ord. 123105, § 2, 2009.)

22.801.130 - "L"

"Land disturbing activity" means any activity that results in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, excavation, or addition of new or the replacement of impervious surface. Compaction, excluding hot asphalt mix, that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activities.

"Large project" means a project including 5,000 square feet or more of new impervious surface or replaced impervious surface, individually or combined, or one acre or more of land disturbing activity.

"Listed creek basins" means Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek.

(Ord. 123105, § 2, 2009.)

22.801.140 - "M"

"Master use permit" means a document issued by DPD giving permission for development or use of land or street right-of-way in accordance with Chapter 23.76.

"Maximum extent feasible" means the requirement is to be fully implemented, constrained only by the physical limitations of the site, practical considerations of engineering design, and reasonable considerations of financial costs and environmental impacts.

"Municipal stormwater NPDES permit" means the permit issued to the City under the federal Clean Water Act for public drainage systems within the City limits.

(Ord. 123105, § 2, 2009.)

22.801.150 - "N"

"Native vegetation" means "native vegetation" as defined in Section 25.09.520.

"Nutrient-critical receiving water" means a surface water or water segment that that has been listed as Category 5 (impaired) under Section 303(d) of the Clean Water Act for total phosphorus through the State of Washington's Water Quality Assessment program and approved by EPA.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act.

"NPDES permit" means an authorization, license or equivalent control document issued by the United States Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

(Ord. 123105, § 2, 2009.)

22.801.160 - "O"

"Oil control treatment facility" means a drainage control facility designed to reduce concentrations of oil in drainage water.

"Owner" means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee, and the owner's duly authorized agent.

(Ord. 123105, § 2, 2009.)

22.801.170 - "P"

"Parcel-based project" means any project that is not a roadway project, single-family residential project, sidewalk project, or trail project.

"Person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the State of Washington, political subdivision or agency of the State of Washington, public authority or other public body, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and the United States or any instrumentality thereof.

"Pervious surface" means a surface that is not impervious. See also, "impervious surface".

"Phosphorus treatment facility" means a drainage control facility designed to reduce concentrations of phosphorus in drainage water.

"Plan" means a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents, or a document consisting of checklists, steps, actions, schedules, or other contents that has been prepared pursuant to this subtitle, such as a drainage control plan, construction stormwater control plan, stormwater pollution prevention plan, and integrated drainage plan.

"Pollution-generating activity" means any activity that is regulated by the joint SPU/DPD Directors' Rule titled, "Source Control Technical Requirements Manual" or activities with similar impacts on drainage water. These activities include, but are not limited to: cleaning and washing activities; transfer of liquid or solid material; production and application activities; dust, soil, and sediment control; commercial animal care and handling; log sorting and handling; boat building, mooring, maintenance, and repair; logging and tree removal; mining and quarrying of sand, gravel, rock, peat, clay, and other materials; cleaning and maintenance of swimming pool and spas; deicing and anti-icing operations for airports and streets; maintenance and management of roof and building drains at manufacturing and commercial buildings; maintenance and operation of railroad yards; maintenance of public and utility corridors and facilities; and maintenance of roadside ditches.

"Pollution-generating impervious surface" means those impervious surfaces considered to be a significant source of pollutants in drainage water. Such surfaces include those that are subject to:

vehicular use; certain industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the drainage water. Examples include: erodible soils that are stockpiled; uncovered process wastes; manure; fertilizers; oily substances; ashes; kiln dust; and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads; unvegetated road shoulders; permeable pavement; bike lanes within the traveled lane of a roadway; driveways; parking lots; unfenced fire lanes; vehicular equipment storage yards; and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles; fenced fire lanes; and infrequently used maintenance access roads.

"Pollution-generating pervious surface" means any non-impervious surface subject to use of pesticides and fertilizers or loss of soil, and typically includes lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

"Pre-developed condition" means the vegetation and soil conditions that are used to determine the allowable post-development discharge peak flow rates and flow durations, such as pasture or forest.

"Project" means the addition or replacement of impervious surface or the undertaking of land disturbing activity on a site.

"Public combined sewer" means a publicly owned and maintained system which carries drainage water and wastewater and flows to a publicly owned treatment works.

"Public drainage system" means a drainage system owned or used by the City of Seattle.

"Public place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

"Public sanitary sewer" means the sanitary sewer that is owned or operated by a City agency.

"Public storm drain" means the part of a public drainage system that is wholly or partially piped, owned or operated by a City agency, and designed to carry only drainage water.

(Ord. 123105, § 2, 2009.)

22.801.190 - "R"

"Real property" means "real property" as defined in Section 3.110.

"Receiving water" means the surface water or wetland receiving drainage water.

"Repeat Violation" means a prior violation of this subtitle within the preceding five years that became a final order or decision of the Director or a court. The violation does not need to be the same nor occur on one site to be considered repeat.

"Replaced impervious surface" or "replacement of impervious surface" means for structures, the removal and replacement of impervious surface down to the foundation. For other impervious surface, the impervious surface that is removed down to earth material and a new impervious surface is installed.

"Responsible party" means all of the following persons:

1. Owners, operators, and occupants of property; and,
2. Any person causing or contributing to a violation of the provisions of this subtitle.

"Right-of-way" means "right-of-way" as defined in Section 23.84A.032.

"Roadway" means "roadway" as defined in Section 23.84A.032.

"Roadway project" means a project located in the public right-of-way, that involves the creation of a new or replacement of an existing roadway, or that involves the creation of new or replacement of existing impervious surface.

"Runoff" means the portion of rainfall or other precipitation that becomes surface flow and interflow.

(Ord. 123105, § 2, 2009.)

22.801.200 - "S"

"SPU" means Seattle Public Utilities.

"Sanitary sewer" means a system that conveys wastewater and is not designed to convey stormwater.

"SDOT" means the Seattle Department of Transportation.

"Service drain" means "service drain" as defined in Section 21.16.030.

"Side sewer" means "side sewer" as defined in Section 21.16.030.

"Sidewalk" means "sidewalk" as defined in Section 23.84A.036.

"Sidewalk project" means a project that exclusively involves the creation of a new or replacement of an existing sidewalk, including any associated planting strip, curb, or gutter.

"Single-family residential project" means a project, that constructs one Single-family Dwelling Unit per Section 23.44.006.A located in land classified as being Single-family Residential 9,600 (SF 9600), Single-family Residential 7,200 (SF 7200), or Single-family Residential 5,000 (SF 5000) per Section 23.30.010, and the total new plus replaced impervious surface is less than 10,000 square feet and the total new plus replaced pollution-generating impervious surface is less than 5,000 square feet.

"Site" means the lot or parcel, or portion of street, highway or other right-of-way, or contiguous combination thereof, where a permit for the addition or replacement of impervious surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For roadway projects, the length of the project site and the right-of-way boundaries define the site.

"Slope" means an inclined ground surface.

"Small project" means a project with:

1. Less than 5,000 square feet of new and replaced impervious surface; and
2. Less than one acre of land disturbing activities.

"SMC" means the Seattle Municipal Code.

"Soil" means naturally deposited non-rock earth materials.

"Solid waste" means "solid waste" as defined in Section 21.36.016.

"Source controls" mean structures or operations that prevent contaminants from coming in contact with drainage water through physical separation or careful management of activities that are known sources of pollution.

"Standard design" is a design pre-approved by the Director for drainage and erosion control available for use at a site with pre-defined characteristics.

"Storm drain" means both public storm drain and service drain.

"Stormwater" means that portion of precipitation and snowmelt that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a drainage system into a receiving water or a constructed infiltration facility.

"Stream" means a Type 2-5 water as defined in WAC 222-16-031. Used synonymously with "creek."

(Ord. 123105, § 2, 2009.)

22.801.210 - "T"

"Topsoil" means the weathered surface soil, including the organic layer, in which plants have most of their roots.

"Trail" means a path of travel for recreation and/or transportation within a park, natural environment, or corridor that is not classified as a highway, road, or street.

"Trail project" means a project that exclusively involves creating a new or replacement of an existing trail, and which does not contain pollution-generating impervious surfaces.

"Treatment facility" means a drainage control facility designed to remove pollutants from drainage water.

(Ord. 123105, § 2, 2009.)

22.801.220 - "U"

"Uncontaminated" means surface water or groundwater not containing sediment or other pollutants or contaminants above natural background levels and not containing pollutants or contaminants in levels greater than City-supplied drinking water when referring to potable water.

(Ord. 123105, § 2, 2009.)

22.801.230 - "V"

"Vegetation" means "vegetation" as defined in Section 25.09.520.

(Ord. 123105, § 2, 2009.)

22.801.240 - "W"

"Wastewater" means "wastewater" as defined in Section 21.16.030.

"Water Quality Standards" means Surface Water Quality Standards, Chapter 173-201A WAC, Ground Water Quality Standards, Chapter 173-200 WAC, and Sediment Management Standards, Chapter 173-204 WAC.

"Watercourse" means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks or sides, in which surface waters flow. Watercourse includes small lakes, bogs, streams, creeks, and intermittent artificial components (including ditches and culverts) but does not include designated receiving waters.

"Watershed" means a geographic region within which water drains into a particular river, stream, or other body of water.

"Wetland" means a wetland designated under Section 25.09.020.

"Wetland function" means the physical, biological, chemical, and geologic interactions among different components of the environment that occur within a wetland. Wetland functions can be grouped into three categories: functions that improve water quality; functions that change the water regime in a watershed, such as flood storage; and functions that provide habitat for plants and animals.

"Wetland values" means wetland processes, characteristics, or attributes that are considered to benefit society.

(Ord. 123105, § 2, 2009.)

Chapter 22.802 - PROHIBITED AND PERMISSIBLE DISCHARGES

Sections:

22.802.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 2, 2009.)

22.802.020 - Prohibited Discharges

- A. Prohibited Discharges. The following common substances are prohibited to enter, either directly or indirectly, a public drainage system, a private drainage system, or a receiving water within or contiguous to Seattle city limits, including but not limited to when entering via a service drain, overland flow, or as a result of a spill or deliberate dumping:
 - 1. acids;
 - 2. alkalis including cement wash water;
 - 3. ammonia;
 - 4. animal carcasses;
 - 5. antifreeze, oil, gasoline, grease and all other automotive and petroleum products;
 - 6. chemicals not normally found in uncontaminated water;
 - 7. chlorinated swimming pool or hot tub water;
 - 8. chlorine;
 - 9. commercial and household cleaning materials;
 - 10. detergent;
 - 11. dirt;
 - 12. domestic or sanitary sewage;
 - 13. drain cleaners;
 - 14. fertilizers;
 - 15. flammable or explosive materials;
 - 16. food and food waste;
 - 17. gravel.
 - 18. herbicides;
 - 19. human and animal waste;
 - 20. industrial process wastewater,
 - 21. ink;
 - 22. laundry waste;
 - 23. metals in excess of naturally occurring amounts, whether in liquid or solid form;

24. painting products;
 25. pesticides;
 26. sand;
 27. soap;
 28. solid waste;
 29. solvents and degreasers;
 30. steam-cleaning waste; and,
 31. yard waste.
- B. Prohibited Discharges to Public and Private Drainage System. Except as provided in Section 22.802.030, any discharge to a public drainage system or to a private drainage system that is not composed entirely of stormwater is prohibited.
- C. Prohibited Discharges to Receiving Waters. Except as provided in Section 22.802.030, any discharge, either directly or indirectly to receiving waters within or contiguous to Seattle city limits or to a public drainage system that is not composed entirely of stormwater is prohibited.

(Ord. 123105, § 2, 2009.)

22.802.030 - Permissible Discharges

Permissible Discharges to Drainage Systems and Receiving Waters. Discharges from the sources listed below are permissible discharges unless the Director of SPU determines that the type of discharge, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, whether singly or in combination with others, is causing or contributing to a violation of the City's NPDES stormwater permit or is causing or contributing to a water quality problem:

1. Discharges from potable water sources, including flushing of potable water lines, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage system;
2. Discharges from washing or rinsing of potable water storage reservoirs, dechlorinated as above;
3. Discharges from surface waters, including diverted stream flows;
4. Discharges of uncontaminated groundwater, including uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(2), uncontaminated pumped groundwater, and rising ground waters;
5. Discharges of air conditioning condensation;
6. Discharges from springs;
7. Discharges of uncontaminated water from crawl space pumps;
8. Discharges from lawn watering;
9. Discharges from irrigation runoff, including irrigation water from agricultural sources that is commingled with stormwater and that does not contain prohibited substances;
10. Discharges from riparian habitats and wetlands;
11. Discharges from approved footing drains and other subsurface drains or, where approval is not required, installed in compliance with this subtitle and rules promulgated pursuant to this subtitle;
12. Discharges from foundation drains;

13. Discharges from swimming pools, hot tubs, fountains, or similar aquatic recreation facilities and constructed water features, provided the discharges have been de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the drainage control system;
 14. Discharges of street and sidewalk wash-water that does not use detergents or chemical additives;
 15. Discharges of water used to control dust;
 16. Discharges of water from routine external building washdown that does not use detergents or chemical additives;
 17. Discharges that are in compliance with a separate individual or general NPDES permit;
 18. Discharges that are from emergency fire fighting activities; and
 19. Other non-stormwater discharges, provided these discharges are in compliance with the requirements of an approved stormwater pollution prevention plan that addresses such discharges.
- B. Permissible Discharges to Sanitary Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a sanitary sewer if the discharging party demonstrates to the satisfaction of the Director of SPU that other methods of controlling pollutants in the discharge are not adequate or reasonable, the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the sanitary sewer. Connections to the sanitary sewer shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.
- C. Permissible Discharges to Public Combined Sewers. In consultation with the local sewage treatment agency, the Director of SPU may approve discharges of drainage water to a public combined sewer if the discharging party certifies that the discharge will not harm the environment, and the discharging party certifies that the discharge will not overburden or otherwise harm the public combined sewers. Connections to the public combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code). The Director of SPU shall condition approval of such a discharge on compliance with local pretreatment regulations and on maintaining compliance with the required certifications given by the discharging party.

(Ord. 123105, § 2, 2009.)

22.802.040 - Testing for Prohibited Discharges

When the Director of SPU has reason to believe that any discharge is a prohibited discharge, the Director of SPU may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to be a prohibited discharge on a recurring basis, the Director of SPU may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

(Ord. 123105, § 2, 2009.)

Chapter 22.803 - MINIMUM REQUIREMENTS FOR ALL DISCHARGES AND ALL REAL PROPERTY Sections:

22.803.010 - General

- A. All responsible parties are required to comply with this chapter, even where no development is occurring.

- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.803.020 - Minimum Requirements for All Discharges and Real Property

- A. Requirement to provide documentation. The owner is required to make plans, procedures, and schedules required by this subsection available to the Director of SPU when requested.
- B. Requirement to report spills, releases, or dumping. A responsible party is required to, at the earliest possible time, but in any case within 24 hours of discovery, report to the Director of SPU, a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage system, a private drainage system, or a receiving water. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.
- C. Requirements to maintain facilities. All treatment facilities, flow control facilities, drainage control facilities, and drainage systems shall be maintained as prescribed in rules promulgated by the Director in order for these facilities and systems to be kept in continuous working order.
- D. Requirements for disposal of waste from maintenance activities. Disposal of waste from maintenance of drainage control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, Chapter 173-303 WAC.
- E. Requirements to maintain records of installation and maintenance activities. When a drainage control facility is installed, the party having the facility installed shall make records of the installation and shall identify the party (or parties) responsible for maintenance and operations. The parties shall retain a continuous record of all maintenance and repair activities, and shall retain the records for at least ten years. If a transfer of ownership occurs, these records of installation, repair, and maintenance shall be transferred to the new property owner. These records shall be made available to the Director of SPU during inspection of the facility and at other reasonable times upon request of the Director of SPU.

(Ord. 123105, § 3, 2009.)

22.803.030 - Minimum Requirements for Source Controls for All Real Property

For all discharges, responsible parties shall implement and maintain source controls to prevent or minimize pollutants from leaving a site or property. Source controls that are required for all real property include, but are not limited to, the following, as further described in rules promulgated by the Director:

- A. Eliminate Illicit or Prohibited Connections to Storm Drains. It is the responsibility of the property owner to ensure that all plumbing connections are properly made and that only connections conveying stormwater or permissible discharges per Section 22.802.030 are connected to the drainage system.
- B. Perform Routine Maintenance for Stormwater Drainage System. All drainage system components, including, but not limited to catch basins, flow control facilities, treatment facilities, green stormwater infrastructure, and unimproved drainage pathways shall be kept in continuously working order.

- C. Dispose of Fluids and Wastes Properly. Solid and liquid wastes must be disposed of in a manner that minimizes the risk of contaminating stormwater.
- D. Proper Storage of Solid Wastes. Solid wastes must be stored of in a manner that minimizes the risk of contaminating stormwater.
- E. Spill Prevention and Cleanup. All property owners having the potential to spill pollutants shall take measures to the maximum extent feasible to prevent spills of pollutant and to properly clean up spills that may occur.
- F. Provide Oversight and Training for Staff. Train at least annually all employees responsible for the operation, maintenance, or inspection of BMPs.

(Ord. 123105, § 3, 2009.)

22.803.040 - Minimum Requirements for Source Controls For All Businesses and Public Entities

- A. Source controls shall be implemented, to the extent allowed by law, by all businesses and public entities for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in subsection 22.802.020.A through subsection 22.802.020.C, and to prevent contaminants from coming in contact with drainage water. Source controls include, but are not limited to, segregating or isolating wastes to prevent contact with drainage water; enclosing, covering, or containing the activity to prevent contact with drainage water; developing and implementing inspection and maintenance programs; sweeping; and taking management actions such as training employees on pollution prevention.
- B. Spill prevention shall be required for all businesses and public entities, as further defined in rules promulgated by the Director:
 - 1. Develop and implement plans and procedures to prevent spills and other accidental releases of materials that may contaminate drainage water. This requirement may be satisfied by a Stormwater Pollution Prevention Plan prepared in compliance with an NPDES industrial stormwater permit for the site; and
 - 2. Implement procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of drainage water; and
 - 3. Provide necessary containment and response equipment on-site, and training of personnel regarding the procedures and equipment to be used.

(Ord. 123105, § 3, 2009.)

Chapter 22.805 - MINIMUM REQUIREMENTS FOR ALL PROJECTS

Sections:

22.805.010 - General

- A. All projects are required to comply with this chapter, even where drainage control review is not required.
- B. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- C. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits,

cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.805.020 - Minimum requirements for all projects

- A. Minimum Requirements for Maintaining Natural Drainage Patterns. For all projects, natural drainage patterns shall be maintained and discharges shall occur at the natural location to the maximum extent feasible and consistent with subsection 22.805.020.B. Drainage water discharged from the site shall not cause a significant adverse impact to receiving waters or down-gradient properties. Drainage water retained on the site shall not cause significant adverse impact to up-gradient properties.
- B. Minimum Requirements for Discharge Point. The discharge point for drainage water from each site shall be selected using criteria that shall include, but not be limited to, preservation of natural drainage patterns and whether the capacity of the drainage system is adequate for the flow rate and volume. For those projects meeting the drainage review threshold, the proposed discharge point shall be identified in the drainage control plan required by this subtitle, for review and approval or disapproval by the Director.
- C. Minimum Requirements for Flood-prone Areas. On sites within flood prone areas, responsible parties are required to employ procedures to minimize the potential for flooding on the site and to minimize the potential for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Seattle Municipal Code and rules promulgated thereunder, including, but not limited to, Chapter 23.60 (Shoreline Master Program), Chapter 25.06 (Floodplain Development) and Chapter 25.09 (Environmentally Critical Areas) of the Seattle Municipal Code.
- D. Minimum Requirements for Construction Site Stormwater Pollution Prevention Control. Temporary and permanent construction controls shall be used to accomplish the following minimum requirements. All projects are required to meet each of the elements below or document why an element is not applicable. Additional controls may be required by the Director when minimum controls are not sufficient to prevent erosion or transport of sediment or other pollutants from the site.
 - 1. Mark Clearing Limits and Environmentally Critical Areas. Within the boundaries of the project site and prior to beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits, easements, setbacks, all environmentally critical areas and their buffers, and all trees, and drainage courses that are to be preserved within the construction area.
 - 2. Retain Top Layer. Within the boundaries of the project site, the duff layer, topsoil, and native vegetation, if there is any, shall be retained in an undisturbed state to the maximum extent feasible. If it is not feasible to retain the top layer in place, it should be stockpiled on-site, covered to prevent erosion, and replaced immediately upon completion of the ground disturbing activities to the maximum extent feasible.
 - 3. Establish Construction Access. Limit construction vehicle access, whenever possible, to one route. Stabilize access points and minimize tracking sediment onto public roads. Promptly remove any sediment tracked off site.
 - 4. Protect Downstream Properties and Receiving Waters. Protect properties and receiving waters downstream from the development sites from erosion due to increases in the volume, velocity, and peak flow rate of drainage water from the project site. If it is necessary to construct flow control facilities to meet this requirement, these facilities shall be functioning prior to implementation of other land disturbing activity. If permanent infiltration ponds are used to control flows during construction, these facilities shall be protected from siltation during the construction phase of the project.
 - 5. Prevent Erosion and Sediment Transport from the Site. Pass all drainage water from disturbed areas through a sediment trap, sediment pond, or other appropriate sediment removal BMP

before leaving the site or prior to discharge to an infiltration facility. Sediment controls intended to trap sediment on site shall be constructed as one of the first steps in grading and shall be functional before other land disturbing activities take place. BMPs intended to trap sedimentation shall be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

6. Prevent Erosion and Sediment Transport from the Site by Vehicles. Whenever construction vehicle access routes intersect paved roads, the transport of sediment onto the paved road shall be minimized. If sediment is transported onto a paved road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from paved roads by shoveling or sweeping and shall be transported to a controlled sediment disposal area. If sediment is tracked off site, roads shall be cleaned thoroughly at the end of each day, or at least twice daily during wet weather. Street washing is allowed only after sediment is removed and street wash wastewater shall be prevented from entering the public drainage system and receiving waters.
7. Stabilize Soils. Prevent on-site erosion by stabilizing all exposed and unworked soils, including stock piles and earthen structures such as dams, dikes, and diversions. From October 1 to April 30, no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed for more than seven days. Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast. Soil stockpiles shall be stabilized from erosion, protected with sediment trapping measures, and be located away from storm drain inlets, waterways, and drainage channels. Before the completion of the project, permanently stabilize all exposed soils that have been disturbed during construction.
8. Protect Slopes. Erosion from slopes shall be minimized. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Off-site stormwater run-on or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes, and/or swales. Pipe slope drains or protected channels shall be constructed at the top of slopes to collect drainage and prevent erosion. Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations. Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.
9. Protect Storm Drains. Prevent sediment from entering all storm drains, including ditches that receive drainage water from the project. Storm drain inlets protection devices shall be cleaned or removed and replaced as recommended by the product manufacturer, or more frequently if required to prevent failure of the device or flooding. Storm drain inlets made operable during construction shall be protected so that drainage water does not enter the drainage system without first being filtered or treated to remove sediments. Storm drain inlet protection devices shall be removed at the conclusion of the project. When manufactured storm drain inlet protection devices are not feasible, inlets and catch basins must be cleaned as necessary to prevent sediment from entering the drainage control system.
10. Stabilize Channels and Outlets. All temporary on-site drainage systems shall be designed, constructed, and stabilized to prevent erosion. Stabilization shall be provided at the outlets of all drainage systems that is adequate to prevent erosion of outlets, adjacent stream banks, slopes, and downstream reaches.
11. Control Pollutants. Measures shall be taken to control potential pollutants that include, but are not limited to, the following measures:
 - a. All pollutants, including sediment, waste materials, and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of drainage water and per all applicable disposal laws.
 - b. Containment, cover, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment.

- c. On-site fueling tanks shall include secondary containment.
 - d. Maintenance, fueling, and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into drainage water runoff shall be conducted using spill prevention and control measures.
 - e. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident.
 - f. Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the sanitary sewer or combined sewer system with approval of the Director of SPU. Temporary discharges or connections to the public sanitary and combined sewers shall be made in accordance with Chapter 21.16 (Side Sewer Code).
 - g. Application of fertilizers and pesticides shall be conducted in a manner and at application rates that will not result in loss of chemical to drainage water. Manufacturers' label requirements for application rates and procedures shall be followed.
 - h. BMPs shall be used to prevent or treat contamination of drainage water by pH-modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Construction site operators may be required to adjust the pH of drainage water if necessary to prevent a violation of water quality standards. Construction site operators must obtain written approval from Ecology prior to using chemical treatment other than carbon dioxide (CO₂) or dry ice to adjust pH.
12. Control Dewatering. When dewatering devices discharge on site or to a public drainage system, dewatering devices shall discharge into a sediment trap, sediment pond, gently sloping vegetated area of sufficient length to remove sediment contamination, or other sediment removal BMP. Foundation, vault, and trench dewatering waters must be discharged into a controlled drainage system prior to discharge to a sediment trap or sediment pond. Clean, non-turbid dewatering water, such as well-point ground water, that is discharged to systems tributary to state surface waters must not cause erosion or flooding. Highly turbid or contaminated dewatering water shall be handled separately from drainage water. For any project with an excavation depth of 12 feet or more below the existing grade and for all large projects, dewatering flows must be determined and it must be verified that there is sufficient capacity in the public drainage system and public combined sewer prior to discharging.
 13. Maintain BMPs. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All temporary erosion and sediment controls shall be removed within five days after final site stabilization is achieved or after the temporary controls are no longer needed, whichever is later. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal shall be permanently stabilized.
 14. Inspect BMPs. BMPs shall be periodically inspected. For projects with 5,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity, site inspections shall be conducted by a Certified Erosion and Sediment Control Lead who shall be identified in the Construction Stormwater Control Plan and shall be present on-site or on-call at all times.
 15. Execute Construction Stormwater Control Plan. Construction site operators shall maintain, update, and implement their Construction Stormwater Control Plan. Construction site operators shall modify their Construction Stormwater Control Plan to maintain compliance whenever there is a change in design, construction, operation, or maintenance at the site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.

