

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, March 9, 2021
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87992485568>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 879 9248 5568. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call:

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar

- 1. Lease Agreement: Patpatia & Associates, Inc. for 125-127 University Ave. Office Space**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,754-N.S. executing a lease agreement with Patpatia & Associates, Inc. to lease 2nd floor office space located at 125-127 University Ave. The lease term is anticipated to begin May 1, 2021 and end April 30, 2024.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 2. Stahlschmidt v. City of Berkeley, Case No. RG 20069713**
From: City Manager
Recommendation: Adopt a Resolution approving the settlement of the action entitled Stahlschmidt v. City of Berkeley, Case No. RG 20069713.
Financial Implications: Public Liability Fund - \$75,533
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 3. Referral Response: Commission Low-Income Stipend Reform**
From: City Manager
Recommendation: Adopt a Resolution adjusting the qualifying annual household income to the Alameda County 50% Area Median Income (AMI) for a three-person household for stipend and reimbursement in lieu of expenses for members of certain Boards, Commissions, and Committees, increasing the stipend to \$100 per meeting with an annual Consumer Price Index (CPI) inflator, and rescinding Resolution No. 64,831-N.S.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Confirming “At-Large” Appointments to the Reimagining Public Safety Task Force**
From: City Manager
Recommendation: Adopt a Resolution confirming “At-Large” appointments to the Reimagining Public Safety Task Force.
Financial Implications: None
Contact: Dave White, City Manager's Office, (510) 981-7000

Consent Calendar

5. Referral Response: Deferral of Remaining Permit, Inspection, Connection, and Impact Fees for 2009 Addison Street and Referral to the City Manager to Develop a Limited-Term Citywide Fee Deferral Program

From: City Manager

Recommendation: Consider Adopting a Resolution authorizing the City Manager to defer remaining building permit, inspection, connection, and impact fees estimated at \$676,464 for the Berkeley Repertory Theater's project at 2009 Addison Street for a period of ten years. In addition, city staff is asking City Council to refer to the City Manager the development of a limited-term citywide fee deferral program.

Financial Implications: See report

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

6. Revenue Contract: East Bay Community Energy FY2021- Kitchen Electrification for Aging Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any resultant revenue agreements and amendments with East Bay Community Energy to provide funding for upgraded, energy-efficient kitchen appliances at both the North Berkeley and South Berkeley senior centers, in the amount of \$48,994, through the East Bay Community Energy's Kitchen Electrification Grant.

Financial Implications: See report

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

7. Contract No. 32000063 Amendment: United Site Service, Inc. for Additional Rental and Servicing of Portable Toilets and Sinks

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000063 with United Site Services of California, Inc. for rental and service of portable toilet and handwashing units, increasing the current contract amount of \$360,000 by \$270,000, for a total not to exceed amount of \$630,000 for a period of two years, with an option to extend for three 12-month periods, for a total amount not to exceed \$1,200,000.

Financial Implications: Various Funds - \$1,200,000

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

Consent Calendar

8. **Contracts: On-Call Waterfront Project Management and Construction Management Services for Capital Improvement Projects at the Berkeley Waterfront**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call waterfront project management services for capital improvement projects at the Berkeley Waterfront, for contract periods of April 1, 2021 through June 30, 2024:
1. AnchorCM, for an amount not to exceed \$1,000,000.
2. Park Engineering, Inc., for an amount not to exceed \$1,000,000.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
9. **Loan Application: Dock Replacement at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to sign a loan agreement with the California Department of Boating and Waterways and to accept the funds for a loan not to exceed \$5,500,000 for replacement of D & E docks at the Berkeley Marina.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
10. **Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in the amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: Revenue - \$500,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 11. Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)** *(Reviewed by the Agenda & Rules Committee) (Item contains Supplemental Material)*
From: Fair Campaign Practices Commission
Recommendation: Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.
(On February 8, 2021, the Agenda & Rules Committee made a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.)
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
- 12a. Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure** *(Reviewed by the Land Use, Housing, & Economic Development Committee)*
From: Homeless Commission
Recommendation: The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31. Stage 1 of enforcement in the complaints procedure shall involve the taking of the complaint which shall be investigated by the designated department expeditiously, within a reasonable period of time no longer than ten days. Upon completion of the investigation, a finding shall be made of substantial evidence of discrimination or no evidence of discrimination. In the process of the investigation, the investigator shall concurrently, while identifying the facts, attempt to resolve the complaint by seeking to bring the parties to agreement that the complaining party be permitted to rent the premises in question or alternatively, if the premises has otherwise been rented prior to the investigation, be provided the first option for the next available vacancy at the premises. Where the complaint has not otherwise been resolved through this procedure, and there is a finding of substantial evidence, the complaining party shall be offered the opportunity to have its complaint heard by an

Consent Calendar

administrative hearing officer mirroring a procedure or similar to a procedure afforded by BMC 1.28. If the complainant files for such an administrative hearing, and the rental property remains available, the filing for an administrative hearing, shall constitute a stay of the property being otherwise rented to another applicant. If at the administrative hearing, the administrative law judge, or hearing officer, finds in favor of the complainant, the administrative hearing officer can order that housing be provided to the complainant and/or direct a fine of no more than five thousand dollars (\$5,000) to be paid to the complainant with an additional penalty to the City of Berkeley for the costs of the administrative appeal. This procedure will be a final administrative decision subject to litigation to be brought in a court of law by a complainant through any legal entity, private or public as the complainant can identify. The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

(On February 4, 2021, the Land Using, Housing, & Economic Development Policy Committee made a qualified positive recommendation to refer to the City Manager to: 1) Draft amendments to the Source of Income Discrimination Ordinance to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income, parallel to the Fair Chance Ordinance; 2) Submit to Council in 2022 a report reviewing the effectiveness of the source of income discrimination ordinance in its first five years; and 3) Update and improve information on the City website and elsewhere about legal services for low income residents; and 4) Refer to the 4x4 Committee discussion of feasibility of enforcement of source of income discrimination alongside the fair chance ordinance, and discussion of Homeless Commission's first-in-time standard recommendations.)

Financial Implications: See report

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

Consent Calendar

- 12b. Companion Report: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure** *(Reviewed by the Land Use, Housing, & Economic Development Committee)*

From: City Manager

Recommendation: The City Manager thanks the Homeless Commission for their concern regarding potential discrimination against residents trying to utilize rental assistance vouchers in Berkeley. She recommends, however, taking no action on the Homeless Commission recommendation since the City already funds legal assistance for low-income residents that may be used to obtain relief under BMC 13.31.

(On February 4, 2021, the Land Using, Housing, & Economic Development Policy Committee made a qualified positive recommendation to refer to the City Manager to: 1) Draft amendments to the Source of Income Discrimination Ordinance to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income, parallel to the Fair Chance Ordinance; 2) Submit to Council in 2022 a report reviewing the effectiveness of the source of income discrimination ordinance in its first five years; and 3) Update and improve information on the City website and elsewhere about legal services for low income residents; and 4) Refer to the 4x4 Committee discussion of feasibility of enforcement of source of income discrimination alongside the fair chance ordinance, and discussion of Homeless Commission's first-in-time standard recommendations.)

Financial Implications: None

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

Council Consent Items

- 13. HelpBerkeley: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**

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

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to HelpBerkeley with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

Financial Implications: Mayor's Discretionary Funds - \$250

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

- 14. Declaring the 2021 Cesar Chavez-Dolores Huerta Commemorative Period**

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

Recommendation: Adopt a Resolution declaring the period of March 21, 2021 to April 10, 2021 as the Cesar Chavez/Dolores Huerta Commemorative Period in the City of Berkeley.

Financial Implications: None

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

Council Consent Items

- 15. Budget Referral: Funding Rectangular Rapid Flashing Beacons (RRFB) at Sixth Street and Addison Street**
From: Councilmember Taplin (Author)
Recommendation: That the City Council refers to the budget process the funding of Rectangular Rapid Flashing Beacons (RRFB) at the south end of the intersection of Sixth Street and Addison Street.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 16. Budget Referral: George Florence Park Traffic Calming (Tenth Street between University Avenue and Allston Way)**
From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor)
Recommendation: That the City Council refers to the budget process the funding of traffic calming measures on Tenth Street between University Avenue and Allston Way including but not limited to: 1. The addition of "SLOW CHILDREN AT PLAY" signs approaching George Florence Park and the West Berkeley YMCA. 2. Two speed tables on Tenth Street between Addison and Allston approaching George Florence Park, another speed table in front of the West Berkeley YMCA, and another at the south end of the intersection of Tenth and Allston. 3. Repainting of crosswalks along this section of Tenth Street. 4. Bulb outs at each corner of Tenth Street and Addison Street.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 17. Resolution Supporting HR 25, Calling for Federal Investigation on Sedition at U.S. Capitol and Expulsion of Complicit Members of Congress**
From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a resolution condemning the violent attack on the U.S. Capitol on January 6, 2021 by a seditious mob intent on preventing the certification of the 2020 Presidential Election, in support of House Resolution 25, calling for a federal investigation on the attack and the expulsion of Members of Congress found complicit in incitement of insurrection.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 18. Support for SB 260**
From: Councilmember Taplin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Send a letter of endorsement for SB 260, the Climate Corporate Accountability Act, to Senator Scott Wiener and the Senate Standing Committee on Environmental Quality, and urge the CA Senate to lead the nation in pursuing real emissions reductions and holding corporations accountable.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Council Consent Items

19. Support Vision 2025 for Sustainable for Sustainable Food Policies *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: Councilmember Davila (Author)

Recommendation:

1. Adopt a Resolution Supporting Vision 2025 for Sustainable Food Policies
2. Join San Francisco, Chicago and Austin in signing the Milan Urban Food Policy Pact (MUFPP) which includes forming an advisory body on sustainable food policies.
3. Support adoption of a Climate-Friendly Food Purchasing Policy as described by Friends of the Earth to replace 50% of the City's annual animal-based food procurement with plant-based food.

4. Short Term Referral to the City Manager to: a. Track the amount of animal-based food replaced with plant-based food; b. Use Friends of the Earth's Municipal Guide to Climate-Friendly Food Purchasing for the procurement of plant-based food.

(On February 8, 2021, the Health, Life Enrichment, Equity and Community Committee moved the item to Council with a qualified positive recommendation to take the following action: 1. Express support for the Milan Urban Food Policy Pact (MUFPP) 2. Refer aspects of the original item to the Community Health Commission (or future commission addressing public health) to take the following actions: a) Consult with appropriate City staff to evaluate the feasibility of altering food sources within the City's existing food service contracts - with a specific focus on the feasibility of replacing meat and dairy-based offerings with plant-based options - given contractor procurement practices and any federal or state nutrition requirements for seniors and other affected populations; and (b) Solicit input from potentially affected communities, particularly seniors, for their feedback on shifting to more plant-based foods through a short survey or other means; and 3. Adopt the resolution as amended.)

Financial Implications: See Report

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

20. Resolution in Support of Establishing Statewide Targets for 100% Zero-Emission Vehicle Sales No Later Than 2025 and Comprehensive Legislative Program to Achieve an Equitable and Just Statewide Transition Towards 100% Zero-Emission Transportation and Mobility by 2030

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

Recommendation: Adopt a resolution in support of establishing (1) statewide binding legislative targets for 100% zero emission vehicle sales no later than 2025, and (2) comprehensive statewide legislative program to achieve an equitable and just transition towards 100% zero-emissions transportation and mobility by 2030.

Send copies of the resolution to Governor Newsom, State Senator Nancy Skinner, Assemblywoman Buffy Wicks, copying President Biden, Vice President Harris, Senators Feinstein and Padilla, and Congresswoman Lee.

Financial Implications: Staff time

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

Council Consent Items

- 21. Budget Referral: Allocate Transportation Network Companies User's Tax Proceeds and other General Fund Revenues to Support Priority Protected Bicycle Boulevards and the Street Repair Program**
From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Author), Councilmember Taplin (Author)
Recommendation:
1. Refer to the June 2021 budget process: a. The first \$500,000 in expected Transportation Network Companies (TNC) User's Tax General Fund revenue toward the construction and maintenance of 18.4 miles of priority protected bicycle boulevards; and b. \$410,000 in expected TNC Tax revenue as revenues become available and an additional \$90,000 from other General Fund revenue to supplement demonstration projects under the Street Repair Program that either directly or indirectly reduce greenhouse gas emissions.
2. Refer to the Transportation Commission to make recommendations to the Council as to allocation of TNC User's Tax in subsequent budget cycles.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 22. Kala Art Institute 2021 Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)
Recommendation: Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn, to the Kala Art Institute, a 501(c)(3) non-profit organization, to support Art Kala 2021, an exhibition, auction, and benefit to support Kala's artistic, cultural, and educational programs, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$250
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 23. Resolution Condemning Anti-Asian Hate and Violence**
From: Councilmember Wengraf (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt a Resolution Condemning Anti-Asian Hate and Violence.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 24. Affirming the City of Berkeley's Support for the People of Tibet**
From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt a resolution affirming the City of Berkeley's support for the people of Tibet.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 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 use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

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

Council Action Items

- 25. Resolution Clarifying Eligibility for Historic Landmark Designation for Residences and Other Structures, Sites and Areas of Importance for Notable Community Members Who Contributed to the Cultural and Historic Values of Berkeley**
From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a resolution clarifying eligibility for historic landmark designation for residences and/or other structures, sites and areas of importance for notable community members who contributed to the cultural and historic values of Berkeley, including to allow the childhood home of Vice President Kamala Harris to be eligible for designation.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar – New Business

- 26. Berkeley Economic Dashboards Update**
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

Information Reports

- 27. FY 2021-2022 Peace and Justice Commission Work Plan**
From: Peace and Justice Commission
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000
- 28. Youth Commission Work Plan 2021**
From: Youth Commission
Contact: Ginsi Bryant, Commission Secretary, (510) 981-6700

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

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



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 25, 2021.***

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

## **Communications**

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

### **COVID-19 Vaccinations**

1. Lina Haldar
2. Anne McClintock (2)
3. Kimberly Wesley, on behalf of acgov.org (3)
4. Laura Babitt
5. Ariel Smith-Iyer
6. Councilmember Kesarwani
7. Rebecca Esterson
8. B.J. Chisholm & Joshua Sperry
9. Rachel Gold
10. Kathy Labriola

### **North Berkeley BART Transit-Oriented Development (TOD)**

11. Richard Links
12. Mary Lai
13. Charlene Woodcock
14. Todd Jailer
15. Allegra Guarino
16. Bruce Bagnell
17. Gael Alcock
18. Roberta Silverstein and Stephen Sperber
19. Vicki Sommer
20. 34 similarly worded form letters (Development that fits the neighborhood)

### **National Crime Victims' Rights Week Proclamation Request**

21. Michelle Joya, on behalf of the Alameda County District Attorney's Office

### **Berkeley Police Chief**

22. Isabelle Gaston
23. Lavy Quintero

### **Gilman I-80 Interchange Project**

24. David Lerman

### **Literature Live Around the World**

25. Cherilyn Parson

### **Cannabis**

26. Daniel Kosmal

**Berkeley Mutual Aid**

27. Susan Runyan

**Housing Accountability Unit**

28. Livable California Electeds

**Cedar Rose Pickleball Courts Lawsuit**

29. Ravi Sahae, on behalf of LPS Law Firm

**Saka Nakodar Day**

30. Baldev Singh

**Golden Gate Horse Fatality**

31. Joe Kaplan (2)

**People's Park**

32. Uma Channer

**Black History Month 2021**

33. Russbumper

**Intent to Sue – 1346 Ordway Street**

34. Tim Kaun, on behalf of Law Offices of Dana Dean

**Homelessness**

35. Kathy Krebs

**Restaurant Week Promotion**

36. Jeffrey Church, on behalf of Visit Berkeley

**USPS Sanfu's**

37. Max Ventura

**Conduct of Zoom Meeting**

38. Linda Franklin

**URL's Only**

39. Vivian Warkentin (2)

40. Russbumper (6)

**Supplemental Communications and Reports**

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

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

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



ORDINANCE NO. 7,754-N.S.

LEASE AGREEMENT: PATPATIA & ASSOCIATES, INC. FOR OFFICE SPACE AT  
125-127 UNIVERSITY AVENUE AT THE BERKELEY MARINA

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

Section 1. The City Manager is hereby authorized to execute a three-year lease agreement and any amendments with Patpatia & Associates for office space at 125-127 University Avenue at the Berkeley Marina. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be \$3,000 per month, escalating 3% annually, and will be deposited in the Marina Fund Budget Code 608-52-544-592-0000-000-000-461120-. The lease includes an option to extend for two additional years; if exercised, monthly rent will increase to \$3,412, and will escalate by 3% the following year.

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

At a regular meeting of the Council of the City of Berkeley held on February 23, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

**OFFICE LEASE**

by and between

**CITY OF BERKELEY**  
a California municipal corporation  
(as Landlord)

and

**Patpatia & Associates, Inc.**  
a California Corporation  
(as Tenant)

Dated: May 1, 2021

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Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

**LIST OF EXHIBITS**

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| Exhibit A-1 | Legal Description of Property |
| Exhibit A-2 | Depiction of the Premises     |
| Exhibit B   | Rules and Regulations         |
| Exhibit C   | Deleted                       |

Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

**OFFICE LEASE**

**BASIC LEASE INFORMATION**

- 1. Landlord: City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Parks, Recreation & Waterfront  
Telephone: (510) 981-6704  
Facsimile: (510) 981-6710
- 2. Tenant: Patpatia & Associates, Inc.  
1803 Sixth St. Suite A  
Berkeley, CA 94710  
Telephone: (510) 559-7140  
Facsimile: (510) 559-7145
- 3. Tenant Trade Name: Tenant shall operate under the trade name Patpatia & Associates, Inc.
- 4. Effective Date: May 1, 2021
- 5. Premises: Approximately 1,706 rentable square feet comprising the southern portion of the 2nd floor (“**Premises**”) of the building commonly known and referred to as 125-127 University Avenue, Berkeley, California 94710 (the “**Building**”).
- 6. Permitted Uses: General office and ancillary commercial use, subject to any applicable or required approvals from the City of Berkeley.
- 7. Initial Term: Three (3) years, commencing as of May 1, 2021, with an option to extend for 2 years (“**Commencement Date**”).
- 8. Base Rent: \$3,000 per month with 3% annual increase
- 9. Security Deposit: \$3,000
- 10. Guarantor: Not required with this Lease.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS \_\_\_\_\_

TENANT’S INITIALS \_\_\_\_\_

Lease Agreement for 125-127 University Avenue- Patpatia & Associates, Inc.

## OFFICE LEASE

This Office Lease (“**Lease**”) is made and entered into as of the effective date specified in Section 4 of the Basic Lease Information, above (“**Effective Date**”), by and between the City of Berkeley, a municipal corporation of the State of California (“**Landlord**”), and the tenant identified in Section 2 of the Basic Lease Information (“**Tenant**”).

### 1. PREMISES.

1.1 Premises. Landlord is the owner of that certain Building referred to in Basic Lease Information Section 5, and the underlying land on which the Premises are located as described in Exhibit A-1 attached hereto and incorporated herein (collectively, the “**Property**”). Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Any improvements or alterations existing in the Premises, or otherwise constructed by Tenant or on Tenant’s behalf therein (whether under this Lease, or any prior lease or sublease) are referred to in this Lease as “**Tenant Improvements.**” Notwithstanding the foregoing, Landlord will not be obligated to deliver possession of the Premises to Tenant (but Tenant will be liable for rent if Landlord can otherwise deliver the Premises to Tenant) until the City Council of Landlord has approved the Lease and Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant and the guaranty of Tenant’s obligations under this Lease, if applicable, executed by the Guarantor(s) in the form attached hereto and incorporated by reference as Exhibit C (“**Guaranty**”); (ii) the Security Deposit and the first installment of Base Rent ; and (iii) copies of policies of insurance or certificates thereof as required under this Lease.

1.2 Landlord’s Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign in or about the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord may exercise this right of entry without any abatement of Rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

### 2. COMMON AREA.

2.1 Definition of Common Areas. The term “**Common Area,**” as used in this Lease, means all areas within the exterior boundaries of the Property now or later made available for the collective general use of Tenant and other persons entitled to occupy space in the Building, including the exterior surfaces and roof of the Building. Common Area shall not include any areas or facilities that could be considered as Common Area except that the areas or facilities are included in the description of premises leased to any other tenant of the Building.



2.2 Maintenance and Use of Common Area. The manner in which the Common Area shall be maintained shall be solely determined by Landlord. The use and occupancy by Tenant of the Premises shall include the right to use the Common Area (except areas used in the maintenance or operation of the Property), in common with Landlord and other tenants of the Property and their customers and invitees, subject to such reasonable, nondiscriminatory rules and regulations concerning the use of the Common Area as may be established by Landlord from time to time. Written notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Tenant thirty (30) days prior to their effective date. Tenant agrees to promptly comply with all such rules and regulations upon receipt of written notice from Landlord.

2.3 Control of and Changes to Common Area. Landlord shall have the sole and exclusive control of the Common Area, as well as the right to make reasonable changes to the Common Area. Landlord's rights shall include, but shall not be limited to, the right to: (i) restrain the use of the Common Area by unauthorized persons; (ii) cause Tenant to remove or restrain persons from any unauthorized use of the Common Area if they are using the Common Area by reason of Tenant's presence in the Property; (iii) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage noncustomer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's judgment; and (iv) reasonably change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area. Landlord may determine the nature, size and extent of the Common Area, as well as make changes to the Common Area from time to time which, in Landlord's opinion, are deemed desirable for the Property.

### 3. TERM.

3.1 Term; Commencement Date. The "**Initial Term**" of this Lease shall be as set forth in Section 7 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 7 of the Basic Lease Information. The Initial Term together with the Extension Term(s), if any, are collectively referred to herein as the "**Term.**"

3.2 Option to Extend Term. Tenant has an option to extend this lease agreement for two (2) years. During option period, rent will increase to two dollars per square foot at the beginning of the first option year (\$3,412/month) and a 3% increase at the beginning of the second option year,

### 4. RENT; SECURITY DEPOSIT.

4.1 Base Rent; Rent. All Rent under this Lease shall commence as of the Commencement Date. Rent shall be paid as set forth in this Section 4. Tenant shall pay to Landlord, at Landlord's address for payment of Rent designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent designated in Section 8 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If Base Rent is due for a period of less than a full month, it shall be prorated for such

partial month on the basis of a thirty (30) day month. The term “Rent” means the Base Rent and any other amounts of any kind that become due and payable by Tenant to Landlord under this Lease. Tenant’s obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

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

4.3 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses (“**Delinquency Costs**”). If Landlord has not received any installment of Rent within five (5) business days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum (“**Applicable Interest Rate**”) equal to the lesser of (i) the maximum interest rate permitted by Law, or (ii) five percent (5%) above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) (“**Bank**”) as its “**Reference Rate.**” If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant’s failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord’s acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant’s default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of Law.

4.4 Security Deposit. The cash sum specified under Section 9 of the Basic Lease Information, if any, shall be deposited with Landlord concurrently with Tenant’s execution of this Lease (“**Security Deposit**”). Landlord shall hold the Security Deposit as security for the performance of Tenant’s obligations under this Lease. Tenant is not entitled to any interest on the Security Deposit and Landlord shall not be liable therefor. If Tenant defaults on any provision of this Lease, Landlord may, at its election and without prejudice to any remedy it has under this Lease or by operation of Law, apply all or part of the Security Deposit to: (i) Rent or other sum in default; (ii) any amount that Landlord may spend or become obligated to spend in exercising Landlord’s rights under this Lease; (iii) unamortized costs of improvements paid for by Landlord, if any; (iv) unamortized costs of brokerage commissions, if any; or (v) any expense, loss or damage that Landlord may suffer because of Tenant’s default. Tenant waives the provisions of California Civil Code section 1950.7, and all Laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant, or of Tenant’s officers,

agents, employees, independent contractors, invitees, customers, licensees, assignees or subtenants (individually and collectively, “**Tenant’s Parties**”).

4.5 Restoration of Security Deposit; Return of Security Deposit. If Landlord applies any portion of the Security Deposit during the Term, Tenant shall, within ten (10) days after demand by Landlord, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount. If Tenant performs every provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit, if any, shall be returned to Tenant or the last assignee of Tenant’s interest under this Lease within thirty (30) days following the expiration or termination of the Term.

4.6 Transfer of Security Deposit; Assignment or Encumbrance of Security Deposit. If Landlord disposes of its interest in the Premises, Landlord may deliver the remaining Security Deposit to Landlord’s successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit. Tenant may not assign or encumber the Security Deposit without the prior written consent of Landlord. Any attempt to do so shall be void and shall not be binding on Landlord.

## **5. UTILITIES AND JANITORIAL SERVICES.**

5.1 Landlord Utility and Service Costs. Landlord shall be responsible and directly contract and pay for the following utilities and services in connection with Tenant’s use or occupancy of the Premises: (i) water; (ii) sewage; (iii) the Landlord janitorial services described in Section 5.2 below; (iv) trash removal; and (v) HVAC (individually and collectively, the “**Landlord Services**”).

5.2 Janitorial Services. Landlord shall provide all janitorial services to common areas only. Tenant shall provide and pay for all janitorial services, including supplies and shampooing carpets, to the Leased Premises during this lease term.

5.3 Tenant Utility and Service Costs. Tenant, at Tenant’s sole cost and expense, shall be responsible and shall directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, which are not expressly included within the definition of Landlord Services, including, but not limited to, electricity, gas, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

5.4 Conservation and Use Policies. Tenant, at Tenant’s sole cost and expense, shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term.

5.5 Exculpation of Liability. Landlord is not obligated to furnish any security patrol or any other services to Tenant, other than the Landlord Services expressly described above, and Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord’s failure to furnish or election to discontinue providing any security patrol or other services. Landlord shall not be liable for any failure or interruption of any Landlord Service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease. Landlord makes no representation with respect to the presence, adequacy

or fitness of the heating, air conditioning or ventilation equipment on or about the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant. The exculpation of liability under this Section 5.5 shall not apply to the extent claims are caused by Landlord's gross negligence or willful misconduct.

## 6. TAXES.

6.1 Taxes. As used in this Lease "**Taxes**" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

6.2 Possessory Interest Taxes. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested shall be responsible for payment of any and all property taxes levied on the interest (collectively, "**Possessory Interest Taxes**").

6.3 Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon the trade fixtures, alterations, additions, improvements, partitions, cabling, wiring, furniture, equipment, inventories and other personal property located and/or installed on the Premises by or on behalf of Tenant (individually and collectively "**Tenant's Property**") and any Tenant Improvements (collectively, "**Personal Taxes**").

6.4 Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill. Tenant shall pay such amount directly to the taxing authority no later than ten (10) business days prior to the date on which such Taxes are due. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf within five (5) days of Landlord's demand therefor. Tenant shall reimburse Landlord for such Taxes and any penalties and fines, together with interest at the Applicable Interest Rate, from the date Landlord tendered payment.

## 7. INSURANCE.

7.1 Landlord. Landlord may elect to self-insure, jointly-insure, or maintain insurance or an insurance equivalent (including, but not limited to, that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Property (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 7.1 is referred to herein as "**Landlord's Insurance.**" Landlord's Insurance shall not, under any circumstances, include

Tenant's Property, any Tenant Improvements, or other items required to be covered by Tenant's Insurance.

7.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times during the Term the following "**Tenant's Insurance**," and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith. Tenant's Insurance shall not have a deductible amount exceeding Five Thousand Dollars (\$5,000).

7.3 Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage. If necessary, Tenant shall provide for restoration of the aggregate limit.

7.4 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.

7.5 Property Insurance. "All risk" property insurance including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, covering damage to or loss of Tenant's Property or any Tenant Improvements (together with, if the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance insuring property belonging to invitees and located in or about the Premises), in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the mortgagees of Landlord shall be presumptive.

7.6 Other Insurance. Any other form or forms of insurance as Landlord or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

7.7 General.

7.7.1 Insurance Companies. Tenant's Insurance shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-VII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

7.7.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as

required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure.

7.7.3 Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be named as additional insureds on the commercial general liability policy required by Section 7.3. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

7.7.4 Primary Coverage. Tenant's Insurance shall be primary, without right of contribution from any Landlord's Insurance.

7.7.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease.

7.7.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant's Property or any Tenant Improvements to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of Landlord, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

7.7.7 Notification of Incidents. Tenant shall notify Landlord within twenty-four (24) hours after the occurrence of any accident or incident on or about the Property or any portion thereof which could give rise to a claim against Landlord, Landlord's Insurance, Tenant, or Tenant's Insurance, except that Tenant shall not be obligated to give Landlord notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation insurance. Tenant's notice shall be accompanied by a copy of any report(s) relating to the accident or incident.

7.7.8 Compliance With Insurance Requirements; Warranties. Tenant shall not do anything in the Premises, or bring or keep anything therein, or subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or fire, or violate Landlord's Insurance, or Tenant's Insurance, or which shall conflict with the regulations of the fire department or any Laws or with any insurance policy on the Premises or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

## **8. INDEMNITY; LIABILITY EXEMPTION.**

8.1 Indemnity. Except to the extent claims are caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees,

expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's or Tenant's Parties use of the Premises, the Property, or any portion thereof, or the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or Tenant's Parties in or about the Premises, the Property or any portion thereof; (iii) any act, error or omission of Tenant or Tenant's Parties in or about the Property or any portion thereof; (iv) loss of, injury or damage to, or destruction of property (including but not limited to merchandise or inventory), including loss of use resulting from such loss, injury, damage, or destruction; or (v) any resulting economic loss, consequential damages, or exemplary damages (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section 8.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

8.2 Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises, the Property, or any portion thereof, arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises, the Property, or any portion thereof, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Premises, the Property, or any portion thereof or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises, the Property, or any portion thereof, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

## **9. REPAIRS AND MAINTENANCE.**

9.1 Landlord's Obligations. The Premises are being leased to Tenant in their current, existing, "AS-IS" condition. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, decorate or paint the Premises, construct or install any Tenant Improvements, or otherwise alter or improve the Premises, Property, or any portion thereof. Having occupied the Premises before entering this Lease with Landlord, Tenant is familiar with the existing condition of the Property and Premises, including any Tenant Improvements, and acknowledges that Landlord has made no representation or warranty regarding the condition thereof. Landlord, at its expense shall maintain the Building's roof (including structure portions of the roof), foundation, and exterior walls, exterior windows,

common areas, building systems including HVAC, plumbing, and electrical and any items in the common areas required for compliance with applicable laws.

9.2 Tenant's Waiver. Notwithstanding anything in this Lease to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights, including its right to make repairs at Landlord's expense, under California Civil Code sections 1932(1), 1941, and 1942 or any similar Laws.

9.3 Tenant's Obligations. Tenant, at its expense, shall maintain the Premises in good order, condition and repair, including interior floor surfaces and floor coverings, interior walls and wall coverings, paintings, interior glass, doors, Tenant Improvements, Signs, , and any items required for compliance with Laws. In the event Tenant fails, in the reasonable judgment of Landlord, to so maintain the Premises in good order, condition and repair, Landlord shall in its sole discretion, upon five (5) days' written notice to Tenant, have the right but not the obligation to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within such five (5) day period. If Landlord elects to undertake any such repairs or maintenance as provided above, then Tenant shall pay as additional Rent, Landlord's actual costs paid or incurred in connection therewith.

## 10. ALTERATIONS.

10.1 Trade Fixtures; Alterations. Subject to the conditions and requirements of this Section 10, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises or any Tenant Improvements. For purposes of this Lease, "**Trade Fixtures**" means specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations, physical additions, or improvements in, about, or to the Premises without the prior written consent of Landlord, which consent may be granted or denied in Landlord's sole discretion. If Landlord approves proposed alterations, additions or improvements, Landlord's consent may be conditioned upon Tenant's establishing compliance with Laws and with Landlord's reasonable requirements regarding selection of contractors and construction of improvements and alterations. Should Tenant make any alterations, additions, improvements without the prior written consent of Landlord, Landlord may, at any time during the Term of this Lease, require Tenant to remove any or all of the same and restore the Premises to their prior condition, at Tenant's sole cost and expense.

10.2 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to installation in or about the Premises or any portion thereof of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "**Transmission Devices**").