16. Minimize Open Trenches. In the construction of underground utility lines, where feasible, no more than 150 feet of trench shall be opened at one time, unless soil is replaced within the same working day, and where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches. Trench dewatering devices shall discharge into a sediment trap or sediment pond.
 17. Phase the Project. Development projects shall be phased to the maximum extent feasible in order to minimize the amount of land disturbing activity occurring at the same time and shall take into account seasonal work limitations.
 18. Install Permanent Flow Control and Water Quality Facilities. Development projects required to comply with Section 22.805.080 (Minimum Requirements for Flow Control) or Section 22.805.090 (Minimum Requirements for Treatment) shall install permanent flow control and water quality facilities.
- E. Minimum Requirement to Amend Soils. Prior to completion of the project all new, replaced, and disturbed topsoil shall be amended with organic matter per rules promulgated by the Director to improve onsite management of drainage water flow and water quality.
 - F. Implement Green Stormwater Infrastructure. All Single-family residential projects and all other projects with 7,000 square feet or more of land disturbing activity or 2,000 square feet or more of new plus replaced impervious surface must implement green stormwater infrastructure to infiltrate, disperse, and retain drainage water onsite to the maximum extent feasible without causing flooding, landslide, or erosion impacts.
 - G. Protect Wetlands. All projects discharging into a wetland or its buffer, either directly or indirectly through a drainage system, shall prevent impacts to wetlands that would result in a net loss of functions or values.
 - H. Protect Streams and Creeks. All projects, including projects discharging directly to a stream or creek, or to a drainage system that discharges to a stream or creek, shall maintain the water quality in any affected stream or creek by selecting, designing, installing, and maintaining temporary and permanent controls.
 - I. Protect Shorelines. All projects discharging directly or indirectly through a drainage system into the Shoreline District as defined in Chapter 23.60A shall prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions as defined in WAC 173-26-020 (11).
 - J. Ensure Sufficient Capacity. All large projects, all projects with an excavation depth of 12 feet or more below the existing grade, and all projects with an excavation depth of less than 12 feet located in an area expected to have shallow groundwater depths shall ensure that sufficient capacity exists in the public drainage system and public combined sewer to carry existing and anticipated loads, including any flows from dewatering activities. Capacity analysis shall extend to at least ¼-mile from the discharge point of the site. Sites at which there is insufficient capacity may be required to install a flow control facility or improve the drainage system or public combined sewer to accommodate flow from the site. Unless approved otherwise by the Director as necessary to meet the purposes of this subtitle:
 1. Capacity analysis for discharges to the public drainage system shall be based on peak flows with a 4% annual probability (25-year recurrence interval); and
 2. Capacity analysis for discharges to the public combined sewer shall be based on peak flows with a 20% annual probability (5-year recurrence interval).
 - K. Install Source Control BMPs. Source control BMPs shall be installed for specific pollution-generating activities as specified in the joint SPU/DPD Directors' Rule, "Source Control Technical Requirements Manual," to the extent necessary to prevent prohibited discharges as described in Section 22.802.020, and to prevent contaminants from coming in contact with drainage water. This requirement applies to the pollution-generating activities that are stationary or occur in one primary

location and to the portion of the site being developed. Examples of installed source controls include, but are not limited to, the following:

1. A roof, awning, or cover erected over the pollution-generating activity area;
 2. Ground surface treatment in the pollution-generating activity area to prevent interaction with, or breakdown of, materials used in conjunction with the pollution-generating activity;
 3. Containment of drainage from the pollution-generating activity to a closed sump or tank. Contents of such a sump or tank must be pumped or hauled by a waste handler, or treated prior to discharge to a public drainage system.
 4. Construct a berm or dike to enclose or contain the pollution-generating activities;
 5. Direct drainage from containment area of pollution-generating activity to a closed sump or tank for settling and appropriate disposal, or treat prior to discharging to a public drainage system;
 6. Pave, treat, or cover the containment area of pollution-generating activities with materials that will not interact with or break down in the presence of other materials used in conjunction with the pollution-generating activity; and
 7. Prevent precipitation from flowing or being blown onto containment areas of pollution-generating activities.
- L. Do not obstruct watercourses. Watercourses shall not be obstructed.
- M. Comply with Side Sewer Code.
1. All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage system, shall be considered side sewers and subject to Chapter 21.16 (Side Sewer Code), SPU Director's Rules promulgated under Title 21, and the design and installation specifications and permit requirements of SPU and DPD for side sewer and drainage systems.
 2. Side sewer permits and inspections shall be required for constructing, capping, altering, or repairing privately owned and operated drainage systems as provided for in Chapter 21.16. When the work is ready for inspection, the permittee shall notify the Director of DPD. If the work is not constructed according to the plans approved under this subtitle, Chapter 21.16, the SPU Director's Rules promulgated under Title 21, and SPU and DPD design and installation specifications, then SPU, after consulting with DPD, may issue a stop work order under Chapter 22.808 and require modifications as provided for in this subtitle and Chapter 21.16.

(Ord. [124105](#), § 7, 2013; Ord. 123105, § 3, 2009.)

22.805.030 - Minimum Requirements for Single-Family Residential Projects

All single-family residential projects shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

22.805.040 - Minimum Requirements for Trail and Sidewalk Projects

All trail and sidewalk projects with 2,000 square feet or more of new plus replaced impervious surface or 7,000 square feet or more of land disturbing activity shall implement green stormwater infrastructure to the maximum extent feasible.

(Ord. 123105, § 3, 2009.)

22.805.050 - Minimum Requirements for Parcel-Based Projects

- A. Flow Control. Parcel-based projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.

1. Discharges to Wetlands. Parcel-based projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
 - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
 - b. The project converts $\frac{3}{4}$ -acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
2. Discharges to Listed Creek Basins. Parcel-based projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
 - 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
 - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.2.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Parcel-based projects discharging into a creek not listed in subsection 22.805.050.A.2 shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
 - 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.

- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.050.A.3.a do not apply and the total new plus replaced impervious surface is 2,000 square feet or more.
 - 4. Discharges to Small Lake Basins. Parcel-based projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
 - 5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, parcel-based projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
 - 6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.050.A.1 through subsection 22.805.050.A.5, parcel-based projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 2,000 square feet or more.
- B. Treatment. Parcel-based projects not discharging to the public combined sewer shall comply with the minimum requirements for treatment contained in Section 22.805.090, to the extent allowed by law, if:
- 1. The total new plus replaced pollution-generating impervious surface is 5,000 square feet or more; or
 - 2. The total new plus replaced pollution-generating pervious surfaces is $\frac{3}{4}$ of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site.

(Ord. [124758](#), § 2, 2015; Ord. 123105, § 3, 2009.)

22.805.060 - Minimum Requirements for Roadway Projects

- A. Flow Control. Roadway projects shall meet the minimum requirements for flow control contained in Section 22.805.080, to the extent allowed by law, as prescribed below.
- 1. Discharges to Wetlands. Roadway projects discharging into a wetland shall comply with subsection 22.805.080.B.1 (Wetland Protection Standard) if:
 - a. The total new plus replaced impervious surface is 5,000 square feet or more; or
 - b. The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - c. The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site.
 - 2. Discharges to Listed Creek Basins. Roadway projects discharging into Blue Ridge Creek, Broadview Creek, Discovery Park Creek, Durham Creek, Frink Creek, Golden Gardens Creek, Kiwanis Ravine/Wolfe Creek, Licton Springs Creek, Madrona Park Creek, Mee-Kwa-Mooks Creek, Mount Baker Park Creek, Puget Creek, Riverview Creek, Schmitz Creek, Taylor Creek, or Washington Park Creek shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing impervious coverage is less than 35 percent and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or

- 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
- b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.2.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
3. Discharges to Non-listed Creek Basins. Roadway projects discharging into a creek not listed in subsection 22.805.060.A.2 shall:
 - a. Comply with subsection 22.805.080.B.2 (Pre-developed Forested Standard) if the existing land cover is forested and one or more of the following apply:
 - 1) The project adds 5,000 square feet or more of new impervious surface and the total new plus replaced impervious surface is 10,000 square feet or more; or
 - 2) The project converts $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped areas and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 3) The project converts 2.5 acres or more of native vegetation to pasture and from which there is a surface discharge into a natural or man-made conveyance system from the site; or
 - 4) The project adds 5,000 square feet or more of new impervious surface and, through a combination of effective impervious surfaces and converted pervious surfaces, causes a 0.1 cubic feet per second increase in the 100-year recurrence interval flow frequency as estimated using a continuous model approved by the Director.
 - b. Comply with subsection 22.805.080.B.3 (Pre-developed Pasture Standard) if the criteria in subsection 22.805.060.A.3.a do not apply and the total new plus replaced impervious surface is 10,000 square feet or more.
 4. Discharges to Small Lake Basins. Projects discharging into Bitter Lake, Green Lake, or Haller Lake drainage basins shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
 5. Discharges to Public Combined Sewer. Unless the Director of SPU has exercised its discretion to determine and has determined that the public combined sewer has sufficient capacity to carry existing and anticipated loads, roadway projects discharging into the public combined sewer shall comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
 6. Discharges to a Capacity-constrained System. In addition to applicable minimum requirements for flow control in subsection 22.805.060.A.1 through subsection 22.805.060.A.5, roadway projects discharging into a capacity-constrained system shall also comply with subsection 22.805.080.B.4 (Peak Control Standard) if the total new plus replaced impervious surface is 10,000 square feet or more.
- B. Treatment. Roadway projects not discharging to the public combined sewer shall, to the extent allowed by law:

1. If the site has less than 35 percent existing impervious surface coverage, and the project's total new plus replaced pollution-generating impervious surface is 5,000 square feet or more, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface; and
2. If the site has greater than or equal to 35 percent existing impervious surface coverage and the project's total new pollution-generating impervious surface is 5,000 square feet or more, and
 - a. If the new pollution-generating impervious surface adds 50 percent or more to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; or
 - b. If the new pollution-generating impervious surface adds less than 50 percent to the existing impervious surfaces within the project limits, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new pollution-generating impervious surface. The project limits are defined by the length of the project and the width of the right-of-way; and
3. If the total new plus replaced pollution-generating pervious surfaces is three-quarters of an acre or more and from which there is a surface discharge in a natural or man-made conveyance system from the site, comply with the minimum requirements for treatment contained in Section 22.805.090 for flows from the total new plus replaced pollution-generating pervious surface.

(Ord. [124758](#), § 3, 2015; Ord. 123105, § 3, 2009.)

22.805.070 - Minimum Requirements for Joint Parcel-Based and Roadway Projects

The parcel-based portion of joint projects shall comply with the minimum requirements for parcel-based projects contained in Section 22.805.050. The roadway portion of joint projects shall comply with the minimum requirements roadway projects contained in Section 22.805.060. The boundary of the public right-of-way shall form the boundary between the parcel and roadway portions of the joint project for purposes of determining applicable thresholds.

(Ord. 123105, § 3, 2009.)

22.805.080 - Minimum Requirements for Flow Control

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Flow control facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to receive flows from that portion of the site being developed. Post-development discharge determination must include flows from dewatering activities. All projects shall use green stormwater infrastructure to the maximum extent feasible to meet the minimum requirements. Flow control facilities that receive flows from less than that portion of the site being developed may be installed if the total new plus replaced impervious surface is less than 10,000 square feet, the project site uses only green stormwater infrastructure to meet the requirement, and the green stormwater infrastructure provides substantially equivalent environmental protection as facilities not using green stormwater infrastructure that receive flows from all of the portion of the site being developed.
 1. Wetland Protection Standard. All projects discharging to wetlands or their buffers shall protect the hydrologic conditions, vegetative community, and substrate characteristics of the wetlands and their buffers to protect the functions and values of the affected wetlands. The introduction of sediment, heat and other pollutants and contaminants into wetlands shall be minimized through the selection, design, installation, and maintenance of temporary and permanent controls. Discharges shall maintain existing flows to the extent necessary to protect the functions and values of the wetlands. Prior to authorizing new discharges to a wetland, alternative discharge

locations shall be evaluated and infiltration options outside the wetland shall be maximized unless doing so will adversely impact the functions and values of the affected wetlands. If one or more of the flow control requirements contained in 22.805.080.B.2 through 22.805.080.B.4 also apply to the project, an analysis shall be conducted to ensure that the functions and values of the affected wetland are protected before implementing these flow control requirements.

2. Pre-developed Forested Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed forested condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 50-year recurrence interval flow.
 3. Pre-developed Pasture Standard. The post-development discharge peak flow rates and flow durations must be matched to the pre-developed pasture condition for the range of pre-developed discharge rates from 50% of the 2-year recurrence interval flow up to the 2-year recurrence interval flow.
 4. Peak Flow Control Standard. The post-development peak flow with a 4% annual probability (25-year recurrence flow) shall not exceed 0.4 cubic feet per second per acre. Additionally, the peak flow with a 50% annual probability (2-year recurrence flow) shall not exceed 0.15 cubic feet per second per acre.
- C. Inspection and Maintenance Schedule. Temporary and permanent flow control facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities in continuous working order.

(Ord. 123105, § 3, 2009.)

22.805.090 - Minimum Requirements for Treatment.

- A. Applicability. The requirements of this subsection apply to the extent required in Section 22.805.050 to Section 22.805.070.
- B. Requirements. Water quality treatment facilities shall be installed to the extent allowed by law and maintained per rules promulgated by the Director to treat flows from the pollution generating pervious and impervious surfaces on the site being developed. When stormwater flows from other areas, including non-pollution generating surfaces (e.g., roofs), dewatering activities, and offsite areas, cannot be separated or bypassed, treatment BMPs shall be designed for the entire area draining to the treatment facility. All projects shall use green stormwater infrastructure the maximum extent feasible to meet the minimum requirements.
 1. Runoff Volume. Stormwater treatment facilities shall be designed based on the stormwater runoff volume from the contributing area or a peak flow rate as follows:
 - a. The daily runoff volume at or below which 91 percent of the total runoff volume for the simulation period occurs, as determined using an approved continuous model. It is calculated as follows:
 - 1) Rank the daily runoff volumes from highest to lowest.
 - 2) Sum all the daily volumes and multiply by 0.09.
 - 3) Sequentially sum daily runoff volumes, starting with the highest value, until the total equals 9 percent of the total runoff volume. The last daily value added to the sum is defined as the water quality design volume.
 - b. Different design flow rates are required depending on whether a treatment facility will be located upstream or downstream of a detention facility:
 - 1) For facilities located upstream of detention or when detention is not required, the design flow rate is the flow rate at or below which 91 percent of the total runoff volume for the simulation period is treated, as determined using an approved continuous runoff model.

- 2) For facilities located downstream of detention, the design flow rate is the release rate from the detention facility that has a 50 percent annual probability of occurring in any given year (2-year recurrence interval), as determined using an approved continuous runoff model.
- c. Infiltration facilities designed for water quality treatment must infiltrate 91 percent of the total runoff volume as determined using an approved continuous runoff model. To prevent the onset of anaerobic conditions, an infiltration facility designed for water quality treatment purposes must be designed to drain the water quality design treatment volume (the 91st percentile, 24-hour volume) within 48 hours.
2. Basic Treatment. A basic treatment facility shall be required for all projects. The requirements of subsection 22.805.090 B3 (Oil Control Treatment), subsection 22.805.090 B4 (Phosphorus Treatment), subsection 22.805.090.B.5 (Enhanced Treatment) are in addition to this basic treatment requirement.
3. Oil Control Treatment. An oil control treatment facility shall be required for high-use sites, as defined in this subtitle.
4. Phosphorus Treatment. A phosphorus treatment facility shall be required for projects discharging into nutrient-critical receiving waters.
5. Enhanced Treatment. An enhanced treatment facility for reducing concentrations of dissolved metals shall be required for projects discharging to a fish-bearing stream or lake, and to waters or drainage systems that are tributary to fish-bearing streams, creeks, or lakes, if the project meets one of the following criteria:
 - a. For a parcel-based project, the total of new plus replaced pollution-generating impervious surface is 5,000 square feet or more, and the site is an industrial, commercial, or multi-family project.
 - b. For a roadway project, the project adds 5,000 square feet or more of pollution-generating impervious surface, and the site is either:
 - 1) A fully controlled or a partially controlled limited access highway with Annual Average Daily Traffic counts of 15,000 or more; or
 - 2) Any other road with an Annual Average Daily Traffic count of 7,500 or greater.
6. Discharges to Groundwater. Direct discharge of untreated drainage water from pollution-generating impervious surfaces to ground water is prohibited.
- C. Inspection and Maintenance Schedule. Temporary and permanent treatment facilities shall be inspected and maintained according to rules promulgated by the Director to keep these facilities to be kept in continuous working order.

(Ord. 123105, § 3, 2009.)

Chapter 22.807 - DRAINAGE CONTROL REVIEW AND APPLICATION REQUIREMENTS

22.807.010 - General

- A. No discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, may cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.
- B. Every permit issued to implement this subtitle shall contain a performance standard requiring that no discharge from a site, real property, or drainage facility, directly or indirectly to a public drainage system, private drainage system, or a receiving water within or contiguous to Seattle city limits, cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's municipal stormwater NPDES permit.

(Ord. 123105, § 3, 2009.)

22.807.020 - Drainage control review and application requirements

A. Thresholds for Drainage Control Review. Drainage control review and approval shall be required for any of the following:

1. Standard drainage control review and approval shall be required for the following:
 - a. Any land disturbing activity encompassing an area of seven hundred fifty (750) square feet or more;
 - b. Applications for either a master use permit or building permit that includes the cumulative addition of 750 square feet or more of land disturbing activity and/or new and replaced impervious surface;
 - c. Applications for which a grading permit or approval is required per SMC 22.170;
 - d. Applications for street use permits for the cumulative addition of 750 square feet or more of new and replaced impervious surface and land disturbing activity;
 - e. City public works projects or construction contracts, including contracts for day labor and other public works purchasing agreements, for the cumulative addition of 750 square feet or more of new and replaced impervious surface and/or land disturbing activity to the site, except for projects in a City-owned right-of-way and except for work performed for the operation and maintenance of park lands under the control or jurisdiction of the Department of Parks and Recreation; or
 - f. Permit approvals and contracts that include any new or replaced impervious surface or any land disturbing activity on a site deemed a potentially hazardous location, as specified in Section 22.800.050 (Potentially Hazardous Locations);
 - g. Permit approvals that include any new impervious surface in a Category I peat settlement-prone area delineated pursuant to subsection 25.09.020; or
 - h. Whenever an exception to a requirement set forth in this subtitle or in a rule promulgated under this subtitle is desired, whether or not review and approval would otherwise be required, including but not limited to, alteration of natural drainage patterns or the obstruction of watercourses.
2. Large project drainage control review and approval shall be required for projects that include:
 - a. Five thousand square feet or more of new plus replaced impervious surface;
 - b. One acre or more of land disturbing activity;
 - c. Conversion of $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped area;
 - d. Conversion of 2.5 acres or more of native vegetation to pasture.
3. The City may, by interagency agreement signed by the Directors of SPU and DPD, waive the drainage and erosion control permit and document requirements for property owned by public entities, when discharges for the property do not enter the public drainage system or the public combined sewer system.

B. Submittal Requirements for Drainage Control Review and Approval

1. Information Required for Standard Drainage Control Review. The following information shall be submitted to the Director for all projects for which drainage control review is required.
 - a. Standard Drainage Control Plan. A drainage control plan shall be submitted to the Director. Standard designs for drainage control facilities as set forth in rules promulgated by the Director may be used.
 - b. Construction Stormwater Control Plan. A construction stormwater control plan demonstrating controls sufficient to determine compliance with subsection 22.805.020.D

shall be submitted. The Director may approve a checklist in place of a plan, pursuant to rules promulgated by the Director.

- c. Memorandum of Drainage Control. The owner(s) of the site shall sign a "memorandum of drainage control" that has been prepared by the Director of SPU. Completion of the memorandum shall be a condition precedent to issuance of any permit or approval for which a drainage control plan is required. The applicant shall file the memorandum of drainage control with the King County Recorder's Office so as to become part of the King County real property records. The applicant shall give the Director of SPU proof of filing of the memorandum. The memorandum shall not be required when the drainage control facility will be owned and operated by the City. A memorandum of drainage control shall include:
 - 1) The legal description of the site;
 - 2) A summary of the terms of the drainage control plan, including any known limitations of the drainage control facilities, and an agreement by the owners to implement those terms;
 - 3) An agreement that the owner(s) shall inform future purchasers and other successors and assignees of the existence of the drainage control facilities and other elements of the drainage control plan, the limitations of the drainage control facilities, and of the requirements for continued inspection and maintenance of the drainage control facilities;
 - 4) The side sewer permit number and the date and name of the permit or approval for which the drainage control plan is required;
 - 5) Permission for the City to enter the property for inspection, monitoring, correction, and abatement purposes;
 - 6) An acknowledgment by the owner(s) that the City is not responsible for the adequacy or performance of the drainage control plan, and a waiver of any and all claims against the City for any harm, loss, or damage related to the plan, or to drainage or erosion on the property, except for claims arising from the City's sole negligence; and
 - 7) The owner(s)' signatures acknowledged by a notary public.
2. Information Required for Large Project Drainage Control Review. In addition to the submittal requirements for standard drainage control review, the following information is required for projects that include: one acre or more of land disturbing activities; 5,000 square feet or more of new and replaced impervious surface; conversion of $\frac{3}{4}$ acres or more of native vegetation to lawn or landscaped area; or conversion of 2.5 acres or more of native vegetation to pasture.
 - a. Comprehensive Drainage Control Plan. A comprehensive drainage control plan, in lieu of a standard drainage control plan, to comply with the requirements of this subtitle and rules promulgated hereunder and to accomplish the purposes of this subtitle shall be submitted with the permit application. It shall be prepared by a licensed civil engineer in accordance with standards adopted by the Director of DPD.
 - b. Inspection and Maintenance Schedule. A schedule shall be submitted that provides for inspection of temporary and permanent flow control facilities, treatment facilities, and source controls to comply with Section 22.805.080 (Minimum Requirements for Flow Control) and Section 22.805.090 (Minimum Requirements for Treatment).
 - c. Construction Stormwater Control Plan. A construction stormwater control plan prepared in accordance with subsection 22.805.020.D shall be submitted.
3. Applications for drainage control review and approval shall be prepared and submitted in accordance with provisions of this subsection, with Chapter 21.16 (Side Sewer Code) and with associated rules and regulations adopted jointly by the Directors of DPD and SPU.

4. The Director of DPD may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this subtitle and other laws and regulations, including but not limited to Chapter 25.09 (Regulations for Environmentally Critical Areas) and Chapter 23.60A. The Director of DPD may also require appropriate information about adjoining properties that may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.
 5. Where an applicant simultaneously applies for more than one of the permits listed in subsection 22.807.020.A for the same property, the application shall comply with the requirements for the permit that is the most detailed and complete.
- C. Authority to Review. The Director may approve those plans that comply with the provisions of this subtitle and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this subtitle. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. The Director may review and inspect activities subject to this subtitle and may require compliance regardless of whether review or approval is specifically required by this subsection. The Director may disapprove plans that do not comply with the provisions of this subtitle and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

(Ord. [124105](#), § 8, 2013; Ord. 123105, § 3, 2009.)

22.807.090 - Maintenance and Inspection

- A. Responsibility for Maintenance and Inspection. The owner and other responsible party shall maintain drainage control facilities, source controls, and other facilities required by this subtitle and by rules adopted hereunder to keep these facilities in continuous working order. The owner and other responsible party shall inspect permanent drainage control facilities temporary drainage control facilities, and other temporary best management practices or facilities on a schedule consistent with this subtitle and sufficient for the facilities to function at design capacity. The Director may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to ensure functioning at design capacity. The owner(s) shall inform future purchasers and other successors and assignees to the property of the existence of the drainage control facilities and the elements of the drainage control plan, the limitations of the drainage control facilities, and the requirements for continued inspection and maintenance of the drainage control facilities.
- B. Inspection by City. The Director of SPU may establish inspection programs to evaluate and, when required, enforce compliance with the requirements of this subtitle and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the City's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices.
- C. Entry for Inspection and Abatement Purposes.
 1. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage system, sanitary sewer or combined sewer, the property owner shall grant, per subsection 22.807.020.B.1.c (Memorandum of Drainage Control), the City the right to enter the

property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant subsection 22.807.090.B, and to enter the property when the City has a reasonable basis to believe that a violation of this subtitle is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this subtitle.

2. Existing Real Property and Discharges. Owners of property with existing discharges or land uses subject to this subtitle who are not installing a new drainage control facility or making a new connection between private property and a public drainage system, sanitary sewer or combined sewer, shall have the option to execute a permission form for the purposes described above when provided with the form by the Director of SPU.

(Ord. 123105, § 3, 2009.)

Chapter 22.808 - STORMWATER CODE ENFORCEMENT

22.808.010 - Violations

A. Civil Violations.

1. The following are civil violations of this subtitle, subject to a maximum civil penalty of up to \$5,000 per day for each violation.
 - a. General. It is a violation to not comply with any requirement of, or to act in a manner prohibited by, this subtitle, or a permit, approval, rule, manual, order, or Notice of Violation issued pursuant to this subtitle;
 - b. Aiding and Abetting. It is a violation to aid, abet, counsel, encourage, commend, incite, induce, hire or otherwise procure another person to violate this subtitle;
 - c. Alteration of Existing Drainage. It is a violation to alter existing drainage patterns which serve a tributary area of more than one acre without authorization or approval by the Director;
 - d. Obstruction of Watercourse. It is a violation to obstruct a watercourse without authorization or approval by the Director;
 - e. Dangerous Condition. It is a violation to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, drainage water, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property;
 - f. Interference. It is a violation for any person to interfere with or impede the correction of any violation, or compliance with any Notice of Violation, emergency order, stop work order, or the abatement of any nuisance;
 - g. Piecemeal of Projects. It is a violation for any person to knowingly divide a large project into a set of smaller projects specifically for the purpose of avoiding minimum requirements;
 - h. Altering a Posted Order. It is a violation for any person to remove, obscure, or mutilate any posted order of the Director, including a stop work or emergency order; and
 - i. Continuing Work. It is a violation for any work to be done after service or posting of a stop work order, except work necessary to perform the required corrective action, until authorization is given by the Director.

B. Criminal Violations.

1. The following are criminal violations, punishable upon conviction by a fine of not more than \$5,000 per violation or imprisonment for each violation for not more than 360 days, or both such fine and imprisonment:

- a. Failing to comply with a Notice of Violation or Director's order issued pursuant to this subtitle;
- b. Failing to comply with a court order;
- c. Tampering with or vandalizing any part of a drainage control facility or other best management practice, a public or private drainage system, monitoring or sampling equipment or records, or notices posted pursuant to this subtitle; and
- d. Anyone violating this subtitle who has had a judgment, final Director's order, or Director's review decision against them for a prior violation of this subtitle in the preceding five years.

(Ord. 123105, § 4, 2009.)

22.808.020 - Liability and Defenses of Responsible Parties

- A. Who Must Comply. It is the specific intent of this subtitle to place the obligation of complying with its requirements upon the responsible parties, as defined in subsection 22.801.190. The City and its agencies are intended to have the same obligation for compliance when the City is a responsible party. No provision of this subtitle is intended to impose any other duty upon the City or any of its officers or employees.
 1. Joint and Several Liability. Each responsible party is jointly and severally liable for a violation of this subtitle. The Director may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party.
 2. Allocation of Damages. In the event enforcement action is taken against more than one responsible party, recoverable damages, costs, and expenses may be allocated among the responsible parties by the court based upon the extent to which each responsible party's acts or omissions caused the violation. If this factor cannot be determined the court may consider:
 - a. Awareness of the violation;
 - b. Ability to correct the violation;
 - c. Ability to pay the damages, costs, and expenses;
 - d. Cooperation with government agencies;
 - e. Degree to which any impact or threatened impact on water or sediment quality, human health, the environment, or public or private property is related to acts or omissions by each responsible party;
 - f. Degree to which the responsible parties made good-faith efforts to avoid a violation or to mitigate its consequences; and
 - g. Other equitable factors.
- B. Defenses. A responsible party shall not be liable under this subtitle when the responsible party proves, by a preponderance of the evidence, one of the following:
 1. The violation was caused solely by an act of God;
 2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;
 3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. But, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant; or
 4. The responsible party implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls, and best management practices identified in rules promulgated by the Director or in manuals

published by the State Department of Ecology, or as otherwise identified and required of the responsible party by the Director in writing.

(Ord. 123105, § 4, 2009.)

22.808.025 - Right of Entry for Enforcement

With the consent of the owner or occupant of a building, premises, or property, or pursuant to a lawfully issued warrant, the Director may enter a building, premises, or property at any reasonable time to perform the duties imposed by this code.

(Ord. 123105, § 4, 2009.)

22.808.030 - Enforcement Actions

A. Investigation. The Director may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this subtitle.

B. Notice of Violation.

1. Issuance. The Director is authorized to issue a Notice of Violation to a responsible party, whenever the Director determines that a violation of this subtitle has occurred or is occurring. The Notice of Violation shall be considered an order of the Director.
2. Contents.
 - a. The Notice of Violation shall include the following information:
 - 1) A description of the violation and the action necessary to correct it;
 - 2) The date of the notice; and
 - 3) A deadline by which the action necessary to correct the violation must be completed.
 - b. A Notice of Violation may be amended at any time to correct clerical errors, add citations of authority, or modify required corrective action.
3. Service. The Director shall serve the notice upon a responsible party either by personal service, by first class mail, or by certified mail return receipt requested, to the party's last known address. If the address of the responsible party cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. Alternatively, if the whereabouts of the responsible party is unknown and cannot be ascertained in the exercise of reasonable diligence, and the Director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the City official newspaper.
4. Nothing in this subtitle shall be deemed to obligate or require the Director to issue a Notice of Violation or order prior to the initiation of enforcement action by the City Attorney's Office pursuant to subsection 22.808.030.E.

C. Stop Work and Emergency Orders.

1. Stop Work Order. The Director may order work on a site stopped when he or she determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this subtitle or rules promulgated hereunder or to correct a violation of a permit or approval granted under this subtitle.
 - a. The stop work notice shall contain the following information:
 - 1) A description of the violation; and
 - 2) An order that the work be stopped until corrective action has been completed and approved by the Director.

- b. The stop work order shall be personally served on the responsible party or posted conspicuously on the premises.
2. Emergency Order.
- a. The Director may order a responsible party to take emergency corrective action and set a schedule for compliance and/or may require immediate compliance with an emergency order to correct when the Director determines that it is necessary to do so in order to obtain immediate compliance with or to correct a violation of any provision of this subtitle, or to correct a violation of a permit or approval granted under this subtitle.
 - b. An emergency order shall be personally served on the responsible party or posted conspicuously on the premises.
 - c. The Director is authorized to enter any property to investigate and correct a condition associated with grading, drainage, erosion control, drainage water, or a drainage control facility when it reasonably appears that the condition creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The Director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property, or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained. The cost of such emergency corrective action shall be collected as set forth in subsection 22.808.060.
3. Director's Review of Stop Work and Emergency Order. A stop work order or emergency order shall be final and not subject to a Director's review.
- D. Review by Director.
- 1. A Notice of Violation, Director's order, or invoice issued pursuant to this subtitle shall be final and not subject to further appeal unless an aggrieved party requests in writing a review by the Director within ten days after service of the Notice of Violation, order or invoice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.
 - 2. Following receipt of a request for review, the Director shall notify the requesting party, any persons served the Notice of Violation, order or invoice, and any person who has requested notice of the review, that the request for review has been received by the Director. Additional information for consideration as part of the review shall be submitted to the Director no later than 15 days after the written request for a review is mailed.
 - 3. The Director will review the basis for issuance of the Notice of Violation, order, or invoice and all information received by the deadline for submission of additional information for consideration as part of the review. The Director may request clarification of information received and a site visit. After the review is completed, the Director may:
 - a. Sustain the Notice of Violation, order, or invoice;
 - b. Withdraw the Notice of Violation, order or invoice;
 - c. Continue the review to a date certain for receipt of additional information; or
 - d. Modify or amend the Notice of Violation, order, or invoice.
 - 4. The Director's decision shall become final and is not subject to further administrative appeal.
- E. Referral to City Attorney for Enforcement. If a responsible party fails to correct a violation or pay a penalty as required by a Notice of Violation, or fails to comply with a Director's order, the Director shall refer the matter to the City Attorney's Office for civil or criminal enforcement action. Civil actions to enforce a violation of this subtitle shall be exclusively in Municipal Court.
- F. Appeal to Superior Court. Because civil actions to enforce Title 22 are brought exclusively in Municipal Court, notices of violation, orders, and all other actions made under this chapter are not subject to judicial review under chapter 36.70C RCW. Instead, final decisions of the Municipal Court

on enforcement actions authorized by this chapter may be appealed under the Rules of Appeals of Decisions of Courts of Limited Jurisdiction.

- G. Filing of Notice or Order. A Notice of Violation, voluntary compliance agreement or an order issued by the Director or court, may be filed with the King County Recorder's Office.
- H. Change of Ownership. When a Notice of Violation, voluntary compliance agreement, or an order issued by the Director or court has been filed with the King County Recorder's Office, a Notice of Violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no Notice of Violation or order is served upon the new owner, the Director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

(Ord. 123105, § 4, 2009.)

22.808.040 - Voluntary Compliance Agreement

- A. Initiation. Either a responsible party or the Director may initiate negotiations for a voluntary compliance agreement at any time. Neither has any obligation to enter into any voluntary compliance agreement.
- B. Contents. A voluntary compliance agreement shall identify actions to be taken by the responsible party that will correct past or existing violations of this subtitle. The agreement may also identify actions to mitigate the impacts of violations. The agreement shall contain a schedule for completion of the corrective actions and any mitigating actions. The agreement shall contain a provision allowing the Director to inspect the premises to determine compliance with the agreement. The agreement shall provide that the responsible party agrees the City may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the City incurs in performing the actions, as set forth in Section 22.808.060.
- C. Effect of Agreement.
 - 1. A voluntary compliance agreement is a binding contract between the party executing it and the City. It is not enforceable by any other party. By entering into a voluntary compliance agreement, a responsible party waives the right to Director's Review of the Notice of Violation or order.
 - 2. Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred, or as otherwise provided for in a Notice of Violation or Director's order.
- D. Modification. The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and either Director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications.

(Ord. 123105, § 4, 2009.)

22.808.050 - Penalties and Damages

- A. Assessment of Penalties by the Director. The Director, after considering all available information, may assess a penalty for each violation of this subtitle based upon the Schedule of Civil Penalties.
- B. Schedule of Civil Penalties. The Director shall determine penalties as follows:
 - 1. Basic Penalty.

- a. **Maximum Penalty.** A violation of this subtitle is subject to a maximum civil penalty of up to \$5,000. Each day or portion thereof during which a violation of this subtitle exists is a separate violation of this subtitle.
- b. **Commencement Date.** The penalty shall commence on the date of the violation, unless otherwise provided for in a Notice of Violation or Director's order.
- c. **Assessment Matrix.** The penalty shall be assessed using a matrix of criteria and scored as defined in rules promulgated by the Director. The total score will equate with a penalty up to a maximum of \$5000 for each violation. The penalty shall be rated for severity by using the criteria listed below and by answering "No", "Possibly", "Probably", or "Definitely":
 - 1) Does the violation pose a public health risk;
 - 2) Does the violation cause environmental damage or adversely impact infrastructure;
 - 3) Was the responsible party willful or knowing of the violation;
 - 4) Was the responsible party unresponsive in correcting the violation;
 - 5) Was there improper operation or maintenance;
 - 6) Was there a failure to obtain necessary permits or approval;
 - 7) Does the violation provide economic benefit for non-compliance; and
 - 8) Was the violation a repeat violation.
- C. **Penalty for Significant Violation.** For violations causing significant harm to public health, safety, welfare, the environment, or private or public property, the Director may, as an alternative to the Basic Penalty, refer the matter to the City Attorney's Office for enforcement and request the City Attorney seek a penalty equivalent to the economic benefit the responsible party derived from the violation. Significant harm is damage or injury which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of the Basic Penalty and costs, expenses, or damages under this subtitle. Economic benefit may be determined by savings in costs realized by the responsible party, value received by the responsible party, increased income to the responsible party, increase in market value of property, or any other method reasonable under the circumstances.
- D. **Damages.** Whoever violates any of the provisions of this subtitle shall, in addition to any penalties provided for such violation, be liable for any: investigation cost, cost to correct or any other cost expense; loss or damage incurred by the City; plus a charge of 15% for administrative costs. This subtitle does not establish a cause of action that may be asserted by any party other than the City. Penalties, damages, costs and expenses may be recovered only by the City.
- E. **Effect of Payment of Penalties.** The responsible party named in a Notice of Violation or order is not relieved of the duty to correct the violation by paying civil penalties.

(Ord. 123105, § 4, 2009.)

22.808.060 - Collection of Costs and Penalties

- A. **Invoice and Demand for Payment of Investigation and Correction Costs.** The Director may issue an invoice and demand for payment of the City's costs and expenses when the Director has investigated or corrected a violation of this subtitle. The invoice shall include:
 - 1. The amount of the City's investigation and correction costs, which include, but are not limited to:
 - a. Billed cost including labor, administration, overhead, overtime, profit, taxes, and other related costs for a hired contractor to investigate and/or perform the abatement work;
 - b. Labor, administration, overhead, overtime, and other related costs for the City staff and crews to investigate and/or perform the abatement work;
 - c. Administrative costs to set up contracts and coordinate work;

- d. Time spent communicating with the responsible party, any other enforcing agencies, and the affected community;
 - e. Inspections for compliance with the Code, documentation of costs, and invoicing the responsible party;
 - f. Cost of equipment, materials, and supplies, including all related expenses for purchasing, renting, and leasing;
 - g. Laboratory costs and analytical expenses;
 - h. Cost of mobilization, disposal of materials, and cleanup, and
 - i. Any associated permit fees;
- 2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
 - 3. Notice that the responsible party may request a Director's review pursuant to subsection 22.808.030.D;
 - 4. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C; and
 - 5. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- B. Invoice and Demand for Payment of Civil Penalties. The Director may issue an invoice and demand for payment of civil penalties when the responsible party has failed to pay a penalty by the deadline in a Notice of Violation or order and has failed to request a Director's review or file an appeal within the required time periods established in subsection 22.808.030.D. The invoice shall include:
- 1. The amount of the penalty;
 - 2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the King County Assessor or, where available, the property's street address;
 - 3. Notice that if the amount due is not paid within 30 days, the unpaid amount may be collected in any of the manners identified in subsection 22.808.060.C and
 - 4. Notice that interest shall accrue on the unpaid balance if not paid within 30 days after the invoice date.
- C. Collection Following a Judicial Review. If a court has issued an order or judgment imposing penalties, costs, damages, or expenses for a violation of this subtitle, and the court's order or judgment is not appealed within 30 days, the Director may:
- 1. Refer the matter to the City Attorney to initiate appropriate enforcement action;
 - 2. Refer, after consultation with the City Attorney, the matter to a collection agency; or
 - 3. Add a surcharge in the amount owed under the order to the bill for drainage and wastewater services to the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law or Section 21.33.110.

(Ord. 123105, § 4, 2009.)

22.808.070 - Public Nuisance

- A. Abatement Required. A public nuisance affecting drainage water, drainage, erosion control, grading and other public nuisances set forth in this subsection are violations of this subtitle. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

- B. **Dysfunctional Facility or Practice.** Any private drainage control facility or best management practice not installed or maintained as required by this subtitle, or otherwise found to be in a state of dysfunction creating, a threat to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- C. **Obstruction of Watercourse.** Obstruction of a watercourse without authorization by the Director, and obstruction in such a manner as to increase the risk of flooding or erosion should a storm occur, is a public nuisance.
- D. **Dangerous Conditions.** Any condition relating to grading, drainage water, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a storm, to the public health, safety or welfare, the environment, or public or private property is a public nuisance.
- E. **Abatement by the City.** The Director is authorized, but not required to investigate a condition that the Director suspects of being a public nuisance under this subtitle, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the Director may summarily and without prior notice abate the condition. The Director shall give notice of the abatement to the responsible party as soon as reasonably possible after the abatement.
- F. **Collection of Abatement Costs.** The costs of abatement may be collected from the responsible party, including, a reasonable charge for attorney time, and a 15% surcharge for administrative expenses as set forth in subsection 22.808.050.D. Abatement costs and other damages, expenses and penalties collected by the City shall go into an abatement account for the department collecting the moneys. The money in the abatement account shall be used for abatements, investigations, and corrections of violations performed by the City. When the account is insufficient the Director may use other available funds.

(Ord. 123105, § 4, 2009.)

22.808.080 - Additional Relief

In addition to any remedy provided in this subtitle, the Director may seek any other legal or equitable remedy to enjoin any acts or practice or abate any condition that or will constitute a violation of this subtitle or a public nuisance.

(Ord. 123105, § 4, 2009.)

22.808.090 - Suspension or Revocation

Approvals or permits granted on the basis of inaccurate or misleading information may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this subsection, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or revoked, the Director may require the applicant take corrective action to bring the project into compliance with this subtitle by a deadline set by the Director, or may take other enforcement action.

(Ord. 123105, § 4, 2009.)

22.808.100 - Fees

Fees for grading permits, drainage control plan review and approvals shall be as identified in the Fee Subtitle, Subtitle IX of Title 22, Seattle Municipal Code. Fees for record-keeping or other activities pursuant to this subtitle shall, unless otherwise provided for in this subtitle, be prescribed by ordinance.

(Ord. 123105, § 4, 2009.)

22.808.110 - Financial Assurance and Covenants

As a condition precedent to issuance of any permit or approval provided for in this subtitle, the Director may require an applicant for a permit or approval to submit financial assurances as provided in this subsection.

A. Insurance.

1. The Director may require the property owners or contractor carry liability and property damage insurance naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks.
2. The Director may also require the property owner maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the City as an additional insured. The amount, as determined by the Director, shall be commensurate with the risks. It shall cover a period of not more than ten years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the Director before issuing a certificate of occupancy or finalizing a permit for any single family dwelling or duplex.
3. The insurance policy shall provide that the City will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the Director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond.

- a. The Director may require that the property owners or contractor deliver to the Director for filing in the Office of the City Clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the Director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in The State of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be left in a safe condition. The bond shall also be conditioned that the site and nearby, adjacent or surrounding areas will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.
- b. The bond will be exonerated one year after a determination by the Director that the requirements of the permit or approval have been met. For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owners may elect to file a cash deposit or instrument of credit with the Director in an amount equal to that which would be required in the surety bond and in a form approved by the Director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The Director may require a covenant between the property owners and the City. The covenant shall be signed by the owners of the site and notarized prior to issuing any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the City. The covenant shall include:

- a. A legal description of the property;
 - b. A description of the property condition making this subsection applicable;
 - c. A statement that the owners of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;
 - d. The application date, type, and number of the permit or approval for which the covenant is required; and
 - e. A statement waiving the right of the owners, the owners' heirs, successors and assigns, to assert any claim against the City by reason of or arising out of issuance of the permit or approval by the City for the development on the property, except only for such losses that may directly result from the sole negligence of the City.
2. The covenant shall be filed by the Director with the King County Recorder's Office, at the expense of the owners, so as to become part of the King County real property records.

(Ord. 123105, § 4, 2009.)

22.808.140 - Severability

The provisions of this subtitle are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this subtitle, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this subtitle or the validity of its application to other persons or circumstances.

(Ord. 116425 § 2(part), 1992.)



ACTION CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
From: Community Environmental Advisory Commission (CEAC)
Submitted by: Michael Goldhaber, Chair, CEAC
Subject: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties

RECOMMENDATION

Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following:

- Comply beyond the State and Alameda County current requirements;
- Encourage the treating and detaining of runoff up to approximately the 85th percentile of water deposited in a 24-hour period;
- Establish site design measures that include minimizing impervious surfaces;
- Require homeowners to include flooding offsets in preparing properties for sale;
- Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff;
- Require abatements for newly paved areas over a specific size;
- Make exceptions for properties that offer significantly below-market rent or sale prices;
- Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections.
- Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.

POLICY COMMITTEE RECOMMENDATION

On May 2, 2019, the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to send the amended version of the Mayor's supplemental item to the Community Environmental Advisory Commission's report to the full Council with a Positive Recommendation. Vote: All Ayes.

SUMMARY

Current climate-change predictions for California suggest severe droughts combined

with extreme storms, causing dangerous erosion, flooding, and increased Bay pollution. According to Berkeley's watershed management plan, in a 10-year storm or greater, both the Codornices and Potter Creek watersheds have a propensity to flood, and climate change increases the probability and severity of storms. BART and the city currently run pumps to mitigate the flow underground.

In order to prevent flooding, there is an urgent need for the City to offset impermeable surfaces and detain stormwater. Impermeable surfaces generate faster stormwater flows of more intensity (volume per duration), therefore creating greater flooding threats. In addition, stormwater flows carries trash, pathogens, pesticides, fertilizer, metals, motor vehicle related contaminants to the creeks and the Bay. Stormwater detention can help mitigate this pollution.

On June 14, 2018, the Commission voted to adopt the Mandatory and Recommended Green Storm Water Infrastructure in New and Existing Redevelopments and send them to council. [Motioned/Seconded: Hetzel/Kapla. Carried: Unanimously (Liz Varnhagen, Fred Hetzel, Robb Kapla, Michael Goldhaber (chair), Ben Gould, and Kristina Lim). Absent: Carla Ticconi, Holly Williams]

FISCAL IMPACTS OF RECOMMENDATION

If inspection fees are adequate, there should be no net costs to the City, except for staff time to firm up the plan. With widespread implementation of features that promote stormwater detention, treatment, and infiltration, overall flood damage within the City should decrease, which in turn could result in increased property values and higher tax revenues.

CURRENT SITUATION AND ITS EFFECTS

This report responds to Referral #2016-21, which originally appeared on the agenda of the September 15, 2015 Council meeting and was sponsored by then-Councilmember Arreguin.

The State stormwater discharge permit requires the City of Berkeley to use Low Impact Design (LID) and Green Infrastructure (GI) to comply with stormwater management requirements, which is in keeping with Berkeley's goals for promoting sustainable development.

Currently, the City does seem to be enforcing rules requiring mitigation when 2,500 square feet or more of new impermeable surface is added to a property. Required mitigation typically takes up an area of approximately 4% of the total new impermeable area and is therefore a very fair and feasible requirement. However, smaller areas, especially pavement, ought to require similar mitigation as they increase runoff.

At present, permits are not required for adding new pavement unless these impinge on the street-property boundary. As a result, the City and its inspectors are not aware of

most small projects that add new pavement. Requiring permits for all (most) (re)paving over permeable surfaces will help ensure that the City is aware, can ask for appropriate mitigation, or can recommend permeable paving that will reduce runoff. Requiring permits for paving beyond a very small threshold area is an essential part of preventing the cumulative effects of increased stormwater runoff.

All these requirements can be met by using on- or off-site strategies to manage the quantity and quality of stormwater runoff. The approach integrates stormwater into the urban environment to achieve multiple goals. It reduces stormwater pollution and restores natural hydrologic function to the City's watersheds. It can also provide wildlife habitat and contribute to the gradual creation of a greener city.

A crucial aspect of identifying and implementing effective mitigation, also mandated by law, is within a comprehensive Watershed Management Plan, which we understand the City is committed to complete. This should include both water from private properties, the topic of this CEAC message, and the City's contributions from public properties including streets and parks.

BACKGROUND

A recent UCLA study ["Increasing precipitation volatility in twenty-first-century California", Daniel L. Swain, Baird Langenbrunner, J. David Neelin & Alex Hall, *Nature Climate Change* **8**, 427–433 (2018)] ... "found that over the next 40 years, the state will be 300 to 400 percent more likely to have a prolonged storm sequence as severe as the one that caused a now-legendary California flood more than 150 years ago.

"The Great Flood of 1862 filled valleys with feet of water and washed gold rush miners and their equipment out of the mountains. In the Central Valley, floodwaters stretched up to 300 miles long and as wide as 60 miles across." [*UCLA Newsroom*]

When there are heavy storms in Berkeley such as 10-year or greater, stormwater that is not absorbed runs downhill towards the Bay and collects in low elevation areas. As the movement of stormwater slows, it can result in flooding if drainage channels become overwhelmed, unless there are means of capturing the water for irrigation or other beneficial uses. It can also pick up pollutants that then will be carried into streams and eventually the Bay.

Urban development has caused two important changes in the nature and volume of stormwater. First, natural, vegetated permeable ground cover is converted to impermeable surfaces such as paved highways, streets, rooftops, and parking lots. Vegetated soil can both absorb rainwater and remove pollutants, providing a very effective natural purification process. This benefit is lost when pavement, or buildings are constructed. With the construction of more impermeable surface, stormwater runoff increases in intensity with higher flows of shorter duration, increasing the

chance of overwhelming drainage channels and flooding in flood prone areas.

In addition, urban development creates pollution sources as urban population density increases. The contamination of urban stormwater comes from many and various sources including pathogens from both pet and human waste, solid waste from litter and trash, pesticides from both residential and commercial uses, fertilizers from landscaping, and heavy metals and other contaminants from the operation of motor vehicles. All these pollutants and others can be deposited on paved surfaces, rooftops, and other impervious surfaces as fine airborne particles, thus yielding stormwater - runoff pollution that is unrelated to the activity associated with a given project site.

As a result of these two changes, stormwater discharges into the Bay from the developed urban area is significantly greater in volume, velocity and contaminants than the same area experienced prior to its conversion into an urban environment.

Additionally, increased flows and volumes of stormwater discharged from new impermeable surfaces resulting from new development and redevelopment can physically modify the natural aquatic ecosystems in our creeks, through bank erosion and deepening and widening of channels, elevating turbidity and sediment loads to the Bay.

Pollutants of concern in stormwater include heavy metals, excessive sediment production from erosion, petroleum hydrocarbons from sources such as motor vehicles, microbial pathogens of domestic sewage origin from illicit or accidental discharges, pesticides and herbicides, nutrients (from fertilizers), and trash.

Effective mitigation to offset the unpredictable and sometimes intense behavior of urban stormwater becomes increasingly necessary. Other cities, including San Francisco, Emeryville, and the North Bay Counties (Marin, Sonoma, Napa and Solano), as well as the Alameda County clean water program, of which the City of Berkeley is a member, have put together comprehensive requirements that are available as guides. Berkeley, given our pioneering status in green issues, should wish to be even more forward looking and develop our own comprehensive green infrastructure program. In addition, Berkeley should continue to work on a comprehensive water management plan, seeking input and cooperation from EBMUD, surrounding cities, UCB, LBNL and BUSD.

Berkeley's program should include requirements for construction projects to implement appropriate source control, site design, and stormwater treatment measures to address water quality, and to prevent increased intensity stormwater runoff volumes.

ENVIRONMENTAL SUSTAINABILITY

The proposed recommendation will improve the sustainability of new construction and redevelopment, increase the City's resiliency to climate change, 10-year storms, and flooding, while helping mitigate pollution from stormwater runoff.

RATIONALE FOR RECOMMENDATION

Berkeley's drought-storm cycle is likely to get worse as Climate change has more effecting the coming years and decades. Therefore, more efforts to control flooding and prevent pollution are needed. In addition, unless mitigated, increased paving on private property increases the stormwater runoff and related problems.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered City Council Referral #2016-21 from September 15, 2015 to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.

CITY MANAGER

See companion report.

CONTACT PERSON

Viviana Garcia, Secretary, Toxics, (510) 981 7460



Office of the Mayor

ACTION CALENDAR
May 28, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Kesarwani, Wengraf, and Bartlett

Subject: Development of the West Berkeley Service Center, 1900 6th Street, for Senior Housing with Supportive Services

RECOMMENDATION

State the intent of the City Council that the West Berkeley Service Center property, 1900 6th Street, will be used for senior housing with on-site services consistent with Age Friendly Berkeley Plan recommendations, maximizing the number of affordable units.

The Berkeley Way Project, 2012 Berkeley Way, is the City's top affordable housing priority. The West Berkeley Service Center, as a City-owned property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to initiate the process of developing senior housing at the West Berkeley Service Center:

- a. Refer to the City Manager to conduct a basic analysis of the development potential for the West Berkeley Service Center site including build-out scenarios for a three-, four-, five-, six- and seven-story building at the site, using Mixed-Use Residential (MUR), West Berkeley Commercial (C-W), and Multiple-Family Residential (R-3) Development Standards. Each buildout scenario should reflect base project conditions, and conditions if a Density Bonus is granted including waivers and concessions, or if Use Permits are used to modify standards. The scenarios should also incorporate space on the ground floor for resident amenities, supportive social services, and community space. The results of the development scenarios will be presented to the City Council and Planning Commission.
- b. Refer to the Planning Commission to consider any modifications to the underlying zoning at the West Berkeley Service Center site to maximize the production of senior housing, including consideration of an overlay zone.
- c. Based on recommendations from the Health, Housing and Community Services Department, the Housing Advisory Commission, Measure O Bond Oversight Committee, Commission on Aging, and taking into consideration requirements and restrictions associated with potential funding sources, create

recommendations to Council regarding levels of affordability, unit sizes, on-site services and other features to be included in a senior housing and social services development, including senior living housing types. These recommendations will be presented to the City Council to inform the issuance of an RFP.