10.2.1 Tenant will not place or allow any third party to place or maintain on the roof or on any exterior door, wall or windows (or within forty-eight inches (48") of any windows) of the Premises any sign, banner, flag, awning or canopy, advertising matter or



window coverings of any type without Landlord's prior written consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or window coverings as may be approved in good condition and repair at all times.

10.3 Signs. All signs, graphics, and awnings of every kind visible in or from public view or corridors, or the exterior of the Premises, installed or caused to be installed by, for the benefit of, or at the request of Tenant ("Signs") shall be, at Tenant's sole cost and expense, and subject to Landlord's prior written approval, and subject to all applicable Laws. Tenant shall remove all such Signs prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Signs. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice.

10.4 Standard of Work. All work to be performed by or on behalf of Tenant shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all applicable Laws and all insurance carrier requirements. Landlord shall have the right, but not the obligation, to periodically inspect such work and may require changes in the method or quality thereof. In no event shall such work materially obstruct access to the Property or any portion thereof.

10.5 Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of Tenant's Trade Fixtures or other work performed by or on behalf of Tenant. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and remain with the premises at the termination of this lease. Upon the expiration or other termination of this Lease, Tenant shall perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under Hazardous Materials Laws (as hereinafter defined) or by any other applicable Laws; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration or other termination of the Term, any such items (except Trade Fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the expiration or other termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, the Property, or any portion thereof, whatsoever and in strict accordance with all applicable Laws.

10.6 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date

of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

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

## 11. PREVAILING WAGES.

11.1 Prevailing Wages. Tenant acknowledges and agrees that any Tenant Improvements, repairs, maintenance, or alterations made by or on behalf of Tenant to the Premises, Property, or any portion thereof ("**Improvement Work**"), which will become Landlord's property upon the expiration or termination of this Lease, whether paid for in whole or part by Landlord or which are considered to have been paid for in whole or part by Landlord, will constitute "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds..." California Labor Code § 1720. Accordingly, Tenant shall comply with applicable prevailing wage policies as set forth in the City of Berkeley Municipal Code, applicable California Labor Code requirements pertaining to "public works" (California Labor Code Section 1720 et seq., as amended from time to time and implementing regulations)), and other applicable Laws addressing the payment of prevailing wages in connection with any Improvement Work (collectively, "**Prevailing Wage Laws**"). Tenant shall require the general contractor for any Improvement Work to submit, upon request by Landlord, certified copies of payroll records to Landlord and to maintain and make records available to Landlord and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Tenant shall also include in its general contractor agreement, and in all of its subleases and other contracts, a provision in a form acceptable to Landlord which obligates the general contractor and others as applicable, (i) to comply with, and to require that their respective subtenants, contractors and/or subcontractors comply with, Prevailing Wage Laws, and (ii) upon request by Landlord to submit certified copies of payroll records to Landlord and to maintain and make such payroll records available to Landlord and its designees for inspection and copying during regular business hours at the Premises or at another location within the City of Berkeley. Tenant shall defend, indemnify and hold harmless Landlord and its officers, officials, employees, volunteers, agents and representatives (collectively, "**Indemnitees**") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "**Claims**"), arising out of or in any way connected with Tenant's obligation to comply with all such Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726. Tenant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Tenant's obligation to comply with all Prevailing Wage Laws with respect to the Improvement Work.

## 12. PERMITTED USE AND PUBLIC TRUST TIDELANDS REQUIREMENTS.

12.1 Usage. The Premises shall be used only for the permitted uses set forth in Section 6 of the Basic Lease Information and for no other purpose whatsoever without the prior written consent of Landlord. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining a Berkeley Business License and any other permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes no representation concerning the availability of any permits or approvals required or permitted under this Lease. Tenant shall comply with the rules and regulations, including observance of prohibited uses ("**Rules**"), attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as Landlord may from time to time prescribe. Tenant shall not commit waste; overload the floors or structure of the Premises; permit any unreasonable odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises that are offensive or objectionable to Landlord or other tenants or occupants of the Property; take any action which would constitute a nuisance or would disturb, obstruct, or endanger Landlord or other tenants or occupants of the Property; take any action which would abrogate any warranties; or use or allow the Premises to be used for any unlawful purpose; and shall cooperate with Landlord and Landlord's agents to prevent those actions. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the Rules or any other terms or provisions of such tenant's or occupant's lease.

12.2 Public Trust Tidelands Requirements. Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to that certain statutory grant from the State of California to the City of Berkeley, as set forth in Statutes 1913, Chapter 347, as amended ("**Statutory Grant**"). Tenant agrees and covenants to use the Property in a manner consistent with the Statutory Grant and applicable public trust and tidelands requirements during the term of this Lease.

## 13. ENVIRONMENTAL MATTERS.

13.1 Environmental Compliance. Tenant shall, at its sole cost and expense, comply with all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force (collectively, "**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local Law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the

Resources Conservation and Recovery Act. “**Hazardous Materials**” include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof. Neither Tenant nor Tenant’s Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises or the Property. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged on or under the Premises or the Property to be removed from the Premises and Property and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant’s compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant; (iii) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened; or (iv) any claim made or threatened by any person against Landlord, Tenant, the Premises, Property, or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant’s use thereof and concerning Hazardous Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide copies of all workplans and subsequent reports submitted to the governmental agency with jurisdiction to Landlord in a timely manner.

13.2 Tenant’s Indemnification. Except to the extent caused by Landlord’s gross negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys’ fees and expenses and consultant fees and expenses) relating to the presence of Hazardous Materials in, on, under, about, or emanating from the Premises, the Property, or any portion thereof, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises, the Property, or any portion thereof, caused or alleged to have been caused by Tenant or Tenant’s Parties’ use, storage, handling, treatment, generation, discharge or release of Hazardous Materials in violation of Tenant’s obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including, without limitation, claims made against Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant’s Parties’ use, storage, handling, treatment, generation, discharge or release of Hazardous Materials.

#### 14. DAMAGE AND DESTRUCTION.

14.1 Casualty. If, during the Term, the Premises is totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable (“**Casualty**”), then Landlord shall have the right at Landlord’s option to give written notice to Tenant within ninety (90) days after the date of the occurrence of such Casualty of Landlord’s intention to either (i) repair such Casualty as soon as reasonably possible at Landlord’s expense; or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to

repair the damage, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Landlord's Insurance pursuant to Section 7 above, on account of such damage, and if the restoration can be made under then existing Laws and can be completed within one hundred eighty (180) days after obtaining all necessary permits therefor, then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within fifteen (15) days after Landlord determines that the restoration cannot be made as stated in this Section 14.1, Tenant may terminate this Lease immediately by giving written notice to Landlord. If the existing Laws do not permit the restoration, either party may terminate this Lease by giving ninety (90) days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually and materially interferes with Tenant's use of the Premises.

14.2 Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 14.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

14.3 Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 7.5 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 14.1.

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

## 15. EMINENT DOMAIN.

15.1 Effect on Rights and Obligations. If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if 25% or more of the total square footage of the Premises (but expressly excluding parking areas, if any) is taken and if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within thirty (30) days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination

as designated by Tenant. If Tenant does not terminate this Lease within the thirty- (30) day period, this Lease shall continue in full force and effect, except that the Base Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

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

## 16. DEFAULT.

16.1 Events of Default. Where “default” is used in this Lease with reference to Tenant, default refers to any breach of Tenant’s obligations under this Lease, however brief. Where Tenant’s default continues for the period specified below, it shall, at Landlord’s option, constitute an Event of Default giving rise to the remedies set forth in Sections 16.2 and 16.3 of this Lease. The occurrence of any of the following events shall, at Landlord’s option, constitute an “**Event of Default**”:

16.1.1 Abandonment of or vacating the Premises, or cessation of Tenant’s business operations therein, for a period of ten (10) consecutive calendar days;

16.1.2 Failure to pay Rent or other sums on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

16.1.3 Failure to perform Tenant’s covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

16.1.4 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant’s creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any Laws relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant’s assets or this leasehold; Tenant’s insolvency or inability to pay Tenant’s debts or failure generally to pay Tenant’s debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant’s assets; Tenant taking any action toward the dissolution or winding up of Tenant’s affairs; the cessation or suspension of Tenant’s use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant’s assets or this leasehold; or

16.1.5 The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

16.2 Remedies.

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

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

(b) Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Laws, including the right to recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (iv) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (i) and (ii) above, shall be computed at the Applicable Interest Rate, and as used in (iii) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

16.3 Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

**17. ASSIGNMENT AND SUBLETTING.**

17.1 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which Landlord may withhold in its sole absolute discretion, without any obligation to consider any proposed assignment, sublet or transfer in good faith or otherwise. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any other act Tenant proposes to do, Tenant shall pay to Landlord any attorneys' fees incurred by Landlord in connection with each such request.

**18. ESTOPPEL, ATTORNMENT AND SUBORDINATION.**

18.1 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed and acknowledged to any proposed mortgagee, beneficiary, purchaser, or Landlord, in a commercially reasonable form substantially similar to that requested and a statement certifying, without limitation: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; (v) no deposit of any nature has been made in connection with the Lease (other than deposits the nature and amount of which are expressly described in the Lease); and (vi) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 18 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises, the Property, any portion thereof, or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance; (iii) not more than one (1) month's rental has been paid in advance; and (iv) no deposit of any nature has been made in connection with the Lease except as represented by Landlord.

18.2 Subordination. This Lease shall be subject and subordinate to all ground leases, CC&Rs, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 18.2.

18.3 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if



requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for in Section 4.4 of this Lease or by operation of Law.

**19. RELOCATION WAIVER.**

19.1 Waiver. Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in Law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the relocation of Tenant’s business operations, or the relocation of any person(s), business(es), or other occupant(s) located on within, on, or about, the Premises following the full or partial termination or expiration of Tenant’s leasehold interest in the Premises (collectively, “**Relocation Claims**”), including waiver and release of any relocation rights under Government Code sections 7260 et seq. or any federal Laws (collectively, “**Relocation Assistance Law**”). Tenant acknowledges and agrees that the release and waiver set forth in this Section 19 is material consideration for Landlord’s agreement to enter into this Lease, and that, but for this release and waiver, Landlord would not have entered into this Lease. By releasing and forever discharging the Relocation Claims, Tenant expressly waives any rights under California Civil Code section 1542, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

**20. REQUIRED ACCESSIBILITY DISCLOSURE**

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

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

**21. CITY NON-DISCRIMINATION ORDINANCE**

21.1 Tenant hereby agrees to comply with the provisions of B.M.C. Chapter 13.26 as amended from time to time. In the performance of this Lease, Tenant agrees as follows:

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

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

21.4 Tenant represents that it is subject to state and federal anti-discrimination laws, and maintains a policy of non-discrimination in admission, access, and treatment in its programs, activities, and employment, which fulfill the requirements of subdivision (a), above. Assuming, arguendo, that the requirements of Chapter 13.26 would otherwise apply, for purposes of this Lease the City agrees that the documentation contemplated in subdivision (b) will not be required of Tenant.

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

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

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

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

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

23.2 If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

23.3 If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law and equity. Tenant's failure to comply with this Paragraph shall constitute default of the Lease.

23.4 In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

#### **24. BERKELEY LIVING WAGE ORDINANCE (LWO)**

24.1 Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City of Berkeley (City) mandated minimum compensation during the term of this Lease, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein.

24.2 Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the Property. These records shall include the total number of hours worked, the number of hours spent providing service on the Property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the Lease. The records described in this paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 23 herein.

24.3 If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee enters with regard to the subject Property. Sublicenses shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the Property.

24.4 If Licensee fails to comply with the requirements of the LWO and this Lease the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall

constitute default of the Lease, upon which City may terminate this Lease pursuant to Paragraph 23.

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

## **25. OPPRESSIVE STATES**

25.1 In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this Lease to forgo contractual relations to provide personal services to, the following entities:

25.1.1 The governing regime in any Oppressive State.

25.1.2 Any business or corporation organized under the authority of the governing regime of any Oppressive State.

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

25.2 For purposes of this Lease, the Tibet Autonomous Region and the provinces of Aho, Kham, and V-Tsang shall be deemed Oppressive States. Licensee's failure to comply with this paragraph shall constitute a default of this Lease and City may terminate this Lease. In the event that City terminates this Lease due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this Lease is terminated

## **26. CONFLICT OF INTEREST PROHIBITED**

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

26.2 In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family member of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if

it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

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

**27. MISCELLANEOUS.**

27.1 General.

27.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth herein.

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

27.1.3 This subsection intentionally deleted.

27.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

27.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without reference to its choice of law provisions.

27.1.6 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties.

27.1.7 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this Lease shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

27.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 17.

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

27.1.10 Memorandum of Lease; Title. Landlord may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises and the Property, as required, in recordable form, designating Landlord as transferee or grantee. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

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

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

27.1.13 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

27.1.14 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of Landlord; and Tenant shall look solely to the rents, issues, profits and other income generated by the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the other assets of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

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

27.1.16 Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable

attorneys' fees, in connection with a claim by any person for a commission, Finder's Fee or other compensation based upon any statement, representation or agreement of Tenant.

27.1.17 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

27.1.18 Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that Base Rent shall be equal to 125% of the Base Rent payable under this Lease for the last full month before the date of expiration or termination. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Base Rent during the holdover period an amount equal to one hundred fifty percent (150%) of the Rent payable under this Lease for the last full month before the date of expiration or termination. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

27.1.19 Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, broom-swept clean and in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

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

27.1.21 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

27.1.22 Force Majeure. For purposes of this Lease, the term "**Force Majeure**" shall mean and include the following: any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over any construction anticipated to occur thereon

or over any uses thereof, or by fire, flood, inclement weather, energy shortage, strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or governmental agency, or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure an adequate supply of water, electricity, fuel, materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of Hazardous Materials (as defined in paragraph 13.1), earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required.

27.1.23 Financial Statements. Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year, unless Tenant is in default), Tenant shall deliver to Landlord a current financial statement of Tenant and any guarantor of this Lease. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer or general partner of Tenant (if Tenant is a corporation or partnership, respectively).

## 28. SANCTUARY CITY CONTRACTING

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

A. "Data Broker" means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
- ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

B. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:

- i. The City's computer-network health and performance tools;
- ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.





*[SIGNATURES FOLLOW ON NEXT PAGE]*

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of the date written on number four (4) of the basic lease information sheet.

Approved as to form:

CITY OF BERKELEY

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

By \_\_\_\_\_  
City Manager

Registered by:

Attest:

\_\_\_\_\_  
City Auditor

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

Tenant  
Sunny Patpatia, Patpatia & Associates, Inc.

By \_\_\_\_\_  
Sunny Patpatia

TENANT INFORMATION:

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

EXHIBIT A-1

**PROPERTY DESCRIPTION**

The property is located within the Berkeley Waterfront in the City of Berkeley, CA. The premises include approximately 1,706 square feet comprising the northwestern portion of the 2nd floor of the building commonly known and referred to as 125-127 University Avenue, Berkeley, CA 94710.

EXHIBIT A-2

DEPICTION OF PREMISES

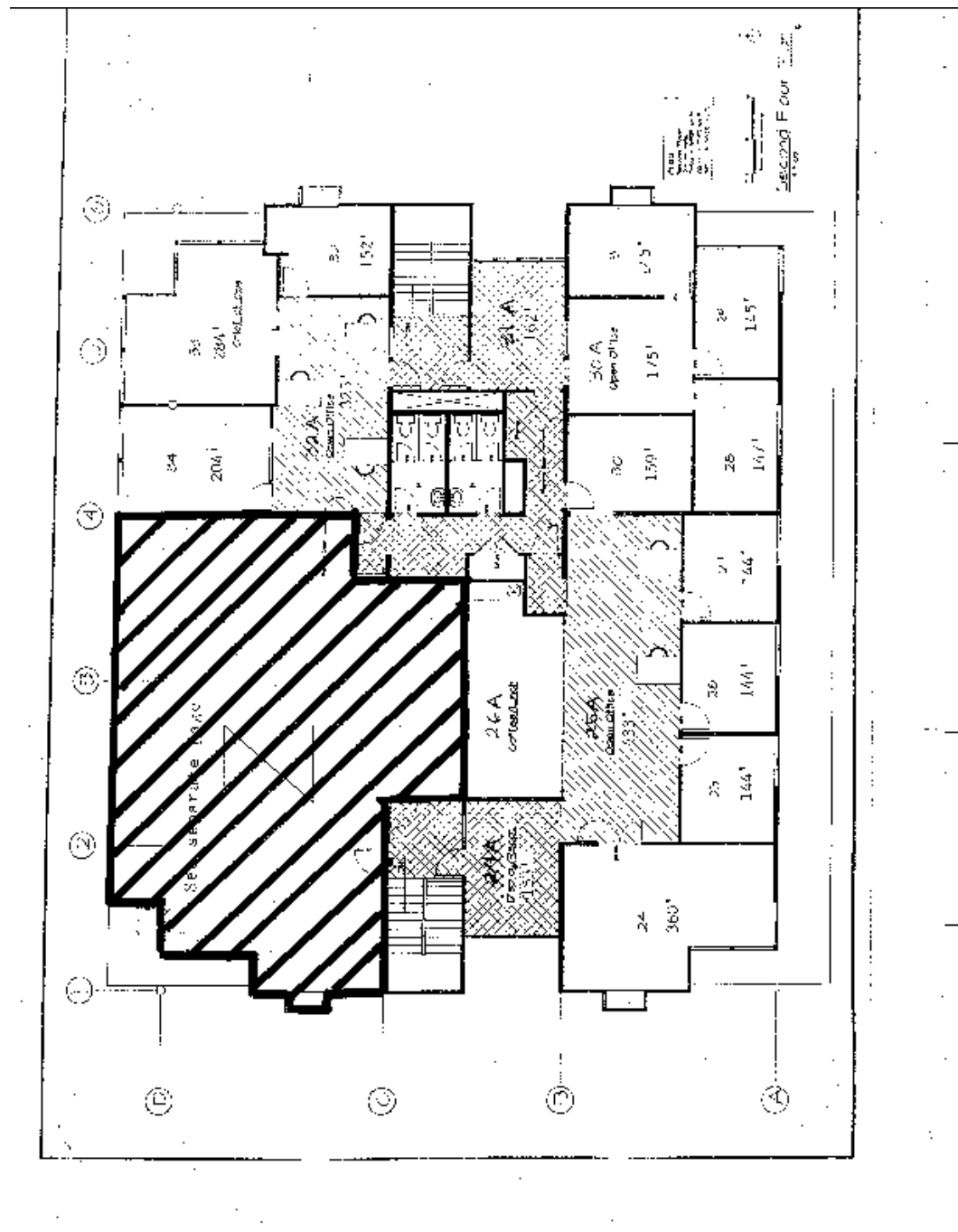


EXHIBIT B

**RULES AND REGULATIONS**

Tenant shall comply with the following Rules and Regulations (individually and collectively, “**Rules**”). Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules.

1. Locks; Keys. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord’s prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys shall be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.
2. Doors Opening to Public Corridors; Protection of Premises. All doors opening to public corridors, if any, must be kept closed at all times except for normal ingress to and egress from the Premises. Tenant shall assume all responsibility, including keeping doors locked and other means of entry to the Premises closed, for protecting the Premises from theft, robbery, and pilferage.
3. Floor Loads. Landlord may prescribe the weight, size, and position of all safes, machinery, equipment, fixtures or other heavy property (“**Heavy Property**”) brought into the Premises and the times and manner of moving those items within and out of the Premises. Tenant shall not overload any floor in the Premises or use or operate any machinery, equipment, or other device, even though its installation may have been permitted, that in Landlord’s opinion is harmful to the Premises. If Tenant shall require Heavy Property, Tenant shall notify Landlord of such fact. If considered necessary by Landlord, Heavy Property must stand on supports that are adequate to distribute the weight properly and Tenant shall pay the cost of any necessary supports or structural bracing. Any damage to any property (whether or not belonging to Tenant), the Premises, the Property or any portion thereof, or its or their respective contents, or any harm to Tenant, its employees, agents, or any occupants or visitors caused by moving or maintaining any Heavy Property shall be the sole responsibility and expense of Tenant.
4. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord’s address set forth in the Lease. Landlord’s employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
5. Use of Plumbing Facilities; Responsibility for Damage. The plumbing facilities (including but not limited to restrooms, toilets, urinals, wash bowls, drains, and other apparatus) shall be used for no purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by Tenant.
6. Restrictions on Defacement; Maintenance of Premises. Tenant shall not mark, drive nails or screws into, or drill into the partitions, woodwork, or plaster, or in any way deface the

Premises, the Property or any portion thereof, without Landlord's prior written consent. Tenant shall maintain the Premises and all portions thereof in a safe, neat and clean condition.

7. Permitted Machines. No machines of more than one horsepower shall be installed, maintained, or operated on the Premises without Landlord's prior written consent.

8. Flammable or Combustible Fluids or Materials; Foul or Noxious Gases or Substances; Nontoxic Materials. Tenant shall not use or keep, or allow to be used or kept, in or on the Premises, the Property, or any portion thereof, any kerosene, gasoline, or other flammable or combustible fluid, material, or any foul or noxious gas or substance. All materials, fabrics, and products used in Tenant's furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord's architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing environmental matters and compliance, Hazardous Materials Laws, Hazardous Materials, or similar matters, or compliance with Laws. Any existing materials supplied or installed by Landlord in the Premises are exempt from this provision.

9. Cooking; No Use of Premises for Improper Purposes. No cooking shall be done or permitted on the Premises, except that Underwriters' Laboratory (UL)-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate, and similar beverages for employees and visitors. This use must be in accordance with all Laws. The Premises shall not be used for lodging, or for any improper, objectionable, or immoral purposes.

10. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof any person who, in Landlord's judgment, is under the influence of alcohol or drugs or commits any act in violation of any of these Rules.

11. Loitering Prohibited. Tenant and Tenant's Parties shall not loiter in or about the Property for the purpose of smoking tobacco products or for any other purpose unrelated to Tenant's use of the Premises.

12. Smoking; Illegal Substances. Smoking of tobacco products and use of illegal substances is strictly prohibited in or about the Property or any portion thereof.

13. Extermination. Tenant agrees not to permit the extermination of vermin to be performed in, on or about the Property or any portion thereof except at times and by a person or company reasonably designated by Landlord.

14. Obstructions. Tenant and Tenant's Parties shall not in any way obstruct the sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Property, and they shall use the same only as passageways to and from the Premises. At no time shall Tenant or Tenant's Parties be permitted to conduct work activity (except for normal loading and unloading of vehicles) nor store wooden pallets, boxes, goods or other materials outside the confines of Tenant's Premises.

15. Disposal of Trash and Garbage. Tenant shall store all trash, garbage and refuse ("Trash") within the interior of the Premises. Tenant shall not place or have placed in Trash

boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of Trash in the vicinity of the Premises. Tenant shall comply fully with all applicable Laws when disposing of Trash.

16. Provision of Information to Tenant's Employees. Tenant shall comply with requests by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.

17. Prohibited Uses and Activities.

17.1 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt, without proper mitigating measures in place;

17.2 Any use, operation or activity which causes or produces any emission into the air of any (i) noxious, toxic, hazardous or corrosive fumes or gases; (ii) excessive smoke, dirt or dust; or (iii) pollutants in violation of any local, state or federal standards;

17.3 Any use, operation or activity which causes or produces any discharge of Hazardous Materials (as defined in Lease Section 13.1) into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or groundwater;

17.4 Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to adjoining properties;

17.5 Uses in violation of any applicable Laws;

17.6 Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

17.7 Additional prohibited uses as determined by Landlord from time to time.

18. Conflict. In the event of any conflict between these Rules or any further or modified Rules from time to time issued by Landlord and the Lease provisions, the Lease shall govern and control.

19. Rule Changes; Waivers. Landlord reserves the right at any time to change or rescind any one or more of these Rules or to make such other and further reasonable Rules as, in Landlord's judgment, may from time to time be necessary for the operation, management, safety, care and cleanliness of the Property or any portion thereof, for the preservation of good order therein, or for the convenience of other occupants and tenants of the Property, if any. Landlord may waive any one or more of these Rules for the benefit of any particular tenant(s). Landlord further reserve(s) all the rights reserved to it or them by the provisions of the Lease, by any CC&Rs, or by operation of Law. No waiver by Landlord shall be construed as a waiver of those Rules in favor of any other tenant or occupant of the Premises or Property, and no waiver shall prevent Landlord from enforcing those Rules against any other tenant or occupant of the Property.



Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules by any other tenant, occupant, or other persons. Tenant shall abide by any additional rules or regulations which are ordered or requested by any governmental or military authority. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition of Tenant's use and occupancy of the Premises





Office of the City Manager

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Farimah Brown, City Attorney  
 Subject: *Stahlschmidt v. City of Berkeley*, Case No. RG 20069713

RECOMMENDATION

Adopt a Resolution approving the settlement of the action entitled *Stahlschmidt v. City of Berkeley*, Case No. RG 20069713.

FISCAL IMPACTS OF RECOMMENDATION

The settlement will require a payment of \$75,533 in attorneys' fees and costs of suit to the petitioners. The settlement amount will be paid out of Public Liability Fund account code 678-31-302-000-0000-000-479-682110. Additional appropriations for this account will be requested in the Second Amendment to the FY 2021 Annual Appropriations Ordinance.

BACKGROUND

On March 16, 2018, Petitioners Hans Stahlschmidt and Patricia Stahlschmidt Hart ("Petitioners") filed an application for an administrative use permit ("AUP") seeking approval for the construction of an accessory dwelling unit ("ADU") on their single-family residential property located at 1446 Scenic Avenue. On August 29, 2019, the Zoning Officer granted the AUP.

On September 19, 2019, a neighboring property owner appealed the Zoning Officer's decision. The Planning Department set the appeal to be heard during the January 9, 2020 meeting of the Zoning Adjustments Board ("ZAB").

Before the appeal could be heard, the City Council adopted an urgency ordinance amending BMC Chapter 23C.24, governing the issuance of permits for the construction of ADUs. The urgency ordinance was enacted in response to three related statutes enacted by the state legislature. These state statutes limit local discretion over the permitting of ADUs. Among other things, the legislation requires local governments to ministerially approve a building permit for an ADU that meets certain criteria, and prohibits requiring a use permit or any other discretionary permit approval for the construction of an ADU. (Gov. Code §§ 65852.2(a)(3), 65852.2(b), 65852.2(e)(1).) The legislation took effect on January 1, 2020.

State ADU law further provides that “an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision . . . shall be null and void.” (Gov. Code § 65852.2(a)(4).) This provision deprived the Zoning Adjustments Board of authority to conduct discretionary review of Petitioners’ AUP application.

On August 3, 2020, Petitioners filed an action in Alameda County Superior Court entitled *Hans Stahlschmidt et al. v. City of Berkeley et al.*, Civil Case No. RG20069713 seeking a writ of mandate and declaratory and injunctive relief to compel the City to issue an AUP to authorize the construction of the ADU on Petitioners’ Property. Petitioners also sought attorneys’ fees under the Housing Accountability Act.

The parties to the lawsuit agree that Petitioners’ proposed ADU is eligible for ministerial approval under Government Code section 65852.2. The City Attorney’s Office recommends that the City Council approve the proposed settlement agreement to resolve the remaining disputed issue surrounding Petitioners’ entitlement to attorneys’ fees.

ENVIRONMENTAL SUSTAINABILITY

No significant environmental impacts are anticipated from approving the settlement agreement.

RATIONALE FOR RECOMMENDATION

Approval of the settlement agreement would limit the City’s liability for additional attorneys’ fees that may be incurred if litigation continues.

ALTERNATIVE ACTIONS CONSIDERED

Alternative actions considered include litigating Petitioners’ eligibility for attorneys’ fees under the Housing Accountability Act.

CONTACT PERSON

Farimah Brown, City Attorney, (510) 981-6998

Attachments:  
1: Resolution

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

AUTHORIZING THE CITY ATTORNEY TO SETTLE STAHLSCHMIDT V. CITY OF BERKELEY (ALAMEDA COUNTY CASE NO. RG20069713)

WHEREAS, on August 3, 2020, Petitioners Hans Stahlschmidt and Patricia Stahlschmidt Hart (“Petitioners”) filed an action in Alameda County Superior Court entitled *Hans Stahlschmidt et al. v. City of Berkeley et al.*, Civil Case No. RG20069713 (“Action”) seeking a writ of mandate and declaratory and injunctive relief to compel the City of Berkeley (“City”) to issue an Administrative Use Permit to authorize the construction of the accessory dwelling unit on Petitioners’ property located at 1446 Scenic Avenue.

WHEREAS, Petitioners and the City wish to resolve the dispute giving rise to the Action.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Attorney to enter into the settlement agreement with Hans Stahlschmidt and Patricia Stahlschmidt Hart in substantially the same form as the Settlement Agreement and Release enclosed herewith as Exhibit A.

Exhibit

A: Settlement Agreement and Release

**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made this \_\_\_<sup>th</sup> day of March, 2021, by and between Respondents and Defendants CITY OF BERKELEY and DEE WILLIAMS-RIDLEY, as City Manager of City of Berkeley (collectively, “City”) and Petitioners and Plaintiffs HANS STAHLSCHMIDT and PATRICIA STAHLSCHMIDT HART (collectively, “Petitioners”). The City and Petitioners are collectively referred to herein as the “Parties,” and are each individually referred to as a “Party.”

**RECITALS**

A. On August 29, 2019, the Zoning Officer for the City approved and issued an administrative use permit (“AUP”) authorizing the construction of an accessory dwelling unit (“ADU”) on Petitioners’ property located at 1446 Scenic Avenue, Berkeley (“the Property”) (Application No. #ZP2018-0058).

B. On September 19, 2019, an appeal was filed challenging the Zoning Officer’s approval of the ADU.

C. Following receipt of the appeal, but before the appeal could be heard by the City’s Zoning Adjustments Board, the City determined that Government Code section 65852.2 rendered the City’s ordinance authorizing issuance of the discretionary AUP “null and void.”

D. On August 3, 2020, Petitioners filed an action in Alameda County Superior Court entitled *Hans Stahl Schmidt et al. v. City of Berkeley et al.*, Civil Case No. RG20069713 (“Action”) seeking a writ of mandate and declaratory and injunctive relief to compel the City to issue an AUP authorizing the construction of the ADU on Petitioners’ Property.

D. On October 21, 2020, Petitioners filed an Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief seeking, *inter alia*, attorneys’ fees under the Housing Accountability Act, Government Code section 65589.5.

F. The Parties agree that the ADU as proposed in Application No. #ZP2018-0058 is eligible for ministerial approval under the provisions of Government Code section 65852.2, and now enter into an agreement to allow for the construction of said ADU and to resolve the Parties’ dispute regarding Petitioners’ entitlement to attorneys’ fees and other claims and defenses raised in or related to the Action.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained in this Agreement, and good and valuable consideration, and in full and final settlement of the Action and to compromise on the disputed claims contained therein, the Parties agree as follows:

## AGREEMENT

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.
2. Issuance of Zoning Certificate. Within 14 days of the date of execution of this Settlement Agreement, the City shall issue a Zoning Certificate for construction of the ADU proposed in Application No. #ZP2018-0058. No fees shall be charged the Petitioners for processing or issuance of this certificate.
3. Ministerial Review of Building Permit. The City will complete ministerial review of any building permit application received for construction of the ADU proposed in Application No. #ZP2018-0058 within the time period provided in Government Code section 65852.2. Approval and issuance of a building permit shall be conditioned on compliance with applicable requirements of the California Building Standards Code; provided, however, approval shall not be unreasonably withheld by the City. No fees shall be charged the Petitioners for processing or issuance of this permit.
4. Payment by the City. Within 14 days of the date of execution of this Settlement Agreement, the City shall pay to Petitioners attorneys' fees and costs of suit incurred in the amount of \$75,544. Payment shall be made to Greenfire Law, PC, in trust for Hans Stahlschmidt and Patricia Stahlschmidt Hart, and shall issue a 1099 to Hans and Patricia Stahlschmidt. Counsel will provide social security numbers and/or EIN or complete IRS Form W-9 upon request.
5. Notice of Settlement and Request for Dismissal. Within 14 days of the date of execution of this Settlement Agreement, Petitioners shall file a notice of settlement of entire case in the Action. In the absence of any breach by the City of Paragraphs 1 through 4 of this Settlement Agreement, Petitioners shall file a request for dismissal with prejudice of the entire action as to all parties and all causes of action. The Parties shall promptly meet and confer in the event any breach of the Settlement Agreement is alleged.
6. Mutual Release. Except as otherwise expressly set forth in this Settlement Agreement, Petitioners and the City hereby release and forever discharge each other, together with their agents, representatives, trustees, employees, officers, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, and attorneys' fees relating to the Action or the claims or causes of action set forth therein.