POLICY COMMITTEE RECOMMENDATION

On April 25, 2019, the Land Use, Housing and Economic Development Committee adopted the following action: M/S/C (Droste/Hahn) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND

The population of Berkeley residents 65 years and older has steadily increased in recent years. In 2017, older adults were estimated to make up 13.5% of our community – an increase of approximately 2% from the 2010 Census (11.7%) and approximately 3% from the 2000 Census (10.2%). Recent projections from multiple sources, including the Alameda County Plan for Older Adults, show that by 2030 one in five residents (20.5%) in Berkeley will be over 65, nearly doubling the current population. Advances in medicine and the spike of ‘baby boomers’ born after World War II have resulted in a late-twentieth century demographic phenomenon, popularly referred to as the ‘silver tsunami’, that cities across the country are similarly anticipating.

Based on surveys completed by AARP (2012) and the Age Friendly Berkeley Initiative (2018) we know that older adults increasingly prefer to age in their communities, which tells us we need a continuum of housing options for this growing population, in tandem with services. We also know that housing affordability and availability, along with transit access, are major areas of concern, especially for low-income respondents. In 2014, 23% of Berkeley residents 60 years and older were living under 200% of the Federal Poverty Level, according to the American Community Survey. As of July 2018, there were 738 dedicated affordable units for seniors, with a waitlist of 6-8 years. Amidst the current affordability crisis, low- and fixed-income seniors are struggling just to stay housed, let alone receive the care they require.

In an effort to respond to current and future needs, the Berkeley Age Friendly Continuum was formed out of conversations between residents and those providing and working in aging services across the city. The goal of this work is to strengthen Berkeley as a place to age, and ensure implementation of an integrated, person-centered, replicable, continuum of supports and services for older adults and those with disabilities as they navigate transitions of aging. This effort is now supported by the City of Berkeley, Kaiser, Sutter and AARP, and is heavily informed by the Age Friendly Cities and Communities effort led by the World Health Organization. Their three-year Action Plan will soon be released, focusing on how we can move forward aging standards, and ensure ours is a livable community where all generations thrive.

While the initial work of the Age Friendly Continuum has been focused on conducting a comprehensive needs assessment, setting priorities, articulating an organizational structure, and developing a 3-year plan, their longer term goal has always included piloting a senior housing and services facility that could be a model for the future of aging in place in Berkeley. One of the recommendations from their soon to be released Age Friendly Berkeley Action Plan under Housing and Economic Security, is to “develop a continuum of affordable, accessible housing options for older adults to age in their community regardless of their health or financial status”.

In April 2016, the City Council passed a referral to identify City owned properties that have the potential to be used for affordable housing sites. An information report with the referral response was presented in February 2017, with the West Berkeley Service Center (WBSC) identified as a potential site for future development. In May 2017, Council then passed a budget referral for a feasibility study for the construction of affordable senior housing, specifically mentioning the WBSC along with the North and South Berkeley Senior Centers. Located at 1900 6th Street, the WBSC is an approximately 31,000 square foot parcel situated in a Mixed Used Residential (MUR) zone. Public transit accessibility is plentiful, with several high-frequency AC Transit routes and Amtrak located within half a mile. In addition, the 4th Street shopping corridor, and community health care facilities are nearby. The site is currently home to several tenants that provide a variety of services, including the City of Berkeley Aging Services, the Black Infant Health Program, Public Health Nurses and the Meals on Wheels program. It is also covering services provided by the North Berkeley Senior Center (NBSC) for the next 18-24 months until renovations at the NBSC are completed.

Initial plans were to keep the WBSC under the scope of the Measure T1 process. Measure T1, passed by Berkeley voters in 2016, is a \$100 million bond for rebuilding and renovating the City’s aging infrastructure, including City owned facilities. Yet what this site needs is beyond an infrastructure upgrade, and its history as a hub for senior services presents an opportunity. West Berkeley has an extremely limited number of affordable housing units for seniors, despite being in a location that is easily accessible to various medical and aging services. And thanks to the passage of Measure O, a \$135 million dollar housing bond, combined with other funding opportunities, it could now be possible to fund the development of a senior housing and services facility modeled after the work of Age Friendly Berkeley, that becomes the gold standard for aging in place in our community, and the region.

Such a development would be consistent with the West Berkeley Plan, which calls for the residential development of MUR zones to facilitate the activation of such blocks while also maintaining a high level of services for the diverse population of West Berkeley. Additionally, the Plan calls for the development of housing, which provides on-site supportive services, as an explicit goal. However, to fully understand the possibilities of potential development of the site, the Planning Commission will need to consider several zoning options to find the optimal conditions.

After any rezoning is approved and recommendations on the development program are made by relevant City Commissions and the Council, the next step is to issue an RFP for development of the WBSC. We recommend consideration of the following criteria:

- Focuses on universally designed, affordable housing for older adults
- Incorporates the latest in technology and aging
- Functions both as services linked to housing and as a community hub of activity
- Reserves a portion of the units for assisted living and memory care
- Consistency with the recommendations of the Age Friendly Berkeley Initiative
- Maximize sustainability and energy efficiency

Any proposed development could have access to various forms of funding, including but not limited to Measure O (which explicitly mentions senior housing), new markets and low-income tax credits, local/regional/state funding such as U1, A1, and Prop 63/MHSA, along with private foundations.

RATIONALE FOR RECOMMENDATION

With Berkeley's senior population expected to skyrocket over the next decade, steps must be made to increase housing and services. There is currently a lack of senior housing in Northwest Berkeley, despite being in close proximity to various healthcare, shopping, and transit options. Affordable housing is particularly limited with wait lists for some senior housing projects between 6-8 years. There is also a need for a neighborhood hub for access to information and activities for older people in the area, along with meeting rooms and event space.

In 2017, Council voted to look into the feasibility of developing housing at Berkeley's senior centers, as recommended by the community. There are limitations to providing services at the North and South Berkeley Senior Centers due to their current R-2A residential zoning, and site constraints exist at the North Center due to the proximity of the BART tunnel. The development of WBSC for senior housing and services is consistent with both zoning regulations and the West Berkeley Plan. Such a development is also consistent with the Age Friendly Continuum.

Developing the former West Berkeley Senior Center into senior housing and services would uphold and honor the legacy of elder advocates who championed the creation of the Center to serve the needs of the West Berkeley Community, and would be consistent with its long-standing use.

FINANCIAL IMPLICATIONS

Staff time to conduct the analysis of development potential at the West Berkeley Service Center site, prepare reports for Council and Planning Commission discussion, and to work with City Commissions to create recommendations on the development program for a senior housing project. According to the staff memo dated March 7, 2019 "Process for Considering Proposals to Develop the West Berkeley Senior Center Site for Senior

Housing”, city staff estimate that the analysis of development potential will take approximately 40-60 hours of staff time.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín	510-981-7100
Councilmember Rashi Kesarawni	510-981-7110
Councilmember Susan Wengraf	510-981-7160
Councilmember Ben Bartlett	510-981-7130

Attachments:

1. Age Friendly Initiative, HHCS Presentation, City Council Worksession on July 17, 2018
2. Referral Response: Analysis of City-Owned Property for Potential Housing Development, February 14, 2017
3. Budget Referral: Feasibility Study For The Construction Of Affordable Senior Housing, May 16, 2017
4. Staff Report to the Land Use, Housing, an Economic Development Committee: Process for Considering Proposals to Develop the West Berkeley Senior Center Site for Senior Housing, March 7, 2019



Office of the City Manager

WORKSESSION

July 17, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services

Subject: Berkeley Age Friendly Initiative

SUMMARY

At the request of City Council, the Health, Housing and Community Services Department is providing an overview and update on the Age Friendly Berkeley initiative. Helping Berkeley's older adults remain in Berkeley and live long, healthy and fulfilled lives is the goal of the Age-Friendly Berkeley initiative. It's a collaborative effort between the City of Berkeley, Lifelong Medical Care, the Center for Independent Living, and Ashby Village. This report provides information on the key findings from a community survey that was conducted in March and April 2018 to help plan the work. This report also provides highlights from informational interviews that were conducted with City staff from various Departments to identify projects that City Departments have completed, or are considering, that consider the needs of older adults as they age in Berkeley.

The community survey and the informational interviews are strategies used to inform the development of the City of Berkeley Aging Friendly City Plan. This Plan will include recommended actions to achieve the goal of creating a livable community for all Berkeley residents, and will be submitted to the World Health Organization in November 2018. This report provides Council with information to inform the discussion on better serving our seniors.

The community survey gathered input from Berkeley community members age 50 and over. The purpose of the survey was to identify their priorities as they age in the Berkeley community. Survey results indicate that residents prioritize affordable senior housing, transportation services, and outdoor spaces that are walkable.

CURRENT SITUATION AND ITS EFFECTS

Many cities are experiencing rapid increases in the proportion of people aged 60 and over. In Berkeley, the population over age 65 is expected to nearly double from 12% in 2010 to 21% in 2030.

The World Health Organization (WHO) recognizes that older people are a resource for their families, communities and economies in supportive living environments. Older

people in particular often require supportive and enabling living environments to compensate for physical and social changes associated with aging. Thus, in order to retain a vibrant and enriching population of older adults, cities must provide the structures and services to support their wellbeing and productivity. Making cities more age-friendly is a necessary and logical response to promote the wellbeing and contributions of older urban residents and keep cities thriving (Global Age-Friendly Cities: A Guide, WHO, 2007).

The WHO has developed an active aging framework that outlines how cities can improve opportunities for health, participation and security in order to enhance quality of life for elders as they age. In an age-friendly city, policies, services, settings and structures support and enable people to age actively. Active and healthy aging depends on a variety of influences or determinants that surround individuals, families and nations. These determinants are reflected in the eight domain, or topic areas, identified by the AARP in previous research with older people on the characteristics of elderly-friendly communities:

1. Outdoor Spaces
2. Transportation
3. Housing
4. Social Participation
5. Respect & Social Inclusion
6. Civic Participation & Employment
7. Communication & Participation
8. Community and Health Services

Berkeley must complete an Aging Friendly Plan to be recognized by the WHO as an Age-Friendly City. To develop this Plan, public input was gathered from Berkeley community members through a community survey developed and implemented in partnership with AARP. The survey was distributed by mail to AARP members in Berkeley. Hard copies of the survey were also made available at the senior centers, libraries, and partner agencies such as churches and senior housing facilities. Funding for the development and analysis of the community survey was provided by a grant from the Pilgrimage Foundation.

AGING SERVICES DIVISION

The City of Berkeley's Aging Services Division aims to promote a dignified and healthy quality of life for older adults by offering connections to community, services & resources through two vibrant senior centers (North Berkeley Senior Center and South Berkeley Senior Center) and a multi-resource center (West Berkeley Service Center). Our programs touch the lives of older adults each year by serving as a resource for recreation, group meals, health & wellness education and other supportive services for adults 55 and older.

At our senior centers, staff provide local resources and provide individualized assistance to seniors and caregivers. Classes provided through the Berkeley Adult School, and other enrichment activities, are scheduled daily at the Centers. Lunchtime dining for senior center members is provided at a reasonable price (often free) at both senior centers; approximately 200 members are fed each day (over 40,000 meals per year).

Our Social Services staff provides consultation, referral, and case management for seniors in distress. Services include, but are not limited to, transportation, housing, food accessibility, access to healthcare, and legal assistance.

The Division's Meals on Wheels staff and volunteers provides approximately 60,000 home-delivered, well balanced meals to homebound seniors, 60 years of age or older, in Berkeley, Albany and Emeryville.

Berkeley senior centers provide transportation and access to recreational and educational activities in the community. Our paratransit services assist Berkeley residents with disabilities, and those 70 years of age or older, by providing taxi scrip and van voucher programs that enhance access to things seniors need and want. In FY17, over 13,400 taxi rides were provided to taxi scrip users, and over 1,200 van vouchers were used.

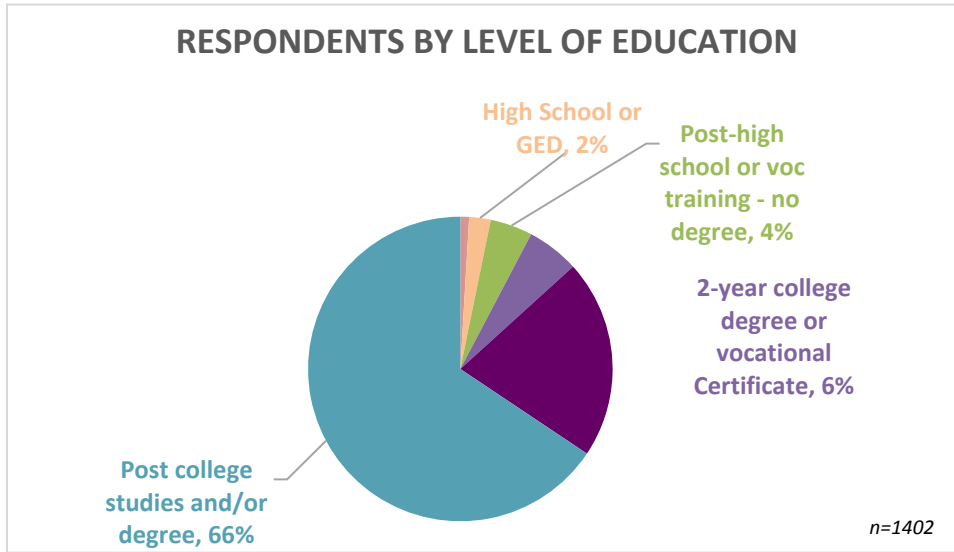
Finally, the Aging Services Division provides many opportunities for volunteers to support seniors, and thereby remain engaged in our community. Each year, hundreds of volunteers support the activities and services provided at the North and South Berkeley Senior Centers and help to deliver thousands of meals for the Meals on Wheels program.

SURVEY RESULTS

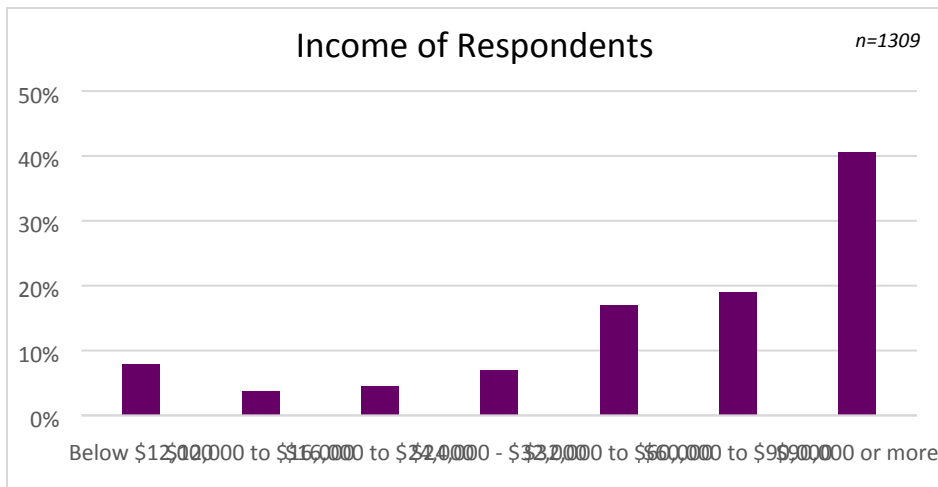
Respondent Characteristics

A total of 1416 surveys from Berkeley adults age 50 and over were received and analyzed in April 2018. 30% of the respondents are between the ages of 50-64, 57% between ages 65-79, and 13% age 80 or more. 73% of those surveyed are female.

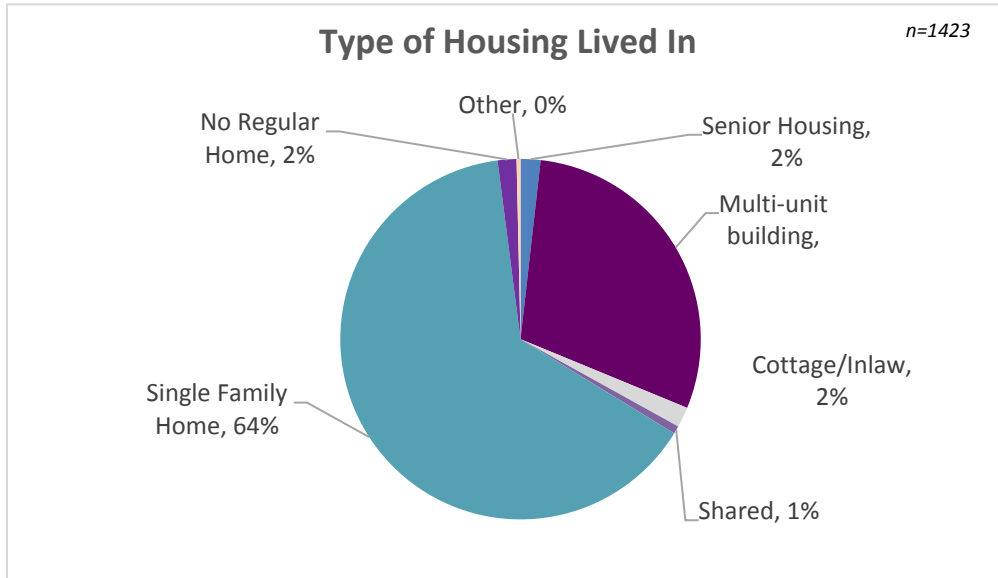
Approximately 66% of the respondents indicated a post-college level of education.



Approximately 60% of the survey respondents reported an income of \$60,000 or more in the previous year.



A majority of the survey respondents indicated that they live in single family homes. One-third of the respondents indicated living in multi-unit housing complexes.

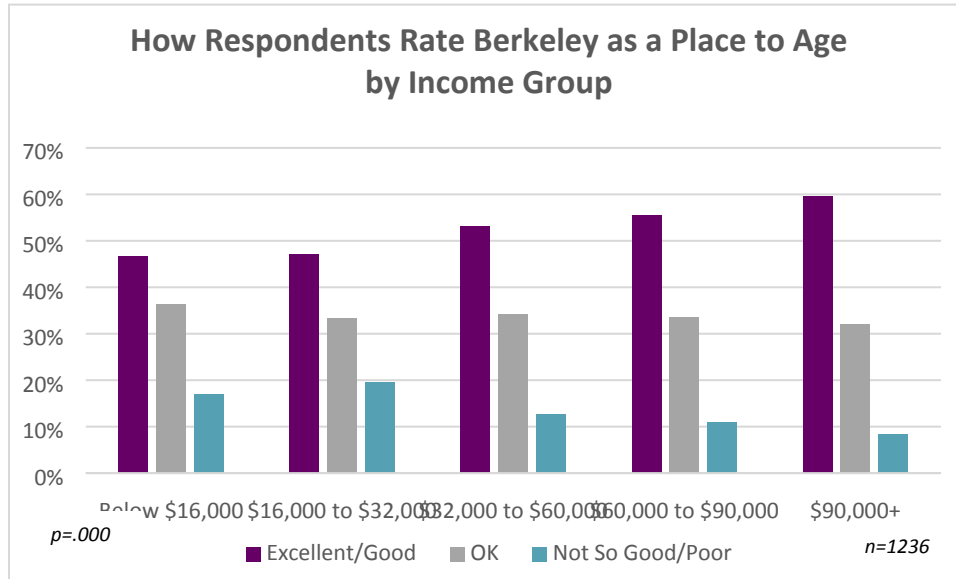


Key Survey Findings

The community survey included various questions that address each domain. As mentioned previously, survey respondents highlighted concerns and priorities under the housing, transportation, and outdoor spaces domain areas. These findings are summarized below, by domain area:

Housing

The majority of the survey respondents in each income group indicated that Berkeley was an “Excellent” or “Good” city to age in. However, over 30% of respondents reporting an income of \$32,000 or below in the previous year indicated that Berkeley is a “Not so good/poor” place to age.



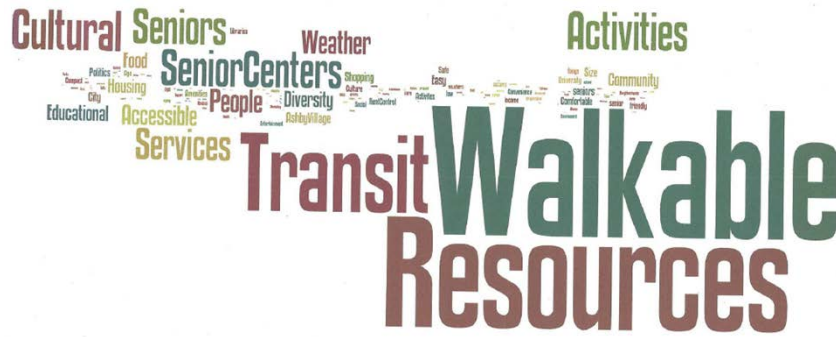
When asked about main reasons for their rating of Berkeley as a place to age, respondents indicated that they appreciated the availability of low-income and senior housing in the City. However, respondents also pointed out that the availability of such housing was low, and that housing and property tax costs are too high. These reasons, along with mentions of gentrification and homelessness, support respondents' indication of Berkeley as a "Not so good/poor" place to age.

It is important to note that those survey respondents in the \$16,000-\$32,000 income bracket rate Berkeley the lowest for aging. As income increases, the number of respondents indicating that Berkeley is an "Excellent/Good" place to age also increases. The chart above highlights the income disparities that exist in Berkeley; as mentioned in the Health Status Report, the environments and neighborhoods in which people live, work, learn, and raise their families impact their access to resources such as effective health care, and ultimately affect their overall quality of life.

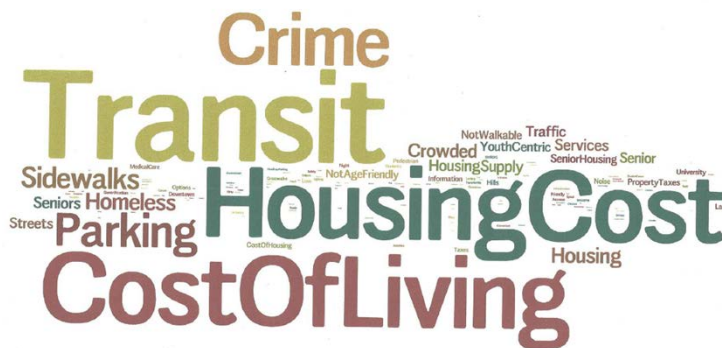
Additionally, survey respondents were asked about factors that would influence their decision to move out of Berkeley. Over 60% of respondents identified their need for housing to live independently, lowering the cost of living overall, and needing a less expensive home, as their top three influencing factors.

Outdoor Spaces

Word clouds were created to illustrate the most frequently mentioned positive reasons from those survey respondents who reported the City of Berkeley to be an "Excellent" or "Good" place to age (55% overall):



Word clouds were also created to illustrate the most frequently mentioned negative reasons from those survey respondents who reported the City of Berkeley to be a be "Not So Good" or "Poor" place to age (11% overall):

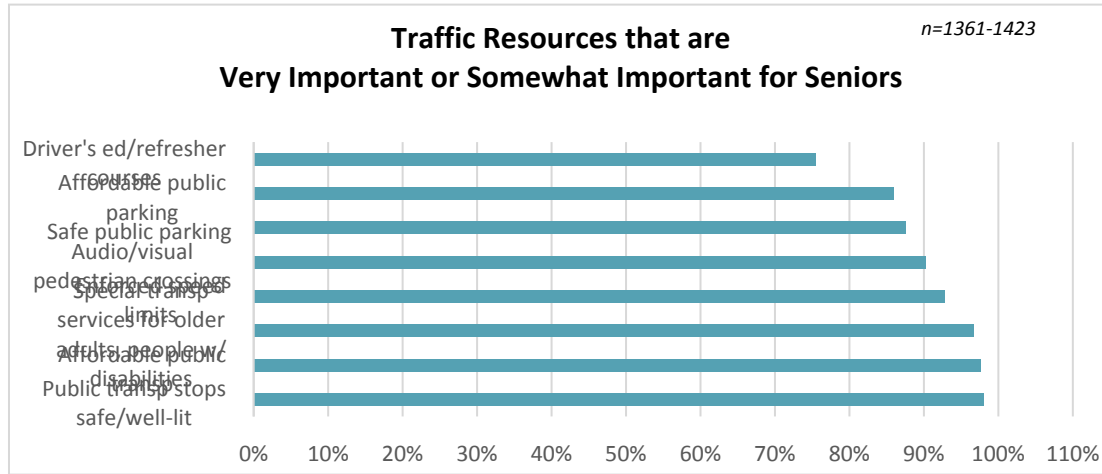


While respondents acknowledge that the City of Berkeley is an accessible community that is resource and activity-rich, they also identified affordable housing, transportation services, and safety as significant needs in the Berkeley community.

Transportation

Respondents were asked how they get around for things like shopping, visiting the doctor, running errands or socializing. While the majority drive themselves, a large percentage rely on walking, and half report using public transit. Fewer than 30% use a taxi or ride service, but they may not know about the transportation and paratransit services that the City, and other City partners, offer.

Survey respondents were also asked about the importance of certain traffic resources:



Transportation is a high priority for older adults with nearly all wanting more transit enhancements. Approximately 100% state that the following are very important: Public transportation stops are safe and well lit, public transportation is affordable, and special transportation for seniors.

Key Interview Findings

In addition to the community survey, a total of 18 informational interviews with City staff from 9 City Departments were conducted. Data on projects that have been completed and are currently being planned/pursued that address relevant older adult issues and concerns was collected. The following list summarizes these projects by domain area.

Housing

Projects/Elements currently in place

- Senior and disabled home loan rehab program: long term, low interest loans to fix houses of low income seniors so they can age in place.
- Short term rental application support/workshops through Finance Department
- Housing Assistance is available through the Berkeley Housing Authority, Center for Independent Living, ECHO housing (fair house counseling), NID (housing counseling Agency focused on foreclosure counseling) and the Unity Council (foreclosure workshops)
- 738 dedicated, affordable senior housing units in Berkeley, but with wait lists of 6-8 years

Projects in process with Age Friendly Elements

- Disability Commission and Planning Commission considering amendments to ADU's - goals is to increase housing stock that is accessible.
- Expansion of City Planning's housing safety program with intent to proactively protect low-income housing stock.

Outdoor Spaces*Projects/Elements currently in place*

- Recreational programs through the Parks & Rec department now offering more adult classes: painting, yoga, aquatics, Tai Chi, etc.
- 52 Parks as well as trails and community gardens are available
- Sidewalks, curb cuts, street lighting, benches, & traffic calming devices are well developed in most of the city
- New developments & redevelopments, including businesses & housing developments, are required to build or remodel according to ADA standards

Projects in process with Age Friendly Elements

- Parks & Rec Department considering adding paid classes and programs targeting the older adult population
- City Planning Department using “Crime Prevention through Environmental Design” to address safety issues, uncomfortable spaces, dark alleys, etc.
- Measure T1 holding public hearings; goal to improve existing infrastructure and facilities

Transportation*Projects/Elements currently in place*

- Strategic Transportation Plan strives to enable equal access for Berkeley community members of any age, background, and ability to move throughout City
- Paratransit, senior shuttle, and taxi scrip services available through City’s Aging Services Division

Projects in process with Age Friendly Elements

- Planning, Public Works Departments developing master pedestrian plan in commercial areas; safety, walkability, lighting, etc.
- Planning, Public Works Departments reviewing sidewalks in poor condition, which have been an issue for people with disabilities and elders who are challenged by broken sidewalks
- Aging Services transportation services to implement mobility management and travel training for seniors

POSSIBLE FUTURE ACTION

The recommendations listed below were developed by the Age Friendly Berkeley collaborative. These recommendations align with both the key findings from the community survey and the City staff informational interviews.

Housing

- Incorporate universal design into new building codes
- Support efforts to overturn policy that allows people to raise the rent to market when someone in a rent-controlled space moves out
- Create a publicly accessible, understandable database where seniors can see rental opportunities rather than the need to call each establishment individually

- Allow & promote a mix of uses in buildings and neighborhoods through zoning codes and planning tools to provide access to necessary services (grocery stores, pharmacies, etc.) with multiple transportation options in neighborhoods
- Work with additional personnel and leadership outside government agencies to help coordinate housing needs along a continuum, from shared housing to assisted living

Outdoor Spaces

- Include input from older adults while developing the master pedestrian plan for input about cleanliness, wayfinding, safety, walkability, etc.
- Improve park bathrooms and facilities in general for the older population
- Create safe routes to common destinations (e.g., community centers, libraries)

Transportation

- Advance the affordability, availability, reliability, frequency, and travel destinations for public transit
- Allocate additional funding to improve transportation infrastructure (benches, shelters, traffic signals, and pavement on pedestrian sidewalks)
- Extend educational programs to help individuals learn about public transit options

The City's Aging Services Division remains committed to promoting quality services and resources to encourage active aging for Berkeley's older adults. The Division is also committed to working with partners to create sustainable age-friendly elements in the Berkeley community that enable access to resources which support a full and healthy life for everyone. As our older adult population increases, it is important for the city to continue to focus on their needs, and provide accessible and affordable opportunities for them to participate actively in our community.

BACKGROUND

To become a member of the World Health Network, the City completed an application that demonstrated Berkeley's commitment to older adults. Through the City's dedicated services to older adults, its robust non-profit sector, and innovative planning, the City demonstrated Berkeley's commitment to the older adult community and was accepted into the World Health Network in November 2016.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability impacts as part of this report.

CONTACT PERSON


Tanya Bustamante, Aging Services Manager, HHCS, (510) 981-5178



Office of the City Manager

INFORMATION CALENDAR
February 14, 2017

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing and Community Services

Subject: Referral Response: Analysis of City-Owned Property for Potential for Housing Development

SUMMARY

On April 5, 2016 City Council requested an inventory of City-owned properties in order to evaluate their potential for affordable housing development. In the past, the City has sold (for example, for Oxford Plaza and Harper Crossing) and leased (in the case of William Byron Rumford Senior Plaza) City-owned property to support affordable housing.

The City owns 119 properties scattered throughout Berkeley. (In many cases, these properties are made up of multiple legal parcels.) Staff reviewed the inventory and assessed each site's development potential, based on criteria prioritizing sites that are mostly likely to accommodate a multifamily rental project and most competitive for affordable housing funding. HHCS staff reviewed the sites' zoning designation, square footage, current use, and whether or not properties were protected as parks or open space under Measure L, the Berkeley Public Parks and Open Space Preservation Ordinance. Six properties were identified citywide that met the basic criteria. One is the Berkeley Way parking lot, currently the subject of an agreement with BRIDGE Housing related to its development as affordable housing. The other five all had other significant challenges to development. All would require more review before taking any further action.

Staff did not review properties for the potential to sell. Oakland's housing plan, Oakland at Home, recommended selling City-owned properties not suitable for affordable housing development and placing 30% of the proceeds in a housing trust fund.

CURRENT SITUATION AND ITS EFFECTS

This report responds to a referral that originally appeared on the April 5, 2016 Council agenda and was sponsored by Councilmember Wengraf.

For this project, HHCS staff started with a detailed list of City-owned parcels that had been compiled by the Public Works Department from multiple sources, and updated it with information from the Berkeley Municipal Code as well as internal records. The

complete list is attached (see Attachment 3). It is the most comprehensive list that has been compiled to date.

Initial Assessment: Selected Properties

HHCS staff identified six properties that met basic criteria for housing development suitability and grouped them in three categories, based on the criteria briefly described above, and described in depth in the Background section of this report. The following describes the six properties which best met the criteria identified. None of these sites were identified as housing opportunity sites in the Housing Element, primarily because of existing City uses and zoning constraints. The City already has an agreement with BRIDGE Housing for the development of Berkeley Way, and the other five have significant challenges to development. These sites are also listed in Attachment 1.

Group 1. Two properties met all basic criteria. They are: 1) located within zones allowing multifamily development; 2) larger than 15,000 square feet; 3) not protected under Measure L; and 4) have no existing structures.

- **Berkeley Way Parking Lot (2012 Berkeley Way):**

The City and BRIDGE Housing have a Disposition and Development Agreement for a project on this site that will incorporate affordable housing, permanent supportive housing, transitional housing, homeless services, and replacement public parking. On September 27, 2016, City Council awarded \$835,897 in Housing Trust Funds to support additional predevelopment activities, including architectural work, environmental studies, and planning fees.

- **Elmwood Parking Lot (2642 Russell Street)**

Five City-owned parcels could be merged to create a 27,000 square foot lot. The parcels currently form a narrow parking lot situated between a row of shops facing College Avenue, and a residential neighborhood composed primarily of 1-2 story single family homes and small multifamily buildings. This parking lot supports the Elmwood commercial area. At a minimum, this site would need to be rezoned to support multifamily housing development at a large enough scale to make affordable housing feasible.

While the square footage of the parcel initially seemed promising, several of the adjacent residential buildings are situated on the lot lines, and the businesses use the City's property for trash pickup and delivery access. Setbacks would likely be required on one if not both sides. In addition, the lot's irregular shape and proximity to existing commercial and residential uses would constrain its footprint and height to the point at which an affordable development may be infeasible, particularly with replacement parking for the commercial district. Combined, these limitations are likely to make affordable housing development infeasible at this time.

Group 2. Two additional properties are 1) located within zones allowing multifamily development; 2) larger than 15,000 square feet; and 3) not protected under Measure L; but they have active City uses. A third property, Center Street Garage, also met these criteria but was not considered because it is currently under construction.

- **West Berkeley Service Center (1900 Sixth Street).** The West Berkeley Service Center is located on a parcel that is 31,000 square feet, in an area that is a mix of commercial, industrial, and residential. Some of the parking spots are currently being used for City vehicles. The neighboring buildings are 1-2 stories tall, but 4-5 story buildings are located one block away along University Avenue. Though the existing zoning (MUR - Mixed Use Residential) permits multifamily development, changing the zoning could help maximize the site's development potential. Demolishing and replacing the service center, currently used for senior social services, the Black Infant Health Program, Public Health Nurses and the Meals on Wheels program, would add significantly to the cost of housing development at the site.
- **Telegraph-Channing Garage and Shops (2425 Channing Way)**
This six-story parking garage also includes retail spaces on the ground floor. Built in the late 1960s, the garage provides parking for the stores and restaurants along Telegraph Avenue near the UC Berkeley campus. Conceivably, the site could be redeveloped to include replacement commercial spaces and parking with housing over it.

However, since the structure is a key resource for local businesses, the costs of temporary commercial relocation during construction, and the costs of replacing parking and commercial spaces would make development very costly and could be infeasible in combination with affordable housing. In order to also add new residential units, the replacement structure would likely need to be several stories taller than the current structure, which is already among the tallest buildings in the neighborhood. These issues present significant challenges to using the site for affordable housing in the foreseeable future.

Group 3. These properties are both larger than 15,000 square feet and vacant, but would require zoning changes before multifamily housing could be constructed and have constraints from Measure L. The North Bowling Green is protected from development under Measure L, and would require a vote of the people to change its designation and make it legal to develop. The Santa Fe Right of Way requires further analysis to determine Measure L's applicability. Unlike other parcels protected under Measure L, both of these properties are fenced off from the public and not in active use.

- **North Bowling Green (1324 Allston Way)**
Within the Corp Yard, along Allston Way, the North Bowling Green is a vacant lot of approximately 21,000 square feet that is not actively used by the City. The site

was used as a lawn bowling green starting in 1929, but has not been maintained as such since 2008. This site, along with the South Bowling Green and clubhouse, is leased to the Berkeley Lawn Bowling Club, though Parks is negotiating a new lease that will not include the North Bowling Green. The site contains elevated levels of pesticides and metals, and the contaminated soil would need to be excavated or encapsulated prior to active use or development, which does not rule out affordable housing development but would add to the cost. The entire Corp Yard site is within an R-2 zone, so the North Bowling Green would need to be split from the Corp Yard parcel and rezoned to allow for multifamily housing. The 150-unit Strawberry Creek Lodge (affordable senior housing) is located within a block of the vacant site, though the immediately adjacent residential units are single-family homes.

- **Santa Fe Right of Way**

The City owns six vacant, non-contiguous parcels that were part of the right of way for the former Santa Fe Railroad. The lots cut through the middle of blocks at a diagonal, and are separated by several streets: Ward, Derby, Carleton, Parker and Blake. Collectively, the parcels comprise approximately 75,000 square feet of undeveloped land. The parcels are zoned R-1 and R-2, which do not permit multifamily construction. The neighborhood is primarily single family homes with a few 2-story multifamily buildings. Although it could be possible to combine these sites into a single scattered site project, it would be difficult to achieve the density required to make a scattered site project large enough to be competitive for tax credit and other affordable housing funding.

BACKGROUND

The initial data collection resulted in a list of 229 individual parcels, which was reduced to 119 after staff analysis. Several Berkeley Housing Authority and BUSD properties associated with Berkeley 75, former public housing, were removed from consideration, and adjacent parcels were combined into single entries to better assess their development potential. Staff then researched each property for specific data, including zoning and property square footage.

From the list of 119 parcels, some City-owned properties were excluded from further analysis because they were not available or clearly not suitable for development as housing. Sites not considered for future housing development included City offices at Center and Milvia, street segments, sidewalks, fire and police facilities, and sites leased to existing affordable housing projects.

The City owns approximately one acre of air rights to develop over the western parking lot at Ashby BART, which is zoned C-SA. The site was not included in this report because it is being analyzed as part of the Adeline Corridor planning process. The City does not own air rights at North Berkeley BART.

Methodology and Criteria

The remaining 92 properties were then ranked based on a set of criteria established to identify the sites with the greatest development potential (and fewest development barriers). The following criteria were used:

Zoning

Given the City of Berkeley's general plan and municipal code, multi-family housing can only be built within certain zones¹. Properties outside these zones were ranked lower since they would require zoning changes in order to be suitable for higher density development.

Size of parcel/ability to support 50+ units of housing

Staff prioritized sites that can accommodate 50+ units of housing for affordable housing development. In this analysis, we looked at sites of 15,000 square feet as having the greatest potential, and gave consideration to sites over 10,000 square feet. Sites smaller than this are unsuitable for affordable multifamily housing development because:

- Even with greatly reduced or donated land, affordable housing development requires public funding. There are limited funding sources for affordable housing, and most multifamily housing developers pursue Low Income Housing Tax Credits as a significant source. Tax credit funding is highly competitive, and non-tax credit projects can be difficult to finance. California intends to start incentivizing larger developments by awarding higher points to projects with 50 or more units. Staff estimated that sites under 15,000 square feet would not allow for the density required to meet the 50-unit minimum for a competitive project. Sites between 10,000 and 15,000 were included but ranked lower, as they could be combined for a scattered site project.
- The long length of time required for obtaining financing for Harper Crossing (41 units) and Grayson Street Apartments (23 units) are probably at least partially related to their small size. Smaller projects are generally less competitive for housing funds because of their higher per unit costs and, in the case of the Affordable Housing and Sustainable Communities program, due to their smaller impact on reducing greenhouse gas emissions.
- Similarly, Oakland's housing plan recommended using sites that can accommodate 50+ units for affordable housing, and selling the others for revenue to support housing.
- One local affordable housing developer, when asked about minimum size, said "we've found that in higher-density areas (like Berkeley) sites should be at least 15,000 sq ft. We will look at smaller sites if there are special circumstances but as a rule of thumb it is hard to create a feasible multifamily rental project on a site

¹ Zones that allow multifamily housing are R-3, R-4, R-5, C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, and MU-R

under that size.” Another emphasized the need to look at the development capacity, citing a project on 13,000 square foot plot with 62 one-bedrooms, feasible only because it has 6 stories (typically not possible in Berkeley).

Parks and open spaces, restricted by Measure L

In 1986, Berkeley residents passed Measure L, the Berkeley Public Parks and Open Space Preservation Ordinance, ensuring that all existing City open space would be preserved (not developed). Measure L requires a vote of the people to use or to develop a public open space or park for any purpose other than public parks or open space, unless a State of Emergency has been declared. In this context, the Homeless Shelter Crisis declared by City Council in 2016 does not qualify as a State of Emergency, and would not supersede Measure L. Staff consulted with Parks to confirm that 23 properties larger than 10,000 square feet are restricted under Measure L. Staff did not ask Parks to review the following properties in hillside zones due to topographical constraints on development: Grotto Rock Park, Indian Rock Park, Remillard Park, Cragmont Park, and Great Stone Face Park.

Current Use

Berkeley is largely built out, and most City-owned properties have buildings and active uses. Staff prioritized properties that do not have any structures, followed by properties that are active City facilities, and finally properties leased to non-City entities. Staff did not review the 21 leases noted in the property inventory, and did not assess the development potential of the sites once the leases expire, as that was beyond the scope of the current analysis.

Properties Less Suitable for Development

The remaining 113 properties were considered less suitable for development because they did not meet enough of the priority criteria. More than half of the remaining properties were eliminated because they fell below the threshold of 10,000 square feet (49 properties) or because they are actively used open space or parks and are protected under Measure L (22 properties, excluding the Santa Fe ROW). Other properties were eliminated because of their current use, including a number of City facilities on lots larger than 15,000 square feet. Attachment 2 includes a list of every City-owned property over 15,000 square feet in area.

ENVIRONMENTAL SUSTAINABILITY

Any site would require environmental analysis to assess its suitability for development, and identify contaminants or issues needing remediation.

POSSIBLE FUTURE ACTION

Staff will continue to work with BRIDGE Housing and the Berkeley Food and Housing Project on the redevelopment of the Berkeley Way Parking Lot. Staff plan to report back to City Council with a recommendation on the disposition of two former

Redevelopment Agency properties the City owns on 5th Street. Staff welcome any additional information that could further update the property information shown in Attachment 3.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts of future action will depend on the course of action identified. Developing new affordable housing on City-owned land will require additional City funding contributions.


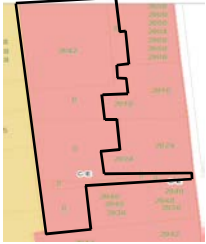




CONTACT PERSON

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

Attachments:

1. Selected Property List
2. City Properties Larger Than 15,000 SF
3. Inventory of City Properties
4. Original Referral Report from April 5, 2016

Selected Property List

Priority Group	Name (Address)	Zoning	Lot SF	Current Use	Image	Bldg SF
1	Berkeley Way Parking Lot (2012 Berkeley Way)	C-DMU Buffer	40,945	Parking Lot		
1	Elmwood Parking Lot (2642 Russell, 5 parcels)	C-E	27,374	Parking Lot		
2	Telegraph-Channing Garage and Shops (2425 Channing Way)	C-T	32,685	Parking Garage		189,867
2	West Berkeley Service Center (1900 Sixth St)	MUR	31,020	City Facility		
3	North Bowling Green (portion of City Corp Yard, 1324 Allston)	R-2	21,000	City Facility		46,604
3	Santa Fe Right of Way (Ward, Derby, Carleton, and Blake, 6 parcels)	R-1/R-2	75,086	ROW		

**Attachment 2:
All City-Owned Properties Larger Than 15,000 SF**

City Facilities

- Berkeley Fire Station Number 5 (2680 Shattuck Ave)
- Berkeley Fire Station Number 6 (999 Cedar St)
- Berkeley Fire Warehouse (1011 Folger Ave)
- Berkeley Police Department / Old City Hall (2100 / 2134 MLK Jr. Way)
- Berkeley Public Library – Central Branch (2090 Kittredge St)
- Berkeley Public Library-North Branch (1170 The Alameda)
- Berkeley Transfer Station (1201 Second St)
- City Corp Yard (1326 Allston Way)
- City Office Building (1947 Center St.)
- Civic Center Building (2180 Milvia St)
- Fire Department Station No.2 (2029 Berkeley Way)
- Firehouse Number 7 (3000 Shasta Ave)
- North Berkeley Senior Center (1901 Hearst Ave)
- North Bowling Green (part of City Corp Yard, 1324 Allston)
- South Berkeley Senior Center (2939 Ellis St)
- West Berkeley Service Center (1900 Sixth St)

Existing Affordable Housing

- Oceanview Garden Apartments (1816 Sixth St)
- University Avenue Cooperative Homes Apartments (Addison at Sacramento)
- William Byron Rumford Senior Plaza (3012 Sacramento St)

Leased Properties

- Berkeley Black Repertory Group Theater (3201 Adeline St)
- Berkeley Recycling Center (669 Gilman St)
- Nia House Learning Center (2234 Ninth St)
- Veterans Memorial Building (1931 Center St)
- Women's Daytime Drop-In Center (2218 Acton St)

Parking Lots/Garages

- Berkeley Way Parking Lot (2012 Berkeley Way)
- Center Street Garage (2025 Center St)
- Elmwood Parking Lot (2642 Russell)
- Oxford Plaza Parking Garage (2165 Kittredge)
- Telegraph-Channing Garage and Shops (2425 Channing Way)

Parks and Open Space









- Aquatic Park* (80 Bolivar Dr)
- Berkeley Way Mini Park (1294 Berkeley Way)
- Cedar Rose Park* (1300 Rose St)
- Codornices Park and Berkeley Rose Garden (1201 Euclid Ave)
- Community Garden (1308 Bancroft Way)
- Cragmont Rock Park (960 Regal Rd)
- Dorothy Bolte Park (540 Spruce St)
- George Florence Park (2121 Tenth St)
- Glendale- La Loma Park (1310 La Loma Ave)
- Great Stoneface park (1930 Thousand Oaks Blvd)
- Greg Brown Park (1907 Harmon St)
- Grotto Rock Park (879 Santa Barbara Rd)
- Grove Park (1730 Oregon St)
- Harrison Park (1100 Fourth St)
- Hillside Open Space on Euclid Ave
- Indian Rock Park (950 Indian Rock Ave)
- James Kenney Park* (1720 Eighth St)
- John Hinkel Park (41 Somerset Pl)
- Live Oak Park* (1301 Shattuck Ave)
- Marina*/Cesar Chavez Park (11 Spinnaker Way)
- MLK Jr. Civic Center Park (2151 Martin Luther King Jr Way)
- Ohlone Park (1701 Hearst Ave)
- Remillard Park (80 Poppy Ln)
- San Pablo Park (2800 Park St)
- Strawberry Creek Park (1260 Allston Way)
- Terrace View Park (1421 Queens Rd)
- Virginia-McGee Totland (1644 Virginia St)
- Willard Park (2730 Hillegass Ave)

**A portion of the property is leased to a local organization.*









Other

- Santa Fe Right of Way (approx. 1400 Carleton)
- Sidewalk and Road (Ashby between Harper and MLK Jr. Way)
- Roundabout (Parkside Dr)
- Sojourner Truth Court (former Santa Fe ROW)
- West St (between Lincoln and Delaware)









Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
1631 5th Street	MUR	5,525	Other	Former RDA property. Vacant lot.		057 211701100				
1654 5th Street	MULI/ MUR	5,300	Other	Former RDA property. Vacant, single-family home.		057 211602300				
1817-1819 Fourth Street	C-W	12,500	Other	2 parcels. Former RDA properties. Leased for retail.		057 209901400 057 209901500	10,070			
63rd Street Mini Park (1615 63rd St)	R-2A	8,100	Park			052 152201100				
Abandoned Rail ROW (1018 Ashby Ave)	MULI	11,450	ROW	2 parcels.		053 163300300 053 163300400				
Abandoned Rail ROW (between Heinz and Ashby, at Ninth)	MULI/ C- W	11,855	ROW	Potential extension of Emeryville Greenway?		053 165200300				
Abandoned Rail ROW (near 920 Flogr)	MULI	743	ROW	At Berkeley-Emeryville City Line along Greenway.		052 151201002				
Ann Chandler Public Health Center (830 University Ave)	C-W	14,700	City Facility			056 196600100				









Attachment 3:
Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Aquatic Park (80 Bolivar Dr)	Along MM/ MULI/C- DMU Buffer/R- 2A/No zoning available	739,878	Park	12 parcels		060 251300101 054 177100100 060 250700101 060 250700102 054 175200100 054 175200201 054 177200100 054 177100200 060 252700101 056 194900601 056 194800300		Yes, a portion	Bay Area Outreach Recreation Program; Waterside Workshop	7/31/2021
BART ROW (Adeline at Alcatraz)	Zoning not found, in between C-SA/ R- 2A	5,553	ROW			052 153200600				
BART ROW (Gilman to Neilson)	C-N/ R- 1A/ R-2	7,350	Other			060 239107502				
Bateman Mall (3027 Colby St)	R-2A/ R-3	9,501	Park			052 157405906				
Becky Temko Tot Park (2424 Roosevelt Ave)	R-2	6,760	Park			055 190701100				
Berkeley 75 (1521 Alcatraz Ave, A,B,C,D)	R-3	7,150	Leased	scattered site affordable housing development		052 152000800		Yes	Berkeley 75 Housing Partners LP - c/o Related California	2/1/2084
Berkeley 75 (1605 Stuart St C)	R-2	6,750	Leased	scattered site affordable housing development		054 173001400		Yes	Berkeley 75 Housing Partners LP	5/12/2083
Berkeley 75 (1812 A,B,C Fairview St)	R-2A	6,500	Leased	scattered site affordable housing development		052 153001800		Yes	Berkeley 75 Housing Partners LP	5/12/2083





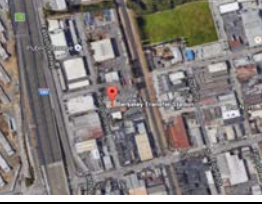

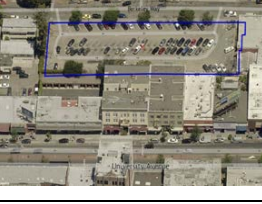
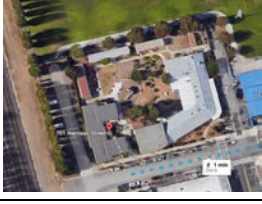
Attachment 3:
Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Berkeley 75 (2231, 2231A, 2231B, 2235 Eighth St)	R-1A	6,500	Leased	scattered site affordable housing development		056 197001507		Yes	Berkeley 75 Housing Partners LP	5/12/2083
Berkeley 75 (3016 Harper St A, B)	R-2A	4,893	Leased	scattered site affordable housing development		053 160200600		Yes	Berkeley 75 Housing Partners LP	5/12/2083
Berkeley Adult Day Health Center (1890 Alcatraz Ave)	C-SA	9,404	Other			052 152702401	4,425			
Berkeley Black Repertory Group Theater (3209 Adeline St)	C-SA	17,097	Leased	3 parcels		052 152902100 052 152902200 052 152902300	8,000	Yes	Black Repertory Group	5/30/2023
Berkeley Fire Station Number 1 (2442 Eighth St)	R-1A	10,260	City Facility			056 193901902	5,260			
Berkeley Fire Station Number 2 (2029 Berkeley Way)	C-DMU Buffer	23,977	City Facility			057 205100901	13,685			
Berkeley Fire Station Number 3 (2710 Russell St)	R-2	9,359	City Facility			052 156702601	5,100			
Berkeley Fire Station Number 4 (1900 Marin Ave)	R-1H/ R- 1A	12,623	City Facility			061 257302600	5,442			









Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Berkeley Fire Station Number 5 (2680 Shattuck Ave)	C-SA	17,300	City Facility			055 181900301	9,302			
Berkeley Fire Station Number 6 (999 Cedar St)	R-1A	26,000	City Facility			059 231201200	8,346			
Berkeley Fire Station Number 7 (3000 Shasta Ave)	R-1H	129,277	City Facility	from BMC. RealQuest Pro and City site indicate that EBMUD is owner of larger parcel, not City.		063 316001305 063 316003700				
Berkeley Fire Warehouse (1011 Folger Ave)	MULI	24,425	City Facility			053 163403000	8,021			
Berkeley Police Department / Old City Hall (2100 / 2134 MLK Jr. Way)	R-2	144,480	City Facility			057 201701601	122,783	Yes	Building Opportunities for Self Sufficiency (BOSS) - McKinley House; County of Alameda; Berkeley Unified School District	6/30/2013
Berkeley Public Library - Central Branch (2090 Kittredge St)	C-DMU Corridor	25,141	City Facility			057 202801701	75,000			
Berkeley Public Library - Claremont Branch (2940 Benvenue Ave)	R-2A	11,652	City Facility	2 parcels		052 157301600, 052 157301700	7,434			
Berkeley Public Library (2031 Bancroft Way)	C-DMV Buffer/ Corridor	14,133	City Facility			057 202800500	30,000			