It is understood and agreed that this is a full and final mutual release of the Action. The Parties agree, as further consideration and inducement for this Agreement, to waive the provisions of California Civil Code §1542 which provides as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

7. Cooperation on Additional Documents. Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Settlement Agreement.

8. Authorization to Execute. Each Party represents that the individual signing this Settlement Agreement is authorized to bind the Party on whose behalf he or she signs.

9. Entire Agreement. As to the matters set forth herein, this Settlement Agreement is the entire, integrated agreement and understanding of the Parties.

10. Waiver, Modification, and Amendment. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only be a writing duly executed by the Parties or their authorized representatives.

11. Notice. Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed as provided in this Section or such other address as such Party may request by notice in accordance with the terms of this Section.

Notice to Petitioners shall be provided as follows:

Greenfire Law, PC  
2001 Addison Street, Suite 300  
Berkeley, CA 94704  
rdoughty@greenfirelaw.com

Notice to the City shall be provided as follows:

City Attorney  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704  
attorney@cityofberkeley.info



12. Severability. If any part of this Settlement Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the Parties' intent with respect to their obligations and rights.

13. Drafting of Agreement. The Parties and/or their respective counsel have participated in the drafting and negotiation of this Settlement Agreement and, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by all Parties.

14. Successors and Representatives. This Settlement Agreement shall be binding on and shall inure to the benefit of the successors and assigns of each Party.

15. Informed Consent. Each Party declares that prior to the execution of this Settlement Agreement, it and/or its duly authorized representatives have apprised themselves of sufficient relevant data, either through attorneys, experts or other sources of their own selection, in order to intelligently exercise their judgment in deciding whether to execute, and in deciding the contents of, this Settlement Agreement. Each Party states that this Settlement Agreement is entered into freely and voluntarily, upon the advice and with the approval of its counsel.

16. Applicable Law. This Settlement Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

17. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles shall constitute good evidence of such execution.

Dated: \_\_\_\_\_, 2021

HANS STAHLSCHMIDT

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

Name: Hans Stahlschmidt

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021

PATRICIA STAHLSCHMIDT HART

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

Name: Patricia Stahlschmidt Hart

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021

CITY OF BERKELEY

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

Name: Farimah Brown

Title: City Attorney

Dated: \_\_\_\_\_, 2021

DEE WILLIAMS-RIDLEY

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

Name: Dee Williams-Ridley

Title: City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher D. Jensen  
Assistant City Attorney



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Referral Response: Commission Low-Income Stipend Reform

RECOMMENDATION

Adopt a Resolution adjusting the qualifying annual household income to the Alameda County 50% Area Median Income (AMI) for a three-person household for stipend and reimbursement in lieu of expenses for members of certain Boards, Commissions, and Committees, increasing the stipend to \$100 per meeting with an annual Consumer Price Index (CPI) inflator, and rescinding Resolution No. 64,831-N.S.

FISCAL IMPACTS OF RECOMMENDATION

Based on responses from commission secretaries for 2019, there are currently 9 Commissioners that qualify for and claim the low-income stipend, for an annual cost of approximately \$2,480. With an increase in the qualifying annual income and an increase in per-meeting stipend from \$40 to \$100, it is anticipated that there will be an increase of eligible recipients. The total cost of increasing the stipend is estimated at \$35,000. This estimate assumes approximately 35 members of Council-appointed board, commissions, committees, task forces, and joint subcommittees qualify and apply for the proposed stipend. Stipends are paid for with funds from multiple funds.

As resources have not been appropriated for this proposed increase in FY 2021, if the attached Resolution is adopted by City Council, city staff will submit a budget request so that the new stipend can take effect as soon as July 1, 2021 upon adoption of the Fiscal Year 2022 budget. If resources are not available in the FY 2022 budget for the proposed increase in the stipend, city staff will work with the City Council to identify funding opportunities in subsequent funding cycles.

CURRENT SITUATION AND ITS EFFECTS

This report responds a referral that originally appeared on the agenda of the December 1, 2020, Council meeting and was authored by Councilmember Robinson. Councilmember Robinson recommended increasing the annual household income cap to 50% of Area Median Income (AMI) for Alameda County and adjust it based on each commissioner's household size, with an annual update. The recommendation also included increasing the stipend to \$78 per meeting and updating it annually with the Berkeley minimum wage.

Staff research found that the qualifying income rate of \$20,000 has not been adjusted since 1991 and the stipend amount was last increased to \$40 in the year 2000.

*Proposed Formula*

Staff’s recommendation is to use 50% of the median household income for a three-person household in Alameda County as the cap to qualify for the low-income stipend and reimbursement. Setting the qualifying amount at a single threshold for all commissioners will make the program easier to administer for both commissioners and city staff. The three-person median household income for Alameda County was used for setting the Mayor’s salary in the Charter amendment approved by voters in November 2020. The current (2020) AMI for a three-person household in Alameda County is \$117,500. Fifty percent of that figure is \$58,750 as shown in the chart below.

| Persons in Household | Annual Income Extremely Low (30%) | Annual Income Very Low (50%) | Annual Low Income (80%) | Annual Income Median (100%) |
|----------------------|-----------------------------------|------------------------------|-------------------------|-----------------------------|
| 3                    | \$35,250                          | \$58,750                     | \$94,000                | \$117,500                   |

The Councilmember’s proposed stipend amount of \$78 was based on minimum wage rates. Applying the \$40/\$20,000 ratio of .002 to the \$58,750 qualifying threshold resulted in a stipend of \$118. The Police Accountability Board and Independent Redistricting Commission both have their compensation for Commissioners set at \$100 per meeting, with an annual increase based on CPI. Staff is recommending that for consistency, the low-income stipend amount be set at \$100 per meeting, not to exceed four meetings per month.

If the Council adopts the new stipend formula resolution, there will be associated changes made to the implementing Administrative Regulation (AR 3.2), and additional updates to account for the transition from FUND\$ to ERMA.

**BACKGROUND**

On July 25, 1974, Council adopted Resolution No. 46,721-N.S., authorizing reimbursement in lieu of actual expense paid or incurred by members of certain boards, commissions and committees, and authorizing payment of actual expenses under certain terms and conditions. The qualifying annual household income was capped at \$12,000 per year and the meeting reimbursement set at \$7.50 per meeting with a maximum of \$15.00 per month.

On October 1, 1991, Council adopted Resolution No. 56,110-N.S., authorizing an increase to \$20,000 for the maximum annual household income and the per meeting stipend to \$20, not to exceed two meetings per month.

On April 11, 2000, Council adopted Resolution No. 60,505-N.S., increasing the per meeting stipend to \$40, not to exceed two meetings per month. Resolution No. 64,831-N.S., adopted April 20, 2010, increased the meetings per month eligible for reimbursement to four.

Each commission secretary is responsible for submitting a reimbursement request on a quarterly basis, and the reimbursements are funded through individual department budgets.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

As part of Measure JJ that was approved by Berkeley voters on November 3, 2020, the three-person Alameda County AMI was used to set the Mayor's salary. For consistency, the low-income eligibility cap to qualify for the proposed new stipend was set at 50% of AMI as well. Additionally, the per-meeting stipend is recommended at \$100 per meeting to maintain consistency with the Police Accountability Board and Independent Redistricting Commission.

ALTERNATIVE ACTIONS CONSIDERED

Council could choose to use a different size household for the area median income, a different percentage, or set the stipend at a rate lower than the comparison commissions, while still increasing the amount from its current rate. Council could also choose to take no action or defer taking action until a later date.

CONTACT PERSON

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

Attachments:

- 1: Resolution
- 2: Original Referral Report from December 1, 2020

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

AUTHORIZING REIMBURSEMENT IN LIEU OF ACTUAL EXPENSES PAID OR INCURRED BY MEMBERS OF CERTAIN BOARDS, COMMISSIONS, COMMITTEES, TASK FORCES, AND JOINT SUBCOMMITTEES, AND AUTHORIZING PAYMENT OF ACTUAL EXPENSES UNDER CERTAIN TERMS AND CONDITIONS AND RESCINDING RESOLUTION NO. 64,831-N.S. AND ALL AMENDMENTS

WHEREAS, it is in the public interest to remove barriers from citizen participation on boards, commissions and committees of the City of Berkeley; and

WHEREAS, the Council of the City of Berkeley finds and determines that it is in the public interest to alleviate this hardship by reimbursing and paying certain minimum allowances for expenses incident to attending official meetings of said bodies; and

WHEREAS, such allowances are determined to be in lieu of actual expenses paid or incurred by said members, except in the case of actual expenses incurred for child care and actual expenses incurred by a member who must employ a paid attendance to provide care for a dependent elderly person while he or she attends meetings; and

WHEREAS, the Council of the City of Berkeley finds and determines that it is in the public interest to reimburse for these support costs when they create an economic hardship for disabled members of boards, commissions and committees; and

WHEREAS, Resolution No. 64,831-N.S., known as the Stipend Resolution, is being rescinded and readopted to change the qualifying household income cap to 50% of Annual Median Income (AMI) for a three-person household in Alameda County, increase the per meeting stipend to \$100 per month, and reaffirm the current policy and procedures.

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

Section 1. ELIGIBILITY OF BOARDS, COMMISSIONS, COMMITTEES, TASK FORCES AND JOINT SUBCOMMITTEES

This resolution shall apply to members of Council-appointed boards, commissions and committees, and temporary task forces and joint subcommittees established by Council (collectively "Eligible Recipients"). Payments in lieu of expenses for other than members of Council-appointed boards, commissions, committees, task forces and joint subcommittees, shall be addressed as part of the Council's budgetary process.

Section 2. ANNUAL STATEMENT OF ELIGIBILITY

Eligible recipients desiring said payments shall file annually with the secretary of the board, commission, committee, task force, or joint subcommittee (“secretary”), a statement certifying that their family income for the preceding year was below the limits specified in Section 3.

Eligible recipients listed as dependents on their family's Federal Income Tax, shall file annually with the secretary, a parental statement certifying that the family income for the preceding year was below the limits specified in Section 3.

Section 3. FINANCIAL LIMITATIONS ON ELIGIBILITY

Those eligible recipients whose family gross income as filed jointly for Federal Income Tax purposes is below the Alameda County 50% Area Median Income (AMI) for a three-person household per year shall be entitled to receive payments as set forth in section 5.

When an eligible recipient becomes aware that their annual family income has or will exceed the Alameda County 50% AMI for a three-person household, that member shall immediately notify the secretary, and request that their eligibility to receive payments be cancelled.

When an eligible recipient whose family income for the preceding year was more than the Alameda County 50% AMI for a three-person household finds that their family income for the current year will be below the Alameda County 50% AMI for a three-person household, they may file a certified declaration with the secretary describing the general circumstances which have occurred that resulted in the lower income. Such certified declaration shall make the person again eligible for payments pursuant to Section 5 of this Resolution.

Section 4. DISABLED SUPPORT

Eligible recipients who are disabled and whose incomes fall within the limitations set forth in Section 3, qualify for reimbursement for the costs of readers to help in reviewing written materials in the meeting packets, for attendants to accompany members to meetings, and other support costs that are required in order to allow such disabled members to participate fully in meeting deliberations.

Disabled eligible recipients desiring reimbursement for these costs, will file in addition to the statement of eligibility set forth in Section 2, a statement with the secretary that certifies the support services that the member requires in order to participate fully. If the member's needs change, they will immediately notify the secretary. Otherwise, the statement certifying the need for support services will continue to be in effect for the duration of the eligible recipient's term of appointment.

## Section 5. REIMBURSEMENT

Eligible recipients are authorized to receive \$100 for each official meeting attended, not to exceed four meetings each month and reimbursement for actual expenses incurred upon presentation of a receipt from the person(s) providing the following services:

- a) Child care expenses incurred by a member while they attend meetings;
- b) Expenses incurred by a member who must employ a paid attendant to provide care for a dependent elderly person while they attend meetings;
- c) Expenses incurred by a disabled member who requires support services in order to participate fully on board, commission or committee meetings.

An "official meeting" is defined as a duly noticed, properly agendized, regular or special meeting of the full board, commission, or committee.

For a meeting that is cancelled, claims may only be submitted if it is for a meeting where the attendees and secretary believed that the meeting would proceed as scheduled, and for which eligible recipients and the secretary actually showed up and waited a reasonable period beyond the meeting start time for the quorum to be met before canceling.

The \$100 stipend amount shall be annually adjusted by the Bay Area Consumer Price Index.

Additionally, eligible recipients requesting reimbursement for child care expenses, a paid attendant for elderly care, or expenses incurred for support services as a disabled member, are subject to AB 1234. State law AB 1234 requires completion of an online ethics training course within one year of the first day of service, and every two years thereafter.

The ethics course is available at no cost online on the FPPC website. Upon completion of the course, a printed and signed certificate of participation must be filed with the secretary in order to be eligible for reimbursement,

## Section 6. CLAIMS

Claims for reimbursement in lieu of actual expenses paid or incurred shall be filed with the secretary. Said secretary shall process the claim for payment pursuant to procedures established by City Administrative Regulation 3.2 and as amended by the City Manager.



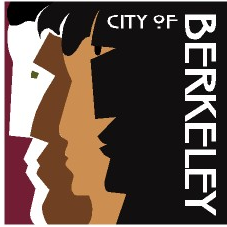
March 9, 2021

Section 7. REIMBURSEMENT NOT SUBJECT TO FINANCIAL LIMITATIONS

- A. Human Welfare and Community Action Commission. The Human Welfare and Community Action Commission provides for alternate representatives of the poor to be elected or appointed when a vacancy occurs. Alternate representatives of the poor shall be eligible for stipend payments when serving in place of the principal member.
  
- B. Commission on Disability. Pursuant to Berkeley Municipal Code Section 3.66.040, low income status for members of the Commission on Disability is not a prerequisite for reimbursement of attendant care expenses.

BE IT FURTHER RESOLVED that the new stipend rate and qualifying threshold shall take effect upon the date which City Council appropriates resources in the General Fund for the increase in the stipend, but no earlier than July 1, 2021.

BE IT FURTHER RESOLVED that Resolution No. 64,831-N.S. and all amending resolutions are hereby rescinded upon the date the new stipend rate and qualifying threshold take effect.



Rigel Robinson  
Councilmember District 7

## REVISED AGENDA MATERIAL

**Meeting Date:** December 1

**Item Number:** 28

**Item Description:** Referral: Commission Low-Income Stipend Reform

**Submitted by:** Councilmember Rigel Robinson

Non-substantive edit deleting the phrase “to correspond to compensation for 2.5 hours of work” from the recommendation language.



CONSENT CALENDAR  
December 1, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Robinson  
Subject: Referral: Commission Low-Income Stipend Reform

RECOMMENDATION

Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider:

1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data.
2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage.

**Deleted:** to correspond to compensation for 2.5 hours of work

CURRENT SITUATION

Under current policy, a City of Berkeley commissioner qualifies for the low-income stipend if their combined household income is under \$20,000. The income cap does not take household size into account. The Council last updated the stipend policy in April 2010, via Resolution No. 64,831–N.S.

An eligible commissioner is authorized to receive:

- \$40 for each official meeting attended, not to exceed four meetings each month.
- Reimbursement for actual childcare expenses incurred while they attend meetings.
- Reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while the commissioner attends meetings.
- Reimbursement for actual expenses incurred for disabled support services necessary to participate fully in board, commission, or committee meetings.

If a commissioner is paid \$600 or more in stipend payments in one calendar year, an IRS Form 1099 will be generated by the Finance Department.

To establish eligibility, commissioners must file the Annual Declaration form, found in Appendix H of the Commissioner's Manual, with the secretary of their board, commission, or committee. Commissioners must file a new declaration form annually prior to May 31 in order to maintain eligibility. Commissioners who are minors (under 18

years old) must have eligibility declaration forms cosigned by a parent or legal guardian attesting that the combined household income is under \$20,000.

Pursuant to Berkeley Municipal Code Section 3.32.060, Police Review Commissioners receive \$3 per hour for their time and work investigating complaints, reviewing policies and practices, and attending meetings, for a maximum compensation of \$200 per month.

**BACKGROUND**

The City of Berkeley has over 35 boards and commissions, which reflects the high level of political participation from its residents. The work that these commissioners carry out is invaluable to the City Council and Berkeley at large, providing expertise and in-depth policy recommendations on a wide range of subjects that the Council would otherwise only be capable of giving cursory attention to.

Outside of the regularly scheduled meetings that low-income commissioners are compensated for, extended work hours are almost always necessary. A commissioner's financial situation should not act as a barrier to civic engagement in any capacity. This referral seeks to make commission roles more accessible by expanding stipend eligibility and implementing a cost of living adjustment.

***Expanding Stipend Eligibility***

The \$20,000 income cap for stipend eligibility has not been adjusted in recent memory, despite inflation and cost of living skyrocketing in Berkeley and the greater Bay Area.

According to 2019 data from the U.S. Department of Housing and Urban Development (HUD), the median income in Alameda County for a household of four is \$111,700. This means that a family of four making \$61,950 is classified as "very low-income" and is eligible for Section 8 housing. Even a commissioner in a one-person household making \$26,050, which HUD considers "extremely low-income" at 30% AMI, would not qualify for the low-income stipend with the current criteria.

In order to ensure that everyone who wants to serve on a City of Berkeley commission can afford to do so, the criteria for stipend eligibility must be expanded to show an accurate picture of costs of living. If a household qualifies for low-income housing at 50% AMI, they should also qualify for low-income commissioner stipends. Furthermore, household size should be taken into account when determining eligibility, as shown in the chart below.

**2019 HUD Alameda County Income Guidelines**

Referral: Commission Low-Income Stipend Reform

CONSENT CALENDAR: December 1, 2020

Effective April 24, 2019

| Persons in Household | Annual Income Extremely Low (30%) | Annual Very Low Income (50%) | (60%)    | Annual Low Income (80%) | Annual Income Median (100%) | Annual Income Moderate (120%) |
|----------------------|-----------------------------------|------------------------------|----------|-------------------------|-----------------------------|-------------------------------|
| 1                    | \$26,050                          | \$43,400                     | \$52,080 | \$69,000                |                             | \$104,100                     |
| 2                    | \$29,750                          | \$49,600                     | \$59,520 | \$78,850                |                             | \$118,950                     |
| 3                    | \$33,450                          | \$55,800                     | \$66,960 | \$88,700                |                             | \$133,800                     |
| 4                    | \$37,150                          | \$61,950                     | \$74,340 | \$98,550                | \$111,700                   | \$148,700                     |
| 5                    | \$40,150                          | \$66,950                     | \$80,340 | \$106,450               |                             | \$160,550                     |
| 6                    | \$43,100                          | \$71,900                     | \$86,280 | \$114,350               |                             | \$172,450                     |
| 7                    | \$46,100                          | \$76,850                     | \$92,220 | \$122,250               |                             | \$184,350                     |
| 8                    | \$49,050                          | \$81,800                     | \$98,160 | \$130,100               |                             | \$196,250                     |

### ***Implementing Cost of Living Adjustment***

In 2010, when the Council approved the most recent version of the commissioner stipend resolution to amend the number of stipend-eligible meetings, the minimum wage in Berkeley was \$8 an hour. Today, in 2020, it is \$15.59 an hour plus CPI.

Commission meetings usually last around 3 to 5 hours, depending on the commission and the topics at hand. Additional work is needed on the part of the commissioner to prepare for the meeting by reading the agenda packet, attending subcommittee meetings, submitting items for discussion, and reaching out to stakeholders for input. In 2010, the \$40 stipend was equivalent to minimum wage pay for 5 hours of work. Today, it is only equivalent to approximately 2.5 hours of work. The equivalent stipend in today's dollars would be \$15.59 x 5, or \$77.95. For the purposes of this proposal, that number is rounded up to \$78.

### **FINANCIAL IMPLICATIONS**

The financial implications depend on the number of commissioners who currently receive the low-income stipend, as well as the number of commissioners who would be newly eligible under the amended income caps. Costs can potentially be offset by reorganizing and consolidating commissions, as outlined in a separate Council proposal currently at the Agenda & Rules Committee.

Referral: Commission Low-Income Stipend Reform

CONSENT CALENDAR: December 1, 2020

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David A. White, Deputy City Manager, City Manager's Office  
 Subject: Confirming "At-Large" Appointments to the Reimagining Public Safety Task Force

RECOMMENDATION

Adopt a Resolution confirming "At-Large" appointments to the Reimagining Public Safety Task Force.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts attributed to confirming appointments to the Reimagining Public Safety Task Force (Task Force).

CURRENT SITUATION AND ITS EFFECTS

On February 18, 2021, the Task Force convened for the sole purpose of appointing individuals to serve as "At-Large" members on the Task Force<sup>1</sup>. In making these appointments, the Task Force was asked to consider identifying individuals that bring perspectives, expertise or experience that may be missing in initial appointments made by the City Council, Mental Health Commission, Police Review Commission, Youth Commission, Associated Students of the University of California, and the Berkeley Community Safety Coalition. As outlined in the enabling legislation<sup>2</sup> for the Task Force, appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active members of the community
- b. Representation from impacted communities
  - Formerly incarcerated individuals
  - Victims/family members of violent crime
  - Immigrant community
  - Communities impacted by high crime, over-policing and police violence

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/-Reimagining-Public-Safety-Task-Force\\_2-18%20Meeting%20Packet.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/-Reimagining-Public-Safety-Task-Force_2-18%20Meeting%20Packet.pdf).

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Documents/2021-01-19\\_Item\\_18\\_Revisions\\_to\\_Enabling\\_Legislation\\_for\\_Reimagining.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Documents/2021-01-19_Item_18_Revisions_to_Enabling_Legislation_for_Reimagining.aspx).

- Individuals experiencing homelessness
  - Historically marginalized populations
- c. Faith-based community leaders
- d. Expertise/leadership in violence prevention, youth services, crisis intervention, and restorative or transformative justice
- e. Health/public health expertise
- f. City of Berkeley labor/union representation
- g. Law enforcement operation knowledge
- h. City budget operations/knowledge
- i. Committed to the goals and success of The Task Force

“At-Large” appointees are not required to be residents, as long as they are active, committed Berkeley stakeholders and work in the City.

After some discussion on the applicants and the process of selecting the “At-Large” members, the Task Force ultimately selected the following three individuals for City Council’s consideration:

- Alex Diaz
- Frances Ho
- Liza Lutzker

#### BACKGROUND

On January 19, 2021, the Berkeley City Council unanimously adopted Resolution No. 69,695-N.S. that is the enabling legislation for the Reimagining Public Safety Task Force (Task Force)<sup>3</sup>.

The enabling legislation indicates that the Task Force shall consist of the following:

- One (1) representative appointed by each member of the City Council and Mayor;
- One (1) representative appointed from each of the Mental Health, Police Review and Youth commissions;

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<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Documents/2021-01-19\\_Item\\_18\\_Revisions\\_to\\_Enabling\\_Legislation\\_for\\_Reimagining.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Documents/2021-01-19_Item_18_Revisions_to_Enabling_Legislation_for_Reimagining.aspx).



- One (1) representative appointed by the Associated Students of the University of California (ASUC), subject to City Council confirmation;
- One (1) representative appointed by the Berkeley Community Safety Coalition (BCSC) , subject to City Council confirmation; and
- Three (3) additional members to be appointed "At Large" and recommended by the Task Force, all subject to confirmation by the City Council.

As of February 5, 2021, City staff received appointments from the City Council, Mental Health Commission, Police Review Commission, Youth Commission, ASUC, and the BCSC. These appointments consist of the initial 14-members of the Task Force.

To solicit community interest in the three (3) "At-Large" positions on the Task Force, city staff developed an application and issued a press release on January 20, 2021 notifying the community of the application. The City received eighteen (18) applications by the deadline of February 8, 2021<sup>4</sup>. Applications were provided to Task Force to consider in making its appointments.

#### ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental impacts associated with the action being requested by City Council.

#### RATIONALE FOR RECOMMENDATION

The appointments presented to the City Council reflect the recommendation of the Task Force.

#### ALTERNATIVE ACTIONS CONSIDERED

The City Council could decide not to approve one or more of the individuals selected to serve as "At-Large" members of the Task Force. Should City Council take this action, city staff will work with the Task Force to identify additional individuals for City Council consideration.

#### CONTACT PERSON

David A. White, Deputy City Manager, City Manager's Office, 510 981-7012

#### Attachments:

1: Resolution

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<sup>4</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/List%20of%20Applicants%20\(01\).pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/List%20of%20Applicants%20(01).pdf).

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

CONFIRMING “AT-LARGE” APPOINTMENTS TO THE REIMAGINING PUBLIC SAFETY TASK FORCE

WHEREAS, on July 14, 2020, the City Council of the City Berkeley passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley; and

WHEREAS, on January 19, 2021, the Berkeley City Council unanimously adopted Resolution No. 69,695-N.S. that is the enabling legislation for the Reimagining Public Safety Task Force; and

WHEREAS, on February 18, 2021 the Reimagining Public Safety Task Force met to appoint individuals to serve as “At-Large” members of the Reimagining Public Safety Task Force; and

WHEREAS, after careful deliberation and thorough discussion, the Reimagining Public Safety Task Force has identified three (3) individuals, subject to City Council confirmation, to serve as “At-Large” members.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby confirms the appointment of the following individuals as “At-Large” members of the Reimagining Public Safety Task Force:

- Alex Diaz;
- Frances Ho; and
- Liza Lutzker.



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Manager, Office of Economic Development

Subject: Referral Response: Deferral of Remaining Permit, Inspection, Connection, and Impact Fees for 2009 Addison Street and Referral to the City Manager to Develop a Limited-Term Citywide Fee Deferral Program

RECOMMENDATION

Consider Adopting a Resolution authorizing the City Manager to defer remaining building permit, inspection, connection, and impact fees estimated at \$676,464.16 for the Berkeley Repertory Theater's project at 2009 Addison Street for a period of ten years. In addition, city staff is asking City Council to refer to the City Manager the development of a limited-term citywide fee deferral program.

SUMMARY

The Berkeley Repertory Theatre, a California nonprofit corporation, also known as Berkeley Repertory Theatre, hereinafter referred to as the "**BRT**" or "**Berkeley Rep**", or "**the Rep**" has requested that the City defer remaining building permit, inspection, connection, and impacts fees estimated at \$676,464.16 for ten years for their unique arts workforce housing and workshop space project to be constructed at 2009 Addison Street. This report describes staff's analysis of this request, and offers an option for council to consider approving this fee deferral via resolution (Attachment 1).

FISCAL IMPACTS OF RECOMMENDATION

According to information provided by the Planning and Development Department, Berkeley Rep has paid \$362,520.48 in building permit and fees to date and has outstanding amounts owed to the City that total \$676,464.16. In 2018, the Streets and Open Space Impact (SOSIP) Fee and Parking In Lieu Fee impact fees were waived by the City Council.<sup>1</sup>

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<sup>1</sup> Berkeley City Council, Item 28, *Fee Waivers for Berkeley Repertory Theatre Live/Work Artist Housing*, June 26, 2018.

Based on the referral adopted by City Council on December 15, 2020 (Attachment 2) and discussions with Berkeley Rep, the following points are offered to Council for consideration as components of a fee deferral agreement:

- All building, permit, impact and connection fees shall be due and payable to the city in ten (10) years from the date that the fee deferral agreement is executed by the City and Berkeley Rep.
- Simple interest of 2% per year shall be due and payable to the City on an annual basis.
- In the event Berkeley Rep does not pay its annual interest payment, it shall accrue to the balance and will be owed at the end of the fee deferral agreement. Interest payments should be based on the financial condition of Berkeley Rep.
- On an annual basis, Berkeley Rep should be required to submit its annual audited financial statements to the City and provide an update to the City on its fundraising activities.

Should the City Council approve the proposed fee deferral, the City will not recognize revenue from permit, inspection, connection, and impact fees for a period of ten (10) years. The total amount due to the City at the end of ten (10) years is estimated at \$811,756.99 (\$676,464.16 in deferred building permit, inspection, connection and impact fees plus interest estimated at \$135,292.83).

**Table 1: Berkeley Rep Fee Repayment Schedule**

|                                  | <b>Fees</b>          | <b>Interest @2% per year</b> |
|----------------------------------|----------------------|------------------------------|
| <b>Year 1</b>                    | \$ 676,464.16        | \$ 13,529.28                 |
| <b>Year 2</b>                    |                      | \$ 13,529.28                 |
| <b>Year 3</b>                    |                      | \$ 13,529.28                 |
| <b>Year 4</b>                    |                      | \$ 13,529.28                 |
| <b>Year 5</b>                    |                      | \$ 13,529.28                 |
| <b>Year 6</b>                    |                      | \$ 13,529.28                 |
| <b>Year 7</b>                    |                      | \$ 13,529.28                 |
| <b>Year 8</b>                    |                      | \$ 13,529.28                 |
| <b>Year 9</b>                    |                      | \$ 13,529.28                 |
| <b>Year 10</b>                   |                      | \$ 13,529.28                 |
| <b>Sub-Totals</b>                | \$ 676,464.16        | \$ 135,292.83                |
| <b>Total Due to City Year 10</b> | <b>\$ 811,756.99</b> |                              |

In evaluating the fee deferral request, city staff updated its short and long-term projections for the Permit Service Center Fund. While the Permit Service Center Fund is adequately capitalized at the moment (fund balance as of June 30, 2020, approximately \$14.8 million), city staff do anticipate that there is the potential for the Permit Service Center Fund to generate deficits due to an anticipated slowdown in development activity attributed to the COVID-19 pandemic. At the Budget and Finance Policy Committee on February 25, 2021, city staff will provide an update on the financial condition of the Permit Service Center Fund, along with an initial outline of potential revenue-generating and cost containment measures should the City experience a slowdown in construction activity. Examples of measures that will be discussed at the Budget and Finance Policy Committee include, but are not limited to:

- Delaying implementation of a new permit system;
- Evaluating the need to fill vacancies on a case by case basis; and
- Performing a fee nexus study and updating the City's fee schedule.

Materials provided to the Budget and Finance Policy Committee by the Planning and Development department will be submitted to City Council in a Supplemental Report.

#### CURRENT SITUATION AND ITS EFFECTS

This report responds to a short term referral from the City Council that appeared on the agenda of the December 15, 2020 Council meeting. The item adopted by City Council, "referred to the City Manager to conduct a feasibility analysis and develop an MOU with the Berkeley Repertory Theater to defer \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street (leaving flexibility for timing, setting of interest, schedule of payments, and fund sources). (Attachment 2).

#### *Feasibility Analysis*

In order to get a sense of Berkeley Rep's true financial position, and complete adequate due diligence, staff conducted a number of meetings with Berkeley Rep's leadership, including the Managing Director and Finance Director. In performing this due diligence, city staff reviewed Berkeley Rep's most recent audited financial statements, project costs, and long-term financial plan. Through this work, city staff learned the following:

- Due to the loss of significant revenue as a result of the COVID-19 pandemic, Berkeley Rep has had to reduce its workforce to control costs and has relied on its line of credit to support operations.

- Berkeley Rep has experienced increases in construction costs since it received its project financing and has had to value engineer the project to reduce construction costs.
- Berkeley Rep's long-term financial plan assumes that it will take up to five (5) years for the organization to recover from COVID's impacts and its recovery relies on significant fundraising.
- Without the proposed fee deferral, Berkeley Rep would not move ahead with the project at 2009 Addison Street.

#### *Project Budget and Financing*

Staff reviewed Berkeley Rep's current project budget. The total project is approximately \$29.7M. According to Berkeley Rep, due to project delays they have had to cut \$1.0M from the project budget. In addition to asking for the fee deferral to achieve immediate savings, Berkeley Rep has value engineered and reduced the scope of the project (i.e., cutting back on furniture, fixtures, and equipment (FF&E) purchases and scaling back other project elements) to save costs.

Berkeley Rep has already secured 100% of the financing needed for the project at 2009 Addison Street upfront in what has been conveyed to the City as a combination of tax-exempt and taxable financing. This is a unique opportunity for Berkeley Rep but has the added pressure, due to the structure of their project financing to expend certain amounts of loaned funds by a date certain in order to not jeopardize its tax-exempt project financing. According to Berkeley Rep, they have a deadline of March 2022 to spend the funds on project construction. Because of this timeline, Berkeley Rep is under tremendous amounts of stress to work out a fee deferral with the City and begin construction on the project.