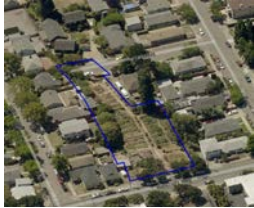






Attachment 3:
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Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Berkeley Public Library-North Branch (1170 The Alameda)	R-1	17,668	City Facility			061 260503500	10,591			
Berkeley Public Library-South Branch (1901 Russell St)	R-2A	13,444	City Facility			053 167901601	5,250			
Berkeley Public Library-West Branch (1125 University Ave)	C-1	12,000	City Facility			057 208501100	9,400			
Berkeley Recycling Center (669 Gilman St)	M	48,150	Leased			060 236200110	22,595	Yes	Community Conservation Center Inc	8/31/1991
Berkeley Transfer Station (1201 Second St)	M	276,531	City Facility	5 parcels		060 238200102 060 238200303 060 236200109 060 236200111 060 236200108	51,615			
Berkeley Way Mini Park (1294 Berkeley Way)	R-2A/ C-1	18,733	Park	BMC		057 208102300	960			
Berkeley Way Parking Lot (2012 Berkeley Way)	C-DMU Buffer	40,945	Parking Lot			057 205302201				
BOSS: Harrison House/ Sankofa house (711 / 701 Harrison)	MULI	6,486	Leased	HCS Leased		060 238300102		Yes	Building Opportunities for Self Sufficiency (BOSS) - Harrison House	10/31/2013




Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Cedar Rose Park (1300 Rose St)	R-2	175,727	Park	9 parcels		060 241605800 060 241607700 059 228601900 059 228600203 059 229302001 060 242309600 059 228600103 058 213801500 059 228600104		Yes, a portion	Ala Costa Center	No End Date
Center Street Garage (2025 Center St)	C-DMU Core	34,267	Parking Garage			057 202302003	175,500			
City Corp Yard (1326 Allston Way)	R-2	250,072	City Facility			056 199301501	46,604	Yes	Berkeley Lawn Bowling	12/31/2014
City of Berkeley Animal Shelter (1 Bolivar Dr)	C-W	8,874	Leased			060 252100201		Yes	New Cingular Wireless	No End Date
City Office Building (1947 Center St)	C-DMU Buffer	18,750	City Facility			057 202200600	116,142	Yes	International Computer Science Institute; Rising Sun Energy Center	4/30/2013
Civic Center Building (2180 Milvia St)	C-DMU Buffer	38,808	City Facility			057 202100100	77,145			
Codornices Park and Berkeley Rose Garden (1201 Euclid Ave)	R-1H	470,240	Park	4 parcels		060 246800101 060 246800102 060 246800103 060 246500900				
Colby St. (between Ashby and Webster)	Next to R-3	13,603	Other	BMC		052 157308706				








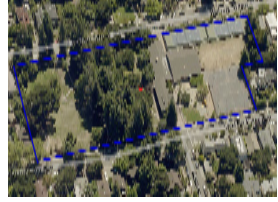
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Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Community Basketball Court	R-1	11,886	Open Space			058 213903108				
Community Garden (1308 Bancroft Way)	R-2	38,526	Open Space	former rail ROW		056 192203402				
Contra Costa Rock Park (869 Contra Costa Ave)	R-1H	7,456	Park			061 257605600				
Cragmont Rock Park (960 Regal Rd)	R-1H	136,458	Park	2 parcels		063 297500900 063 297501000				
Dorothy Bolte Park (540 Spruce St)	R-1H	50,516	Park			062 293902001 062 293902301				
Elmwood Parking Lot (2642 Russell St)	C-E	27,374	Parking Lot	6 parcels		052 156800300, 052 156800501, 052 156800601, 052 156800700, 052 156800801, 052 156800401				
Epehsian's Children's Center (1907 Harmon St)	R-2A	3,000	Leased			052 152901100		Yes	Epehsian's Children's Center	No End Date
Fountain Walk (at Hopkins and El Dorado)	C-N (H)/ R 1H	9,678	Other			061 257100200				









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Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Frederick Mini Park (780 Arlington Ave)	R-1H	9,925	Park			062 292002300				
George Florence Park (2121 Tenth St)	R-1A	21,600	Park			056 197701900				
Glendale- La Loma Park (1310 La Loma Ave)	R-1H	129,092	Park	5 parcels		060 246904300 060 246905500 060 246904200 060 246906101 064 423201100				
Great Stone Face park (1930 Thousand Oaks Blvd)	R-1H	30,471	Park			062 292000100				
Greg Brown Park (1907 Harmon St)	R-2A	20,046	Park	2 parcels		052 152902601 052 152901002				
Grizzly Peak Park (50 Whitaker Ave)	R-1H	10,692	Park	BMC		063 298304900				
Grotto Rock Park (879 Santa Barbara Rd)	R-1H	16,867	Park			061 258204500				
Grove Park (1730 Oregon St)	R-2/R-2A	121,794	Park	3 parcels		053 167600101 053 167800101 053 167800102				









Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Harper Crossing (3132 MLK Jr. Way)	R-2A/ C-SA	14,585	Other	Satellite Affordable Housing Associates development		052 155101302				
Harrison Park (1100 Fourth St)	MULI	280,341	Park	4 parcels		060 238300102 060 238300200 060 238300300 060 238300400	9,644			
Haskell-Mabel Mini Park (1255 Haskell St)	R-2A	2,658	Park			053 162600601				
Hillside Open Space on Euclid Ave (near 660 Euclid Ave)	R-1H	21,041	Open Space	steep slope. Near 660 Euclid.		063 295601701				
Indian Rock Park (950 Indian Rock Ave)	R-1H	39,714	Park	2 parcels		061 257802100 061 258401600				
James Kenney Park (1720 Eighth St)	R-1A	159,948	Leased			058 212200100		Yes, a portion	BAHIA	5/15/2012
John Hinkel Park (41 Somerset Ave)	R-1H	180,127	Park	3 parcels		061 257900200 061 257900100 061 259803300				
Live Oak Park (1301 Shattuck Ave)	R-2H/ R-2AH	224,036	Leased			060 245503805 060 246601500		Yes	Theater First INC	1/31/2023








Attachment 3:
Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Lower Codornices Path (at Sixth St)	MULI	2,900	Park			060 238501000				
Marina/Cesar Chavez Park (11 Spinnaker Way)	No Zoning available	191,060,069	Leased			060 254500100 060 254000201 060 252800701 060 253400103	2,529	Yes, a portion	Berkeley yacht Club; Berkeley marine Center; Berkeley Company, Highline Kites; Cal Sailing Club; Cal adventures; Skates Restaurant; Hs Lordships; Bait Shop-oung Kim; Doubletree	12/31/2058
Mental Health Adult Clinic (2640 MLK Jr Way)	R-2A	12,314	City Facility			054 181100300	11,194			
MLK Jr. Civic Center Park (2151 Martin Luther King Jr Way)	R-3/ C-DMU Buffer	121,548	Park			057 202100200	-			
Mortar Rock Park (901 Indian Rock Ave)	X? Next to R-1H	5,174	Park			061 258305100				
Nia House Learning Center (2234 Ninth St)	R-1A	19,855	Leased			056 197000801	7,760	Yes	Nia House Learning Center	8/1/2053
North Berkeley Senior Center (1901 Hearst Ave)	R-2A	32,803	City Facility			057 205701202				
North Bowling Green (portion of City Corp Yard, 1324 Allston)	R-2	21,000	City Facility			056 199301501	46,604			



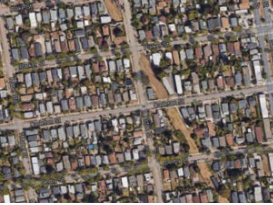





Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Oak Park (35 Domingo Ave)	R-1H	9,894	Park			064 424200100				
Oak Ridge Steps (between El Camino Real and Oak Ridge)	R-1H	1,408	ROW			064 424301400				
Oceanview Garden Apartments (1816 Sixth St)	MUR	115,476	Other	Oceanview Garden Apartments. Former RDA property. 2 non-contiguous parcels.		057 209801202 058 211801007				
Ohlone Park (1701 Hearst Ave)	R-2/ R-2A	300,981	Park	10 Parcels		057 206702801 057 206600601 057 206503100 057 206400702 057 205601501 057 206700700 058 215002001 060 241403102 060 241707602 060 241101802				
Open Space (1100 Kains Ave)	R-2, adjacent to C-W	5,200	Other	Only the open space is in Berkeley. Buildings are in Albany.		060 241000200				
Open Space (Santa Fe Ave at Albany border)	R-2	1,925	Open Space	adjacent to BART ROW		060 240906902				
Open Space on California (entrance to 1600 Addison condos)	R-2	3,322	Park			056 200500300				
Open Space (Hillcrest Rd)	R-1H	4,427	Other			064 424701600				




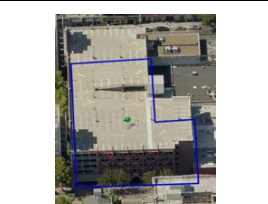




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Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Open Space (Sutter St at Eunice St)	R-1H	7,579	Open Space			061 256600600				
Open Space (Tamalpais Rd)	R-1H	1,760	Open Space			060 247303800				
Open Space (Twain Ave near Sterling Ave)	R-1H	3,271	Open Space			063 298400805				
Oxford Plaza Parking Garage (2165 Kittredge)	C-DMU Core	46,633	Parking Garage	2 parcels. City owns a portion of the site - parking garage. Parcel listed as 0 square feet.		057 211800100 057 211900100	46,302			
Parking Lot (Adeline and Alcatraz)	C-SA	5,831	Leased			052 152801504	-	Yes	Children's First Medical Group	No End Date
Presentation Park (2199 California st)	R-2	2,493	Park			056 200500200				
Prince Street Mini Park (1631 Prince St)	R-2A	6,750	Park			053 160601000				
Remillard Park (80 Poppy Ln)	R-1H	83,734	Park	3 parcels		063 297601201 063 297601100 063 297601203				





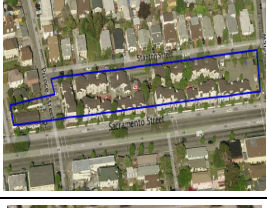


Inventory of City Properties

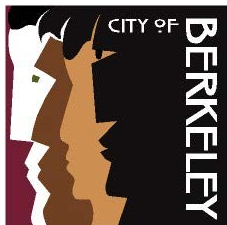
Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Roundabout (Parkside Drive)	R-1H	16,767	Open Space			064 424404200				
San Pablo Park (2800 Park st)	R-1	518,647	Park			053 166500100				
Santa Fe Right of Way (approx. 1400 Carleton)	R-1/R-2	75,086	ROW	6 parcels		054 179302700 054 178303500 054 17830360 054 179402800 054 173502000 054 179002800				
Sidewalk and Road (Ashby between Harper and MLK Jr. Way)	R-2A/ C-SA	16,500	Other			053 160100402				
Sidewalk (Le Conte Ave at La Loma Ave)	R-2AH	2,957	Other			058 220400100				
Small Parcel (Ashby Ave, between Harper and Ellis)	R-2A	222	Other			053 160200401				
small plaza (Henry and Hearst)	R-2A	1,620	Other			057 205101602				
Sojourner Truth Court (former Santa Fe ROW)	R-3/ R-1/ C-SA	36,110	ROW	includes some open space		054 173702000				

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Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
South Berkeley Senior Center (2939 Ellis St)	R-2A	21,690	City Facility	3 parcels		053 160302100 053 160302200 053 160302300				
Spiral gardens (2850 Sacramento St)	R-1/ C-SA	12,423	Leased			053 166903000		Yes	Spiral Gardens Community Garden	6/30/2008
Strawberry Creek Park (1260 Allston Way)	R-2/ R-2A	147,999	Park	3 parcels		056 199000700 056 199100200 056 199000403				
Telegraph-Channing Garage and Shops (2425 Channing Way)	C-T	32,685	Parking Garage			055 187900601	189,867			
Terrace View Park (1421 Queens Rd)	R-1H	39,724	Park			060 248504601				
Tevlin Street (north of Gilman)	R-1A	7,438	Other			060 241701900				
University Avenue Cooperative Homes Apartments (Addison at Sacramento)	R-4	50,842	Leased	Resources for Community Development affordable housing project		056 199600401 056 199602401 056 199601000 056 199600600 056 199600900 056 199600200 056 199602800 056 199600300		Yes	UACH, LP	11/15/2080
Veterans Memorial Building (1931 Center St)	C-DMU Buffer	24,819	Leased			057 202202000	33,254	Yes	Building Opportunities for Self-Sufficiency (BOSS); Dorothy Day House; Option Recovery Services; Berkeley Food and Housing Project; Berkeley place; American Legion Post 7; Disabled American Vets, The Ecology Center	Mo to mo

Inventory of City Properties

Name (Address)	Zoning	Lot SF	Current Use	Notes	Image	APN	Bldg SF	Leased?	Tenant	End Lease Term
Virginia-McGee Totland (1644 Virginia St)	R-2	16,248	Park			058 215700100				
West Berkeley Service Center (1900 Sixth St)	MUR	31,020	City Facility			057 209700201				
West St. (between Lincoln and Delaware)	In between R-2/ R-1	33,048	Other	BMC. 3 parcels		058 213602400 058 213701800 058 213501900				
Willard Park (2730 Hilleglass Ave)	R-2	111,000	Park			054 171102700				
William B Rumford Senior Plaza (3012 Sacramento St)	C-SA	76,666	Leased	Resources for Community Development affordable housing project		053 161401800	47,424		South Berkeley Cmty Housing Dev Corp - William Byron Rumford Sr. Plaza (Resources for Community Development)	8/26/2070
Women's Day Time Drop-in Center (2213 Byron St)	R-2	4,800	Leased			056 198403000	3,173	Yes	Women's Day Time Drop-in Center	12/24/2023
Women's Daytime Drop-In Center (2218 Acton St)	R-2	21,085	Leased	Adjacent to City Corp Yard		056 199300600	594	Yes	Women's Daytime Drop In Center	2/18/2018



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR

April 5, 2016

To: Honorable Mayor and Members of the City Council
From: Councilmember Susan Wengraf
Subject: Analyzing All City-Owned Properties for Potential for Housing Development

RECOMMENDATION

Request that the City Manager explore the opportunity for the City of Berkeley to build housing on city-owned property: conduct an inventory of city owned properties and return to City Council as soon as possible with an evaluation and analysis of those properties that are appropriate for the development of affordable housing.

BACKGROUND

Across the state of California, urban centers are experiencing a crisis in housing availability at all levels of affordability. The crisis is very severe in the Bay Area. Lack of funds and subsidies from the state and federal government has exacerbated the obstacles to developing housing at all levels of affordability. In addition, the scarcity and the high cost of land in the Bay Area and in Berkeley, specifically, is an enormous barrier to producing affordable housing. Berkeley needs to optimize its limited resources now and look to partner with housing developers to build housing on city-owned land.

The City of Berkeley has a unique opportunity. The two senior centers, "North", on MLK and Hearst, and "South" on Ellis and Ashby and the Service Center on 6th Street are all in need of significant renovation. Now is the time to evaluate these properties to determine if it is feasible to create a mixed-use, housing/community center on these sites prior to spending millions of dollars on the current structures.

All City owned properties should be explored and evaluated for their potential as sites for housing development.

In addition, the Berkeley Unified School District owns property that has the potential to be developed as housing. The City of Berkeley should work closely with the BUSD to encourage them to move forward with their own analysis of potential housing sites that are currently under- utilized.

This severe housing crisis calls for all publicly owned land to be evaluated and considered.

FINANCIAL IMPLICATIONS: Staff time

CONTACT: Councilmember Susan Wengraf Council District 6 510-981-7160



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
May 16, 2017

To: Honorable Mayor and Member of the City Council

From: Councilmembers Susan Wengraf, Kate Harrison, Linda Maio and Ben Bartlett

Subject: Budget Referral: Feasibility Study for the Construction of Affordable Senior Housing

RECOMMENDATION:

Refer to the budget referral process a feasibility study that evaluates the financial requirements and analyzes the site/context yield of the construction of affordable housing for seniors on the sites of North Berkeley Senior Center, West Berkeley Service Center and South Berkeley Senior Center.

FINANCIAL IMPLICATIONS:

\$100,000

BACKGROUND:

The demographic for people over 65 is increasing in Berkeley. By 2030, the population of residents over 65 will be more than 26,000. The number one concern expressed by seniors is their ability to be able to stay housed in Berkeley, as they get older.

Berkeley has an opportunity to provide affordable senior housing by building over the senior or service centers. Since the city owns the land, a public/private partnership for the construction and management is an excellent possibility.

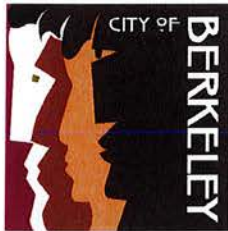
As the city moves forward with planning the expenditures from Measure T1, we should be sure that resources used on improving our current facilities do not pre-empt the possibility of future development at these three sites.

ENVIRONMENTAL SUSTAINABILITY

No adverse effect on the environment.

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160



Planning and Development Department
Health, Housing and Community Services Department

March 7, 2019

To: Honorable Members of the Land Use, Housing, and Economic Development Committee

From: Timothy Burroughs, Director, Planning and Development Department
Kelly Wallace, Interim Director, Health, Housing and Community Services Department

Subject: Process for Considering Proposals to Develop the West Berkeley Senior Center Site for Senior Housing

SUMMARY

The Committee is considering a referral that would direct the City Manager to issue a Request for Proposals (RFP) for the development of the West Berkeley Service Center site (located at 1900 Sixth Street) into a senior housing and services project, consistent with Age Friendly Berkeley recommendations. The Committee discussed this item at its February 20, 2019 meeting and requested that staff come to the March 7, 2019 Committee meeting with additional information.

Specifically, the Committee requested an estimate of the staff time required to conduct a basic analysis of the development potential for the West Berkeley Service Center site. The Committee also requested input from staff on the appropriate procurement process for soliciting ideas and proposals from housing developers for potential future development of the site.

STAFF TIME NEEDED:

Land Use staff recommend that the analysis of development potential at the site include build-out scenarios for a three-, four-, five- and six-story building at the site, using Mixed-Use Residential (MUR), West Berkeley Commercial (C-W), and Multiple-Family Residential (R-3) Development Standards. Each buildout scenario should reflect base project conditions, and conditions if Density Bonus waivers and concessions are requested, or if Use Permits are used to modify Development Standards. The proposed analysis would take approximately 40-60 hours of staff time.

PROCUREMENT PROCESS:

Staff recommends that Council consider:

- Complete any rezoning before issuing an RFP. If the zoning changes for the site are not yet settled, this may inhibit the number of interested developers. This sequence would also avoid the duplicate time and expense of designing two projects (one responding to the current zoning, one responding to the revised zoning). Completing this process first will also mean that the RFP responses are

based on more current information, since predevelopment work could proceed immediately after a contract award.

- A Request for Proposals (RFP), as opposed to a Request for Information (RFI), may be the best tool to use for soliciting development concepts from housing developers if Council wishes to use this process to award a contract, such as a Disposition and Development Agreement. An RFI is typically used to collect information from many potential bidders in anticipation of releasing a request for bids, to inform the request. An RFP is an excellent tool to use when the City wants bidders to apply their creative thinking to the proposed project and wants to award a contract. The RFP can ask the bidders to respond to multiple City priorities. Since identifying and analyzing options to develop the site will require an investment of staff time from respondents, developers are more likely to respond with more fully developed proposals if the process is used to award a contract.
- As a precursor to developing an RFP, it would help staff to understand Council's priorities for the site, particularly what project components are most important, such as maximizing the number of affordable units for seniors, providing deeply affordable units, inclusion of community services space, a memory care facility, etc. Understanding the ranking of Council priorities will help staff and bidders evaluate trade-offs and enable more responsive proposals, making the process more efficient for the City and developer alike.

CONTACT PERSONS

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437
Kelly Wallace, Interim Director, Health, Housing and Community Services Department,
510-981-5107



Office of the Mayor

CONSENT CALENDAR
May 28, 2019

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín
 Subject: Tax Exemption on Federal Research Grants

RECOMMENDATION

Adopt a first reading of an Ordinance to add a subsection to Berkeley Municipal Code Section 9.04.165 to create an exemption on the taxing of business gross receipts relating to federal research grants.

BACKGROUND

Berkeley is an attractive place for tech startups due to its proximity to San Francisco and Silicon Valley, as well as being home to the University of California, Berkeley where many of these innovative companies are conceived, often in partnership with the Lawrence Berkeley National Laboratory. The City of Berkeley is home to more than 330 innovation sector/tech companies, with more than 260 – approximately 80% – being startups. 29% of these companies are in biotech and 12% in cleantech. Both these industries often use research and development (R&D) grants to serve the public good and often receive grant opportunities from various federal sources, such as the Department of Energy, Environmental Protection Agency, National Science Foundation, and Health and Human Services. Berkeley is also home to 8 Accelerators, such as SkyDeck, QB3 East Bay Innovation Center, Bonneville Labs and CITRIS Foundry. Many companies under the accelerators are recipients of federal research grants, including cleantech companies like PolyPlus Battery, All Power Labs and Opus 12, and biotech companies like Aduro, Valitor, Newomics, and CinderBio. Many of these companies are providing public interest research, such as health, clean energy, and other social and environmental solutions, all while providing jobs and investments to our community.

In addition to a lack of adequate office and R&D space, startups that are dependent on federal R&D grants as their primary source of financing face an additional disincentive for remaining/expanding in Berkeley due to the gross receipts taxing of such grants. It creates a perception that Berkeley is not a startup-friendly city, despite its status as a hub of intellectual innovation.

Tech startups often rely heavily on federal grants for R&D. Although the City of Berkeley has a business license fee similar to other cities in the Bay Area and across the country with a high concentration of startups, such as Boulder and Cambridge, we are one of very few that taxes federal grants. Taxing these grants makes the tax burden enormously high for startups and impacts their ability to grow, which in turn limits their overall tax

contributions to the City. Most importantly though, it can cause businesses to move out of Berkeley.

In March 2019, the Office of Economic Development provided its economic update for the City, showing a continual trend of low vacancy for office and non-retail usage commercial space. Berkeley's unemployment rate and office space vacancy is noticeably lower than county and statewide averages, showing a desirability for businesses to take root in Berkeley. However, much of this is a result of existing businesses expanding, leaving little room for startups to flourish. With many of these emerging startups having a high probability of contributing significantly to the innovation sector, and their strong desire to stay, we must do more to make it possible for them to stay and thrive in Berkeley, where they were founded.

Over the past few months, the Finance Department, Office of Economic Development, and the Mayor's Office have been researching best practices and has met with various stakeholders, including local startups reliant on federal research grants. The Ordinance recommends that companies that receive less than \$100,000 in gross receipts (excluding government grants) be exempt from paying taxes on the first \$1,000,000 in federal research grants.

RATIONALE FOR RECOMMENDATION

Providing a tax exemption on the first \$1,000,000 for federal research grants will greatly benefit startups that rely on these grants to move their projects forward, leading to more successful outcomes. Such a change could enable some of today's smaller companies to become tomorrow's engines of the economy. It also levels the playing field, as companies do not have to pay taxes on seed money but do for federal grants. It will also provide an incentive for such business to remain in Berkeley and therefore improve our tax base in the long run, making it a smart way to invest in Berkeley's future economic vitality.

FINANCIAL IMPLICATIONS

Slight loss in tax revenue that will likely be recouped through more businesses remaining in Berkeley. Staff time for application of the Ordinance.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1. Ordinance

ORDINANCE NO. XXXX-N.S

AMENDING BERKELEY MUNICIPAL CODED CHAPTER 9.04 BUSINESS LICENSES

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

Section 1. That Section 9.04.165 of the Berkeley Municipal Code is amended to read as follows:

9.04.165 Professional--Semiprofessional--Connected business.

A. Finance, Insurance, Banking (including Savings and Loans) and Real Estate. Every person in any business, profession or occupation within the business field of finance, insurance and real estate, as described in the most practicable version of the U.S. Government Printing Office publication North American Industrial Classification System Manual, except for those persons whose business is primarily renting real property, as defined in Section 9.04.195, shall be classified as a professional-semiprofessional.

B. Health, Veterinary, Legal, Educational, Engineering-Architectural-Surveying, Accounting-Auditing-Bookkeeping, and Miscellaneous Services Not Classified Elsewhere. Every person in any business, profession, or occupation within the business fields of health, veterinary, legal, education, engineering-architectural surveying, accounting-auditing-bookkeeping, and miscellaneous services not classified elsewhere, as described in the current U.S. Government Printing Office publication entitled North American Industrial Classification System Manual shall be classified as professional-semi-professional.

C. Nothing contained in this section shall be deemed or construed as applying to any person engaged in any of the professions or occupations enumerated in this section solely as an employee or partner of any other person or entity conducting, managing or carrying on any such business in the City.

D. Any person subject to a license under provisions of this section may exclude from gross receipts the portion of those receipts paid to subcontractors, providing that a list of such subcontractors and the amounts of payment are reported to the Director of Finance. The Finance Department shall pursue collection of the business license tax from all reported subcontractors.

E. Any person subject to a license under provisions of this section with less than \$100,000 in annual gross receipts, as defined in Section 9.04.025, net of governmental research grants, may exclude from gross receipts up to \$1,000,000 received from governmental research grants, providing that a list of those grants and the amounts of payments received are reported to the City as defined by the Director of Finance.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Councilmember
Cheryl Davila
District 2

ACTION CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila

Subject: Direct City Manager to place a moratorium on enforcement of Ordinance No. 7632-N.S. (BMC Sections 14.48.160 and 14.48.170), “Miscellaneous Use of Streets and Sidewalks” / “Shared Sidewalk Policy” until a homeless response system is designed, created and implemented as stated in the “1000 Person Plan.”

RECOMMENDATION

Direct City Manager to place a moratorium on enforcement of Ordinance No. 7,632-N.S. (BMC Section 14.48.160 and 14.48.170) Miscellaneous Use of Streets and Sidewalks” / “Shared Sidewalk Policy” at homeless encampments until a homelessness response system is planned, created and implemented pursuant to research, findings, reports, and goals resulting from the “1000 Person Plan” report received by Council. This action is in fidelity to elements of the 2018 EveryOne Home Plan to End Homelessness adopted by Council on March 12, 2019, that clearly states at pg. 13, “Proposed Actions,” that protection of the dignity of people experiencing homelessness requires municipalities to repeal or stop enforcing policies that criminalize homelessness, and instead develop a humane and consistent response to the needs of unsheltered people.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

In response to growing homelessness locally and regionally, the City Council voted unanimously on January 19, 2016 to declare a Homeless Shelter Crisis.

In light of the fact that City of Berkeley officials and Berkeley Police have begun issuing notices to homeless encampments regarding to Ordinance No. 7,632-N.S. (BMC

Sections 14.48.160 and 14.48.170 Miscellaneous Use of Streets and Sidewalks” / “Shared Sidewalk Policy”), and signaled that possible enforcement by the City of Berkeley of the ordinance may be imminent, it is critical that a more humane and comprehensive housing program is designed, developed and implemented prior to such enforcement action. The City has legal duty to do so.

Robert Wilson Inc. vs. the City of Boise asserts that until a City can offer alternative housing, it cannot criminalize people for their attempts to shelter themselves and their children. Homeless encampments are the sole option for those who are unable to meet the high cost of housing in Berkeley, the place they call “home.”

Among those living in these encampments in Berkeley are: senior citizens, families with young children (many under age 5), Berkeley Unified School District (BUSD) K-12 students, University of California at Berkeley (UCB) and Berkeley City College (BCC) alumni and current students, as well as people who are fully employed but cannot afford Berkeley's market rate rents. Those living in encampments are diverse in ethnicity, age, ability, some are unemployed, and some suffer from chronic or acute illness, including mental health illness and other disabilities. Encampment residents reflect the same diversity of our housed community and deserve to be treated with equal care and respect. All City dwellers pay taxes in Berkeley, visit our restaurants, theatres, businesses and contribute to our economy.

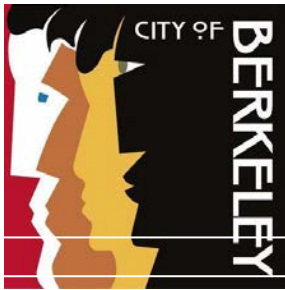
At its April 30, 2019, the Council received the “1000 Person Plan” report prepared and submitted by the City Manager to Council which outlines strategic goals for homelessness reduction to be initiated in 2019 and continuing through 2023.

The findings and goals of the “1000 Person Plan” developed by the City Manager and various departments can provide significant information as to how the City can best address the currently severe housing crisis in a manner that can result in added housing stock which will mitigate the homelessness problems in Berkeley, before the City begins enforcement of Ordinance No. 7,632-N.S. (BMC Sections 14.48.160 and 14.48.170) against these citizens.

It is appropriate and humane that the Council cease enforcement of the “Miscellaneous Use of Streets and Sidewalks” / “Shared Sidewalk Policy” at homeless encampments in order to receive and implement the strategic goals and recommendations of the 1000 Person Plan.

CONTACTS:

Cheryl Davila, Councilmember, District 2 510.981.7120



City of Berkeley, District 3
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Berkeley, CA 94704
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CONSENT CALENDAR
May 28, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Referral to the Public Works Department and the City Manager: Finishing the installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St.

RECOMMENDATION: I

Refer to the City Manager a request to finish the installation of sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer to the Public Works Department for its installation.

BACKGROUND:

In July of 2016, the South Berkeley Legacy Project unveiled their statue of William Byron Rumford, a former Berkeley resident and California State Assemblymember renowned for legislation targeting housing and employment discrimination.

Currently, the statue languishes in total darkness upon nightfall. In the absence of light the statue takes on a shadowy figure, confusing passing vehicles.

FISCAL IMPACTS OF RECOMMENDATION

Staff time to compile a cost estimate and an installation plan.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment

RATIONALE FOR RECOMMENDATION

By installing lightings on the sculpture of a community leader who fought for social justice, the city pays its respects to its history and tradition of political activism and civil right struggles.

By installing permanent lighting fixtures on the streetlights next to the Sacramento and Julia crosswalks, the potential for confusion of passing vehicles is eliminated. (See Attached for an illustrated diagram.)

Also, better lighting also contributes to a healthier business district. Poorly lit areas of Sacramento receive less commercial attention. By investing in a long-term, structural solution, the City will be providing City resources to an underserved geographical area.

Therefore, this item requests that the City Manager and the Public Works Department lay out the procedures and finish the installation of the lightings on the statue. This item is vital toward improving safety and visibility on Sacramento Street, as well as paying tribute to the harbingers of civil rights struggles in our city's history.

CONTACT PERSON

Office of Councilmember Ben Bartlett: 510-981-7130
Yiyang Yuan yiyang.yuan@berkeley.edu

Attachments:

1. Picture





Councilmember Ben Bartlett

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 2180 Milvia Street, 5th Floor
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CONSENT CALENDAR

May 28th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett & Lori Droste

Subject: Increase Staffing Level of Transportation Division to Expedite City's Vision Zero Goal

RECOMMENDATION

That the Council add six permanent positions to the Transportation Division as part of the city's fiscal year 2020-2021 biennial budget. These positions should include 4 Engineers, a permanent Senior Planner (to coordinate Vision Zero), and an Administrative Professional. The Transportation Division needs increased staff capacity to deliver funded capital projects and work towards the City's Vision Zero goal of eliminating fatal and severe injury collisions.

CURRENT SITUATION

As the Mayor, Councilmembers, Transportation Commissioners, and community members have previously noted, the Transportation Division is short-staffed. Meanwhile, community concern about the safety of our streets is growing. The Transportation Division is responsible for the most important Vision Zero strategy: re-engineering our streets to make them safe and attractive for people walking and biking. The Council has made Vision Zero its top priority for staff, but currently the Transportation Division is understaffed.

BACKGROUND

Vision Zero is a data-driven road safety approach that aims to prevent all fatalities and serious, life-altering injuries. The Council has prioritized the Vision Zero initiative to respond to Berkeley's dangerous road conditions.. Traffic crashes that result in severe injuries or deaths cause obvious physical pain to survivors, but also leave survivors, caregivers, and loved ones with emotional trauma a well. Our lack of staff capacity in the Transportation Division interferes with the City's ability to effectively implement Vision Zero and prevent auto-related crashes for our communities. In addition, lack of project delivery capacity has pulled staff away from other core services, like installing

bike racks. Finally, staffing problems will make the city less competitive for major transportation funding streams.

Attempting to prioritize Vision Zero actions, the Council referred to the budget process funds to support a Vision Zero coordinator for one year in December 2018. However, funding the coordinator for one year will not advance our Vision Zero goals. A one-year coordinator will be able to do little more than finish the Vision Zero Action Plan. Thus, the city needs a permanent full-time coordinator whose primary focus is implementing Vision Zero.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Vision Zero has three key elements: Engineering, Enforcement, and Education. The Engineering element focuses on traffic calming and reengineering existing streets into safer ones for all road users, but especially the most vulnerable: people who walk, bike, and take transit. Some existing plans, policies, and programs include safe routes to school, Berkeley Strategic Transportation Plan, Bicycle Plan, Pedestrian Master Plan, and Traffic Calming Program. The Enforcement element will focus on enforcement of traffic violations that cause the most injuries and deaths, like violation of pedestrian right of way. Lastly, the Education element serves to increase public awareness of laws related to the violations that cause the most injuries and deaths. By educating the community on traffic safety, Vision Zero aims to spread awareness on how to stay safe on Berkeley streets.

ACTIONS/ALTERNATIVES CONSIDERED

In December 2018, Council referred to the budget process funds to support a Vision Zero coordinator for one year. But, this plan is insufficient for developing, implementing, and expediting the City's Vision Zero Action Plan. To meet our Vision Zero goal, we must have enough staff to [re]engineer streets and lead a cross-department task force.

OUTREACH OVERVIEW AND RESULTS

Councilmember Bartlett has consulted with Walk Bike Berkeley, a volunteer-run group founded by Berkeley residents that advocates to make walking and biking in Berkeley safe, low-stress, and fun for people of all ages and abilities. This group strongly believes in the importance of increasing the staffing levels of the City's Transportation Division to create a healthy, just, and sustainable transportation system in Berkeley.

RATIONALE FOR RECOMMENDATION

At recent Transportation Commission meetings, staff have outlined their current staffing needs. The Transportation Division has proposed adding four engineering-focused full-

time employees to ensure delivery of critical transportation capital projects. In addition, the Transportation Division needs a permanent Senior Planner to coordinate Vision Zero efforts and an administrative professional. Failure to add these six Transportation Division staff will delay the delivery of projects that would further the city's climate and Vision Zero goals, compromise our competitiveness for grants, reduce staff morale, and challenge staff retention. Thus, we need the appropriate amount of permanent staff members in the Transportation Division to make our Vision Zero goals a reality.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

To be determined.

FISCAL IMPACTS OF RECOMMENDATION

If passed, the financial resources necessary for funding the six permanent positions will be allocated from the FY2020 and FY2021 biennial budget.

ENVIRONMENTAL SUSTAINABILITY

Funding for pedestrian and bike safety would be in compliance with the City's Climate Action Plan and state policy to reduce pollution and emissions.

OUTCOMES AND EVALUATION

It is expected that the Council will strive to implement the Vision Zero initiative and cultivate a culture of traffic safety by adding and funding six permanent positions to the Transportation Division.

CONTACT PERSON

Councilmember Ben Bartlett
Katie Ly

510-981-7130
510-981-7131



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
May 28th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Referral to Public Works Commission to Rename Harold Way to “Dalai Lama Way”.

RECOMMENDATION

Referral to the Public Works Commission requesting changing the name of Harold Way to “Dalai Lama Way” in recognition of the Dalai Lama’s contributions to world peace and in recognition of the Buddhist community center at Harold Way.

BACKGROUND

The Dalai Lamas are the spiritual leaders of Tibetan Buddhists and are believed to be the physical manifestations of the Bodhisattva of Compassion. Bodhisattvas are realized beings, inspired by the wish to attain complete enlightenment, vowed to be reborn in the world to help all living beings. The title of Dalai Lama was established in 1416, when the First Dalai Lama was 25 years old and took an oath to spread the Buddhist teachings all over Tibet. Since then, there have been 14 Dalai Lamas, each being born in the same year of the death of the previous Dalai Lama, according to the belief that the Dalai Lama has a single soul reborn into 14 different bodies and will continue to be reborn as long as the Tibetan people require the institution. The current Dalai Lama, the 14th, has said “in the future, if the Dalai Lama’s institution is no longer relevant or useful and our present situation changes, then the Dalai Lama will cease to exist. At the present moment, however, the Dalai Lama’s institution is crucial to the Tibetan culture and to the Tibetan people.”¹

The current Dalai Lama was born July 6th 1935 in a small Tibetan village of Takser. At the age of two, a search party for the next Dalai Lama came to Takser bringing possessions that had belonged to the Thirteenth Dalai Lama, together with similar items that did not belong to him. In every case, the infant correctly identified those belonging to the Thirteenth Dalai Lama saying “it’s mine! It’s mine.” The Dalai Lama was raised in a monastery and was installed as the spiritual leader of Tibet at the age of five.

In 1950, the People’s Liberation Army (PLA) of China invaded Tibet and the Dalai Lama was given full political authority over the Tibetan people. As the 15 year old leader of six million people facing the threat of war, His Holiness appointed Tibet’s first Prime Ministers

¹ <https://www.dalailama.com/the-dalai-lama/biography-and-daily-life/questions-answers>

and sent delegations abroad in the hope that other countries would intervene on Tibet's behalf. His pleas were not answered and he spent nine years trying to evade a full-scale military invasion by China while also placating the growing resentment against Tibetan people against the Chinese invaders. In 1959 he escaped to India and began working with the Prime Minister of India to rehabilitate Tibetan refugees, and has been in exile for the past 60 years.

From exile, the Dalai Lama instituted a democratic constitution for Tibet and an exile Parliament. In 1987 he delivered a Five Point Peace Plan for Tibet to the United States Congress. In 1989 he was awarded the Nobel Peace Prize. In 2001, the first direct democratic elections were held by the Tibetan people and he requested that his political power be dissolved in favor of democratically elected leadership. He has been a force for world peace and a political advocate and spiritual leader for the Tibetan people since 1959 despite inability to return to his country.

The Mangalam Center in Downtown Berkeley is a Buddhist community center rooted in the Tibetan Buddhist tradition. The Mangalam center offers lectures, mindfulness programs, language classes, and secular and religious ceremonies for the public. The center also "adopted" the streets surrounding their building (Harold Way, Kittredge St, and Allston Way) by painting curbs, repairing street lights, trimming and remulching trees, and more. The Mangalam Center are excellent neighbors and their work renewing Harold Way has previously been recognized by Councilmember Harrison.

When the Tibetan Association of Northern California asked the City to consider renaming a street after the Dalai Lama in recognition of his work for peace, justice, and healing, and to recognize 60 years in exile, Harold Way seemed like an ideal spot. The street has already been adopted by Berkeley's Tibetan Buddhist community and any infrastructure changes will be de minimis because the entire street exists for only one block face and would require only two new signs (at Harold and Allston and at Harold and Kittredge).

FINANCIAL IMPLICATIONS

Cost of creating and installing two street signs.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS:

- 1: City Council Rules of Procedure for changing street names

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

Objective

A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

Section 1 – Lead Commission

The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
May 28th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison and Davila
Subject: Resolution in Support of Full Parity for Mental Health Patients and Clinicians at Kaiser Permanente

RECOMMENDATION

Adopt a resolution calling for full parity for mental health patients and clinicians at Kaiser Permanente and supporting the mental health clinicians in their contract negotiations.

BACKGROUND

Mental health care at Kaiser Permanente is severely understaffed, which leads to poor health outcomes for patients. More than 60,000¹ California Kaiser patients are referred to outside therapists who do not have sufficient appointments available, cannot access their patients' Kaiser charts, and cannot coordinator their care with other Kaiser health professionals, denying them the integration of health care services that Kaiser promises. In 2013, Kaiser Permanente was fined \$4 million² by the California Department of Health Care for violating the California Mental Health Parity Act, because mental health services were found to have dangerously long wait times and duplicate sets of records with contradictory information. Kaiser has since failed two more state mental health surveys in 2015 and 2017, and will remain under state-ordered monitoring of its mental health services until 2020³.

The mental health clinicians represented by the National Union of Healthcare Workers (NUHW) have led the fight to fully fund mental health care at Kaiser and provide the quality care all Californians deserve. In December 2018, NUHW clinicians held a five-day statewide strike⁴ to put pressure on Kaiser to address its failures. This strike sent a powerful message that Kaiser must finally work with clinicians to bring staffing up to needed levels and provide patients with appropriate care, but a fair contract has not yet been ratified. Until then, NUHW continues to hold rallies and organize for a contract that will protect clinicians and patients alike.

¹ <https://calmatters.org/articles/californians-struggle-to-get-mental-health-care/>

² <https://www.sacbee.com/news/local/health-and-medicine/healthy-choices/article2609176.html>

³ <https://nuhw.org/press-release-therapists-to-strike-kaiser-mental-health-clinic-where-patients-wait-up-to-4-months-for-appointments/>

⁴ <https://nuhw.org/news-and-press/kaiser/>

May 2019 has been proclaimed Mental Health Month in Berkeley per Resolution No. 68,847—N.S. Quality mental health care requires well-paid union mental health clinicians with manageable caseloads. In honor of Mental Health Month, Berkeley must stand with NUHW clinicians and support appropriate funding and case levels.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

RESOLUTION NO. ##,###-N.S.
RESOLUTION IN SUPPORT OF FULL PARITY FOR MENTAL HEALTH PATIENTS
AND CLINICIANS AT KAISER PERMANENTE

WHEREAS, nearly 1 in 6 California adults experience a mental illness of some kind and 1 in 13 children have experienced an emotional disturbance that limits their participation in daily activities; and

WHEREAS, more than half of Californians believe that most people suffering with mental health conditions do not get the help they need, and believe that their communities do not have enough mental health providers; and\

WHEREAS, Berkeley has proclaimed May 2019 as Mental Health Month per Resolution No. 68,847-N.S.; and

WHEREAS, the Kennedy Forum, a leading mental health watchdog, has given California's mental health parity statutes an "F" grade, and Milliman, a leading actuarial firm, has found that California patients seeking mental health and addiction services are more than seven times as likely to get treatment out-of-network than patients seeking medical or surgical care; and

WHEREAS, Kaiser Permanente (Kaiser) is California's largest health insurer and provider of health care services, with more than 8.8 million covered lives statewide, and plays a leading role in driving standards of health care for California patients and caregivers; and

WHEREAS, Kaiser was fined \$4 million by the California Department of Health Care in 2013 for violations of California's Mental Health Parity Act and standards for timely access to care; and

WHEREAS, Kaiser has since failed two more state mental health surveys in 2015 and 2017, and will remain under state-ordered outside monitoring of its mental health services until 2020; and

WHEREAS, there have been multiple class action lawsuits filed over Kaiser's mental health care deficiencies and hundreds of press stories reporting on Kaiser's poor delivery of mental health care and its damaging results – including a number of suicides associated with patients allegedly experiencing delays in timely access to appropriate mental health services; and

WHEREAS, Kaiser has barely increased its ratio of 1 full-time mental health clinician to every 3,000 Kaiser Plan members; and

WHEREAS, understaffing remains so severe that more than 60,000 California Kaiser patients are being referred to outside therapists who do not have sufficient appointments available, cannot access their Kaiser charts, and cannot coordinate their care with other Kaiser health professionals, denying them the integration of health care services that Kaiser promises; and

WHEREAS, Kaiser's mental health clinicians have been denied parity with other Kaiser caregivers, losing their pension for new hires in Southern California and enduring past wage freezes; and

WHEREAS, Kaiser's \$14.4 billion in net income since 2014 and \$41.5 billion in cash and reserves as of December 2018 give it more than enough financial resources to accept and afford the implementation of reasonable proposals necessary for the benefit of its patients, including boosting staffing levels, phasing out all outsourcing of care, and providing raises to all Kaiser mental health staff; and

WHEREAS, mental health clinicians are currently voting to authorize an open-ended strike in defense of their patients, their families, and themselves if they cannot settle the fair contract they deserve;

NOW, THEREFORE BE IT RESOLVED that the Berkeley City Council strongly supports the establishment of full parity for mental health patients and clinicians at Kaiser Permanente; and

BE IT FURTHER RESOLVED that the Berkeley City Council stands in solidarity with the mental health clinicians at Kaiser represented by the National Union of Healthcare Workers in their fight to settle a fair contract.



SOPHIE HAHN
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CONSENT CALENDAR

May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Sophie Hahn
 Subject: Budget Referral: Solano Avenue Revitalization Plan

RECOMMENDATION

1. Refer \$300,000 to the FY2020 - FY2021 Budget Process for the development of a two-part Solano Avenue "Master" Revitalization Plan; Part A for the Upper/Eastern end of Solano Avenue and Part B for mid-corridor blocks within the City of Berkeley, to coordinate with the City of Albany's mid-corridor Solano Avenue Reconfiguration Plan.
2. Direct the City Manager to send a letter to the City of Albany expressing Berkeley's desire to collaborate on reconfiguration and revitalization plans for the mid-corridor portion of Solano Avenue, and to initiate plans for coordination.

SUMMARY STATEMENT

Solano Avenue is a primary shopping district for much of North Berkeley, including the Thousand Oaks neighborhood and both the low and high North Berkeley hills. Revitalizing Solano Avenue as a neighborhood-serving, attractive and sustainable Main Street for North Berkeley is a key goal of local residents. Solano also has the potential to generate significantly more tax revenues for the City of Berkeley by attracting new businesses and patrons.

Upper Solano Avenue is extremely wide, with most of the right-of-way devoted to automobiles. This area presents a unique opportunity to create an enhanced sense of place for North Berkeley; to add pedestrian, landscaping and placemaking features that support a vibrant neighborhood Main Street and build community.

Solano Avenue is also the most important commercial and pedestrian-oriented street shared by Berkeley and Albany, knitting the two communities together. For approximately five blocks of mid-Solano, buildings on the North side of the street are in Berkeley, while the street, buildings on the South side of the street and *both* the North and South sidewalks are within Albany. This unusual configuration means that Albany determines the street and sidewalk conditions for many Berkeley properties and

businesses. Ensuring that mid-Solano amenities are similar and/or consistent on both the Albany and Berkeley portions of the street is thus particularly important. As a single continuous corridor, improvements to mid-Solano Avenue should be conceived and designed in a collaborative, coordinated manner.

Albany has already implemented a Complete Streets plan for lower Solano Avenue, from San Pablo Avenue to Masonic Avenue. This public investment in Albany's "downtown" at the western end of the Solano Avenue commercial corridor has triggered a notable revitalization, attracting new patrons and enlivening sidewalks.

Albany is currently discussing proposals for a second phase of their Solano Avenue Reconfiguration Plan, for the "mid-corridor" area, from Masonic Avenue to the Berkeley border. Due to an oversight, Berkeley's City Manager, Mayor and members of the City Council were not apprised of Albany's planning effort at the outset, and their visioning process has progressed without the City of Berkeley's participation.

In light of the importance of Solano Avenue to all of North Berkeley, of Albany's "head start" on planning for the mid-Solano corridor, and to encourage the necessary collaborative process between our two cities, the need to fund a study for the Berkeley portion of Solano Avenue is urgent.

This item refers \$300,000 to the FY2020 - FY 2021 Budget Process to begin development of a two-part Solano Avenue "Master" Revitalization Plan for Berkeley; Part A for the Upper/Eastern end of Solano Avenue and Part B for mid-corridor blocks within the City of Berkeley, allowing Berkeley to coordinate mid-Solano plans with Albany. This item also directs the City Manager to send a letter to the Albany City Manager, City Council and Transportation and Safety Commission expressing the City of Berkeley's desire to collaborate on important inter-City elements of Solano Avenue plans.

BACKGROUND

Since the 1920s, Solano Avenue has served as a neighborhood-serving shopping district for North Berkeley and a northern gateway for the City of Berkeley. Bordering Albany, Berkeley's Solano Avenue Commercial District is home to about 130 commercial spaces encompassing approximately 190,000 square feet of commercial space. The eastern, Berkeley portion of Solano Avenue (commonly referred to as "Upper Solano") was a key hub for a number of rail lines in the 1930s, and today is an extra-wide street largely devoted to automobiles and buses, with relatively narrow sidewalks. Upper Solano has a number of restaurants, home goods, clothing, and other unique shops that make it a commercial hub for North Berkeley.

However, both anecdotal and quantitative data suggest that Solano Avenue is an underperforming commercial district for Berkeley. Solano is similar in neighborhood character to the Elmwood District on College Avenue, but The Elmwood earns significantly more tax revenue per block, despite the fact that the two districts are located in areas with similar home prices and populations with similar purchasing power. Despite a modest uptick, tax revenues from Solano Avenue remained relatively flat between 2010 and 2018, especially when compared to the significant increases over that same time period in other Berkeley districts¹.

In recent years, Solano Avenue has been buffeted by changing demographics, the rise of online retail, and other forces that have impacted the area's longtime shops. For nearly a decade, the prominent Oaks Theater at 1875 Solano was vacant and had difficulty attracting an appropriate tenant.² The absence of the theatre, which drew patrons throughout afternoons and evenings, has deprived the area of much needed foot traffic.

In 2018, commercial vacancy rates in the Solano District were at 5.6%. This means that of a total inventory of ground floor commercial space of approximately 191,000 square feet, about 10,696 square feet were vacant. The vacancy rate was nearly a point higher than it was the previous year, and significantly higher than in the years 2012-2015, when the vacancy rate hovered between 3.5% to 4.4%.³

Solano Avenue is also undergoing a number of changes, including the impending opening of a Touchstone Climbing Gym at the long-vacant Oaks Theatre space. Touchstone estimates several hundred visitors per day. The opening of the new gym is expected to bring many new patrons to Solano Avenue's shops and restaurants, and will also impact parking and drop off zones.

Many of Touchstone's existing patrons ride bikes to their other locations (including Ironworks Gym in Berkeley), and demand for bike parking and other bicycle amenities on Solano is expected to increase dramatically once the gym opens. Solano Avenue was identified for a future Complete Street Corridor Study in the 2017 Berkeley Bicycle Plan, and numerous requests for a Ford Go-Bike station on Solano Avenue have been received since the successful launch of the City's bike sharing program.

¹ Berkeley Office of Economic Development, Commercial District Dashboard, March 2019

² Berkeley Office of Economic Development, Economic Development Analysis – Solano Avenue, Feb. 2017.

³ Berkeley Office of Economic Development, Economic Dashboard, 2018.

Berkeley can strengthen community, enhance commerce and public space, better serve a variety of transit modes and increase tax revenues with the prompt initiation of an aspirational visioning and planning process for Solano Avenue.

In the spring of 2018, the Albany City Council began a public process to develop and approve a Solano Avenue Complete Streets Plan for the “mid-corridor” section of Solano Avenue, from Masonic Avenue to the Berkeley City Limit just east of Ventura Avenue. Goals of the study include strategies to “improve safety for pedestrians and bicyclists; enhance access to transit; promote a cohesive streetscape; [and] support local economic activity”⁴. The study also specifically considers “street lighting, intersection alignments, signal modernization, bike facilities, sidewalk improvements, streetscape landscaping, street parking, bus stops, public art, directional signage, and gateway improvements”.⁵ Finally, the study considers a number of aesthetic features and improvements including public art, signage, and intersection and roadway design.

During the February 28, 2019 meeting of Albany’s Traffic & Safety Commission, the Commission recommended to the City Council adoption of the draft Solano Avenue Complete Streets Plan⁶, including an alternative community plan with different parking and bike infrastructure recommendations. To date, the Plan as recommended by the Traffic & Safety Commission has not yet been discussed by the full Albany City Council, but it is expected to be heard soon. The plan, if adopted, has no sources of funding for implementation, but will guide future improvements on Solano Avenue in Albany. Despite an uneven start, there is still time for Berkeley to “catch up” and coordinate with Albany to create a cohesive, mutually beneficial mid-Solano plan that reflects the aspirations of both communities.