#### *Berkeley Rep Financial Plan*

Staff also reviewed Berkeley Rep's long-term financial plan. Berkeley Rep assumes that it will be five (5) years for theater operations to fully recover from the COVID-19 pandemic. In order to sustain operations, Berkeley Rep is not only relying on traditional fundraising activities, but an extraordinary fund raising campaign – Resilience Campaign – that aspires to raise approximately \$17.4M from fiscal year (FY) FY 2021 - FY 2025. Berkeley Rep has completely utilized their line of credit and has budgeted repaying the line of credit from FY 2027 - FY 2031 and paying the City its deferred permit fees in full in 2031 after repaying its line of credit. In addition to fully exercising its line of credit, Berkeley Rep has significantly reduced its staffing to control costs.

It is not yet fully understood to what extent Berkeley Rep may benefit from the most recent federal stimulus plan that was adopted by the Congress in which approximately \$15 billion was set aside to support live entertainment venues.<sup>2</sup> The rules for these resources are in the process of being finalized and it is not yet known by Berkeley Rep as to what they could qualify for, how much they would be awarded, or what the funding could be used for should they be awarded a 'shuttered venue operator' grant.

#### *Next Steps and Possible Future Action of the City Council*

Since City Council adopted the Referral, city staff have met with Berkeley Rep on several occasions, performed due diligence summarized in this staff report, and updated projections for the Permit Service Center Fund. Should City Council adopt the proposed Resolution, city staff would work with the City Attorney's to develop and enter into an agreement that defers the building permit, inspection, connection, and impact fees attributable to the project at 2009 Addison Street with Berkeley Rep.

As stated above, due to an anticipated slowdown in development activity, staff are closely monitoring the financial condition of the Permit Service Center Fund. As a result, it is anticipated that the Permit Service Center Fund will experience deficits over the coming years. Due to these concerns, city staff are also asking the City Council to refer to the City Manager the development of a limited-term citywide fee deferral program that would be subject to City Council approval. During the Great Recession, the City Council adopted a limited-term citywide fee deferral program<sup>3</sup> and the purpose of this request is to provide direction to city staff to develop a standardized program rather than having to consider requests on an ad hoc basis. In light of the yet-to-be-fully-uncovered impacts of the COVID-19 pandemic on a number of key Berkeley sectors, such a program will also be important to ensure that local organizations that need the most relief will have an opportunity to be considered. Lastly, establishment of a standardized program will enable city staff to recommend a program that balances the financial condition of the Permit Service Center Fund with an economic development incentive that can support recovery of the local economy.

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<sup>2</sup> Small Business Administration, *Shuttered Venues Operators Grant*, December 2020, Online: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/shuttered-venue-operators-grant>.

<sup>3</sup> Berkeley City Council, Action Calendar, Item 29, *City Manager Authority to Defer Development Fees for Priority Economic Development Projects*, March 24, 2009.

## BACKGROUND

In 2018, Berkeley Repertory Theater (BRT) received Use Permit #ZP2017-0004 for work to be completed at 2009 Addison Street.<sup>4</sup> As approved, the project is proposed to construct a new, seven-story mixed-use building featuring performing arts rehearsal space and stage production facilities with an interior loading dock on the ground floor; classrooms and storage space on the second floor; and five floors containing a total of 45, rent-free dwelling units to be occupied by Berkeley Repertory Theatre artists, fellows, and theater professionals. The artistic space that is part of the project along with the planned housing is critical to Berkeley Rep's long-term financial sustainability. According to Berkeley Rep's statement submitted to the Zoning Adjustments Board (ZAB) in 2018, "With the rise in market-rate rent over the past ten years, BRT has seen its housing expenses grow from \$400,000 a year to \$1.3 million in the current season. The building at 2009 Addison Street will allow BRT to do two things: 1. Control its housing costs. [Which are currently] untenable. Building our own work-force housing will provide us with stability, even if it won't decrease our housing costs in the short-term. 2. Meet our housing need so that we can house all of our visiting artists and theater professionals-in-training in one building." In early 2019, Berkeley Rep added a proposed modification to the project that would allow Berkeley Rep to rent vacant units to other nonprofits organizations for their own program participants, such as visiting scholars, faculty and others associated with their organizations. Examples of nonprofit organizations who may benefit from renting units at Berkeley Rep includes but is not limited to Freight and Salvage, Cal Performances, the Mathematical Sciences Research Institute, and other members of the Berkeley Cultural Trust. As described in the attachments of the January 24, 2019 ZAB report, "...while it is anticipated that the residential units will be occupied at minimum 80% of the time by Berkeley Rep workforce, on occasion, there will be vacant residential units. Berkeley Rep is requesting this modification in light of the large amount of debt that they are about to take on in the financing of this building, and knowing the great need for workforce housing from fellow nonprofits in the community."<sup>5</sup>

After the 2019 Use Permit Modification approval by the ZAB, Berkeley Rep secured financing for the project and some initial construction was completed prior to the COVID-19 shelter in place orders issued in March of 2020. Berkeley Rep is now in a position where they would like to move forward with construction of the project at 2009 Addison Street, provided a fee deferral is granted.

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<sup>4</sup> 2009 Addison project overview and application materials, staff reports, and project design drawings: [https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/2009\\_Addison.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2009_Addison.aspx)

<sup>5</sup> Berkeley Rep ZAB application modification, [2009 Addison Street](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2019-01-24_ZAB_Staff%20Report_2009%20Addison.pdf), Jan 24, 2019. Online: [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2019-01-24\\_ZAB\\_Staff%20Report\\_2009%20Addison.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2019-01-24_ZAB_Staff%20Report_2009%20Addison.pdf)



### ENVIRONMENTAL SUSTAINABILITY

Due to a lack of sufficient supply of workforce housing for artists in Berkeley, visiting artists and others associated with productions at Berkeley Rep (located in Downtown Berkeley) are often forced to seek accommodations outside of the immediate area. By increasing the supply of residence rooms in our highly walkable, transit-accessible downtown, the City could experience a reduction in the amount of greenhouse gases generated by trips from visiting artists associated with the Berkeley Rep and other local artistic and cultural productions.

### RATIONALE FOR RECOMMENDATION

The recommendation drafted in the attached resolution (Attachment 1) is informed by the following:

A shared understanding that **Berkeley Rep is an anchor tenant in the Downtown Berkeley Arts District**. Their robust programming, dynamic dramatic works, and roster of performances are an economic engine in the downtown leading to a healthy restaurant sector that also produces direct benefit to the City due to the use of the City's nearby parking facilities at the Center Street garage. Moreover, Berkeley Rep has a positive impact on the culture and arts in Berkeley and the spillover from their presence and national success is a cornerstone to our City's robust arts and culture sector which is currently experiencing terrible impacts from the COVID-19 pandemic.

The project proposed by Berkeley Rep is a foundation to building a sustainable organization, that will continued to be rooted in Berkeley for generations to come. Berkeley Rep, like so many others, has been negatively impacted by rising rents and the limited supply of housing in the region for their visiting artists, actors, playwrights, producers, set designers, and directors. While this project will not produce immediate operational savings to the organization, over time, **the proposed project will enable Berkeley Rep to control its costs by not having to navigate a rental housing market** that has become increasingly expensive. **In essence, this project can be viewed as a unique path breaking "workforce housing" endeavor that ensures that careers in the arts can continue to be made accessible to working professionals.**

While **Berkeley Rep has developed a plan forward and they are led by a strong and capable management team, there is inherent risk in the plan and there is no roadmap for what the future will look like** as Berkeley Rep (and the rest of our City) emerges from the COVID-19 pandemic. It is not yet known how quickly the community and traditional theater-goers will return to enjoy live theater and Berkeley Rep's reliance on an aggressive fundraising campaign is aspirational. To date, Berkeley Rep has not been able to raise donations for their proposed workforce housing project, and it is this fact that drove them to pursue the favorable financing for 100% of the project costs from a local bank. Time is now of the essence, as the funds are time-limited and Berkeley

Rep is paying interest on their construction financing with an unclear path forward. Securing the fee deferral from the City will allow Berkeley Rep to move forward with construction and complete the project successfully.

ALTERNATIVE ACTIONS CONSIDERED

The City Council could deny Berkeley Rep's request and not approve the proposed fee deferral. Given the uncertain result of this course of action, and the opportunity to support the Berkeley Rep and by extension the Berkeley Arts District and Berkeley's arts and cultural sector to recover from the COVID-19 pandemic by helping to enable the project, staff decided against this.

City Council could also choose to require Berkeley Rep to repay the deferred fees over a shorter period of time (e.g., for five years rather than ten years). However, in exploring this option with Berkeley Rep, city staff learned that this would negatively impact their operations as they have incurred debt under their line of credit in order to sustain the organization during the pandemic that must be repaid prior to repaying the fee deferral. As a result, Berkeley Rep indicated that they would likely not proceed with the project under this scenario.

Lastly, City Council could decide not to refer to the City Manager the development of a limited-term citywide fee deferral program. This alternative is not recommended as city staff strives for a standardized program that provides clear guidance and evaluation criteria to the community.

CONTACT PERSON

Eleanor Hollander, Acting Manager, Office of Economic Development, (510) 981-7536  
David White, Deputy City Manager, City Manager's Office, (510) 981-7012

Attachments:

- 1: Resolution
- 2: Berkeley City Council Item #32, *Deferral of Remaining Permit Fees for 2009 Addison Street (and Supplemental Material)*, December 15, 2020.

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

DEFERRAL OF BUILDING PERMIT, INSPECTION, CONNECTION, AND IMPACT FEES FOR THE BERKELEY REPERTORY THEATER (BRT) PROJECT AT 2009 ADDISON STREET AND REFERRAL TO THE CITY MANAGER TO DEVELOP A LIMITED-TERM CITYWIDE FEE DEFERRAL PROGRAM

**WHEREAS**, BRT is the current owner of real property located in the County of Alameda, State of California, commonly known as 2009 Addison Street, Berkeley, Alameda County;

**WHEREAS**, BRT received approval in 2018 for a seven-story, mixed-use project (“Project”) at 2009 Addison Street in Downtown Berkeley;

**WHEREAS**, in 2018, the City Council of the City of Berkeley waived impact fees estimated at \$218,966 associated with the project at 2009 Addison Street for Streets and Open Space and Parking;

**WHEREAS**, the City Council of the City of Berkeley has asked staff to explore the feasibility of deferring approximately \$676,500 in remaining permit, inspection, connection, and impact fees for BRT’s housing project at 2009 Addison Street for ten (10) years, after which point the fees will be immediately due and payable to the City of Berkeley;

**WHEREAS**, BRT has already paid \$362,520.48 in permit fees, with a remaining amount estimated at \$676,464.16 in fees due to the City;

**WHEREAS**, during this raging global pandemic, BRT has had to closed its doors on March 16, 2020 in response to orders issued by the City of Berkeley Health Officer, and laid off most of its employees and has lost approximately \$6,000,000 in ticket and related income;

**WHEREAS**, the financing for the 2009 Addison Street project was secured pre-pandemic in a way that allows construction to proceed; however, with the onset of Covid-19, base construction costs have increased;

**WHEREAS**, despite all these challenges, BRT wishes to proceed with the project at 2009 Addison Street despite the recognition that it will be a very difficult path, and with full knowledge that BRT, its leadership, its staff, and its board bear a responsibility to this community to forge ahead with this unique project at this very uncertain time;

**WHEREAS**, the City is an essential partner in this endeavor and recognizes that deferring certain fees would facilitate BRT to move forward with the groundbreaking project at 2009 Addison Street;

**WHEREAS**, the project at 2009 Addison Street will provide housing for BRT's visiting artists in residence as well as the 15 young professionals who are awarded fellowships every year;

**WHEREAS**, in addition to 45 apartment units, the building will include two classroom spaces for the Berkeley Rep School of Theatre, an outdoor terrace, and an 88-foot video display marquee on the mezzanine level; and

**WHEREAS**, BRT's project at 2009 Addison Street will bring more residents and add to artistic, cultural, and economic vitality to our Downtown area, further bolstering the City's tax base and supporting local business.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Berkeley that the City Manager is authorized to defer remaining building permit, inspection, connection, and impact fees of approximately \$676,464.16 for Berkeley Repertory Theater's project that shall be repaid to the City in no more than ten (10) years' from the date that the City and BRT enter in an agreement that is acceptable to the City Attorney.

**BE IT FURTHER RESOLVED** that outstanding deferred fee amounts that are owed to the City by Berkeley Rep shall accrue simple interest at a rate of 2% per year until full repayment is achieved.

**BE IT FURTHER RESOLVED** that the City Council of the City of Berkeley hereby refers to the City Manager to develop a limited term citywide fee deferral program, subject to City Council adoption, that consists of program guidelines and criteria to evaluate future requests submitted to the City.



Office of the Mayor

CONSENT CALENDAR  
December 15, 2020

To: Members of the City Council  
From: Mayor Jesse Arreguin and Councilmember Susan Wengraf  
Subject: Deferral of Remaining Permit Fees for 2009 Addison Street

RECOMMENDATION

Approve the deferral of \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street for a period of ten years, after which point the fees will be repaid to the City of Berkeley. Authorize the City Manager to execute a written agreement to memorialize this deferral and repayment requirements.

FINANCIAL IMPLICATIONS

According to the Berkeley Rep roughly \$385,000 in permit fees have already been paid to the Permit Service Center Enterprise Fund, with a remaining \$720,000 in fees due in order to receive building permits to complete construction. Through adoption of this item, the remaining permit and inspection fees would be deferred for a period of ten years, after which time they would need to be repaid in full. This would enable the project to proceed and allow Berkeley Rep time to recover from the COVID-19 pandemic and recover economically. The funding to cover the remaining \$720,000 would be borne from the balance of the Permit Service Center Enterprise Fund.

BACKGROUND

The Berkeley Repertory Theater has received approval in 2018 for a seven-story, mixed use project at 2009 Addison Street in Downtown Berkeley. The project will provide housing for Berkeley Rep's visiting artists as well as the 15 young professionals who are awarded fellowships every year. In addition to 45 apartment units, the building will include two spaces for the Berkeley Rep School of Theatre, an outdoor terrace, and an 88-foot video display marquee on the mezzanine level. This groundbreaking project provides artist housing in collaboration with a regional theater company. 2009 Addison will bring more residents and economic vitality to our Downtown area, further bolstering our tax base.

Due to the COVID-19 pandemic and increasing costs, the project budget has increased significantly making it financially prohibitive to proceed with construction. Berkeley Rep has requested that the City consider deferring remaining permit fees in order to help make the project economically feasible and to allow construction to proceed. Berkeley Rep has agreed to repay remaining permit fees 10 years from the date of deferral. While this will result in a short-term impact on the Permit Service Center (PSC) Fund, the PSC Fund has a sufficient balance to be able to cover this amount, and fees will be repaid over time. City Council action is required to defer any permit fees over \$50,000.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

- 1: Letter from Berkeley Rep requesting fee deferral for 2009 Addison Street

To: Mayor Jesse Arreguin and the Berkeley City Council  
From: Berkeley Repertory Theater  
Re: 2009 Addison Street - Artists' Housing

Permit and inspection fees for 2001 Addison Street are expected to be approximately \$1,100,000, of which BRT has already paid \$385,000. Given extenuating circumstances, BRT requests a deferral of the remaining fees until September 1, 2030 - a period of 10 years - a period during which the Theater will need to rebuild its producing capacity, which has been devastated by this crisis. It also recognizes that, regardless of the availability of a vaccine, we expect it to take years to rebuild audience trust and reestablish norms of cultural attendance.

**As a reminder:**

**Project Description:**

- 45 units of artist housing
- 3 classrooms for Berkeley Rep School of Theater
- Exterior deck with 200 person capacity
- Enclosed backstage and loading dock for the Roda Theater
- LEED Gold ??? certification
- Union construction

**Project Vision:**

For over 30 years, Berkeley Rep has struggled to find adequate housing for its guest artists and for its fellowship program. Our collective bargaining agreements require that artists be housed within half a mile of the theater, with stipulations about furnishings and safety. As a result of increased employment and the tight housing market, our housing costs have increased from \$300,000 to almost \$2,000,000 in just twelve years. And the experts on our facilities committee have advised us that after the pandemic, which has slowed and even lowered rents, the rental market will continue to be heated with limited availability and continued increases in rental rates. Over a year ago, with rental costs now absorbing almost 12% of the theater's budget, Berkeley Rep's board committed to construction of a building to address our long term housing needs. While those needs will drop for a few years as Berkeley Rep stabilizes after this pandemic, we anticipate that eventually, we will again need this housing.

**State of Affairs of the Theater:**

Berkeley Rep closed our doors on March 16, 2020. In a matter of weeks, we deconstructed what it had taken us 50 years to build. Over a matter of weeks, we were forced to lay off most of our employees. Our staff went from 180 employees to 30. Many of those were people who had worked with us for 35, 25, and 15 years. Those who we lost have been devastated. They are seeking new professions, they have moved to new cities. Some await our reopening and are living off their savings. We don't know who will be able to return when we finally reopen our doors. Since March 16, we have lost approximately \$6,000,000 in ticket and related income. We cancelled or postponed four productions. We laid off most of our staff and we shut down our buildings. As a result,

we reduced our year-end deficit to \$1.5,000,000. Our budget for the current fiscal year reflects a total of \$150,000 in production income and a reduction in contributed income. To balance that budget we will require, and our Board is committed to finding, an additional \$2,500,000 in extraordinary funding. As we look to the 2022 fiscal year, in which we fully expect to start producing again, we are projecting more need for extraordinary funding to replace what we anticipate will be an extremely cautious return to the theater by our patrons.

**Project Status 2009:**

**Financing -**

It is fortuitous that lending for 2009 Addison was secured pre-pandemic in a way that allows the theater the choice of whether to build even now, despite its lack of revenue. In a more typical finance package, BRT might have tripped covenants that would have stopped the project. Covenants that would have scrutinized its lack of revenue due to Covid. It so happens that conditions of the loan required the theater borrow all of its \$29,000,000 up front (and begin paying interest on that loan immediately). While this has cost us a great deal in interest payments as the permit process has been a slow one, the benefit is that the theater has the money to build. The theater has been paying on that debt despite not being able to build, adding tremendous stress to an already difficult situation. The construction is now scheduled to begin construction in January, a 15 months later than first planned. And this has added \$1,000,000 to the project budget.

**Construction Budget -**

Prior to Covid, the project faced rising costs from a building boom and as increase in the cost of labor and materials. In the face of these increases, we trimmed \$1,000,000 from the budget. With the onset of Covid, counter-intuitively, base costs have only increased. Covid-related expenses and slow-downs have further increased the budget (as an example, our construction insurance increased from \$20,000 to almost \$300,000) while materials and labor have only continued to rise. As a result, we are facing yet another \$1,000,000 in increased costs - that is another \$1,000,000 over-budget. We have proposed another round of cost-engineering that will bring us back towards budget, but it is the last set of compromises we can make without threatening the vision of the project. Since they were a cornerstone of the project and the vision of the theater, we have preserved the housing through this round of cost-cutting. Any further reduction will cut into vital components of the building and specifically, the housing.

**Berkeley Repertory Leadership -**

We are blessed with an extraordinary team at this time - from the core 30 staff-members to a committed board of 34, who bring expertise from varying sectors of the economy and professional backgrounds. We have built this team of staff and Board members upon a shared vision of theater within the cultural life of our greater society and more specifically upon a vision of the Berkeley Repertory as a partner in the cultural and economic life of the City of Berkeley. At a recent Board meeting, at which staff presented the budget shortfalls and projected various options for paths forward, the Board was asked the fundamental question of whether or not to proceed with this project. They voted unanimously to proceed with the project in spite of the recognition that it will be a very difficult path, and with full knowledge that the Berkeley Repertory Theater, its leadership, its staff and its board, bore a responsibility to this community to forge ahead and to lead at this time.



**The Path Forward:**

The operational budget of the theater will operate at a deficit of for the next five years. While we expect to start rehiring staff beginning in summer of 2021, we do not expect to achieve previous levels of employment until 2025. An emergency Resilience campaign will be needed to close our operating gap in each of those years. Our Board has committed to raising as much as \$20,000,000 to help us through this time. What we already have tested is that funds raised must be committed to employment of artists and staff and to the making of Theater. Our donors have prioritized that. This has made us very aware that we will have real difficulty raising additional funds for the housing project. The Board has committed to raising this money, have yet to actually raise those dollars. There will be extraordinary need throughout the Country in the next few years. We do not know whether this campaign will be successful. We hope that by 2026 we can wean ourselves from the funds raised through this Resilience campaign, at which point we will need to stabilize based on whatever the new normal has become. Without the funds from the Resilience campaign we will have to test our capacity to raise additional annual funds and hope that attendance will stabilize at pre-pandemic levels. This is all new territory and we do not have any roadmap to help us know what the future holds. It is our expectation that once stabilized, we can begin to plan to pay off the fees for which we now ask a deferment.

**Our request:**

Defer up to \$720,000 in City of Berkeley fees for ten years.

Summary:

|               |                                                   |
|---------------|---------------------------------------------------|
| Total Fees:   | \$1,100,000                                       |
| Already paid: | <u>\$380,000</u>                                  |
| Deferred:     | <b><i>\$720,000 (Until September 1, 2030)</i></b> |

**Why deferral matters to the City of Berkeley?**

- **Employment:** Berkeley Rep, prior to the pandemic, employed over 100 people full-time per season and another 350 artists, artisans, technicians and administrators throughout the course of each season;
- **Economic Multiplier:** Our operating budget of \$18-\$20 million resulted in total economic impact to the city of over \$60 million (using a 3:1 multiplier that is generally considered a conservative estimate);
- **Benefit to Local Vendors:**
  - The Berkeley Rep budget prioritizes local vendors. A new company policy also prioritizes BIPOC owned companies. Our vendors include Truitt and White, ACE Hardware, Minuteman Press, ACT Catering, just to reference a few who are vital to the City;

- Berkeley Rep patrons provide much needed business for one of the most threatened and also our most special sectors - local restaurants. Our patrons visit restaurants running the gamut from Pollo and Jupiter to Revival and Chez Panisse;
- **Regional Draw:** Berkeley Rep draws patrons to our downtown from nine counties, and even has regular attendees from Fresno, Stockton and even Austin, Texas.
- **BRT as Gateway:** Because of our role as a 'gateway to the arts for many arts lovers, Berkeley Rep's patrons have become fans of Aurora Theater the Freight and other local arts venues.
- **Local Leadership:** Berkeley Rep not only takes its leadership role seriously as an entity, but also our staff are expected and do serve on civic boards and volunteer in civic activities;
- **As a Resource for other Nonprofits:** Throughout this pandemic, Berkeley Rep has shared resources and opportunities for training and learning with other local arts organizations (i.e., Berkeley Rep is storing all of California Shakespeare Company's props and shop goods since that company has lost their scene shop).

#### Why 2009 Addison is Important to Berkeley Rep:

- **Cost-Control:** Berkeley Rep will be able to control its cost of housing in a market that has risen even in the face of Covid, and which will continue to rise after the pandemic.
- **Local Work/The Ground Floor:** BRT will attract new work for its nationally recognized Ground Floor new play development program, which supports and features young artists from the most varied social, economic and political backgrounds. This program is rare in the country and one of the most responsive to the stresses of our time;
- **Berkeley Rep School of Theater:** the classrooms will facilitate the expansion of our school, preserving our capacity to offer programs to children and adults within easy access to public transit;
- **Fellowship Program:** Will provide housing for Berkeley Rep's nationally respected Fellowship program, which each year trains 15 early career aspiring theater professionals. For over 15 years, Berkeley Rep has been at the forefront, with this program, of training BIPOC professionals;
- **Reduction of Carbon Footprint:** BRT will reduce its carbon footprint by creating living spaces immediately adjacent to the two theaters and school;
- **National and International Standing:** Improved housing for artists will attract more world-renowned artists and projects to Berkeley - in the spirit of projects like PARADISE SQUARE, AMERICAN IDIOT, and NO MAN'S LAND featuring Ian McKellen and Patrick Stewart;

#### In Summary:

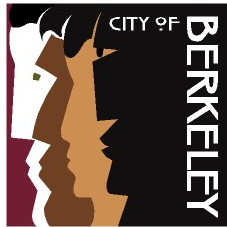
We are not asking for permit fees to be waived. We understand that the City, itself, anticipates its own adverse impacts from the pandemic. The City of Berkeley has been steadfast in its commitment to preserving the life and well-being of all its residents and we are so grateful for that. We have only the greatest respect for and appreciation for all that you, our leaders and our City staff, have accomplished to protect us. We are aware that the decisions are difficult and often treacherous, and that the situation has cost the City millions of dollars in lost revenue. In recognition that we have a role to play in rebuilding the economic life of the City, we are asking, instead, simply for a deferment of payments until we have the capacity and resources to repay them.

The Theater must survive this health and economic crisis, and it will emerge with greater experience and greater resilience - for its inner resources, but also and most importantly in partnership with the City. The need for housing, and specifically housing in support of artists and the arts is no less important now than it ever was - it is, rather, even greater. There can be no better statement of our will to survive, our commitment to artists and commitment to our community, than to proceed with this project. It reflects our aspirations, once we have the pandemic behind us, to once again, produce world-class theater, to teach children and adults the joy of creative expression, to house our programs for teens and young professionals and welcome back to Berkeley, arts-lovers from throughout the Bay area.

If there is one feature of our lives that we have all come to understand during shelter-in-place, it is the value of being able to commune together in a shared, real space and to be able to enjoy the pleasure of live, unmediated artistic expression. The virtual world may have been our lifeline during this long, long spell, but it has birthed in many of us, a newfound appreciation for what we have lost.

Susan Medak  
Managing Director  
Berkeley Repertory Theater





Office of the Mayor

## REVISED AGENDA MATERIAL

**Meeting Date:** December 15, 2020

**Item Number:** #32

**Item Description:** Deferral of Remaining Permit Fees for 2009 Addison Street

**Supplemental/Revision Submitted By:** Mayor Arreguin

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

Based on discussions with City staff, the item has been revised as a referral to the City Manager to conduct a feasibility analysis and develop an MOU to defer the remaining fees, determining the terms of the deferral and the fund source.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the Mayor

#32

REVISED  
CONSENT CALENDAR  
December 15, 2020

To: Members of the City Council  
From: Mayor Jesse Arreguin  
Subject: [Referral to City Manager](#): Deferral of Remaining Permit Fees for 2009 Addison Street

**RECOMMENDATION**

[Refer to the City Manager to conduct a feasibility analysis and develop an MOU with the Berkeley Repertory Theater to defer \\$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street \(leaving flexibility for timing, setting of interest, schedule of payments, and fund sources\).](#)

**Deleted:** Approve the deferral of

**Deleted:** for a period of ten years, after which point the fees will be repaid to the City of Berkeley. Authorize the City Manager to execute a written agreement to memorialize this deferral and repayment requirements.

**FINANCIAL IMPLICATIONS**

According to the Berkeley Rep roughly \$385,000 in permit fees have already been paid to the Permit Service Center Enterprise Fund, with a remaining \$720,000 in fees due in order to receive building permits to complete construction. Through adoption of this item, the remaining permit and inspection fees would be deferred for a period of ten years, after which time they would need to be repaid in full. This would enable the project to proceed and allow Berkeley Rep time to recover from the COVID-19 pandemic and recover economically.

**Deleted:** The funding to cover the remaining \$720,000 would be borne from the balance of the Permit Service Center Enterprise Fund.

**BACKGROUND**

The Berkeley Repertory Theater has received approval in 2018 for a seven-story, mixed use project at 2009 Addison Street in Downtown Berkeley. The project will provide housing for Berkeley Rep's visiting artists as well as the 15 young professionals who are awarded fellowships every year. In addition to 45 apartment units, the building will include two spaces for the Berkeley Rep School of Theatre, an outdoor terrace, and an 88-foot video display marquee on the mezzanine level. This groundbreaking project provides artist housing in collaboration with a regional theater company. 2009 Addison will bring more residents and economic vitality to our Downtown area, further bolstering our tax base.

Due to the COVID-19 pandemic and increasing costs, the project budget has increased significantly making it financially prohibitive to proceed with construction. Berkeley Rep has requested that the City consider deferring remaining permit fees in order to help make the project economically feasible and to allow construction to proceed. Berkeley Rep has agreed to repay remaining permit fees 10 years from the date of deferral.

**Deleted:** While this will result in a short-term impact on the Permit Service Center (PSC) Fund, the PSC Fund has a sufficient balance to be able to cover this amount, and fees will be repaid over time. City Council action is required to defer any permit fees over \$50,000.

**CONTACT PERSON**

Mayor Jesse Arreguin      510-981-7100

Attachments:  
1: Letter from Berkeley Rep requesting fee deferral for 2009 Addison Street



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Revenue Contract: East Bay Community Energy FY 2021- Kitchen  
 Electrification for Aging Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any resultant revenue agreements and amendments with East Bay Community Energy to provide funding for upgraded, energy-efficient kitchen appliances at both the North Berkeley and South Berkeley senior centers, in the amount of \$48,994, through the East Bay Community Energy's Kitchen Electrification Grant.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive a one-time grant totaling \$48,994 from East Bay Community Energy for FY 2021 for the purpose of accelerating clean energy investments that enhance workforce development, promote stronger local economic activity, and increase community resilience. The contract does not require matching funds. The grant budgets will be adjusted to match the contract amounts and these changes will be included in the Second Amendment to the FY 2021 Annual Appropriations Ordinance. Grant funds will be deposited into ERMA GL Code 336-51-505-540-3011-000-000-433120-.

CURRENT SITUATION AND ITS EFFECTS

In September 2020, East Bay Community Energy issued a request for proposals for funds to improve community kitchens. The City of Berkeley applied and received notification of a grant award to purchase new electric induction cook tops, new induction cookware, and new dry well induction warmers and induction warming pans to replace the old steam tables.

The City of Berkeley will benefit from the natural gas cost savings by converting the current natural gas appliances to electric appliances, which is in line with the City's goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. Funds from this grant will also cover most of the cost of materials and labor for Public Works to add new electric circuits and breakers for the new equipment. The balance of

the costs will be covered by Aging Services General Fund Rentals revenue budget ((011-51-505-540-0000-000-000-461210-).

#### BACKGROUND

The City of Berkeley receives funding from city, county, and state sources as well as private donations to serve senior residents of Berkeley, and to coordinate the Tri-City Nutrition Program. The Department of Health, Housing and Community Services is committed to providing a broad range of community services, including services to meet the needs of seniors in the community. The Aging Services Division provides nutritious meals, outreach, activities, social events, classes, and individual support and referral services to seniors and their families in the community.

Kitchens at the senior centers are available for the community to use as part of the senior center facility rental program.

#### ENVIRONMENTAL SUSTAINABILITY

Electric appliances are environmentally-friendly and will support the City's investment in clean energy. The grant also aligns with the City of Berkeley's strategic plan goal to be a global leader in addressing climate change. Collective small steps towards increased energy efficiency support a protected environment.

#### RATIONALE FOR RECOMMENDATION

These grant funds will support the City's senior centers and meals programs, and provide critical infrastructure to ensure the Aging Services Division can continue to provide meal services at the North and South Berkeley Senior Centers, and Senior Nutrition Programs.

#### ALTERNATIVE ACTIONS CONSIDERED

The alternative action of not seeking any of these funding sources would be maintaining less energy efficient older kitchen appliances, which may lead to a reduction in services available to seniors.

#### CONTACT PERSON

Tanya Bustamante, Manager of Aging Services, HHCS, 981-5178.

Attachments:

1: Resolution



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

REVENUE CONTRACT: EAST BAY COMMUNITY ENERGY FY 2021 KITCHEN  
ELECTRIFICATION FOR AGING SERVICES

WHEREAS, East Bay Community Energy, the City of Berkeley power provider, has granted the City of Berkeley \$48,994 under their Commercial Kitchen Electrification grant program; and

WHEREAS, on July 23, 2019, Berkeley City Council adopted a Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80); and

WHEREAS, the North and South Berkeley Senior Centers each have natural gas ranges which have standing pilot lights that run continuously; and

WHEREAS, the indoor air quality of North and South Berkeley Senior Centers is impacted by these gas pilot lights, as well as the continuous costs to operate these gas pilot lights; and

WHEREAS, both the North and South Berkeley Senior Center would benefit by the natural gas cost savings by converting these appliances to electric appliances; and

WHEREAS, this grant will include indoor air quality monitoring of the Senior Centers both before and after installation of any new equipment; and

WHEREAS, the Kitchen Electrification Grant from East Bay Community Energy will cover the cost of the new electric induction cook tops, new induction cookware, and new dry well induction warmers and induction warming pans to replace the old steam tables; and

WHEREAS, this grant will also cover most of the cost of materials and labor for Public Works to add new electric circuits and breakers for the new equipment; and

WHEREAS, the instructions for proper use will be included as part of every facility rental contract; and

WHEREAS, the funds will be deposited in the current budget year in ERMA GL Code 336-51-505-540-3011-000-000-433120-.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to East Bay Community Energy for up to \$50,000 in funding for fiscal year 2021 for the replacement of natural gas appliances, and to accept the Kitchen Electrification Grant and to execute any resultant revenue agreements and amendments. A record signature

March 9, 2021

copy of said agreements and any amendments shall be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks, Recreation and Waterfront  
 Subject: Contract No. 32000063 Amendment: United Site Service, Inc. for  
 Additional Rental and Servicing of Portable Toilets and Sinks

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000063 with United Site Services of California, Inc. for rental and service of portable toilet and handwashing units, increasing the current contract amount of \$360,000 by \$270,000, for a total not to exceed amount of \$630,000 for a period of two years, with an option to extend for three 12-month periods, for a total amount not to exceed \$1,200,000.

FISCAL IMPACTS OF RECOMMENDATION

This proposed contract amendment will provide funding through September 2021. Funds are available in the Parks Tax (Fund 138) for ongoing rental and service of portable toilets in City Parks; and in General Fund (Fund 011) for additional hand washing stations, and special events, and emergency orders.

CURRENT SITUATION AND ITS EFFECTS

The City has a current contract with United Site and Services, Inc. in the amount of \$360,000 for a period of two years for the rental and service of portable units to supplement existing facilities, to provide services for events, programs and activities where no permanent facilities exist, at construction sites as needed, and in emergency situations.

On March 3, 2020, the City Manager, acting as the Director of Emergency Services, issued a Proclamation of Local Emergency regarding the novel coronavirus (COVID-19), which the City Council subsequently ratified on March 10, 2020 and doubled the number of portable units throughout Berkeley to meet the community's need. Staff estimates that the authorized not-to-exceed spending amount will be reached by March 2021. This proposed contract amendment would increase the authorized amount to cover portable toilet and handwashing service through the end of the existing contract term (September 2021) with the existing rate structure. This allows the City to continue to receive portable toilet and handwashing service at competitive prices.

BACKGROUND

On June 18, 2019 the City released a Request for Proposals (Specification No. 19-11336-C) for rental and service of portable toilet units, and received one proposal. On September 10, 2019, by Resolution 69,083-N.S., Council authorized the City Manager to execute a contract and any amendments with United Site Services of California, Inc., in an amount not to exceed \$360,000 for two years with an option to extend for three 12-month periods for a total amount not to exceed \$900,000 for five years.

ENVIRONMENTAL SUSTAINABILITY

Providing portable toilets in areas where permanent facilities are insufficient or unavailable helps to keep those environments clean and safe for the public.

RATIONALE FOR RECOMMENDATION

The City's need for rental and service of portable toilets and handwashing units has increased due to the COVID-19. The proposed amendment will allow the City to continue providing services.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director of Parks, Recreation & Waterfront Department, 981-6700

Attachments:

1: Resolution

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

CONTRACT NO. 32000063 AMENDMENT: UNITED SITE SERVICE OF CALIFORINA, INC., FOR ADDITIONAL PORTABLE TOILET RENTAL AND SERVICE

WHEREAS, on June 18, 2019 the City released a Request for Proposals (Specification No. 19-11336-C) for rental and service of portable toilet units, and received one proposal; and

WHEREAS, on September 10, 2019, by Resolution 69,083-N.S., Council authorized the City Manager to execute a contract and any amendments with United Site Services of California, Inc., in an amount not to exceed \$360,000 for two years with an option to extend for three 12-month periods for a total amount not to exceed \$900,000 for five years; and

WHEREAS, On March 3, 2020, the City Manager, acting as the Director of Emergency Services, issued a Proclamation of Local Emergency regarding the novel coronavirus (COVID-19), which the City Council subsequently ratified on March 10,2020; and

WHEREAS, the City doubled the number of portable units throughout Berkeley where permanent facilities are insufficient or unavailable to keep environments clean and safe for the public; and

WHEREAS, Funds are available in the Parks Tax (Fund 138) for ongoing rental and service of portable toilets in City Parks; and in the General Fund for additional hand washing stations, special events, and emergency orders.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute an amendment to Contract No. 32000063 with United Site Services of California, Inc. for rental and service of portable toilet and handwashing units, increasing the current contract amount of \$360,000 by \$270,000, for a total a total no to exceed amount of \$630,000 for a period of two years, with an option to extend for three 12-month periods, for a total amount not to exceed \$1,200,000.





Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront  
 Subject: Contracts: On-Call Waterfront Project Management and Construction Management Services for Capital Improvement Projects at the Berkeley Waterfront

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call waterfront project management services for capital improvement projects at the Berkeley Waterfront, for contract periods of April 1, 2021 through June 30, 2024:

1. AnchorCM, for an amount not to exceed \$1,000,000.
2. Park Engineering, Inc., for an amount not to exceed \$1,000,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the on-call consultant contracts is available in the FY 2021 budget in the Measure T1 Infrastructure Bond Fund (511). Funding for FY 2022 through FY 2023 is subject to appropriation in various funding sources in the capital improvement budget and will be identified as projects arise.

CURRENT SITUATION AND ITS EFFECTS

Over the next several years, the Waterfront Capital Projects Division of the Parks, Recreation & Waterfront Department is expecting significantly increased workloads in order to address deferred maintenance, ongoing capital projects, the Department of Boating and Waterway loan project, outside grants, and Measure T1 projects. The On-Call Waterfront consultants possess specialized technical knowledge for capital projects at the Berkeley Waterfront area.

The City has used on-call consultants in the past to manage construction projects to supplement City staff. These include situations where the nature of the work is specialized such as landscape architectural design, architectural design, civil engineering design, electrical design, mechanical design, structural engineering, permitting, construction administration, inspections, and commissioning of systems. On-call consultants have also enabled the City to meet tight schedules when short-term work needs to be addressed. On-call contracts will provide construction management

consulting services when needed and will match highly technical short term work with appropriate short term contracted services.

#### BACKGROUND

Requests for Qualifications (RFQ) were issued on October 29, 2020 seeking qualified firms or individuals to provide on-call waterfront project management and construction management services for capital improvement projects. On November 24, 2020, the City received eleven Statement of Qualifications (SOQ) from professional consultant firms. A panel of City staff reviewed, evaluated, and ranked the firms according to how their proposals responded to criteria in the RFQ. After evaluation by the review panel, AnchorCM, and Park Engineering, Inc. were selected as the best qualified to provide these services according to the criteria contained in the RFP. The City also confirmed the consultants' qualifications by checking references.

#### ENVIRONMENTAL SUSTAINABILITY

There are no anticipated negative environmental effects of this action. The execution of these contracts will help ensure successful completion of several ongoing waterfront capital improvement projects that will incorporate the sourcing of sustainable and renewable resources used in construction projects, as well as complying with all regulatory agency requirements such as Bay Conservation Development Commission, Fish and Wildlife, Army Corp of Engineers, and Regional Water Control Board. This promotes environmental sustainability and meets the Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### RATIONALE FOR RECOMMENDATION

After evaluation by the review panel, AnchorCM, and Park Engineering, Inc. were selected as the best qualified to provide construction management and project management services to the City according to the criteria contained in the RFP.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6711

Nelson Lam, Supervising Civil Engineer, Parks, Recreation & Waterfront, 981-6395

#### Attachments:

- 1: Resolution - AnchorCM
- 2: Resolution - Park Engineering, Inc.



RESOLUTION NO.:-N.S.

CONTRACT: ANCHORCM FOR ON-CALL WATERFRONT PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS

WHEREAS, on October 29, 2020, the City released a Request for Qualifications (Specification No. 21-11424-C) seeking firms or individuals to provide on-call waterfront project management and construction management services for capital improvement projects at the Berkeley Waterfront; and

WHEREAS, on November 24, 2020, the City received eleven submissions, which were reviewed and ranked by a panel according to the criteria in the Request for Qualifications; and

WHEREAS, the two highest-rated firms would be considered the best qualified to meet the City's needs according to the criteria contained in the RFP; and

WHEREAS, AnchorCM was found by City staff to be one of the two highest-rated firms responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with AnchorCM for on-call waterfront project management and construction management services for capital improvement projects for the contract period of April 1, 2021 through June 30, 2024 in an amount not to exceed \$1,000,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

RESOLUTION NO.: -N.S.

CONTRACT: PARK ENGINEERING, INC. FOR ON-CALL WATERFRONT PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS

WHEREAS, on October 29, 2020, the City released a Request for Qualifications (Specification No. 21-11424-C) seeking firms or individuals to provide on-call waterfront project management and construction management services for capital improvement projects at the Berkeley Waterfront; and

WHEREAS, on November 24, 2020, the City received eleven submissions, which were reviewed and ranked by a panel according to the criteria in the Request for Qualifications; and

WHEREAS, the two highest-rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, Park Engineering, Inc. was found by City staff to be one of the two highest-rated firms responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with Park Engineering, Inc. for on-call waterfront project management and construction management services for capital improvement projects for the contract period of April 1, 2021 through June 30, 2024 in an amount not to exceed \$1,000,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront

Subject: Loan Application: Dock Replacement at the Berkeley Marina

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to sign a loan agreement with the California Department of Boating and Waterways and to accept the funds for a loan not to exceed \$5,500,000 for replacement of D & E docks at the Berkeley Marina.

FISCAL IMPACTS OF RECOMMENDATION

A summary of project costs and expected offsetting revenues and savings is shown in Attachment 1. The loan terms and payment schedule are detailed in Attachment 2. At the interest rate of 4.5%, the City will pay \$342,000 annually in debt service (principal and interest). All payments will be made from the Marina Fund (Fund 608).

Until recently, the City carried two loans from the Department of Boating & Waterways (DBAW) for the dock replacements and associated marina infrastructure improvements at B & C and H & I docks. In FY17, the City paid off one of these loans, reducing annual debt service by \$160,712. Staff expects that inflation-based marina fee adjustments over the thirty-year life of the new loan will partially offset the increase in debt service to pay off the loan. Staff estimates that the proposed dock and finger improvements, as well as returning currently un-rentable slips to the market, will increase annual revenue by at least \$185,000. Once the replacement project is completed, total revenue from D & E docks is estimated to exceed \$400,000.

CURRENT SITUATION AND ITS EFFECTS

Docks D & E are currently the oldest docks in the Berkeley Marina, and have deteriorated significantly. Nearly half of all slips on these docks cannot be rented due to poor condition. In recent years, the deterioration has accelerated, and in the last month alone, winter storm damage to D & E docks and piles have rendered an additional 6 slips un-rentable. The un-rentable slips on D & E dock represent more than 80% of all un-rentable slips in the Marina, and represent a loss to the Marina Fund of more than \$150,000/year. Furthermore, Docks D & E do not meet current Americans with Disabilities Act (ADA) standards. Therefore, these docks need to be replaced.

On [January 23, 2018](#), Council authorized the City Manager to apply for a \$5,000,000 loan from the State Department of Boating & Waterways for the replacement of D & E

docks, (Resolution 68,296–N.S.). The City submitted the loan application in February 2018. In December 2019, the State notified City staff that the amount available for a loan had increased to \$5,500,000.

On February 14, 2020, the State Boating & Waterways Commission reviewed and approved the City’s application. They noted that the Marina Fund does not currently meet the income/expense ratio required by the State Department of Boating and Waterways and is not forecasted to do so. Their approval included a condition that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year’s repayment from any legally available source, for every year until the loan is fully repaid.

The total project cost is estimated to be \$6,000,000, with \$500,000 to be funded by Measure T1<sup>1</sup> and the remaining \$5.5M to be funded by the loan.

BACKGROUND

The City has approximately 16 large dock systems in the Berkeley Marina, serving up to 1,000 boats. Since these docks were constructed in the 1960s, nearly all of them have been rehabilitated or replaced, except for D & E docks. These Docks were initially slated for replacement in 2000 when the City received a \$7,000,000 loan from the Department of Boating & Waterways to replace Docks A through E, H & I Docks, and also to construct a new restroom facility at B & C docks. D & E docks were eventually excluded from that project due to rising construction costs that exceeded available funding.

ENVIRONMENTAL SUSTAINABILITY

Investment in Marina infrastructure has a direct impact on the sustainability of the Marina Fund, which funds important community environmental programs provided by the Nature Center that educate youth to the natural environment throughout the Berkeley Waterfront.

RATIONALE FOR RECOMMENDATION

Docks D & E cannot be repaired due to age and deterioration and therefore require replacement. The Marina Fund does not have adequate reserves to fund the dock replacement project in a single year. The DBAW loan provides the upfront funding for this project at competitive interest rates, allowing the City to amortize the cost of the docks over a 30-year loan term.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700  
Christina Erickson, Deputy Director, Park, Recreation & Waterfront, 981-6703

Attachments:

1. Summary of Project Costs and Revenue Sources
2. Resolution

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<sup>1</sup> See Resolution 69,657–N.S., City Council’s December 2020 authorization of Phase 2 Measure T1 projects.

Exhibit A: Loan Recitals

Exhibit B: Small Craft Harbor Construction Loan and Operation Agreement

Exhibit C: General Terms and Conditions

Exhibit D: Berkeley Marina Loan Feasibility Report

Exhibit E: Marina Operations, Maintenance, and Capital Outlay Loan Requirements

**ATTACHMENT 1**

**Division of Boating & Waterways  
Dock Replacement Project  
Summary of Project Costs & Revenue Sources**

**Summary of Project Costs & Funding**

|                                    |                     |
|------------------------------------|---------------------|
| <b>Total Project Cost:</b>         | <b>\$ 6,000,000</b> |
| <i>Amount funded by Measure T1</i> | <i>\$ 500,000</i>   |
| <i>Amount funded by DBW Loan</i>   | <i>\$ 5,500,000</i> |

**Summary of Loan**

|                                              |                     |
|----------------------------------------------|---------------------|
| <b>Loan Value</b>                            | <b>\$ 5,500,000</b> |
| <b>Annual Payment (Principal + Interest)</b> | <b>\$ 342,000</b>   |

**Summary of Revenue Sources**

| <b>New Revenue or Expected Savings</b>                                  | <b>Amount</b>  |
|-------------------------------------------------------------------------|----------------|
| Savings from prior DBAW loan paid off in FY17                           | \$ 160,712     |
| Additional berth revenue from increase in D&E occupancy from 45% to 80% | \$ 185,000     |
| <b>Annual Revenue Available to Repay Loan:</b>                          | <b>345,712</b> |

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

LOAN AGREEMENT WITH CALIFORNIA DEPARTMENT OF BOATING & WATERWAYS FOR REPLACEMENT OF D & E DOCKS AT THE BERKELEY MARINA

WHEREAS, the State Department of Boating and Waterways provides loans to cities, counties and districts for the development of small craft harbor facilities; and

WHEREAS, the City of Berkeley needs to replace D & E Docks at the Berkeley Marina in order to meet the needs of the boating public in Berkeley and the surrounding area and to make these facilities comply with the access requirements of the Americans with Disabilities Act; and

WHEREAS, the City has conducted a feasibility study which has found the proposed project to be feasible and economically justified; and

WHEREAS, the City of Berkeley has requested, and the State Department of Boating and Waterways has approved a \$5,500,000 loan; and

WHEREAS, the annual debt service payments will be made from the Marina Fund (Fund 608). However, in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from any legally available source, for every year until the loan is fully repaid.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to sign the loan agreement for \$5,500,000 and accept the loan for the replacement of D & E docks at the Berkeley Marina.

Attachments:

- Exhibit A: Loan Recitals
- Exhibit B: Small Craft Harbor Construction Loan and Operation Agreement
- Exhibit C: General Terms and Conditions
- Exhibit D: Berkeley Marina Loan Feasibility Report
- Exhibit E: Marina Operations, Maintenance, and Capital Outlay Loan Requirements

## LOAN RECITALS

1. WHEREAS, Section 70.2 et seq. of the Harbors and Navigation Code authorizes the Department to make loans to cities, counties and districts to design, construct, and improve small craft harbors.
2. WHEREAS, the Department has agreed to loan up to Five Million Five Hundred Thousand Dollars (\$5,500,000.00) for marina construction at the project area, collectively the (“Loans”).
3. WHEREAS, the legal description and site map of the project area are attached hereto as Exhibit F and made a part of this agreement.
4. WHEREAS, in order to induce the Department to make and enter into the loans, Borrower has agreed to execute and/or authorize the following collateral documents as security for repayment of the loans.
  - (a) A Collateral Assignment of Rents and Leases for the Project Area;
  - (b) A Security Agreement, and;
5. WHEREAS, the Borrower and Department have agreed that ALL of the following conditions must be met prior to liquidation of any loan funding:
  - (a) No later than March 31, 2021, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund achieved a 1.25 debt service coverage ratio (DSCR) in the fiscal year ending June 30, 2020. This process must be repeated each subsequent March 31, confirming a 1.25 DSCR for the prior fiscal year, until construction has begun.



- (b) Before construction loan funding will be made available, and no later than March 31, 2022, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund's ratio of operating income to operating expenses in the fiscal year ending June 30, 2021 was at or above the projected ratio shown in Tables 3 and 3A of the project feasibility report, Exhibit D, pages 16 and 17. This process must be repeated each subsequent March 31, confirming the income/expense ratio for the prior fiscal year met or exceeded the projections in this report, until construction has begun.
  - (c) Before construction loan funding will be made available, and no later than December 31, 2021, the City must send DBW confirmation that all project permits have been obtained.
  - (d) The Berkeley City Council shall adopt a resolution accepting the loan funds. The language of the resolution shall acknowledge the Marina Fund does not currently meet the income/expense ratio required by DBW and is not forecasted to do so, and the language of the resolution must further state that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from any legally available source, for every year until the loan is fully repaid. This condition may be withdrawn if and when the City demonstrates meeting the required income/expense ratio and debt service coverage ratio for five consecutive years.
6. NOW THEREFORE, the Department and the Borrower desire to more clearly set forth their agreement and mutually agree to the terms and conditions of the Small Craft Harbor Construction Loan and Operation Agreement, Exhibit B, as follows:

**SMALL CRAFT HARBOR  
CONSTRUCTION LOAN AND OPERATION AGREEMENT**

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**SMALL CRAFT HARBOR  
CONSTRUCTION LOAN AND OPERATION AGREEMENT**

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ARTICLE 1 – PROMISE TO PAY

- A) For value received, the Borrower promises to repay the sum of principal disbursed pursuant to this (STD 213) Agreement together with interest on that amount at the rate set forth below until fully repaid.

ARTICLE 2 – DEFINITIONS

- A) “Account”: An interest bearing account to be established by the Borrower for the deposit of Loan funds; such account is to be designated the Department of Parks and Recreation, Division of Boating and Waterways - *Marina Development Account* (see Article 6 – Disbursement of Loan).
- B) “Borrower”: The Borrower identified on the Standard Agreement STD 213.
- C) “CEQA”: The California Environmental Quality Act.
- D) “Collateral”: The Gross Revenues (including, without limitation, Excess Revenues), the Enterprise Fund, the Reserve Fund, the Account, the proceeds of the Loan.
- E) “Commission”: The Boating and Waterways Commission.
- F) “Date of Acceptance”: The date specified on the Project Completion Certification.
- G) “Default”:
  - 1) The failure of the Borrower to make any payment of principal or interest on the Loan required by this Agreement.
  - 2) The failure of the Borrower to make any other payment required by this Agreement within thirty (30) days of the due date of the payment.
  - 3) The failure of the Borrower to comply with any requirement in section Article 12 of this Agreement upon receipt of written notice from the Department specifying such failure.
  - 4) The failure of the Borrower to comply with any other requirement of this Agreement within ninety (90) days of receipt of written notice from the Department specifying such failure.
  - 5) The provision of false representations or false warranties by the Borrower in response to any obligations under this Agreement.
  - 6) The failure of Borrower to conduct appropriate proceedings in good faith to contest any levy or proceeding against the Collateral or Borrower’s interest therein; or
  - 7) The filing of a petition by the Borrower under the provisions of the Bankruptcy Code, or the failure of the Borrower to conduct appropriate proceedings in good

faith to contest a bankruptcy filing by a third party when such action affects the Collateral.

- H) “Department”: The Department of Parks and Recreation, Division of Boating and Waterways.
- I) “Effective Date”: The Effective Date of this Agreement is either the mutually agreed upon Project start date or the approval date by the Department of General Services, whichever is later. In cases when DGS approval is not required, this Agreement is of no force or effect until the date of the last signature. No work shall commence until the Effective Date.
- J) “Enterprise Fund”: The fund established by the Borrower under Article 13.
- K) “Excess Revenues”: (formerly Surplus Revenues) The portion of Gross Revenues exceeding the sum of (1) unpaid due or delinquent Loan repayments, (2) required transfers to the Reserve Fund, and (3) operation and maintenance expenses (including those paid from the Reserve Fund) of the Project Area.
- L) “Exhibit D”: The feasibility report exhibit that presents the proposed project in “concept” form only. The actual Project layout shall be determined by the Borrower and the engineer of record (to be determined) during the design process taking actual site conditions and public safety into account. The Project must meet the scope, cost and intent of this report and shall conform to Department guidelines.
- M) “Gross Revenues”: Total revenues, before expenses are deducted, including any (i) rents, profits, interest, and any other income and receipts and (ii) concession or other contract operations income (but excluding gross revenues to a concessioner) received by Borrower for goods, services, facilities, and leaseholds provided or located within the Marina or otherwise derived by the Borrower from operation of the Marina. For purposes of clarification, Gross Revenues also include any sales of stocks, lands, or other property owned by Borrower and located within, or used for operation or maintenance of, the Project Area. Annual Gross Revenues are estimated in Table 3 of Exhibit D (see line item “Sub-Total Revenues”).
- N) “Loan”: The Loan described in Exhibit D.
- O) “Project”: The construction, improvement, acquisition, or maintenance of small craft harbors, related facilities, or connecting waterways described in Exhibit D.
- P) “Project Area”: The real property, and improvements thereto, identified in Exhibit F.

- Q) "Project Completion Certification": A fully executed Notice of Completion, or equivalent, which states the Borrower has accepted the Project as complete on a specific date (Date of Acceptance).
- R) "Project Costs": Contract, equipment, labor, material and construction costs that are incurred by the Borrower for the purpose of completing the Project. However, Project costs incurred:
- 1) For indirect or overhead charges may only be reimbursed with prior written approval by the Department and may be no greater than the combined maximum budget allocated for *Engineering, Inspection, and Permits* Cost as described in Exhibit D (Feasibility Report, Cost Estimate Table);
  - 2) For engineering, inspection, and management services provided by Borrower or Borrower's personnel may only be reimbursed with prior written approval of Department; and
  - 3) Shall not include any expenses incurred prior to the Effective Date of this Agreement.
- S) "Reserve Fund": A separate and independent fund for the exclusive purpose of providing extraordinary, non-routine maintenance, repair or replacement during the term of this Agreement.
- T) "Unpaid Balance": Total outstanding debt, including principal and accumulated interest.

#### ARTICLE 3 – BORROWER COVENANTS

- A) The Borrower certifies that the obligation created by this Agreement will not create an indebtedness or liability contrary to the provisions of Section 18 of Article XVI of the Constitution of the State of California. The Borrower certifies that neither the Borrower nor its City Council has received a protest of the Loan signed by the owners of one-half or more of the assessed valuation of taxable property in the Borrower's jurisdictional boundaries.
- B) The Borrower certifies that the Borrower has title to, or adequate interests in, the Project Area. Adequate interests include, but are not limited to, the following:
- 1) Access to the Project Area by a maintained public way;
  - 2) A right of passage over a waterway, open to the public, between the Project Area and navigable waters; and
  - 3) Easements or other rights of way outside the Project Area sufficient to provide utilities and services to the Project.

- C) The Borrower agrees to incur no additional indebtedness payable from or secured by Collateral without first obtaining the written consent of the Department.
- D) The Borrower represents and warrants that there is no encumbrance, lien, easement, license, title, cloud or other interest that may interfere with the Project Area or use thereof by the public. The Borrower represents and warrants that there is no encumbrance or lien on the Collateral except as permitted by this Agreement.

ARTICLE 4 – BUDGET CONTINGENCY

- A) Only funds that have been appropriated by the Legislature and approved for expenditure on the Project by the Department on or before the Effective Date of this Agreement are authorized for disbursement through this Agreement.
- B) In the event that the Legislature or Department, for any reason, does not approve sufficient funding for this project, or should the Borrower be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and provided that Borrower has not accepted any loan funds, Department shall have no liability to pay any funds whatsoever to Borrower or to furnish any other consideration under this Agreement and Borrower shall not be obligated to perform any provision of this Agreement; this Agreement shall be of no further force and effect.
- C) In the event that the Legislature or Department does not approve sufficient funds to complete the Project, or should the Borrower be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and Borrower has drawn loan funds:
  - 1) Borrower shall repay all drawn loan funds plus the interest (as specified in Article 8.B) accrued to date of said return within ninety (90) days of the end of the fiscal year that such approval is denied; or
  - 2) Borrower shall complete the Project within the scheduled timeline using Borrower's own funds; or
  - 3) Department and Borrower may agree upon a reduced scope version of the Project to be completed within the scheduled timeline and all funds in excess of those previously appropriated necessary to complete the Project shall come from Borrower; or
  - 4) Department and Borrower may, within ninety (90) days of knowledge of such denial, agree that the expenditure of such funds toward the Project constitutes

construction completion. The date of such agreement shall become the Date of Acceptance of the Project.

ARTICLE 5 – TERM OF AGREEMENT

- A) This Agreement, subject to any provisions for prior termination as specified in Article 25 of this exhibit, shall remain in full force and effect until the Borrower repays the Loan and all accumulated interest in full, and all other amounts owing to the Department under this Agreement, or this Agreement is otherwise terminated.
- B) This Agreement may be extended, amended or cancelled, but only upon the written agreement of the parties.

ARTICLE 6 – DISBURSEMENT OF LOAN

The Department shall provide a Loan to the Borrower in the maximum amount stated on STD 213 line 3 of this Agreement; however:

- A) No funds shall be disbursed for work performed prior to the Effective Date of this Agreement.
- B) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower demonstrates to the satisfaction of the Department that the Borrower has title to, or adequate interests in, the real property comprising the Project Area.
- C) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower demonstrates that it has all acquired permits necessary to construct and operate the Project.
- D) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower demonstrates that it has satisfactorily complied with California Environmental Quality Act (CEQA) for the Project.
- E) The Department shall have no obligation to disburse any of the Loan unless and until the Borrower has fully executed all required security agreements which may include but is not limited to a Collateral Assignment of Rents and Leases and Security Agreement; such security agreements are recorded if necessary; and original or conformed copies of such recorded documents are received by the Department.
- F) Borrower shall provide proof that it has established and is contributing monthly to the Reserve Fund account before any Loan funds will be disbursed as the Department sees fit.
- G) Loan disbursements to cover Project Costs shall be made in arrears as follows:



- 1) Borrower shall request a Loan disbursement at least quarterly, when applicable, but not more frequently than monthly, for any and all reimbursable expenses incurred during that period, using the form provided by the Department unless Borrower has a form otherwise approved by the Department in writing. Paid invoices, including proof of payment, or other evidence of Borrower's payment of Project Costs must accompany Loan disbursement requests.
  - 2) Loan disbursement requests shall be submitted in triplicate hardcopy to the Department in a form satisfactory to the Department.
  - 3) In the event no reimbursable expenses were incurred during a quarter, the Borrower shall report to the Department of any progress made on the Project, or explanation of no progress made on the Project, at least quarterly, but not more frequently than monthly.
  - 4) The Borrower shall record such disbursements in the Account.
  - 5) The Department shall withhold from each Loan disbursement an amount equal to ten Percent (10%) of each disbursement until the Department has accepted the Project as complete, approved all Project Costs, and all stop notices, other liens or mechanic's liens have been released.
  - 6) Borrower shall request final Loan disbursement no later than sixty (60) days following the Date of Acceptance of the Project by the Borrower.
- H) The Borrower shall provide the following to the Department within sixty (60) days of the Date of Acceptance:
- 1) A Project Completion Certificate (or equivalent);
  - 2) An accounting of all Loan funds; and
  - 3) As-Built plans and specification on CD-ROM or DVD.
- I) The Department may withhold any Loan disbursement during the continuance of any Default or any Borrower failure to comply with any of the provisions of this Agreement.

#### ARTICLE 7 – DESIGN AND CONSTRUCTION OF PROJECT

- A) The Borrower shall complete the Project no later than February 1, 2023.
- B) The Borrower shall, within sixty (60) days of approval of this Agreement, provide the Department with a Project schedule showing the proposed dates of the following Project phases or milestones:
  - 1) Beginning and ending dates of Project design consultant selection by Borrower;
  - 2) Submission of the consultant services agreement to the Department for approval;

- 3) Beginning and ending of Project design;
  - 4) Submission of plans and specifications to the Department for approval at 30%, 60%, 90% and 100% completion;
  - 5) Beginning and ending dates of Borrower advertising of Project for bids;
  - 6) Project bid opening date;
  - 7) Submission of the construction Agreement to the Department for approval;
  - 8) Beginning and ending dates of Project construction;
  - 9) Acceptance of Project by the Borrower; and
  - 10) Submission of a Project Completion Certification to the Department.
- C) The Borrower shall obtain from the Department advance written approval of the following:
- 1) All bid documents prior to advertisement;
  - 2) All contracts prior to award;
  - 3) All change orders of \$10,000 or more, for any work performed under this Agreement; and
  - 4) All changes to project schedule discussed in Subpart B of this Article, of 60 (sixty) days or more.
- D) All architectural engineering contracts for plans and specifications shall require that the plans and specifications:
- 1) Be prepared by persons licensed by the State of California to undertake the type of design required by the Project (engineer's/architect's certificate number to appear on construction contract design documents);
  - 2) Be prepared in conformance with the most recent version of the Department of Boating and Waterways' *Layout, Design and Construction Handbook for Small Craft Harbors*;
  - 3) Be submitted to the Department and Borrower in 11" X 17" hardcopy and on CD or DVD in full sized and 11" X 17" PDF format. Specifications shall also be submitted in hardcopy and in PDF format;
  - 4) Become the property of the Borrower;
  - 5) Provide for all Project facilities set forth in Exhibit D; and
  - 6) Provide for shore side facilities for removing waste from vessel holding tanks in accordance with the Harbors and Navigation Code section 654.1.
- E) All construction contracts for the Project shall:
- 1) Be awarded in accordance with all applicable laws and regulations;

- 2) Contain the following clause: "The Department of Parks and Recreation, Division of Boating and Waterways and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project Area.";
  - 3) Contain a clause stating that the Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship;
  - 4) Contain a clause that the construction contractor shall comply with all air pollution and environmental control rules, regulation, ordinances and statutes which apply to the Project and any work performed pursuant to the construction agreement;
  - 5) Require that the Project be constructed according to the plans and specifications prepared for the Project, and that quality control shall be performed, and compliance with specifications shall be verified, by qualified professionals selected by the Borrower or Borrower's representative; and
  - 6) Shall contain the requirements of Article 14 Liability and Fire Insurance and Article 24 Liability of this Agreement.
- F) Prior to the commencement of the construction of the Project, the Borrower shall cause the contractor and a corporate surety acceptable to the Department to furnish in favor of the Borrower and the Department, as their interests may appear, bonds or other security interests as allowed pursuant to Public Contract Code sections 10263 and 22300 in the minimum amounts indicated below:
- 1) Faithful performance – one hundred percent (100%) of the total agreement bid price.
  - 2) Labor and materials – one hundred percent (100%) of the total agreement bid price.
- G) The Borrower's personnel and construction of the Project shall be under the supervision of qualified inspectors. Inspection reports and related inspection data shall at all

reasonable times be accessible to the Department personnel, and on request copies of such reports and data shall be provided to the Department by the Borrower.