The community’s desire for a revitalized Solano Avenue, coupled with consideration of the need to coordinate with Albany’s Solano Avenue planning process presents a unique opportunity for Berkeley to begin its own visioning process for Solano Avenue.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES & LAWS

Policy ED-4 *Neighborhood and Avenue Commercial Districts* of the Economic Development Element of the General Plan sets the goal of providing programs and services to assist neighborhood and avenue commercial districts through actions such as “enhanc[ing] the pedestrian orientation of all shopping districts”.

⁴ <https://www.solanocompletestreets.org/>

⁵ <https://www.solanocompletestreets.org/>

⁶ <https://static1.squarespace.com/static/5ac43de02714e5d504879d1a/t/5c6210b26e9a7f2f1c03066d/1549930705894/Solano+Complete+Streets+Public+Review+Draft+2.11.19.pdf>

Specifically, the City Council referred a Solano Avenue Economic Development Study to City Staff on April 25, 2017 to provide baseline information for future strategic planning and business development and initiatives. Several economic reports developed by the Office of Economic Development also demonstrate the potential for improvement to the City's tax base by working towards a thriving Solano Avenue.

ACTIONS/ALTERNATIVES CONSIDERED

The City could defer initiating a comprehensive study for Solano Avenue and take it up at a later time. However, this would preclude any collaboration in the Albany redesign process, and because it is likely that any plan or vision approved in Albany will inform future changes in Berkeley, it is important that Berkeley be involved at the earliest stage possible. Delaying the study would also further prolong improvements to the Solano Avenue commercial district. Given the length of time need to conduct a thorough community process and to complete any construction or infrastructure project that is approved, starting a process now will ultimately yield more timely results.

CONSULTATION/OUTREACH OVERVIEW & RESULTS

Councilmember Hahn's office has discussed the possibility of collaboration with Berkeley with Albany City Councilmembers and the Albany Mayor, and discussed with City Manager Dee Williams-Ridley funding for a Solano Avenue study, outreach protocols and project timing.

RATIONALE FOR RECOMMENDATION

The Albany study has been in development for nearly a year, and will soon be reviewed by the Albany City Council. Because Solano Avenue spans both Albany and Berkeley, it is imperative that Berkeley be informed of and engaged with proposed Albany improvements, and that a Berkeley study be undertaken to establish Berkeley's own objectives and preferences for Solano Avenue.

Transportation infrastructure and other changes to the Albany-side of Solano Avenue will undoubtedly influence any future transportation infrastructure on the Berkeley portion of Solano Avenue. As such, collaboration between Berkeley and Albany on the mid-corridor redesign is key to a sensible and coherent transition between the Albany and Berkeley portions of Solano Avenue.

IMPLEMENTATION, ADMINISTRATION & ENFORCEMENT

The two elements of the requested study are intended to produce inspiring plans for the Upper and mid-Solano portions of Solano Avenue in Berkeley. The Avenue should be seen first as a public space and a driver of community and economic strength; a neighborhood destination, not just a place to pass through quickly.

The goal for Upper Solano, from The Alameda to approximately Ensenada Avenue (exact western border to be determined by the study), is to create a strong and aesthetically pleasing sense of place, and to enhance the experience of the public realm. Upper Solano Avenue already serves as a Main Street for much of North Berkeley; the intent is for this area to become a more vibrant, attractive and accessible Main Street; a complete ecosystem with greater amenities for residents of all ages, and for all modes of transit. Improvements should be considered that create spaces for social interaction and define a character for the street, including but not limited to landscaping, seating, street furniture, lighting, public art and other features that invite the community to gather, linger, shop and dine more frequently.

The goal for the Berkeley portion of mid-Solano (from approximately Ensenada to where Albany picks up responsibility for the street and sidewalks) is to continue pedestrian and other amenities at a scale appropriate for the mix and concentration of retail, office and residential uses, and to coordinate with Albany to ensure a cohesive corridor.

The study should include robust community outreach and input and, at a minimum, a community survey, a public realm study, review of transit needs and pedestrian safety and crossings, a parking study, review of street and curb alignments (including possible alternatives to the Colusa Dogleg) and green infrastructure.

FISCAL IMPACTS

\$300,000 to fund a two-part Solano Avenue “Master” Revitalization Plan. Funds for implementation of the plan have not yet been identified; this is a preliminary visioning process to create a master plan from which funding needs and resources can be derived. Transit infrastructure and pedestrian accessibility improvements that may result from future implementation are intended to increase City tax revenues from Solano Avenue.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with the City of Berkeley’s environmental sustainability goals by encouraging biking and walking, incorporating green infrastructure, and strengthening community.

CONTACT

Sophie Hahn, District 5, (510) 981-7150

ATTACHMENTS

1. Map of Solano Avenue Commercial District, OED Economic Dashboards 2019
2. Photos of streetscape, pedestrian, and traffic treatments on Upper Solano Ave

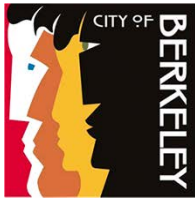
Attachment 1



Attachment 2







CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 May 28th, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson
 Subject: Alternative Compliance Measures to Achieve Fire Safety in Existing Live/Work Spaces

RECOMMENDATION

Refer to the City Manager to develop alternative code compliance measures for nontraditional live/work spaces, in order to improve residential safety without displacing existing communities. Given the current shortage of affordable housing, Staff should consider how to enact a policy of leniency towards existing structures which may not be in complete compliance with city permits. Staff should seek methods to incentivize incremental safety renovations without exposing communities to eviction concerns.

BACKGROUND

In December 2016, the Oakland artist collective known as the Ghost Ship caught fire during a 50-person house concert, ultimately resulting in the deaths of 36 attendees. The building itself, a 1930's industrial warehouse, hadn't been inspected by the City in three decades. In addition to a densely packed interior with art, pianos, and antique furniture obstructing walkways, the Ghost Ship lacked fundamental safety features including sprinklers and clearly marked exits.

This tragedy highlighted the unique challenges and risks faced by the residents of similar nontraditional living spaces, and particularly by economically marginalized populations whose identities or financial circumstances can create a barrier to relocation. In response, Berkeley and other cities should consider what action can be taken to initiate the process of bringing existing spaces up to code without displacing current residents.

When considering methods of doing so, Staff should bear in mind that existing buildings may not be in complete compliance with current city permits and codes. Staff should consider how to adopt a policy of short-term leniency or amnesty, while these structures are improved for the long-term benefit of safe alternative living solutions.

The City of Seattle has also wrestled with the question of how to make alternative living spaces safer while preserving existing communities. In a letter to Seattle Mayor Ed Murray, the Seattle Arts Commission expressed that "reactionary shutdown of essential community spaces is not an appropriate, sustainable, or equitable response. Even when the intent is to protect the public by preventing imminent catastrophe, eviction creates another emergency: the violence of displacement. The existence of non-permitted, non-

code-compliant spaces is in part driven by the economics of space affordability in Seattle, and the fact that code compliance is complicated and expensive.”

Seattle is also considering systematic reforms, including: (1) Instructing all officials involved with code enforcement to consider the impact on marginalized communities before recommending venue closure or resident eviction. (2) Allowing the Fire Marshall to advise non-code-compliant communities on attainable incremental safety improvements, rather than demanding complete compliance immediately, according to the principle that keeping residents safe and housed is the best possible outcome. (3) Designating a fund to assist with life safety improvements, specifically for ‘underground’ or nontraditional live/work spaces. (4) Developing a low-barrier "Arts Events License" for non-commercial spaces, incentivizing nontraditional communities to obtain sanctioned permission rather than operate underground.

When developing a plan, Staff should consider whether aspects of the Seattle model may be appropriate or effective in Berkeley.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

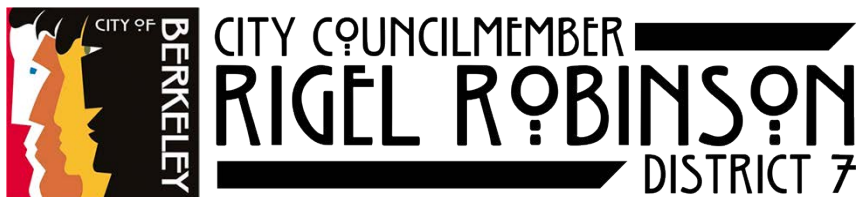
Per-capita use of energy and water by residents of collectives is typically lower. Preserving these community living arrangements helps maintain this low rate of energy and water use per resident. Furthermore, making these communities safer prevents fires which could have devastating consequences for the greater Bay Area ecosystem.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments:

- 1: UC Berkeley Department of City and Regional Planning Report on Strategies for Live/Work Preservation
(http://www.urbandisplacement.org/sites/default/files/images/livework_ucb_studio_report_final.pdf)
- 2: Seattle Arts Commission Letter to Seattle Mayor Ed Murray
(https://res.cloudinary.com/sagacity/image/upload/v1482164218/Commissions_Response_to_Oakland_Fire_mykyrd.pdf)
- 3: Berkeley Zoning Code Title 23, Section 20: Live/Work Provisions
(http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_BMC/BMC-Part2--032508.pdf)



CONSENT CALENDAR
May 28th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Rigel Robinson
Subject: Transition to Zero-Emission Refuse Trucks

RECOMMENDATION

Refer to the City Manager to draft a plan to phase out diesel, biodiesel, and natural gas powered trucks in all fleets used for refuse collection (both City-owned and contracted) and replace them with zero-emission refuse trucks.

BACKGROUND

With the passage of the Fossil Free Declaration of 2018, the City stated its intent to minimize emissions in the future procurement of vehicles and to adopt a plan for transitioning the City's vehicle fleet to all zero-emission electric vehicles.¹ There is an urgent need for climate and air pollution policies, and zero-emission refuse trucks charged on Berkeley's grid could be an alternative to combustion-based refuse trucks.

Combustion-based refuse trucks frequently stop and start along their routes, releasing greenhouse gasses and air pollutants near homes.² As well as reducing harmful pollutants, zero-emission refuse trucks may be much quieter and reduce noise pollution often burdening residents in the early mornings.³

Low emission refuse trucks are more efficient than both diesel and natural gas powered trucks, so transitioning to zero-emission refuse trucks could present an opportunity for even greater efficiency.⁴ Additionally, the total cost of ownership could also be lower than that of combustion-based refuse trucks due to a reduction in operation and maintenance costs.⁵

Successful pilot demonstrations of zero-emission refuse trucks in normal refuse collecting operations have been implemented in Los Angeles and Sacramento.⁶ The City of Palo Alto recently announced plans to replace its entire fleet with zero emissions,

¹ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/EC2018-12-05_Item%207.pdf

² <https://www.governing.com/topics/transportation-infrastructure/gov-to-save-on-trash-trucks-cities-take-a-look-at-the-gas-tank.html>

³ <https://www.nytimes.com/2018/06/21/business/electric-buses-garbage-trucks.html>

⁴ <https://qz.com/749622/the-economics-of-electric-garbage-trucks-are-awesome/>

⁵ Ibid

⁶ <https://www.waste360.com/trucks/two-california-cities-experiment-electric-refuse-trucks>

all electric trucks within the next few years.⁷ By committing to the orderly retirement of fossil-fueled trucks, the City could further stimulate the market for zero-emission refuse trucks and generate political momentum around zero-emission heavy-duty vehicles.

In their proposal, staff should plan for all future refuse truck purchases to be zero-emission. Additionally, staff should consider an expedited time scale for the transition to zero-emission refuse trucks beyond the current refuse truck replacement rate.

FINANCIAL IMPLICATIONS

Variable. The cost is subject to rate at which zero-emission refuse trucks are procured as replacements to current diesel, biodiesel, and natural gas powered refuse trucks.

ENVIRONMENTAL SUSTAINABILITY

The transition of the City's vehicle fleet to zero-emission refuse trucks could greatly reduce the use of pollution-heavy fossil fuels. In the midst of our urgent climate crisis, only zero-emission vehicles meet the urgent need to address criteria air pollutants in California.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Aoife Megaw, Intern to Councilmember Rigel Robinson

Attachments:

1: Palo Alto Press Release

⁷ See Attachment



Attachment
Not Received

This attachment has not been received from the
submitting office.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

The City of Berkeley, City Council's Web site:
<http://www.cityofberkeley.info/citycouncil/>



Commission on Disability

INFORMATION CALENDAR

May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Commission on Disability
 Submitted by: Alex Ghenis, Chairperson, Commission on Disability
 Subject: Update on Concerns about Informational Kiosks and Accessibility, Obstacles

SUMMARY

Following its meeting on February 6, 2019, the Commission on Disability submitted an item for the Information Calendar titled “Concerns about Informational Kiosks and accessibility, obstacles”. (This informational item was not submitted to Council at that time, but is attached to this report for reference.) The informational item outlined the Commission’s concerns about the City’s plans to install informational kiosks in certain public areas of Berkeley. Namely, the Commission raised concerns about universal accessibility of the kiosks (i.e. usability and ease-of-navigation for persons with disabilities) and that the kiosks may obstruct pathways used by people with disabilities.

The Commission would like to follow up on the Information Calendar item filed earlier this year. Our main updates are to acknowledge that a representative from the Ike Kiosk manufacturer visited the Commission’s March meeting and recognized accessibility concerns; he then informed the Commission that the kiosks already have some – but not all – accessibility features. We also understand that the kiosks, as a product/service, can be beneficial to individuals with disabilities in Berkeley. We finally reiterate that it is imperative for the City to ensure that all products and services in the City meet Americans with Disabilities Act (ADA) requirements; if there are not yet concrete federal regulations on specific product features, it is proper for the City to pursue maximum disability access and usability as a matter of civil rights and legal prudence.

CURRENT SITUATION AND ITS EFFECTS

The kiosks are manufactured and designed by Ike and will be located in several areas of the City that serve as hubs of social and commercial activity. They are intended to provide information about Berkeley, its businesses, events, etc. As was noted in our earlier calendar item, the Commission acknowledges that there are potential benefits from kiosks, if they are accessible to all.

The Commission discussed our concerns about accessibility with Mr. Steve Jaffe, a representative from Ike Smart Cities, during the Commission on Disability meeting on March 6, 2019. Mr. Jaffe informed the Commission that Ike kiosks include certain

accessibility features, e.g. the functional area of the kiosk screen/control-pad can move down for individuals unable to reach the standard height. This feature is useful for individuals using wheelchairs or persons of short stature, among other groups.

The Commission inquired about whether kiosks are fully operable by blind/low-vision individuals, for example by having tactile buttons and audio navigation options. Mr. Jaffe confirmed that the kiosks do not currently include full accessibility for blind/low-vision individuals. Ike is exploring product updates that will allow blind/low-vision individuals to use the kiosks; however, the product as currently manufactured does not have appropriate features. The Commission remains concerned about this lack of full accessibility and that kiosk accessibility may ultimately be difficult to upgrade depending on necessary adjustments for hardware and software.

The Commission has noted a recent legal case in the Ninth Circuit, *Robles v Domino's Pizza LLC*, in which the court ruled that Domino's must redesign its website to be accessible to people with blindness who use screen-reading software. Domino's used the defense that there are not established regulations under ADA code for accessibility of websites; the court ruled that a lack of concrete regulations does not preclude the responsibility to offer full accessibility and that Domino's did not pursue due diligence in making their website universally accessible.

The aforementioned case raises concerns that the lack of universal accessibility for the proposed kiosks—including the lack of accessibility for blind/low-vision individuals—could present legal liabilities (in addition to shirking the civil rights responsibility of ensuring equal access to products and services). Claims under the ADA may carry financial penalties and/or requirements to fix accessibility shortcomings.

By licensing kiosks that are not fully accessible and entering a private/municipal collaboration, the City of Berkeley may ultimately be legally and financially liable to claims under the ADA regarding informational kiosks in Berkeley. The Commission cannot state the extent of potential liabilities but believes that it is non-negligible and may be significant.

As we noted in our previous Informational Item, the City needs to fulfill responsibilities under the Americans with Disabilities act, and council may want to further consider the nature of the private/municipal responsibilities of the collaboration in placing potentially inaccessible kiosks in a public space, and taking on potential liabilities.

Accessible Ike City Smart Kiosks are a Strategic Plan Priority Project, advancing our goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

The Commission on Disability had a presentation at the December 5, 2018 meeting, below are the minutes from that portion of the meeting:

“Ike Smart City Kiosks – Mr. Steve Jaffe (Ike Smart City Western region operations manager) presented information on kiosk ADA features and provided a handout of key features. CM Leeder inquired about any audio features and Mr. Jaffe said that IKE was experiencing challenges implementing audio features. CM Walsh requested Mr. Jaffe further research audio features and report back to the CoD. Lighthouse Center for the blind and Ed Roberts Campus may be good resources for IKE designers to tap for discussion of audio options. Discussion about people with disabilities actually using the IKE kiosks with response from Mr. Jaffe that the kiosks are currently deployed in San Antonio, Texas and are being used successfully by persons with disabilities. CM Ghenis appreciated that IKE was attempting to solve the audio challenges, but expressed concerns about possible rollout of kiosks without audio and suggestion was made to at least install a speaker for possible future upgrade to audio. Discussed timeline of kiosk installation with installation of first 15 kiosks (31 total planned/approved by City Council) likely to occur in March/April 2019. Motion to recommend council require that IKE kiosks be fully ADA compliant including blind & deaf by employing audio/tactile features (Walsh/Schwartz 5/0/2).”

Mr. Jaffe returned to the Commission on Disability during its meeting on March 6, 2019. (As of the writing of this Informational Item, the Commission does not have full minutes from March 6 meeting.) Mr. Jaffe noted during the meeting that Ike Kiosks have some accessibility features including a screen that can be lowered for better use by people with disabilities, such as individuals using wheelchairs and persons of short stature. Several commissioners inquired about navigation features for blind/low-vision individuals, e.g. tactile buttons and audio navigation. Mr. Jaffe noted that these features are not available on existing Ike Kiosk models. He stated that Ike Smart City is exploring audio navigation and other functions for potential future upgrades.

Links to additional information about accessibility and kiosk concerns:

<https://www.adakiosks.com> (a particular company)

<https://usability.com.au/2014/04/automated-kiosks-and-accessibility/> (for an international perspective)

<https://www.lflegal.com/2018/01/kiosks18/> (a law firm)

<https://developer.paciellogroup.com/blog/2017/11/considerations-for-making-an-accessible-kiosk/> (considerations for making a kiosk accessible)

ENVIRONMENTAL SUSTAINABILITY

The Commission on Disability has no information about environmental sustainability of the kiosks.

POSSIBLE FUTURE ACTION

Unknown.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

CONTACT PERSON

Alex Ghenis, Chair, Commission on Disability

Dominika Bednarska, Disability Services Specialist, Public Works, 510-981-6418

Attachments:

1: 2019 2.09 adopted informational item city kiosk



Commission on Disability

INFORMATION CALENDAR
(Drafted but Not Submitted)

To: Honorable Mayor and Members of the City Council
From: Commission on Disability
Submitted by: Alex Ghenis, Chairperson, Commission on Disability
Subject: Concerns about Informational Kiosks and accessibility, obstacles

INTRODUCTION

The Commission on Disability is aware that the City of Berkeley is planning to trial/demonstrate a particular type of informational Kiosk, and wishes to share some concerns with the council regarding accessibility issues and sidewalk obstruction.

Given the planned installation and potential for ADA liabilities for the City, we are asking this informational item to be high priority. Prepared for submission and adopted by the Commission on Disability on 2019-02-06

CURRENT SITUATION AND ITS EFFECTS

The kiosks under discussion may not meet accessibility needs. They are a collaborative between a private company and municipalities, and it is unclear if accessibility has been considered in the design, placement, and operation of the kiosks. For example, there is no audio navigation at this time for individuals who are blind, blind/deaf, low vision, or have cognitive or other relevant disabilities. There are other issues as well that will require review.

The Commission is recommending that kiosks need to be accessible, and accessible to all individuals with disabilities, including but not limited to: visual impairment, hearing impaired and Deaf community, and mobility impaired.

The City needs to fulfill responsibilities under the Americans with Disabilities act, and council may want to further consider the nature of the private/municipal responsibilities of the collaboration in placing potentially inaccessible kiosks in a public space, and taking on potential liabilities.

An additional ongoing concern of the Commission is sidewalk safety and obstacles, and the kiosks may impede the right of way of individuals with mobility needs or visual impairment, while not providing services to all individuals with disabilities.

The City has expressed interest in Vision Zero, and pedestrian safety is part of the vision. Pedestrian safety and accessibility is important to civic life and a constant topic of concern for the Commission on Disability. ADA accessibility is #1 of the 10 elements of vision zero streets for NYC, and they have seen a decline in pedestrian fatalities.

The commission acknowledges that there are potential benefits from kiosks if they are accessible to all, and is looking to prevent anticipatable problems with design, placement, and use.

BACKGROUND

The Commission on Disability had a presentation at the December 5, 2018 meeting, below are the minutes from that portion of the meeting:

Ike Smart City Kiosks – Mr. Steve Jaffe (Ike Smart City Western region operations manager) presented information on kiosk ADA features and provided a handout of key features. CM Leeder inquired about any audio features and Mr. Jaffe said that IKE was experiencing challenges implementing audio features. CM Walsh requested Mr. Jaffe further research audio features and report back to the CoD. Lighthouse Center for the blind and Ed Roberts Campus may be good resources for IKE designers to tap for discussion of audio options. Discussion about people with disabilities actually using the IKE kiosks with response from Mr. Jaffe that the kiosks are currently deployed in San Antonio, Texas and are being used successfully by persons with disabilities. CM Ghenis appreciated that IKE was attempting to solve the audio challenges, but expressed concerns about possible rollout of kiosks without audio and suggestion was made to at least install a speaker for possible future upgrade to audio. Discussed timeline of kiosk installation with installation of first 15 kiosks (31 total planned/approved by City Council) likely to occur in March/April 2019. Motion to recommend council require that IKE kiosks be fully ADA compliant including blind & deaf by employing audio/tactile features (Walsh/Schwartz 5/0/2).

Vision zero:

<https://www.visionzerostreets.org>

ADA accessibility is #1 of the 10 elements of vision zero streets for New York

<https://www1.nyc.gov/office-of-the-mayor/news/016-18/vision-zero-mayor-de-blasio-pedestrian-fatalities-dropped-32-last-year-making-2017#/0>

pedestrian fatalities down in NYC.

Some links about accessibility and kiosk concerns:

<https://www.adakiosks.com> (a particular company)

<https://usability.com.au/2014/04/automated-kiosks-and-accessibility/> (an international perspective)

<https://www.lflegal.com/2018/01/kiosks18/>(a law firm)

<https://developer.paciellogroup.com/blog/2017/11/considerations-for-making-an-accessible-kiosk/> (considerations for making a kiosk accessible)

ENVIRONMENTAL SUSTAINABILITY

The Commission on Disability has no information about environmental sustainability of the kiosks.

POSSIBLE FUTURE ACTION

unknown

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown

CONTACT PERSON

Alex Ghenis, Chair, Commission on Disability,
Joe Enke, Supervising Civil Engineer, Public Works Department, (510) 981- 6411

Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
June 18	<ol style="list-style-type: none"> 1. Green Stormwater Infrastructure 2. Arts and Culture Plan
Sept. 17	<ol style="list-style-type: none"> 1. UC Berkeley Student Housing Plan 2. Zero Waste Rate Review 3. Adeline Corridor Plan
Oct. 22	<ol style="list-style-type: none"> 1. Berkeley's 2020 Vision Update 2. Census 2020 Update 3. Short Term Rentals
Nov. 5	<ol style="list-style-type: none"> 1. Transfer Station Feasibility Study 2. Vision Zero Action Plan

Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations

Unscheduled Presentations
<ol style="list-style-type: none"> 1. East Bay Municipal Utility District (presentation by the District, May 28 - tentative)

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	<p>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley <i>(Referred from the July 24, 2018 agenda)</i> From: Housing Advisory Commission Recommendation: That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley. Financial Implications: See report Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley <i>(Referred from the July 24, 2018 agenda)</i> From: City Manager Recommendation: Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley. Financial Implications: See report Contact: Dee Williams-Ridley, City Manager, 981-7000</p>
2.	<p>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance <i>(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)</i> March 18, 2019 Action: <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i> From: Councilmember Worthington Recommendation: Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties. Financial Implications: Minimal Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
3.	<p>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street <i>(Referred from the September 25, 2018 agenda)</i> From: City Manager Recommendation: 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF). 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale. Financial Implications: See report Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>

4. **17. Short-term referral to City Manager and budget referral for creation of a “vehicle dweller program” in Berkeley** *(Referred from the April 2, 2019 agenda.)*

From: Councilmember Davila

Recommendation: Create a comprehensive program to support those living in their vehicles, including but not limited to RVs, to stay in Berkeley without fear of being criminalized, harassed, displaced, fined or having their vehicles confiscated, and with the support needed to have minimal impact on the neighborhoods in which they reside. The program could include: -Issuing 3-6 month permits for vehicles in running order with an option to renew if no validated complaints have been filed. -Creating a registration process that identifies any additional support needed. -Specifying a consistent, clear and transparent process for investigating complaints to determine validity and issuing warnings. -Distributing permits equally across all parking permit districts and identifying any restrictions on parking (i.e. near schools given bus access, etc.). -Creating an affordable sliding scale permit structure based on size of vehicle, weight, number of wheels, etc. -Providing pump-out services, waste disposal and social services as needed. -Creating a pump-out station for use by RVs within the City of Berkeley. - Creating a program for up to \$3,000 per a vehicle for mechanical and sanitation repairs as well as registration and offering a grace period to get vehicles into compliance for a permit. -Piloting a Safe Parking program modeled after Oakland’s pilot: 4-8 sites with 6-10 vehicles parked at business, school, community or faith-based site parking lots, including support and sanitation services.

Vehicles with permits are exempt from Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
1711 MLK Jr. Way (replace commercial space with dwelling)	ZAB	5/9/2019		
Public Hearings Scheduled				
1444 Fifth St (construct four single-family dwellings)	ZAB			5/14/2019
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels)	ZAB			
90-Day Deadline: May 19, 2019				
2701 Shattuck Ave (construct 5-story mixed-use building)	ZAB			
90-Day Deadline: June 30, 2019				
Notes				

Last Updated: 5/8/19