- H) The Borrower's obligation to pay the principal of, and interest on, the Loan are special limited obligations payable solely from Gross Revenues and other Collateral pledged under this Agreement. But the Borrower's obligation to pay the principal of, and interest on, the Loan not paid when due are also payable from any other legally available funds of the Borrower, subject to appropriation by the Borrower of such other funds. If the immediately preceding sentence is held or deemed to be, or is in fact, illegal, inoperative or unenforceable, all of the other provisions in this Agreement shall nonetheless remain unaffected and fully valid, operative, and enforceable.

#### ARTICLE 8 – LOAN REPAYMENT; LIMITED OBLIGATIONS

- A) Repayment of the Loan shall begin on August 1 immediately following the first Loan disbursement as follows:
- 1) Interest only payments shall be made beginning on August 1 immediately following the first Loan draw and be made annually until drawdown is completed. However, upon written agreement between Department and Borrower, Borrower may forego interest-only payments.
  - 2) Repayment of principal and interest shall begin on August 1 immediately following the final draw and be made in thirty (30) annual, approximately equal payments. However upon written agreement between Department and Borrower, repayment of principal and interest may begin on the succeeding August 1.
  - 3) All payments are due on August 1 of each year, and late if not received by the Department by August 15 of each year.
- B) Interest shall be compounded continuously at the rate of four and five-tenths percent (4.5%) per annum on the Unpaid Balance. Interest compounds on the Unpaid Balance of the Loan commencing with the warrant date of each disbursement of Loan funds by the Department.
- C) Repayment of the Loan shall be made from Project Area Gross Revenues and, per Harbors and Navigation Code section 71.8(b) shall be made a priority payment made prior to any other expenditure from Gross Revenues. However, to the extent that the revenues generated within the Project Area are insufficient to repay the Loan, the Borrower shall make every effort, subject to section 18 in Article XVI of the California

Constitution, to assign and collect other revenues, and/or levy taxes as necessary to pay each Loan payment.

- D) The Department will provide a repayment schedule to Borrower and may make adjustments in the schedule of annual Loan payments to reflect changes of principal or interest such as prepayments that have been made.
- E) The Borrower at its option may at any time make prepayment of all or part of the principal on the Unpaid Balance; however, such prepayment does not replace any normally scheduled payment unless the Department receives payment in full.
- F) If any payment made by the Borrower is less than the amount required under this Agreement, then such payment shall first be applied to reduce any accrued unpaid interest due on the Loan, and the balance shall be used to reduce the principal of the Loan.
- G) The Borrower's obligation to pay the principal of, and interest on, the Loan not paid when due are also payable from any other legally available funds of the Borrower, subject to appropriation by the Borrower of such other funds. If the immediately preceding sentence is held or deemed to be, or is in fact, illegal, inoperative or unenforceable, all of the other provisions in this Agreement shall nonetheless remain unaffected and fully valid, operative, and enforceable.

#### ARTICLE 9 – DEPARTMENT'S REMEDIES ON DEFAULT

Upon the occurrence of Default, the Department may:

- A) Exercise all rights and remedies accorded the Department in the security agreements signed by Borrower including, but not limited to, the right to take possession of the Project Area.
- B) Exercise all rights and remedies accorded to the Department by law, including, but not limited to, those rights established in the Harbors and Navigation Code.
- C) Declare the Loan (including, without limitation, all accrued interest) immediately due and payable without further demand or notice.
- D) Recover the defaulted loan as specified in section 71.8(d) of the Harbors and Navigation Code.

#### ARTICLE 10 – RIGHT OF THE DEPARTMENT TO TAKE POSSESSION OF THE PROJECT AREA

The Department may take possession of the Project Area if the Borrower is in Default. The Department shall, after the exercise of such option, construct, operate or maintain the Project

Area for the account of the Borrower until the Loan is repaid in full; the revenues received from the Project Area during such time shall be applied first to reduce the interest and second to reduce the principal of the Loan and then to cover any other expenses incurred in the operation of the Project Area.

#### ARTICLE 11 – RIGHT OF ENTRY BY THE DEPARTMENT

The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project or as otherwise necessary for the Department to exercise its rights under this Agreement.

#### ARTICLE 12 – LAND CONTROL

The Borrower shall not sell, exchange, transfer, mortgage, or hypothecate in any manner all or any portion of the Marina or required therewith, without the advance written approval of the Department.

#### ARTICLE 13 – OPERATION AND MAINTENANCE OF PROJECT

- A) The Borrower shall establish berthing rates, subject to the approval of the Department, within the Project Area sufficient to comply with sections 71.4 and 71.8 of the Harbors and Navigation Code.
- B) The Borrower shall annually report (due June 1 if Borrower's fiscal year runs January 1 through December 31, or due December 1 if Borrower's fiscal year runs July 1 through June 30) to the Department the following:
  - 1) Amounts deposited into the Reserve Fund account;
  - 2) Amounts withdrawn from the Reserve Fund account;
  - 3) Marina Gross Revenues;
  - 4) Uses of funds withdrawn from the Reserve Fund account;
  - 5) Brief assessment of the condition of the Marina;
  - 6) Anticipated expenditures from the Reserve Fund account over the next five years;
  - 7) Audited official report on status and activity of the Reserve Fund during the fiscal year; and
  - 8) Audited annual financial statements including the following:
    - a) Balance Sheet;
    - b) Income Statement; and
    - c) Cash Flow Statement.

- C) Project Area electrical systems that extend into or over water shall be inspected biennially, by a licensed electrical contractor or electrical engineer for compliance with the safety-related provisions of the California Electrical Code (Part 3 of Title 24 of the California Code of Regulations).
- D) The Borrower shall each year conduct a survey of berthing charges that prevail in the same market area as the Marina and shall transmit the results of the survey to the Department by April 1 of the following calendar year.
- E) The Borrower shall operate the Project Area as or in conjunction with a small craft harbor.
- F) The Borrower shall:
- 1) Continuously operate in an efficient and economical manner all Project Area facilities acquired, constructed, improved, maintained, or completed, in full or in part, as a result of the Loan;
  - 2) Make all repairs, renewals and replacements necessary so that the Project Area at all times meets the minimum standard of maintenance set forth in the Department of Boating and Waterways "*Marina Operations, Maintenance, and Capital Outlay Loan Requirements*" which is identified as Exhibit E of this Agreement;
  - 3) Operate, maintain and control the Project with its own employees; however, the Borrower may lease portions of the Project Area, provided that such leases are awarded in accordance with Harbors and Navigation Code sections 72 or 72.2, and provided that such leases do not include any berthing systems or any other revenue producing items paid for by the Loan;
  - 4) Make all Project Area facilities available to all on equal and reasonable terms;
  - 5) Make all Borrower's books, papers, records and accounts relative to the Project Area open and available for inspection and audit by the Department or any authorized representative of the Department during normal business hours; and
  - 6) Subject to section 71.8, subdivision (d), of the Harbor and Navigation Code, periodically fix, prescribe, and collect fees, rentals, or other charges for services and facilities within the Marina sufficient to produce Gross Revenues adequate for payment of the following in the order set forth:
    - a) All installments of principal and interest on the Loan when due;
    - b) All expenses of operation, maintenance, and repair of facilities in the Project Area; and

- c) All transfers to the Reserve Fund as and when required under Article 13, paragraph (J).
- G) The Borrower shall establish an Enterprise Fund to account for Marina revenues and revenues pledged as collateral and expenditures enumerated in section 71.8 of the Harbors and Navigation Code. The Enterprise Fund shall be established before the first loan draw is requested.
- H) Borrower shall deposit Excess Revenues in an interest-bearing account. Excess Revenues are restricted as described in section 71.9 of the Harbors and Navigation Code. Borrower shall obtain prior written approval from the Department before expending excess Revenues. Excess Revenues, and interest accumulated thereon, provide partial security for the loan.
- I) The Borrower shall establish a Reserve Fund and shall deposit monthly into the Reserve Fund an amount equal to two percent (2%), or a higher percentage determined by the Borrower, of Project Area Gross Revenues received by the Borrower during the preceding calendar month.
  - 1) Borrower shall set up an individual account in its Treasurer's Office, which account shall be the Reserve Fund depository. The Borrower shall use deposited funds for extraordinary, non-routine maintenance, repair and/or dredging of the Project throughout the term of this Agreement.
  - 2) Borrower's expenditures from the Reserve Fund shall be consistent with "Department of Parks and Recreation, Division of Boating and Waterways "Marina Operations, Maintenance, and Capital Outlay Loan Requirements."
  - 3) All expenditures from the Reserve Fund shall require prior written approval of the Department. Written approval may include, but not be limited to, e-mail approval. Invoices or other evidence of expenditures must accompany a request for Department approval.
  - 4) Any earnings accrued in the Reserve Fund shall be retained in the Reserve Fund.
  - 5) After payment in full of all amounts owing to the Department under this Agreement, the Borrower may withdraw moneys in the Reserve Fund for any lawful purpose. However, Borrower shall not be eligible for future Department funding unless and until an amount equal to the remaining funds is first expended toward the Project.



## ARTICLE 14 – LIABILITY AND FIRE INSURANCE

A) The Borrower shall maintain in full force and effect during the term of this Agreement the following insurance in the minimum amounts and kinds specified below:

|                              |                                                                             |
|------------------------------|-----------------------------------------------------------------------------|
| Bodily Injury or Death:      | \$1,000,000 each person                                                     |
|                              | \$1,000,000 each occurrence                                                 |
| Property and Product Damage: | \$1,000,000 each occurrence                                                 |
|                              | \$1,000,000 aggregate                                                       |
| Fire Insurance:              | 90% of the full insurable value of all insurable components of the Project. |

B) All policies shall contain the following endorsement:

The State of California, its officers, agents, employees and servants are hereby declared to be additional insureds under the terms of this policy, as to activities of both the Borrower and the Department in respect to the Project, and this policy shall not be cancelled without thirty (30) days prior written notice to the Department.

C) The Borrower shall continuously insure the Project Area through one of the following alternatives:

ALTERNATIVE I

- 1) The Borrower agrees that all contracts between it and the contractor (or contractors) responsible for construction of the Project shall contain a clause which requires the contractor(s) to obtain insurance in the minimum amounts and kinds specified above in Article 14, subpart A.
- 2) The Borrower prior to acceptance and operation of the Project shall procure and maintain in full force and effect during the remainder of the term of this Agreement insurance in the amounts and kinds specified above in Article 14, subpart A.

ALTERNATIVE II

- 1) The insurance requirements specified above in Article 14, subpart A., may be satisfied to the extent that the Borrower can provide comparable protection for the Borrower and the Department by virtue of the Borrower's participation in any "risk management" plan, self-insurance program, insurance pooling arrangement,

or any combination of these, provided that the protection plan has been approved by the Department.

- D) The Borrower agrees that all contracts between it and the designer (or designers) responsible for design and preparation of plans and specifications of the Project shall contain a clause requiring said designer(s) to obtain Architect's Professional Liability (errors and omissions) Insurance in the amount of \$1,000,000.
- E) Copies of any policy or policies, including any new or renewal policy, shall be in a form satisfactory to the Department. Copies of such policy or policies shall be submitted to the Department at least twenty (20) days prior to the effective date or dates thereof.
- F) Loss under any fire insurance policy shall be payable to the Department for deposit in an appropriate trust fund with the State of California. The proceeds may be paid to the Borrower upon the Borrower's application for the reconstruction of the destroyed facilities.
- G) The Department shall not be responsible for the payment of any premiums or assessments on Borrower's insurance policies.
- H) The Borrower shall provide proof of insurance to the Department annually and upon written request by the Department.

#### ARTICLE 15 – INSTALLATION OF OTHER FACILITIES

- A) The Borrower may at its own expense place or cause to be placed within the Project Area any structure, alteration, and/or improvement in addition to those set forth and described in Exhibit D, provided that such facilities:
  - 1) Are constructed, maintained and operated for the use, enjoyment, protection, and service of the public;
  - 2) Are in compliance with Article 13 of this Exhibit;
  - 3) Do not directly or indirectly reduce the service capabilities for the boating public called for in Exhibit D including the sanitary and parking facilities; and
  - 4) Have the prior written approval of the Department. Approval shall not be unreasonably withheld.
- B) The Department shall not be obligated to make or cause to be made any alteration, improvement, or repair to any facilities within the Project Area in addition to the original construction to the Project as provided for herein.

**ARTICLE 16 – SIGN REFERRING TO DEPARTMENT FINANCING**

The Borrower shall cause a permanent sign to be installed within the Project Area, which shall include the Department’s logo (to be provided by Department) and a statement that the Department financed the Project. The sign may contain additional statements that recognize the participation of other government agencies in the Project. The sign shall be installed before the Project is made available to the public. The standard Department precast concrete sign shall be used unless the Borrower is required to use a different sign style or motif. The Department shall furnish an electronic drawing of the standard Department project credit sign to the Borrower for inclusion in the plans and specifications. The location of the project credit sign and make-up of a non-standard sign, including the dimensions, materials and lettering, requires the prior approval of the Department.

**ARTICLE 17 – DIRECTIONAL SIGNS**

The Borrower shall at the direction of the Department cause permanent directional signs to be installed that shall provide adequate directions for reaching the Project Area. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits in conformance with the provisions of the Local Agency’s Development Code and State Department of Transportation (CalTrans) policy. The locations and make-up of the signs, including the dimensions, materials, and lettering, require the prior approval of the Department.

**ARTICLE 18 – WAIVER OF RIGHTS**

Any waiver by either party hereto of its rights with respect to a Default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other Default or matter.

**ARTICLE 19 – PROJECT REPRESENTATIVES**

The Borrower and the Department shall each designate specific staff representatives for the purposes of communication between parties. Borrower’s representative shall be by delegation of authority, signed by the person designated by Resolution to sign the contract or any amendments, and to make decisions concerning the contract.

ARTICLE 20 – REMEDIES NOT EXCLUSIVE

The use by either the Department or the Borrower of any remedy specified in this Agreement for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE 21 – OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either the Department or Borrower, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

ARTICLE 22 – SUCCESSORS AND ASSIGNS OBLIGATED

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

ARTICLE 23 – ASSIGNMENT

No assignment or transfer of this Agreement or any part hereof, rights or obligations hereunder, or interest herein by the Borrower shall be valid unless and until it is approved by the Department in writing. The Department's approval shall be granted at its sole discretion and may be made subject to such reasonable terms and conditions as the Department may impose.

ARTICLE 24 – LIABILITY

- A) The Borrower waives all claims and recourse against the Department, including the right to contribution for any losses or damages arising from, growing out of, or in any way connected with or incident to this Agreement.
- B) The Borrower, to the fullest extent permitted by law, shall indemnify, hold harmless the Department, officers, employees and agents (each an "Department Indemnified Party") from and against any and all Indemnifiable Losses arising out of, resulting from or in any way connected with:
  - 1) The Marina, including the Project, comprising any part of the Project to be financed or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or from the planning, design, acquisition, installation or construction, of the Project or any part thereof, including, without limitation, Indemnifiable Losses resulting from or in any way relating to any generation, processing, handling, transportation, storage, treatment or disposal of solid wastes, Hazardous Materials or any other Hazardous Material Activity relating to

- the Project including, but not limited to, any of those activities occurring, to occur or having previously occurred on the Project and any Releases on, under or from the Facilities to the extent occurring or existing prior to the execution and delivery of this Loan Agreement;
- 2) Any misrepresentation or breach of warranty by the Borrower of any representation or warranty in this Loan Agreement or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing; or
  - 3) Any breach by the Borrower of any covenant or undertaking set forth in this Loan Agreement, or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing; provided that such indemnification pursuant to this Section shall not apply to Indemnifiable Losses resulting because of the negligence or willful misconduct of any Indemnified Party or the gross negligence or willful misconduct of any Indemnified Party.
- C) The Department agrees to notify the Borrower promptly, but in no event later than twenty (20) business days, after written notice to the Department that any third party has brought any action, suit or proceeding against an Indemnified Party that may result in an Indemnifiable Loss (a "Third Party Action"). Upon such notice or other notice from an Indemnified Party of a Third Party Action, the Borrower shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party and reasonably acceptable to the Borrower (which may be the Attorney General of the State of California), and shall assume the payment of all Litigation Expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove (in its sole and absolute discretion) any such compromise or settlement and the Indemnified Party has no liability with respect to any compromise or settlement of any Third Party Claim effected without its written approval. Each Indemnified Party shall have the right to employ separate counsel in any Third Party Claim and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and disbursements of such separate counsel; provided, however, that a Trustee Indemnified Party may only employ separate counsel at the expense of the Borrower if in the reasonable judgment of such Trustee Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel. If the Indemnified Party fails to provide such notice to the Borrower, the Borrower is still obligated to indemnify the Indemnified Party for

Indemnifiable Losses, except that the Borrower is not liable for any Litigation Expense the Indemnified Party incurs during the period in which the Indemnified Party failed to give such notice.

- D) The rights and undertakings set forth in this Section do not terminate and survive the final payment and the termination or defeasance of this Loan Agreement.
- E) For purposes of this Section “Indemnifiable Losses” means the aggregate of Losses and Litigation Expenses.
- F) The Borrower’s obligations under this Article shall survive the payment of the Loan and termination of this Agreement.

#### ARTICLE 25 – TERMINATION

- A) Prior Termination. This Agreement shall terminate on the date specified in Article 7 (A) of this Exhibit if by such date (1) the Borrower has not met all conditions precedent to disbursement under this Agreement, or (2) the Department has disbursed no part of the Loan funds.
- B) Termination. In addition to the Department’s right to terminate pursuant to Exhibit C, and as otherwise provided in this Agreement, the Department may terminate this Agreement without cause upon a thirty (30) calendar days advance written notice to the Borrower.
- C) The Department may declare any loan proceeds already disbursed to the Borrower immediately due and payable.

#### ARTICLE 26 – WAIVER OF THE STATUTE OF LIMITATIONS

Borrower waives the benefit of any limitations affecting its liability hereunder or the enforcement thereof to the extent permitted by law.

#### ARTICLE 27 – SUPERSEDING GENERAL TERMS AND CONDITIONS (GTC)

- A) The reference to the Contractor in Exhibit C is the Borrower in this Agreement.
- B) Notwithstanding Paragraph 13 in Exhibit C, payment to Borrower for expenses shall be limited as provide for in Article 6 of this Exhibit.
- C) Paragraph 5 in Exhibit C is replaced by Article 24 of this Exhibit.

GTC 04/2017

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.



13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support

enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

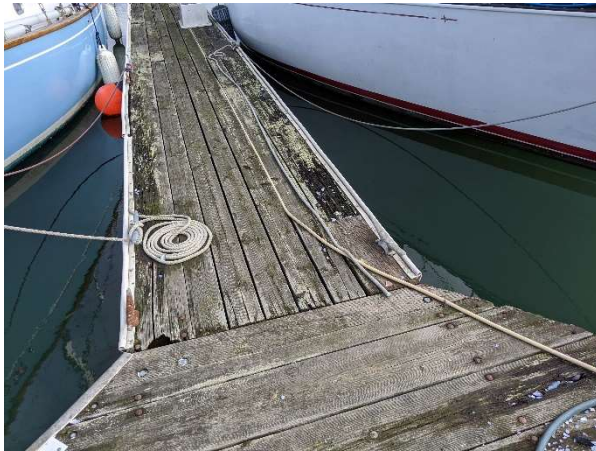
a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

## BERKELEY MARINA LOAN FEASIBILITY REPORT



Dock D



Dock E

City of Berkeley

\$5,500,000 Loan

### SUMMARY

The Department of Parks and Recreation, Division of Boating and Waterways (DBW) asks the Boating and Waterways Commission to provide advice and comment on the City of Berkeley's (City's) request for a \$5.5 million loan from the Harbors and Watercraft Revolving Fund (HWRF) for demolition and replacement of Docks D and E at Berkeley Marina.

The subject loan would fund design and construction of new docks, concrete piles, utilities, and necessary related infrastructure for these two docks.

There are no engineering, permitting, stakeholder or public access issues associated with this project. However, finances and scheduling may present challenges. DBW staff is working with the City to address these challenges, which are discussed below.

Due to DBW's obligation to safeguard public funds and the difficulties involved with recovering those funds in the event of a default by a public entity, staff recommends that if the Commission advises DBW to move forward with this loan, the City must meet certain conditions to DBW's satisfaction at several project milestones during the performance period. DBW will make design and permitting funding available immediately, in the amounts shown in the cost estimate at Table 1 below, but construction funds will not be authorized until DBW's conditions are met. These conditions will be written into the loan agreement. The recommended conditions are as follows:

- 1) No later than March 31, 2021, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund achieved a 1.25 debt service coverage ratio (DSCR) in the fiscal year ending June 30, 2020. This process must be repeated each subsequent March 31, confirming a 1.25 DSCR for the prior fiscal year, until construction has begun.

- 2) Before construction loan funding will be made available, and no later than March 31, 2022, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund's ratio of operating income to operating expenses in the fiscal year ending June 30, 2021 was at or above the projected ratio shown in Tables 3 and 3A of this report. This process must be repeated each subsequent March 31, confirming the income/expense ratio for the prior fiscal year met or exceeded the projections in this report, until construction has begun.
- 3) Before construction loan funding will be made available, and no later than December 31, 2021, the City must send DBW confirmation that all project permits have been obtained.
- 4) The Berkeley City Council shall adopt a resolution accepting the loan funds. The language of the resolution shall acknowledge the Marina Fund does not currently meet the income/expense ratio required by DBW and is not forecasted to do so, and the language of the resolution must further state that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from its General Fund, for every year until the loan is fully repaid. This condition may be withdrawn if and when the City demonstrates meeting the required income/expense ratio and debt service coverage ratio for five consecutive years.

DBW seeks Commission advice and comment on this proposed \$5,500,000 loan, with conditions, to the City of Berkeley for the improvements described in this February 14, 2020 Feasibility Report.

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## **LOAN APPLICANT AND PREVIOUS COMMISSION ACTION**

### **Loan Applicant**

The loan applicant for this project is the City of Berkeley. The City's Parks Recreation and Waterfront Department (PRW) operates and maintains the marina facilities.

### **Commission Site Visit**

On February 13, 2020, the Commission toured the site as part of this Boating and Waterways Commission meeting.

### **Previous Commission Action**

The Commission has previously consented to the following loans to the City for improvements to Berkeley Marina:

- In FY 1964/65, a \$1,800,000 construction loan was approved to develop Berkeley Marina. Development consisted of the construction of 379 new berths, gangways, utilities, a breakwater, dikes, access roads, parking, buildings, and landscaping. In addition, 209 existing berths were relocated.
- In FY 1969/70, a \$25,000 planning loan was approved to study the feasibility of replacing or improving the existing 209 berths.
- In FY 1971/72 and FY1972/73, a \$1,500,000 construction loan was approved in two phases to demolish the 209 old berths in the south basin, and replace them with 560 new concrete berths, two new restrooms, and additional parking. These docks are now known as Docks K-O.
- In FY 1985/86, a \$2,000,000 construction loan was approved to refurbish docks A-G,

including the electrical system, decking, flotation piling encasement, water lines, dock storage boxes, and gangway security gates. Also, the access road along the east perimeter of the marina basin was to be realigned, graded and paved, and the parking areas adjacent to Docks A-E and Docks H-I were to be repaired and repaved. This project experienced prolonged delays at the local level for several years, and ultimately the project was re-scoped to use loan funds for the demolition and replacement of Docks F-G and the realignment of the east access road. Simultaneously, the City used its own funds to rebuild the parking area adjacent to Docks A-E.

- In FY 2001/02, a \$1,800,000 construction loan was approved to demolish and replace Docks A-E along the north side of the marina basin, add new utilities to these docks, install new docks and gangways for barrier-free access, and replace four existing restroom buildings. In FY 2002/03, an additional \$2,000,000 construction loan was approved for this same project. In FY 2003/04, another \$3,200,000 construction was approved, and in FY 2006/07 another \$2,000,000 loan was approved. Later, this project was re-scoped to prioritize refurbishment of Docks H-I, and to reduce the number of restroom buildings from two to four. With funds left over after that work was completed, the City demolished and replaced docks A-C, now known as Docks B and C. No work was done on Docks D and E using these loan funds, as the remaining funds were insufficient to complete that work. In total, \$7,900,000 of the \$9,000,000 in authorized loan funding was used. This \$7,900,000 loan is currently in repayment.

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## GENERAL LOCATION AND AREA

### Location

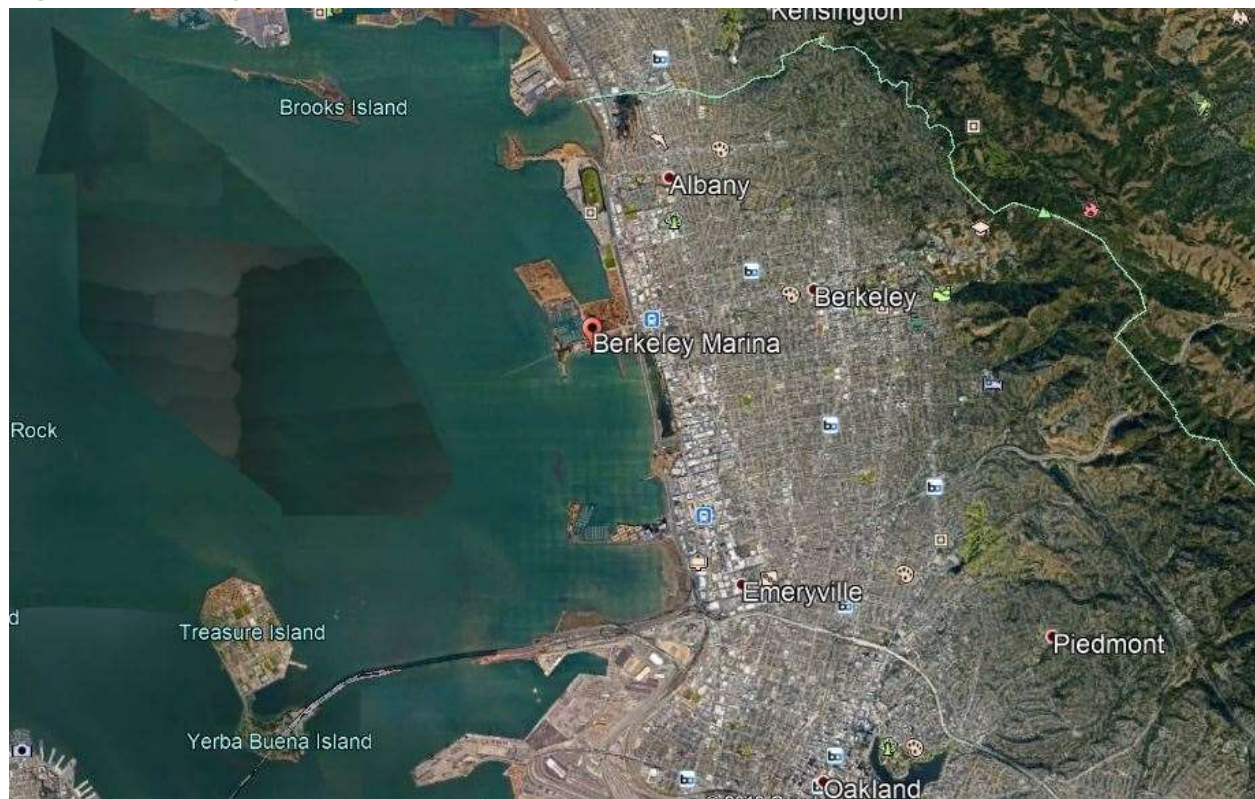
As shown in Figure 1 below, Berkeley Marina is located on the eastern shore of San Francisco Bay, about 2.5 miles north of the Oakland-Bay Bridge, and eight nautical miles from the Golden Gate Bridge.

Nearby marinas include Safe Harbor Marina in Emeryville, a private marina 3 miles south of Berkeley Marina, and the following public marinas: Marina Bay Yacht Harbor, 7 miles north in Richmond; and Alameda Marina, 10 miles south; and South Beach Harbor, 11 miles southwest across the Bay Bridge. San Leandro Marina, 17 miles south, closed in November 2019.

To reach the Marina from Sacramento, use Interstate 80 West. Exit at University Avenue (Exit 11), then keep right at the fork, following the signs for Berkeley Marina. At the stop sign, turn left onto University Avenue. Stay in the right lane, and in a half mile, turn right onto Marina Boulevard. In one mile Marina Boulevard will turn left and become Spinnaker Way. In a quarter mile, turn left into the parking lot for Docks D and E.

To travel to the Marina using GPS navigation, enter the following destination address: 7 Spinnaker Way, Berkeley, CA 94720.

Figure 1: Berkeley Marina Location

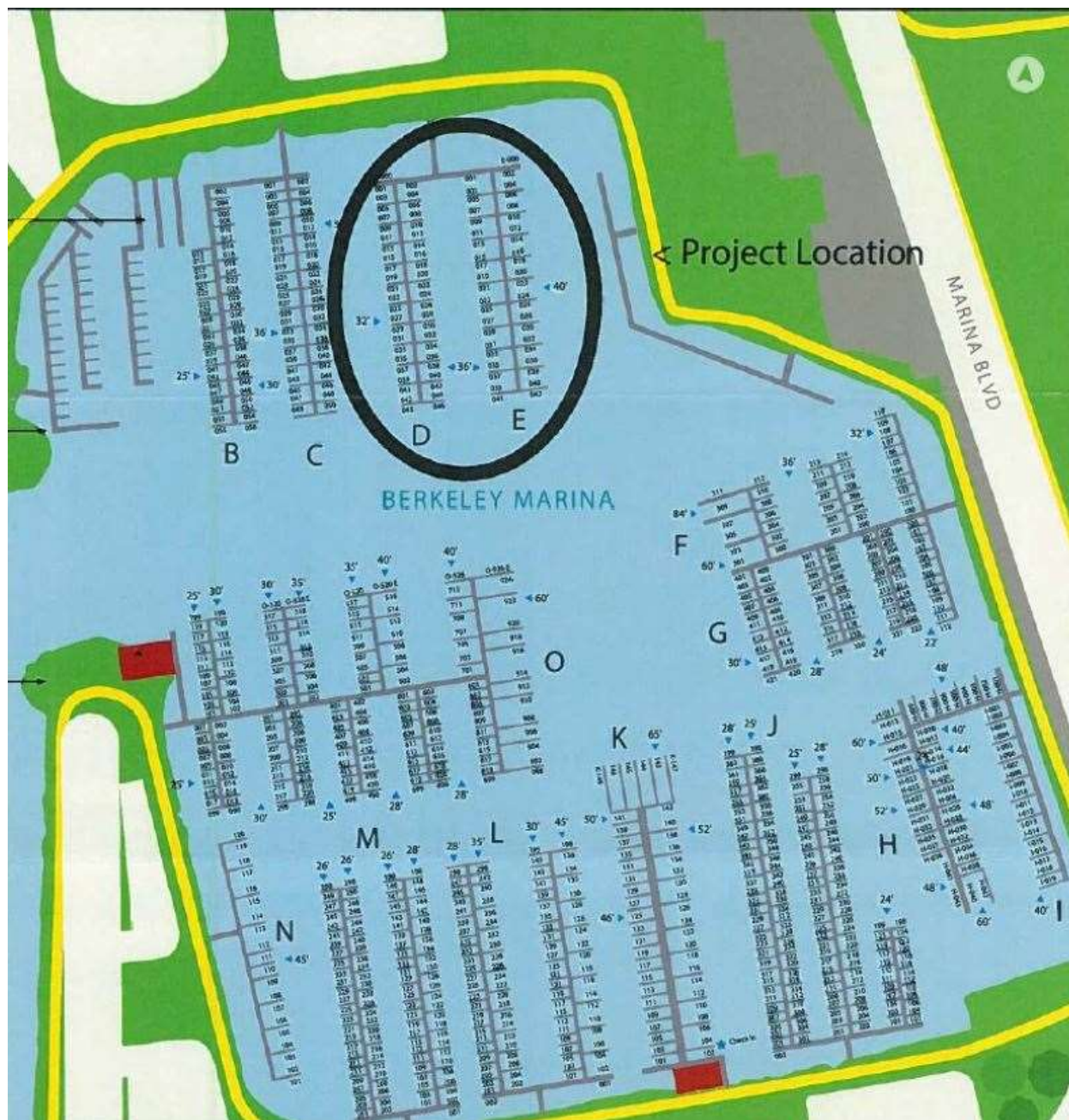


Source: Google Earth

### Existing Conditions

As shown in Figure 2, there are 14 large docks in the Marina, named Dock B through Dock O, with 1,032 berths ranging in length from 20 feet to 85 feet. The original docks were constructed in the 1960s, as discussed above, and all but two have since been rehabilitated or replaced. The exceptions are Docks D and E, which are located in the northern area of the Marina.

Figure 2: Berkeley Marina Map



Source: City of Berkeley

Docks D and E are nearly 50 years old and well past their original expected useful life of 15 years. 20 percent of their slips have degraded to the point of being unrentable. The docks present tripping hazards due to broken and rotted deck planking, many areas on the docks have torqued due to water intrusion into the dock floats, most of the timber piles are rotted at the water line with some having collapsed, and the electrical service is largely original construction that has failed a number of times. Age-related deterioration was exacerbated by a 2009 storm event that caused significant damage to these docks' end slips. In addition to their structural problems, the design of both docks does not meet current ADA accessibility standards.

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## Recent Challenges and Actions Taken

The Marina as a whole has experienced a gradual decline of berthers in recent years. In January 2018, 812 of the 1,032 total slips throughout the Marina were occupied, for an occupancy rate of 79%. As of January 2020, overall occupancy had declined to 791 slips occupied, for an occupancy rate of 77%. Docks D and E contain nearly 10 percent of the total slips in the Marina, and the City's inability to rent these docks' damaged slips has negatively impacted the Marina's occupancy rate.

The City has recently faced numerous additional challenges at the Marina that it believes have contributed to the loss of berthers. In recent years, encampments of people experiencing homelessness have formed at the Marina, requiring the PRW to act with both compassion and diligence to relocate them. Separately, crime around the Marina has increased, sometimes victimizing berthers. And several commercial lessors have departed the Marina, including a well-known restaurant that had been there for nearly 50 years. The physical condition of many Waterfront facilities and infrastructure is also an issue: The Marina's entry and exit roads are in major disrepair, many other facilities are at or near the end of their useful lives, and the PRW currently projects over \$100 million in deferred maintenance and capital improvement needs at the Waterfront. The Berkeley Pier, adjacent to the Marina, closed in 2015 due to need for major structural repairs, and to date those repairs have not been scheduled.

The City has succeeded in addressing or beginning to address many of these issues. The City has disbanded Marina encampments on two separate occasions, and will soon count the City police department among its lessors; their office's new presence at the Waterfront is expected to serve as a crime deterrent. The City has also hired safety staff to patrol the Marina at all hours. Respecting maintenance, the City has committed General Fund resources to pay for repairs to some of the Marina's finger docks and for improvements to Marina restrooms. Bond funding is being used to improve several key roads into and around the Marina. And the City is paying for a contractor to develop a business plan to promote the Marina's long-term ability to remain self-sufficient. Replacement of Docks D and E will assist in executing that plan.

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## PROJECT DESCRIPTION

The proposed project will remove Docks D and E and related infrastructure, and will install new components as listed below.

### Scope

#### **Concrete Docks**

The existing dilapidated wooden docks will be removed and replaced with new, ADA-compliant concrete docks.

#### **Concrete Piles**

The existing rotted timber piles will be removed, and replaced with concrete piles.

#### **Utilities**

All new utilities will be installed, including electrical, communications (telephone and cable), potable water, and fire suppression systems.

#### **Gangway**

A new ADA-compliant 8 foot by 80 foot gangway will be installed to connect the parking lot to the security gate for Docks D and E.

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**Gate Structure**

A new security gate will be installed at the entrance to Docks D and E, near the foot of the gangway.

**Concrete Wall**

A concrete wall will be installed below the gangway.

**Slope Protection**

Riprap slope protection will be installed in front of the new concrete wall.

**Landside Improvements**

ADA parking near Docks D and E will be repaved and repositioned, striping and signage will be updated, the concrete walkway in front of the docks will be replaced, and bollards will be installed.

**Cost Estimate**

The proposed \$5,500,000 loan will be used to demolish and replace Docks D and E, and to conduct necessary related design and construction work. Most of this project will be funded through this proposed DBW loan. Table 1 below shows the most recent project cost estimate.

| <b>Table 1: Berkeley Marina Project Cost Estimate</b>        |                      |                         |
|--------------------------------------------------------------|----------------------|-------------------------|
| <b>CONSTRUCTION SCOPE</b>                                    | <b>COST ESTIMATE</b> |                         |
|                                                              | <b>DBW</b>           | <b>City of Berkeley</b> |
| Mobilization / Demobilization                                | \$ 225,000           |                         |
| Stormwater Pollution Prevention Plan (SWPPP)                 | 50,000               |                         |
| Landside Demolition & Disposal                               | 15,000               |                         |
| Waterside Disposal & Removal                                 | 245,000              |                         |
| Concrete Walkway (4" Concrete, 6" AB)                        |                      | 27,500                  |
| Asphalt Pavement (3" AC, 9" AB)                              |                      | 125,000                 |
| Concrete Curb                                                | 3,750                |                         |
| Striping and Traffic Signage                                 | 7,500                |                         |
| Bollard (6" Diameter)                                        | 10,000               |                         |
| Gate Structure                                               | 39,250               |                         |
| Concrete Wall                                                | 159,000              |                         |
| Gangway (8 x 80')                                            | 120,000              |                         |
| Gangway Abutment                                             | 35,000               |                         |
| Gangway Toe Plate at Float                                   | 15,000               |                         |
| Rock Slope Protection (Riprap) at Abutment                   | 60,000               |                         |
| Concrete Pile (18" Octagonal, 60' Long)                      | 605,000              |                         |
| Float Dock System                                            | 1,814,500            |                         |
| Dock Boxes                                                   | 59,250               |                         |
| Potable Water Service & Fire Service                         | 240,950              |                         |
| Utilities to Slips                                           | 405,000              |                         |
| <b>Construction Subtotal</b>                                 | <b>\$ 4,109,200</b>  | <b>\$ 152,500</b>       |
| <b>NON-CONSTRUCTION COSTS*</b>                               |                      |                         |
| Escalation (9%)**                                            | \$ 369,828           | 13,725                  |
| Construction Contingency (10%)                               | 410,920              | 15,250                  |
| Permit Fees (3%)                                             | 127,851              |                         |
| Engineering before and during project (10%)                  | 426,170              |                         |
| Construction Management & Inspection (5%)                    |                      | 213,085                 |
| <b>Non-Construction Subtotal</b>                             | <b>\$ 1,334,769</b>  | <b>\$ 242,060</b>       |
| <b>TOTAL ESTIMATED COST BY PARTNER</b>                       | <b>\$ 5,443,969</b>  | <b>\$ 394,560</b>       |
| <b>TOTAL OVERALL PROJECT COST</b>                            | <b>\$5,881,146</b>   |                         |
| Source: City cost estimate dated 1/17/2020, and DBW analysis |                      |                         |
| * Percentages are of the Construction Subtotal               |                      |                         |
| ** Escalation at 3% per year for 3 years                     |                      |                         |

### Project Status

No formal project work has begun.

### Timeline

The City expects to complete construction by the end of January 2023, assuming the loan agreement is executed by August 2020. Completion by this date is necessary for State funds to be used within their statutory period of availability. However, the schedule the City supplied to DBW is aggressive, particularly regarding the permitting timeline. If construction is not completed within the loan performance period, a funding extension would require Department of Finance approval, and approval cannot be guaranteed.

### Engineering Feasibility

There are no known difficult or unusual engineering problems associated with the proposed project. Similar work was done on the B and C docks ten years ago, and no unusual engineering problems emerged.

### Access

Berkeley Marina is open to all on an equal and reasonable basis.

### Environmental Impact and Permits

The City expects the California Environmental Quality Act compliance process to result in a Mitigated Negative Declaration, but this process has not yet begun.

The following permitting processes and consultations will need to be completed for the project:

- U.S. Army Corps of Engineers (USACE) Nationwide Permit #3: Not yet begun.
- California Department of Fish and Game Section 1600 Permit: Not yet begun.
- California Regional Water Quality Control Board Certification: Not yet begun.
- National Marine Fisheries Service (consult via USACE): Not yet begun.
- San Francisco Bay Conservation and Development Commission Permit Extension No. 5-79 (as amended through 5/2009): Not yet begun.
- California State Lands Commission Notification: Not yet begun.

DBW does not anticipate any unusual permitting challenges for this project, although delays in the permitting process would put their completion schedule at serious risk.

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## ECONOMIC ANALYSIS

Three factors used to determine the economic feasibility of lending public funds include the following: One, the borrower demonstrates that adequate capital is available to finance the project to completion. Two, the borrower demonstrates that revenues will be sufficient to operate and maintain the project area, including the repayment of any debt. Three, the borrower proposes adequate collateral for the loan.

Public records respecting marina finances are somewhat complex. Each year the City's Comprehensive Annual Financial Report (CAFR) includes a report specific to the City's "Marina Operations Fund," which is different from but related to the Marina Fund discussed throughout our analysis on the following pages.

The most recent CAFR available, for fiscal year 2017/18, reflected an \$833,000 net loss for this fund. However, according to City staff, this audited account does not accurately reflect actual Marina Fund operating revenues and expenditures. There are two key differences between the CAFR figures and the budget-based figures for the Marina: the CAFR uses accrual-based accounting while the budget office uses a cash-based system. And the operating revenues

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reflected in the CAFR include the Marina Fund plus two Marina-oriented grant funds; when the grant funds are received or spent, they show up in the CAFR account but not the Marina Fund account.

In January 2020, the City provided DBW an updated Marina Fund revenue and expenditure forecast in support of their application for this loan. Revenue and expenditure forecasts in the following sections are based on this updated forecast. However, this forecast has not yet been presented at a City Council meeting. The condition of the Marina Fund has been a matter of significant public interest in the last two years, and DBW looks forward to receiving a report from the City on how this updated Marina Fund forecast is received by the Council and public.

### Assumptions

The City's January 2020 financial report adopts the following assumptions for long-term revenue and expense growth, after the benefits of construction have been realized:

- Waterfront lease revenues to grow at a 1% annual rate for the duration of the loan repayment period.
- Slip rental revenues and other Marina revenues to grow 2.5% annually.
- Personnel expenses (both salary and fringe) to grow 2% annually.
- No capital improvement expenses to come out of the Marina Fund for the duration of the loan repayment period.

Each of these revenue and expense types are discussed in more detail below.

DBW conducted its financial analysis based on the City's assumptions. However, based on our experience, all of these revenue and expense growth rates are lower than DBW would typically expect. Personnel expenses are subject to collective bargaining, and the City cannot guarantee they will grow at only a 2% rate indefinitely. And because waterfront lease revenue will be relatively inflexible, since many lease rates are likely to be defined by long-term contracts, personnel cost increases above the forecasted rate would likely require more-than-corresponding slip fee increases for the Fund to remain in balance.

The City also assumes no capital improvement expenses will come from the Marina Fund for the duration of the loan repayment period. Their belief is other City revenues, notably General Fund support and bond revenue, will cover capital expenses from FY2021/22 through FY2024/25. After that, the City expects new sources of revenue such as new ferry service to cover capital improvement needs. Because the City's Marina Fund forecast only covers five future years, the amounts of future capital improvement needs and revenue from new sources are not shown. However, capital improvement costs are shown as Marina Fund operating expenses for past years, but are removed from the scope of Marina Fund expenses for the forecast period. The forecast provided, and which DBW relies on, suggests that capital improvements cease to be an operating cost to the Marina Fund after FY2019/20, at least temporarily.

The City has informed DBW that its budget process forbids making commitments beyond the current budget year, and therefore it cannot assure DBW that General Fund revenue will continue to cover capital improvements in future years.

### Revenue

A project's financial feasibility partly depends on whether there will be sufficient revenue to pay for project expenses on an annual basis, including the repayment of the proposed DBW loan.

In this case, City revenues to repay the DBW loans will be generated from several sources: berthing fees (which comprise about 50% of Marina Fund revenue); waterfront leases (35%); and various other sources (15%). Revenue and expenditure projections are discussed in more detail below.

DBW estimates that in FY 2023/24 Marina revenues will be \$7.2 million annually. The City believes that by FY 2025/26 additional revenues from new sources such as new ferry service will become available that will offset future capital improvement expenditures, which are discussed further below. However, the City has not forecasted an amount of capital per year that will be necessary to meet this need. In its May 2019 budget forecast, the City was forecasting \$500,000 in capital improvement expenses annually.

### Berthing Fees

As shown in Table 2, Berkeley Marina's current slip fees are competitive with surrounding marinas.

|                    | 30'    | 40'    | 50'    | 60'      | as of      |
|--------------------|--------|--------|--------|----------|------------|
| Berkeley           | \$ 310 | \$ 438 | \$ 581 | \$ 740   | 12/26/2019 |
| Alameda            | \$ 255 | \$ 400 | \$ 600 | \$ 780   | 1/6/2020   |
| Richmond           | \$ 269 | \$ 436 | \$ 511 | \$ 741   | 1/6/2020   |
| South Beach Harbor | \$ 385 | \$ 668 | \$ 902 | \$ 1,167 | 1/1/2019   |

Sources: City of Berkeley staff, DBW research and analysis

Berkeley Marina's slip rental rates are based on the length in feet of the slip. Currently, Docks D and E combined include capacity for 88 slips of various sizes from 32 feet to 40 feet, with additional end ties that can accommodate various lengths. Many of these slips are un-rentable due to disrepair, and only 42 slips are currently occupied on Docks D and E. Upon completion of the project, there will be 79 slips on these docks, of sizes from 40 feet to 46 feet. Total linear footage of these docks' slips will increase only modestly, from 3,244 to 3,274. However, the new slips are much more likely to be rented.

The Marina's slip rental fees can be increased or lowered based on berth- and berther-specific factors such as whether a berth is upwind, whether a berth is single or double occupancy, and whether a berther rents multiple slips at the Marina.

As discussed above, the occupancy rate for the entire Marina is currently 79%. The occupancy rate for Docks D and E is 48%. Occupancy of these two docks is expected to immediately increase by 20 to 35 berthers when construction is complete.

### Waterfront Leases

Lease revenue is provided by Waterfront tenants including the Doubletree Hotel, Skates on the Bay and Hana Japan restaurants, the Berkeley Marine Center, the Bait Shop, and office tenants at 125-127 University, the Berkeley Yacht Club and other non-profit tenants. Waterfront lease revenue comprises about one third of all Marina Fund revenue.

### Other Revenue Sources

Other Marina revenue sources include live-aboard fees, dry storage, charter boat fees, fines and penalties, launch ramp fees, and other minor but regular sources. The Marina also collects revenue from several ongoing recreational programs, including special event parking and

playground service and nature center fees.

The Waterfront District also occasionally receives grants, such as it did in fiscal year 2017/18. However, there is no guarantee such third-party revenue augmentations will be available in future years. Accordingly, DBW's analysis in Table 3 does not include a forecast for future grants received.

### Expenses

**Operational:** The City estimates that in FY 2023/24 Marina operational expenses will be \$7.2 million annually. Capital improvements through FY 2024/25 are expected to be covered by bond revenue. As noted above, the City believes capital improvement expenses after that time will be offset by new revenues from new activities, such as expanded ferry service.

**Debt Service:** DBW estimates that the annual debt service for the proposed \$5.5 million loan will be approximately \$342,000. The interest rate will be 4.5%, compounded continuously. The final payment on the prior loan is expected to be due on August 1, 2041. Total debt service each year, including both loans, will be \$828,000.

Together, operational expenses and debt service are projected to be \$7 million in FY2023/24, or \$200,000 less than revenues. A breakdown of projected revenues and expenses is shown in Table 3.

### Dredging Reserves

The City reports that it has not had to dredge the Marina in many years, and that slips have remained accessible without routine dredging. DBW will not require a dredge reserve unless a need for one emerges during the engineering process.

### Maintenance Reserve

DBW normally requires lenders to hold a maintenance reserve totaling 2% of revenue. Such a reserve is already being maintained based on the terms of the prior loan. Staff intends to include a clause in the new loan agreement requiring the City to continue holding 2% of revenue for maintenance purpose through the end of the new loan.

### Payment Reserve

The City does not maintain an operating reserve as a percentage of its annual Marina Fund operating budget.

### Collateral

Collateral for the proposed loan is in the form of a Security Agreement and a recorded Collateral Assignment of Rents and Leases on Marina revenue. The offered collateral, in combination with Condition #4 of the loan, is sufficient for DBW's requirements.

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## FINANCIAL MEASURES

### Income Expense Ratio

Since 2009, it has been DBW's practice to require a 1.2:1 income to expense ratio. Income/expense ratio is operating revenue divided by operating expenses. According to Table 3, this project has an income/expense ratio of 1.17 in FY 2023/24. This ratio then stays steady over time, based on the City's assertion that total operating revenues and expenses will grow at approximately the same rate. The income/expense ratio is close to the minimum requirement.

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### Debt Service Coverage Ratio

The debt service coverage ratio (DSCR) is a measure of an entity's capacity to not only maintain operations, but also to afford debt. DSCR is net operating income divided by total debt service. The minimum DSCR established by the Commission at its May 2009 meeting was 1.25 for public marina loans.

According to Table 3, this project has a DSCR of 1.21 in FY 2022/23, the potential first year of loan repayment. This ratio improves in future years, reaching 1.27 in FY 2024/25 and remaining above 1.25 in subsequent years. The DSCR meets the minimum requirement.

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### CONCLUSION

The Division's analysis indicates that this project is feasible from an engineering, permitting, stakeholder, and public access perspective. However, additional financial and scheduling assurances will be required for this project to be viable, and the project may not be completed within the funds' period of availability.

Due to DBW's obligation to safeguard public funds and the difficulties involved with recovering those funds in the event of a default by a public entity, staff recommends that if the Commission advises DBW to move forward with this loan, the City must meet certain conditions to DBW's satisfaction at several project milestones during the performance period. DBW will make design and permitting funding available immediately, in the amounts shown in the cost estimate at Table 1 below, but construction funds will not be authorized until DBW's conditions are met. These conditions will be written into the loan agreement. The recommended conditions are as follows:

- 1) No later than March 31, 2021, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund achieved a 1.25 debt service coverage ratio (DSCR) in the fiscal year ending June 30, 2020. This process must be repeated each subsequent March 31, confirming a 1.25 DSCR for the prior fiscal year, until construction has begun.
- 2) Before construction loan funding will be made available, and no later than March 31, 2022, the City Council must receive an audited report on the status of the Marina Fund at a regular City Council meeting. This report must confirm that the Marina Fund's ratio of operating income to operating expenses in the fiscal year ending June 30, 2021 was at or above the projected ratio shown in Tables 3 and 3A of this report. This process must be repeated each subsequent March 31, confirming the income/expense ratio for the prior fiscal year met or exceeded the projections in this report, until construction has begun.
- 3) Before construction loan funding will be made available, and no later than December 31, 2021, the City must send DBW confirmation that all project permits have been obtained.
- 4) The Berkeley City Council shall adopt a resolution accepting the loan funds. The language of the resolution shall acknowledge the Marina Fund does not currently meet the income/expense ratio required by DBW and is not forecasted to do so, and the language of the resolution must further state that in the event the Marina Fund cannot fulfill its repayment obligation for this loan in any fiscal year, the City shall supplement that year's repayment from its General Fund, for every year until the loan is fully repaid. This condition may be withdrawn if and when the City demonstrates meeting the required income/expense ratio and debt service coverage ratio for five consecutive years.

***COMMISSION ADVICE AND COMMENT***

DBW seeks Commission advice and comment on the proposed \$5,500,000 HWRF loan, with conditions, to the City of Berkeley for the improvements described in this February 14, 2020 Feasibility Report.





Table 3: Financials Forecasts, 2019-2040

|                                                                                        |              | TABLE 3: BERKELEY MARINA<br>CASH FLOW PROJECTIONS AND DEBT SERVICE COVERAGE RATIO<br>FY 2019 THROUGH FY 2040<br>(Figures in Thousands) |              |              |              |              |              |                                                    |              |              |              |              |              |              |              |              |              |              |              |              |              |              |
|----------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|--------------|--------------|--------------|----------------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|                                                                                        |              | 2020-2025 City forecasts                                                                                                               |              |              |              |              |              | 2026-2040 DEBV projections based on City forecasts |              |              |              |              |              |              |              |              |              |              |              |              |              |              |
| 2019 actuals from City                                                                 | 2020         | 2021                                                                                                                                   | 2022         | 2023         | 2024         | 2025         | 2026         | 2027                                               | 2028         | 2029         | 2030         | 2031         | 2032         | 2033         | 2034         | 2035         | 2036         | 2037         | 2038         | 2039         | 2040         |              |
| <b>WATERFRONT OPERATING REVENUE</b>                                                    |              |                                                                                                                                        |              |              |              |              |              |                                                    |              |              |              |              |              |              |              |              |              |              |              |              |              |              |
| Berth rentals (1)                                                                      | 3,426        | 3,461                                                                                                                                  | 3,547        | 3,636        | 3,727        | 3,820        | 3,915        | 4,013                                              | 4,113        | 4,216        | 4,321        | 4,429        | 4,540        | 4,654        | 4,770        | 4,889        | 5,012        | 5,137        | 5,265        | 5,397        | 5,532        | 5,670        |
| Live Aboard Fees                                                                       | 262          | 281                                                                                                                                    | 288          | 274          | 281          | 288          | 296          | 303                                                | 311          | 319          | 327          | 335          | 343          | 352          | 361          | 370          | 379          | 388          | 398          | 408          | 418          | 429          |
| Dig Storage                                                                            | 104          | 100                                                                                                                                    | 103          | 105          | 108          | 110          | 113          | 116                                                | 119          | 122          | 125          | 128          | 131          | 134          | 138          | 141          | 145          | 148          | 152          | 156          | 160          | 164          |
| Launch Ramp                                                                            | 103          | 109                                                                                                                                    | 111          | 114          | 117          | 120          | 123          | 126                                                | 129          | 132          | 135          | 139          | 142          | 146          | 149          | 153          | 157          | 161          | 165          | 169          | 173          | 177          |
| Charter Boat Fees                                                                      | 112          | 125                                                                                                                                    | 128          | 131          | 135          | 138          | 141          | 145                                                | 149          | 152          | 156          | 160          | 164          | 168          | 172          | 177          | 181          | 186          | 190          | 195          | 200          | 205          |
| Locker Rentals                                                                         | 18           | 18                                                                                                                                     | 19           | 19           | 20           | 20           | 21           | 21                                                 | 22           | 23           | 23           | 24           | 24           | 25           | 26           | 26           | 27           | 28           | 28           | 29           | 30           | 30           |
| Sewer Service / Marina                                                                 | 4            | 3                                                                                                                                      | 3            | 3            | 3            | 4            | 4            | 4                                                  | 4            | 4            | 4            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 6            | 6            | 6            |
| Fines & Penalties                                                                      | 71           | 75                                                                                                                                     | 79           | 81           | 83           | 85           | 87           | 89                                                 | 92           | 94           | 96           | 99           | 101          | 104          | 106          | 109          | 112          | 114          | 117          | 120          | 123          | 126          |
| Miscellaneous                                                                          | 50           | 53                                                                                                                                     | 60           | 62           | 64           | 65           | 67           | 69                                                 | 72           | 74           | 76           | 77           | 79           | 81           | 83           | 85           | 88           | 90           | 92           | 94           | 97           | 100          |
| EY Charging Stations                                                                   | 4            | 5                                                                                                                                      | 5            | 5            | 5            | 5            | 5            | 5                                                  | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            | 5            |
| Valet/Leases (2)                                                                       | 2,479        | 2,272                                                                                                                                  | 2,236        | 2,318        | 2,342        | 2,365        | 2,389        | 2,414                                              | 2,438        | 2,462        | 2,487        | 2,512        | 2,537        | 2,562        | 2,587        | 2,614        | 2,640        | 2,668        | 2,698        | 2,730        | 2,764        | 2,800        |
| Special Events Fees (3)                                                                | 82           | 84                                                                                                                                     | 86           | 88           | 89           | 91           | 92           | 95                                                 | 98           | 100          | 103          | 105          | 108          | 111          | 113          | 116          | 119          | 122          | 125          | 128          | 131          | 135          |
| Phone/Cell Service Fees                                                                | 30           | 31                                                                                                                                     | 32           | 33           | 33           | 34           | 35           | 36                                                 | 37           | 38           | 39           | 40           | 41           | 42           | 43           | 44           | 45           | 46           | 47           | 48           | 49           | 51           |
| Marina Center Fees                                                                     | 14           | 14                                                                                                                                     | 15           | 15           | 15           | 16           | 16           | 17                                                 | 17           | 17           | 18           | 18           | 19           | 19           | 20           | 20           | 21           | 21           | 21           | 22           | 22           | 23           |
| Marina Buoys/Trees                                                                     | 20           | 7                                                                                                                                      | 7            | 7            | 7            | 8            | 8            | 8                                                  | 8            | 9            | 9            | 9            | 9            | 10           | 10           | 10           | 10           | 11           | 11           | 11           | 11           | 12           |
| Donations                                                                              | 0            | 1                                                                                                                                      | 1            | 1            | 1            | 1            | 1            | 1                                                  | 1            | 1            | 1            | 1            | 1            | 1            | 1            | 1            | 1            | 1            | 1            | 2            | 2            | 2            |
| <b>Subtotal Operating Revenue</b>                                                      | <b>6,779</b> | <b>6,515</b>                                                                                                                           | <b>6,734</b> | <b>6,863</b> | <b>7,007</b> | <b>7,149</b> | <b>7,293</b> | <b>7,440</b>                                       | <b>7,590</b> | <b>7,744</b> | <b>7,901</b> | <b>8,061</b> | <b>8,225</b> | <b>8,393</b> | <b>8,565</b> | <b>8,741</b> | <b>8,921</b> | <b>9,104</b> | <b>9,292</b> | <b>9,485</b> | <b>9,681</b> | <b>9,883</b> |
| <b>ADDITIONAL INCOME</b>                                                               |              |                                                                                                                                        |              |              |              |              |              |                                                    |              |              |              |              |              |              |              |              |              |              |              |              |              |              |
| Interest                                                                               | 74           | 35                                                                                                                                     | 18           | 18           | 21           | 22           | 23           | 25                                                 | 26           | 27           | 27           | 28           | 28           | 29           | 29           | 30           | 30           | 31           | 32           | 32           | 33           | 34           |
| Other Fees                                                                             | 0            | 0                                                                                                                                      | 0            | 0            | 0            | 0            | 0            | 0                                                  | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Subtotal Additional Revenue</b>                                                     | <b>74</b>    | <b>35</b>                                                                                                                              | <b>18</b>    | <b>21</b>    | <b>22</b>    | <b>23</b>    | <b>25</b>    | <b>26</b>                                          | <b>26</b>    | <b>27</b>    | <b>27</b>    | <b>28</b>    | <b>28</b>    | <b>29</b>    | <b>29</b>    | <b>30</b>    | <b>30</b>    | <b>31</b>    | <b>32</b>    | <b>32</b>    | <b>33</b>    | <b>34</b>    |
| <b>TOTAL REVENUES</b>                                                                  | <b>6,853</b> | <b>6,550</b>                                                                                                                           | <b>6,752</b> | <b>6,880</b> | <b>7,029</b> | <b>7,172</b> | <b>7,318</b> | <b>7,465</b>                                       | <b>7,616</b> | <b>7,770</b> | <b>7,928</b> | <b>8,089</b> | <b>8,254</b> | <b>8,422</b> | <b>8,594</b> | <b>8,771</b> | <b>8,951</b> | <b>9,135</b> | <b>9,324</b> | <b>9,517</b> | <b>9,714</b> | <b>9,916</b> |
| <b>EXPENSES</b>                                                                        |              |                                                                                                                                        |              |              |              |              |              |                                                    |              |              |              |              |              |              |              |              |              |              |              |              |              |              |
| Personnel (3)                                                                          | 3,880        | 3,711                                                                                                                                  | 3,841        | 3,739        | 3,767        | 3,843        | 3,920        | 3,998                                              | 4,078        | 4,160        | 4,243        | 4,328        | 4,414        | 4,503        | 4,593        | 4,685        | 4,778        | 4,874        | 4,971        | 5,071        | 5,172        | 5,276        |
| Non Personnel (3)                                                                      | 1,956        | 2,093                                                                                                                                  | 2,095        | 2,076        | 2,118        | 2,160        | 2,203        | 2,247                                              | 2,292        | 2,338        | 2,385        | 2,433        | 2,481        | 2,531        | 2,581        | 2,633        | 2,686        | 2,739        | 2,794        | 2,850        | 2,907        | 2,965        |
| Cap Improvements                                                                       | 17           | 17                                                                                                                                     | 0            | 0            | 0            | 0            | 0            | 0                                                  | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| DEBV maint reserve (2% of annual revenue) (4)                                          | 137          | 131                                                                                                                                    | 135          | 138          | 141          | 143          | 147          | 151                                                | 154          | 158          | 162          | 166          | 170          | 175          | 179          | 184          | 188          | 193          | 198          | 203          | 208          | 213          |
| <b>Subtotal Operating Expenses:</b>                                                    | <b>6,044</b> | <b>5,935</b>                                                                                                                           | <b>6,011</b> | <b>5,953</b> | <b>6,026</b> | <b>6,146</b> | <b>6,270</b> | <b>6,395</b>                                       | <b>6,525</b> | <b>6,656</b> | <b>6,790</b> | <b>6,927</b> | <b>7,066</b> | <b>7,208</b> | <b>7,353</b> | <b>7,501</b> | <b>7,652</b> | <b>7,806</b> | <b>7,963</b> | <b>8,123</b> | <b>8,287</b> | <b>8,454</b> |
| <b>NET OPERATING INCOME</b>                                                            | <b>809</b>   | <b>(1,124)</b>                                                                                                                         | <b>741</b>   | <b>937</b>   | <b>1,003</b> | <b>1,025</b> | <b>1,048</b> | <b>1,069</b>                                       | <b>1,091</b> | <b>1,114</b> | <b>1,138</b> | <b>1,162</b> | <b>1,188</b> | <b>1,214</b> | <b>1,241</b> | <b>1,270</b> | <b>1,299</b> | <b>1,329</b> | <b>1,361</b> | <b>1,394</b> | <b>1,427</b> | <b>1,463</b> |
| Less: DEBV Debt Service (\$5,500,000 loan, 4.5% interest rate, 30 year repayment term) | 488          | 488                                                                                                                                    | 488          | 488          | 488          | 488          | 488          | 488                                                | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          |
| Less: Additional debt service, prior DEBV loan (5)                                     | 488          | 488                                                                                                                                    | 488          | 488          | 488          | 488          | 488          | 488                                                | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          | 488          |
| <b>NET INCOME</b>                                                                      | <b>323</b>   | <b>(1,610)</b>                                                                                                                         | <b>255</b>   | <b>451</b>   | <b>517</b>   | <b>537</b>   | <b>560</b>   | <b>571</b>                                         | <b>583</b>   | <b>596</b>   | <b>610</b>   | <b>624</b>   | <b>639</b>   | <b>654</b>   | <b>670</b>   | <b>686</b>   | <b>702</b>   | <b>719</b>   | <b>736</b>   | <b>754</b>   | <b>772</b>   | <b>791</b>   |
| <b>DEBV INCOME/EXPENSE RATIO (min. 1.2:1 req'd)</b>                                    | <b>1.13</b>  | <b>0.85</b>                                                                                                                            | <b>1.12</b>  | <b>1.16</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>                                        | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  |
| <b>DEBT SERVICE COVERAGE RATIO (min. 1.25 req'd)</b>                                   | <b>1.66</b>  | <b>-2.31</b>                                                                                                                           | <b>1.52</b>  | <b>1.93</b>  | <b>1.21</b>  | <b>1.24</b>  | <b>1.27</b>  | <b>1.29</b>                                        | <b>1.32</b>  | <b>1.35</b>  | <b>1.37</b>  | <b>1.40</b>  | <b>1.43</b>  | <b>1.47</b>  | <b>1.50</b>  | <b>1.53</b>  | <b>1.57</b>  | <b>1.61</b>  | <b>1.64</b>  | <b>1.68</b>  | <b>1.72</b>  | <b>1.77</b>  |

Notes:  
 1. Berth fees are estimated to increase by 1% in FY20, and 2.5% thereafter following annual fee increases.  
 2. Lease revenue is projected to increase by 1% per year, consistent with historical averages.  
 3. Personnel and non-personnel expenses are projected to increase 2% per year.  
 4. Personnel for maintenance at 2% of revenue per ordinary DEBV requirements.  
 5. Prior DEBV loan of \$7,853,471 at 4.5% interest rate. Repayment expected to be complete in approximately August 2041.

Table 3A: Financial Forecasts, City Forecast, 2019-2025

| TABLE 3A: BERKELEY MARINA<br>CASH FLOW PROJECTIONS AND DEBT SERVICE COVERAGE RATIO<br>FY 2019 THROUGH FY 2025<br>(Figures in Thousands) |                           |                           |              |              |              |              |              |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------|---------------------------|--------------|--------------|--------------|--------------|--------------|
|                                                                                                                                         | 2019 actuals<br>from City | 2020-2025: City forecasts |              |              |              |              |              |
|                                                                                                                                         | 2019                      | 2020                      | 2021         | 2022         | 2023         | 2024         | 2025         |
| <b>WATERFRONT OPERATING REVENUE</b>                                                                                                     |                           |                           |              |              |              |              |              |
| Berth rentals (1)                                                                                                                       | 3,426                     | 3,461                     | 3,547        | 3,636        | 3,727        | 3,820        | 3,915        |
| Live Aboard Fees                                                                                                                        | 262                       | 261                       | 268          | 274          | 281          | 288          | 296          |
| Dry Storage                                                                                                                             | 104                       | 100                       | 103          | 105          | 108          | 110          | 113          |
| Launch Ramp                                                                                                                             | 103                       | 109                       | 111          | 114          | 117          | 120          | 123          |
| Charter Boat Fees                                                                                                                       | 112                       | 125                       | 128          | 131          | 135          | 138          | 141          |
| Locker Rentals                                                                                                                          | 18                        | 18                        | 19           | 19           | 20           | 20           | 21           |
| Sewer Service / Marina                                                                                                                  | 4                         | 3                         | 3            | 3            | 3            | 4            | 4            |
| Fines & Penalties                                                                                                                       | 71                        | 75                        | 79           | 81           | 83           | 85           | 87           |
| Miscellaneous                                                                                                                           | 50                        | 59                        | 60           | 62           | 64           | 65           | 67           |
| EV Charging Stations                                                                                                                    | 4                         | 4                         | 5            | 5            | 6            | 6            | 7            |
| Waterfront Leases (2)                                                                                                                   | 2,479                     | 2,165                     | 2,273        | 2,296        | 2,319        | 2,342        | 2,366        |
| Special Event Parking                                                                                                                   | 82                        | 82                        | 84           | 86           | 89           | 91           | 93           |
| Playground Service Fees                                                                                                                 | 30                        | 31                        | 32           | 33           | 33           | 34           | 35           |
| Nature Center Fees                                                                                                                      | 14                        | 14                        | 14           | 15           | 15           | 15           | 16           |
| Marina Benches / Trees                                                                                                                  | 20                        | 7                         | 7            | 7            | 7            | 8            | 8            |
| Donations                                                                                                                               | 0                         | 1                         | 1            | 1            | 1            | 1            | 1            |
| <b>Subtotal Operating Revenue</b>                                                                                                       | <b>6,779</b>              | <b>6,515</b>              | <b>6,734</b> | <b>6,869</b> | <b>7,007</b> | <b>7,149</b> | <b>7,293</b> |
| <b>ADDITIONAL INCOME</b>                                                                                                                |                           |                           |              |              |              |              |              |
| Interest                                                                                                                                | 74                        | 35                        | 18           | 21           | 22           | 23           | 25           |
| Other Fees                                                                                                                              | 0                         | 0                         | 0            | 0            | 0            | 0            | 0            |
| <b>Subtotal: Additional Revenue</b>                                                                                                     | <b>74</b>                 | <b>35</b>                 | <b>18</b>    | <b>21</b>    | <b>22</b>    | <b>23</b>    | <b>25</b>    |
| <b>TOTAL REVENUES</b>                                                                                                                   | <b>6,853</b>              | <b>6,550</b>              | <b>6,752</b> | <b>6,890</b> | <b>7,029</b> | <b>7,172</b> | <b>7,318</b> |
| <b>EXPENSES</b>                                                                                                                         |                           |                           |              |              |              |              |              |
| Personnel (3)                                                                                                                           | 3,580                     | 3,711                     | 3,841        | 3,739        | 3,767        | 3,843        | 3,920        |
| Non Personnel (3)                                                                                                                       | 1,956                     | 2,093                     | 2,035        | 2,076        | 2,118        | 2,160        | 2,203        |
| Cap Improvements                                                                                                                        | 371                       | 1,739                     | 0            | 0            | 0            | 0            | 0            |
| DBW maint reserve (2% of annual revenue) (4)                                                                                            | 137                       | 131                       | 135          | 138          | 141          | 143          | 147          |
| <b>Subtotal Operating Expenses:</b>                                                                                                     | <b>6,044</b>              | <b>7,674</b>              | <b>6,011</b> | <b>5,953</b> | <b>6,026</b> | <b>6,146</b> | <b>6,270</b> |
| <b>NET OPERATING INCOME</b>                                                                                                             | <b>809</b>                | <b>(1,124)</b>            | <b>741</b>   | <b>937</b>   | <b>1,003</b> | <b>1,025</b> | <b>1,048</b> |
| Less: DBW Debt Service (\$5,500,000 loan, 4.5% interest rate, 30 year repayment term)                                                   |                           |                           |              |              | 342          | 342          | 342          |
| Less: Additional debt service, prior DBW loan (5)                                                                                       | 486                       | 486                       | 486          | 486          | 486          | 486          | 486          |
| Total Debt Service                                                                                                                      | 486                       | 486                       | 486          | 486          | 828          | 828          | 828          |
| <b>NET INCOME</b>                                                                                                                       | <b>323</b>                | <b>(1,610)</b>            | <b>255</b>   | <b>451</b>   | <b>175</b>   | <b>197</b>   | <b>220</b>   |
| <b>DBV INCOME/EXPENSE RATIO (min. 1.2:1 req'd)</b>                                                                                      | <b>1.13</b>               | <b>0.85</b>               | <b>1.12</b>  | <b>1.16</b>  | <b>1.17</b>  | <b>1.17</b>  | <b>1.17</b>  |
| <b>DEBT SERVICE COVERAGE RATIO (min. 1.25 req'd)</b>                                                                                    | <b>1.66</b>               | <b>-2.31</b>              | <b>1.52</b>  | <b>1.93</b>  | <b>1.21</b>  | <b>1.24</b>  | <b>1.27</b>  |
| <b>Notes:</b>                                                                                                                           |                           |                           |              |              |              |              |              |
| 1 Berth fees are estimated to increase by 1% in FY20, and 2.5% thereafter following annual fee increases.                               |                           |                           |              |              |              |              |              |
| 2 Lease revenue is projected to increase by 1% per year, consistent with historical averages.                                           |                           |                           |              |              |              |              |              |
| 3 Personnel and non-personnel expenses are projected to increase 2% per year.                                                           |                           |                           |              |              |              |              |              |
| 4 Reserve for maintenance set at 2% of revenue per ordinary DBW requirements.                                                           |                           |                           |              |              |              |              |              |
| 5 Prior DBW loan of \$7,863,471 at 4.5% interest rate. Repayment expected to be complete in approximately August 2041.                  |                           |                           |              |              |              |              |              |

Staff note: Table 3A is identical to Table 3 for the years it covers. DBW is providing this version of the table for ease of readability.

# Small Craft Harbor and Recreational Marina Loan Programs



Marina Operations,  
Maintenance, and Capital  
Outlay Loan Requirements

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- F. Example of Capital Outlay Budgetary Plan
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- I. DBW Annual Reporting Checklist

## I. Intent of Loan Requirements

The California Department of Boating and Waterways (DBW) maintains a large loan portfolio of approximately 200 public and private marina loans. In 2001, the portfolio had a combined total value of approximately \$220 million. Funding for the loan programs comes from the Harbors and Watercraft Revolving Fund.

The public loan program, known as the Small Craft Harbor Loan Program, was authorized in 1957 to make loans to cities, counties, and other government agencies for development, or operation, of small craft harbors and facilities. Most of DBW's portfolio (approximately \$200 million for 40 loans) is for public marina facilities.

The private loan program, initiated in its current form in 1985, provides loans directly to private recreational marina owners for development, expansion, and improvement of boating facilities. In 2001 there were about 30 outstanding private loans, totaling \$22 million. The private loan program is known as the Recreational Marina Loan Program. Both loan programs are managed by the Boating Facilities Program within DBW.

DBW has four key objectives for the marina operations, maintenance, and capital outlay loan requirements that shall apply to all new DBW public and private marina loans:

- To protect its sizable investment in statewide boating infrastructure, DBW must ensure that its borrower's marinas are operated in an efficient and economical manner (Operations Report), are annually repaired and maintained (Maintenance Budget Requirement), and that these marinas have adequate reserves for necessary periodic capital outlay expenditures (Capital Outlay Reserve Account)
- The Operations Report and Maintenance Budget Requirements, in combination with the Capital Outlay Reserve Account Requirement, are tools for DBW, as a major financial marina lender, to essentially promote "good management" on its marina borrowers. The Operations Report, Maintenance Budget, and Capital Outlay Reserve Account Requirements are supported by authority in the State Harbors and Navigation Code, Chapter 2, Article 3, Section 71.4 (for public loans) and Chapter 2, Article 5, Section 76 (for private loans)
- The Operations Report, Maintenance Budget, and Capital Outlay Reserve Account Requirements are consistent with industry best practices of ensuring that marinas operate efficiently and economically (Operations Report Requirement), perform necessary short-term maintenance (Maintenance Budget Requirement) and make necessary long-term improvements (Capital Outlay Reserve Account Requirement) to retain the functionality and investment value, of marina facilities during the life of DBW loans. The Operations Report insures that the marina is operated efficiently and economically. The Maintenance Budget Requirement insures that enough financial resources and staff are devoted to ongoing marina maintenance, in addition to just marina operations. The Capital Outlay Reserve Account will help reduce the negative effects of unpredictable increases in the annual operating and maintenance budgets of marinas by buffering and providing for the relative large and lumpy capital outlays that occur over time. The

capital outlay requirement insures continuing reinvestment by the marina borrower in depreciable marina capital items through requiring formal long-term capital budgeting as part of DBW financial loan covenants

- The Operations Report, Maintenance Budget, and Capital Outlay Reserve Account Requirements are to help assure adequate operation, maintenance, and condition of the marina, and also to ensure DBW that if the marina has to be repossessed in the event of foreclosure, the State's investment value is maintained, and there are funds to help cover deferred maintenance on the marina.

To meet these objectives DBW has developed three requirements: (1) Operations Report, (2) Maintenance Budget, and (3) Capital Outlay Reserve Account. This document describes each requirement and the obligations of the marina borrower and DBW for compliance. DBW recognizes that each marina operates under a unique set of circumstances dictated by a wide range of specific factors, such as: location, age, dock materials, market area, ownership, and customer base. These DBW requirements are intended to provide minimum guidelines or standards, recognizing that a "one-size-fits-all" requirement may not necessarily work for every marina. Thus,

DBW encourages each marina to customize and tailor these minimum requirements to their facility and situation. The reporting and accounting requirements are intended to be the minimum necessary to insure compliance with DBW guidelines – guidelines all marinas should already be following of their own accord. It is not DBW's intent to burden marinas with excessive operating requirements, however some reporting is necessary to insure accountability and to protect the State's significant investment in boating facilities statewide. These guidelines are intended to be compatible with each marina's long-term goals. Three such compatible long-term goals that apply to most marinas, whether publicly or privately owned, are as follows:

- Maintain the marina to a standard that is competitive with other marinas in the area and attracts boaters to the marina
- Meet current and long-range needs of the community, and of boaters, in the region
- Produce revenues sufficient to maintain and improve the marina infrastructure and make full debt service payments on the DBW loan.

Each marina that applies these DBW standards and guidelines may also have additional, more specific, goals for their facility.



## II. Definitions and Examples for Loan Requirements

### 1. Marina Operation Costs

- Marina operation costs provide a benefit in the year that they occur
- Marina operation costs are marina income statement items
- Marina operation costs do not include any marina maintenance expenses, or any marina capital outlays, and neither maintenance expenses nor capital outlays shall be funded out of marina operation costs
- Marina operation costs include those tasks necessary to run the marina on a day-to-day, week-to-week, or month-to-month basis, as well as during emergency situations. Marina operation costs include normal staffing operation personnel costs, operations contracts, and day-to-day supply costs. Marina operation costs include the following marina activities: administration, implementation of rules and regulations, customer service, emergency planning, berth management, general staffing, security, utilities, and routine janitorial and house- or yard-keeping
- Examples of marina operation costs can include, but are not limited to, collecting berthing fees, administering transient boat slips, providing boat tenant customer relations, paying bills, patrolling grounds and parking facilities, cleaning restrooms and buildings, removing trash, pumping-out waste tanks, fueling boat gas tanks, and mowing/pruning facility landscaping.

### 2. Marina Maintenance Expenses

- Marina maintenance expenses provide a benefit in the year that they occur
- Marina maintenance expenses are marina income statement items
- Marina maintenance expenses do not include any marina operation costs, or any marina capital outlays, and neither operation costs nor capital outlays shall be funded out of the marina maintenance budget
- Marina maintenance expenses include those actions needed to keep the marina capital facility in a condition that will permit functional, convenient, and safe use, and that will allow the marina facility to achieve its expected life. Marina maintenance expenses include activities for the recurring upkeep of operational assets that are necessary to keep the marina assets in their usual condition. Marina maintenance expenses include scheduled, as well as unscheduled, activities. Marina maintenance expenses include normal staffing maintenance personnel expenses, maintenance service contracts, and parts expenses. There are several types of maintenance activities (these definition categories are not exclusive – a task may fit within more than one category) as follows:
  - Repair maintenance – work conducted to restore a damaged, broken, or worn-out capital facility or component to its normal operating condition. (Selected repair maintenance items that are deferred and involve “major” expenditures could be classified as capital outlays)

Preventative maintenance – maintenance that is scheduled, including servicing, repairing, inspecting, adjusting, and/or replacing parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the asset and help reduce the need for large capital outlays for deferred maintenance. (Selected preventative maintenance items that are deferred and involve “major” expenditures could be classified as capital outlays)

Cyclic maintenance – maintenance that is regular, but typically larger in scope and less frequent. Cyclic maintenance is conducted to ensure that the marina continues its serviceability. (Selected cyclic maintenance items that are deferred and involve “major” expenditures, could be classified as capital outlays)

Annual maintenance – maintenance that is performed to maintain serviceability, or repair failures, during the year in which they occur. (Selected annual maintenance items that are deferred and involve “major” expenditures, could be classified as capital outlays).

- Most marina maintenance expenses are not capital outlays as they are costs for normal maintenance and upkeep necessary to keep marina assets in their usual condition. Maintenance expenditures are recurring in nature, and involve relatively small amounts at each occurrence. Routine maintenance costs are usually performed on a regular, predetermined schedule (daily, weekly, monthly, or yearly) to ensure the marina is safe, and serviceable, and to reduce or eliminate immediate risk
- Examples of marina maintenance expenses can include, but are not limited to, smoothing uneven dock surfaces, repairing toilets, replacing loose bolts, tightening cleats and other hardware, performing minor re-

graveling or re-grading, replacing selected dock materials, repairing selected walkway surfaces, replacing selected signs, changing light bulbs, repainting selected buildings, removing silt from a launch ramp, and power-washing a concrete dock surface.

### 3. Marina Capital Outlays

- Marina capital outlays provide benefits that extend beyond the year in which the outlay is made, and provide benefits for more than one accounting period
- Marina capital outlays are credited to the appropriate asset account on the balance sheet, and are depreciated over the useful life of the item. The Capital Outlay Reserve Account is generally for depreciating marina property. Marina capital outlays, however, do not include outlays that would be used for ultimate facility replacement
- Marina capital outlays do not include any marina operation costs, or any marina maintenance expenses, and neither operation costs nor maintenance expenses shall be funded through the Capital Outlay Reserve Account
- There are several different kinds of marina capital outlays, most of which have long life spans. Marina capital outlay items include the major building, facility, and service components, systems, and equipment. Capital outlay items can include major safety features and major regulated changes. Marina capital outlays generally have an expected useful lifespan that will vary according to the item quality and specific marina conditions. The useful life of marina capital outlay items generally comes to an end when the cost of maintenance is no longer worthwhile because it will not extend the asset useful life by a reasonable period of time

- Some marina maintenance type items may be classified as capital outlays that are larger in nature, and less frequent, or less regular in occurrence, conducted to ensure that the marina continues its serviceability. Marina capital outlays can include certain major maintenance items such as repairs or renovations, and major replacements and upgrades (with “major” being defined as more than \$5,000 in cost, per item), which have benefits that extend beyond the current fiscal period, and that cannot be easily paid for out of annual maintenance budgets. Capital outlays, for purposes of the Capital Outlay Reserve Account (not necessarily for purposes of the Internal Revenue Service) thus may include on a case-by-case explained basis, major repair and maintenance, major deferred cyclic, or major deferred annual maintenance expenses that exceed \$5,000 in cost. All major maintenance-type expenses classified as capital outlays, however, shall be especially singled out, and line-item explained, by the borrower
- Examples of marina capital outlays can include, but are not limited to, refurbishing and replacing docks; expanding the number of berths; upgrading lighting, electrical and fire equipment; replacing faulty dock flotation and fuel dispensers; improving parking lots, boat launching, and security systems; adding new dock gangways; performing marina dredging; improving building facilities, restrooms, moorings, and the harbormaster’s office; re-painting the entire marina; adding new dry storage, showers, fuel docks, stores (convenience, bait shop, deli, restaurant, boat service center, and chandlery); expanding landscaping, picnic, and camping facilities; making major rip-rap repairs; and implementing necessary major regulatory

improvements (such as compliance with the Americans with Disabilities Act or the addition of sewage pump-outs). There are several types of capital outlay examples (these example categories are not exclusive – an example may fit within more than one category) as follows:

**Major deferred maintenance** – Deferred maintenance costs that are classified as capital outlays result from delaying, or putting off, routine repairs or preventative maintenance, leading to the deterioration of performance, increased costs to repair or maintain, and a decrease in asset value. Capital outlays include costs that are major deferred maintenance costs that exceed \$5,000 in value. An example of major deferred maintenance is if a marina had to replace an entire dock section because of a problem with uneven flotation that was not corrected in a timely manner. Other examples of major deferred maintenance include major re-graveling or re-grading a parking lot, major replacing of deck materials, major repairing of walkway surfaces, major replacing of signs, or major repainting of facilities. Major maintenance considered capital outlays also may include major costs to restore a damaged, broken, or worn-out capital facility or component

**Partial replacement** – Partial replacement is a capital outlay, such as substitution or exchange of an existing marina facility component with one having essentially the same capacity and purpose, for example, replacing a dock section that has failed

**Partial reconstruction** – Partial reconstruction is a capital outlay, which includes renovation of the marina to the original condition, capacity, and function, or improvement of the marina to provide additional service, for example replacing dock systems or bulkheads, adding launch lanes, additional berths, installing rest rooms, or installing a new pumpout station

Rehabilitation – Rehabilitation is a capital outlay such as renovation or restoration of a facility or component in order to restore functionality or extend the life of the marina.

Rehabilitation may be primarily done to address deferred maintenance, for example, major repainting and re-roofing a building

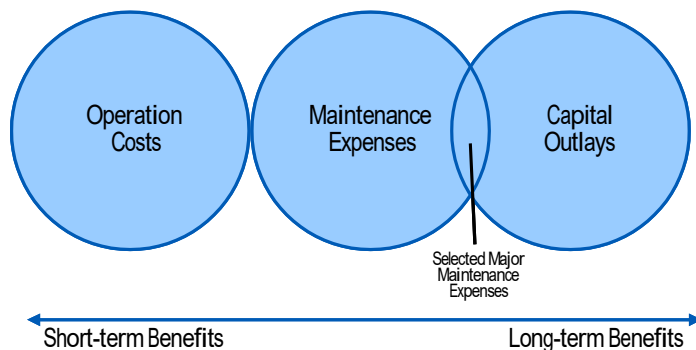
New marina component –

Construction, installation, or assembly of a new major marina component, or a significant alteration, expansion, or extension of the marina to accommodate a change of purpose is a capital outlay. A project that enhances or restores the value of the marina is a capital outlay.

For example, adding a new launch ramp, a new lighting system, or security system, are capital outlays.

#### 4. Relationship of Operation Costs, Maintenance Expenses, and Capital Outlays

Figure 1



#### 5. Marina Gross Revenues

Gross marina revenues are defined as either actual gross marina operating revenues, or gross marina total revenues necessary for the marina to break-even on an income statement basis, whatever is greater.

## III. Requirement 1: Marina Operations Report

### 1. Marina Operations Report Requirement

The loan contract standard agreement requires the marina borrower to operate the marina in an efficient and economical manner. To ensure that the marina is being operated accordingly, the marina borrower shall complete and submit to DBW a signed copy of the Marina Operations Report.

The Marina Operations Report prompts the marina borrower to ascertain whether they are meeting a series of operational performance requirements. In addition, the borrower shall provide their occupancy and berth rental rates, and the competitive berth rental rates for the six nearest facilities.

If the borrower is not in compliance with items in the Operations Report, the borrower shall explain the reasons, and any corrective actions that are, or will, be taken. There is space provided for these explanations on the Marina Operations Report, and additional sheets of paper may be used.

### 2. Marina Operations Checklist (Part A on “Master Checklist”)

In addition to the Marina Operations Report, the borrower shall complete the operations items in Part A of the Marina Operations, Maintenance, and Capital Outlay Master Checklist (see [Appendix A](#)). The marina features listed in Part A shall be inspected regularly.

To “meet standard” for these features, they shall be, (1) conducted regularly and properly, and (2) kept in a clean and sanitary condition. For example, litter shall be regularly collected, restrooms shall be kept clean and stocked, windows shall be cleaned, buildings shall be kept clean (inside and outside), and the waste pumpout system shall be serviced regularly.

### 3. Marina Operations Reporting

The marina borrower shall complete, sign, and submit the Marina Operations Report (see [Appendix B](#)) to DBW. Public marinas shall submit the report by August 1st each year with the annual loan payment, and private marinas shall submit the form by April 1st of each year, at the same time as the required Maintenance Budget and Capital Outlay Reserve Account Reports.

## IV. Requirement 2: Marina Maintenance Budget

The marina maintenance budget requirement includes two components, (1) a budget component, and (2) a performance standard component. Procedures and requirements for each of these components are described below. The two components are necessary to ensure that the marina is maintained in an acceptable condition. Meeting only the budget requirement does not necessarily insure that the marina is kept to a reasonable maintenance performance standard, particularly if the marina is old and requires significant repairs each year. By meeting the planning, inspection, and reporting requirements, in addition to the budget requirements, DBW can be reasonably assured that the borrower's marina is performing at an acceptable maintenance level.

### 1. Marina Maintenance Budget Requirement

Annual maintenance expenses shall normally fall within a range of between six percent and ten percent of annual gross revenues, or the borrower shall explain why this percentage is either high or low. Annual maintenance expenses shall include the following:

1. Payroll, including benefits and employer taxes, for the share of staff time spent conducting maintenance, as previously defined in Section II. For example, if the harbor master spends ten percent of his/her time on maintenance, and a staff person spends fifty percent of his/her time on maintenance, the relative shares of those salaries and benefits shall be included in the maintenance expense line item
2. Equipment and material or supplies for maintenance use – either rental or purchase of tools, paint, wood, nuts, bolts, pipes, fittings, parts, etc.

3. Contract costs for maintenance and repair services – for example, payment to an electrician for repairs. Does not include contract costs for operational expenses – janitorial services or routine landscape care (such as mowing and pruning).

The marina borrower shall provide an actual fiscal year operations and maintenance (O&M) budget. This budget shall reflect the six percent to ten percent maintenance guidelines (with an explanation for any exceptions). The borrower shall identify discreet operations versus maintenance budget line items, as shown in the example of actual fiscal year operation costs and maintenance expenses (see [Appendix C-1](#)).

The marina borrower shall determine the percent of time spent on operation costs, maintenance and repair expenses, and capital outlays for each staff person in order to allocate personnel expenses to the maintenance budget. To support the allocation, the marina borrower shall provide job descriptions for all marina staff, with the percent of staff time allocated to marina operations, maintenance, and capital outlay line items. These job descriptions shall reflect the staff allocation in the actual fiscal year O&M budget.

The marina maintenance performance standards require the borrower to develop and follow a maintenance plan and schedule, conduct a full marina inspection, and report to DBW annually on the marina's condition. The marina borrower shall be responsible for the following:

1. Developing and following a maintenance plan and schedule. The maintenance plan shall include:
  - z A checklist (using the Marina Operations, Maintenance, and Capital Outlay Master Checklist, modified if necessary), with all items to be inspected
  - z Maintenance staff responsibilities
  - z Response time and procedures for unscheduled maintenance problems
  - z Procedures for maintenance records including records of inspections and repairs
  - z Maintenance staff training procedures
2. Conducting marina inspections – items may be inspected daily, weekly, monthly, seasonally, or annually
3. Completing maintenance in a timely fashion
4. Maintaining records of inspections and maintenance
5. Handling unscheduled maintenance problems and complaints in a timely fashion
6. Training marina maintenance employees.

Once each year, August 1st for public loans, and April 1st for private loans, the borrower shall submit the completed and signed Marina Operations, Maintenance, and Capital Outlay Master Checklist (customized to the marina, if appropriate) and the Marina Maintenance Report (see [Appendix D](#)). These forms require the borrower to provide the following:

- Gross revenues for the previous fiscal, or calendar, year (see [Appendix C-2](#))
- Annual fiscal year actual operations and maintenance expenses, including allocation of staff to maintenance
- Total maintenance expenses for the same fiscal year. Maintenance expenses shall include all items as described previously

- Maintenance expenses as a percent of gross revenues
- If maintenance expenses as a percent of gross revenues are below six percent, or above ten percent, the borrower shall provide a written explanation of why this line item is either high or low, particularly in relation to the previous and expected future year's maintenance line items, and the age and condition of the marina
- Job descriptions of all marina staff, including allocation of time for each staff person to operations, maintenance, and capital outlay tasks.

## 2. Marina Maintenance Checklist

The three-page master checklist, to be customized, as appropriate, and used for marina inspections, is included in Appendix A. Instructions are provided below.

### Master Checklist Instructions

The marina supervisor shall conduct regular inspections of the marina using the Master Checklist. Inspections shall be conducted on a weekly, monthly, or seasonal basis by the marina staff. (Note: all items will not require inspection each time. The marina supervisor shall determine the appropriate inspection interval for their facility features). Once a year, the marina supervisor will report inspection results to DBW by submitting one completed Master Checklist for a full-facility inspection. The instructions for using the Master Checklist are as follows:

1. Note the inspection date and inspector(s)
2. For each item on the checklist, mark "Yes" if the item is in good or average condition (meeting standard), and "No" if it is not

3. It is the responsibility of the inspector to determine if the item “meets standard” – meaning the item is in good to average condition, there are no safety hazards, no loose parts, it is functioning properly, it is not broken, it does not have stains, cracks, or uneven surfaces, and it is not warping, sinking, leaking, or chipping, and does not have other problematic features
4. If the item does not meet standard, identify needed maintenance or repairs
5. When the maintenance is completed, note the maintenance date in the appropriate column on the checklist
6. Make any clarifying notes at either the time of inspection, or time of maintenance in the column provided
7. If the item is of a sufficient concern to require a larger capital outlay in the immediate, or near-term (current or next year), make a note in the capital outlay column
8. For any items that do not apply to the facility, place a “NA” in the “Yes” column
9. For any items that are relevant to the marina but are not on the checklist, include them in additional rows in the “Other” section of the checklist
10. For docks, as well as buildings, where there may be multiple structures in differing conditions, complete a checklist for each building or dock, or complete the checklist once for all features. Include descriptions in the notes column to identify which features have unique characteristics or problems
11. For the “Operations” items in Part A, note whether these features “meet standards”, particularly whether they are clean and being conducted regularly.

### 3. Marina Maintenance Reporting

The marina borrower shall complete, sign, and submit a Marina Maintenance Report (see Appendix D) to DBW each year. Public marinas shall submit the form by August 1<sup>st</sup> each year, and private marinas shall submit the form by April 1<sup>st</sup> of each year.



## V. Requirement 3: Marina Capital Outlay Reserve Account

### 1. Marina Capital Outlay Reserve Account Requirement

The marina capital outlay reserve account requirement is intended to insure that the marina borrower sets aside a minimal amount for future capital outlay needs at the marina. The borrower shall ensure that at a minimum, a two (2) percent of annual gross marina revenues capital outlay reserve is deposited annually.

The borrower reserve account requirement is set at a minimum of two percent of annual gross marina revenues, but all marina borrowers are encouraged to set aside a higher percentage of annual gross marina revenues, as required, to meet actual specific marina needs. In general, aging marinas may require much more than the minimum two percent annual requirement. Also, there is a direct correlation between maintenance functions and resulting costs of capital outlay needs, so that the capital outlay reserve account may be inadequate at the two percent level if marina maintenance is inadequate.

The marina borrower shall establish a separate, interest earning, bank savings account specifically earmarked for the marina capital outlay reserve. The Capital Outlay Reserve Account is escrowed in a segregated and discrete account, but with administration and approval process for funding and withdrawal kept as straight forward as possible.

The marina borrower shall establish the capital outlay reserve account at marina operations start-up, or for existing marinas, after signing the loan contract. The marina borrower shall deposit funds monthly to the reserve account. The borrower shall deposit the two percent of annual gross marina revenues reserve account requirement by the end of each fiscal year.

The borrower may withdraw funds at anytime during the year for demonstrated capital outlay items that are in the Capital Outlay Budgetary Plan, or are specially explained and/or justified to DBW on an exception basis.

### Capital Outlay Reserve Account Procedures

The borrower shall report once each year, by August 1st with the loan payment for public marinas, and by April 1st for private marinas on (1) the amount of monies deposited into the Capital Outlay Reserve Account as of the last day of the most recent fiscal year period, (2) the amount of funds withdrawn during the most recent fiscal year period, (3) total gross revenues for the fiscal year time period, (4) use of the funds for the fiscal year period by depreciable property items, as tied to the Capital Outlay Budgetary Plan, (5) a brief assessment describing the long-term condition and overall status of the marina, and (6) the projected marina capital outlays and marina cash flows over the next ten fiscal years.

### Capital Outlay Reserve Account Process

The borrower shall spend capital outlay funds during the year in accordance with the individual marina reported Capital Outlay Budgetary Plan. Withdrawal of funds from the Reserve Account for capital improvement projects is subject to DBW approval. All capital outlays, by definition, shall be included in the marina's Ten-Year Capital Outlay Budgetary Plan. Withdrawals from the Reserve Account shall follow the plan, or the Borrower shall obtain special DBW approval for a capital item expenditure from the Reserve Account.

## 2. Marina Capital Outlay Budgetary Plan

The Marina Capital Outlay Budgetary Plan is a pro forma, ten-year marina cash flow analysis that incorporates planned capital outlay expenditure items. The Capital Outlay Budgetary Plan shall be updated by the borrower each year so that it provides an on-going, and updated ten-year capital outlay budget. The Capital Outlay Budgetary Plan is strictly tied to the capital outlay reserve requirement whereby long-term cash flow projections are tied to planned-for, or expected, marina capital outlays. The capital outlay reserve requirement is to provide for matching funds accumulation to the timing of the capital item needs. This entire capital outlay planning process (Capital Outlay Reserve Account and Capital Outlay Budgetary Plan) provides the borrower with an understanding of the future impact on marina cash flows of long-term capital replacements and improvements.

## 3. Example Capital Outlay Budgetary Plan

The borrower shall take an inventory of all depreciating marina property that will need to be replaced in the long-term. In the case of public marinas the borrower shall project out a maximum of 30 years, and for private marinas, the borrower shall project out a maximum of 20 years, or the life of the respective loans. The borrower shall determine for the next ten years the present condition, or state of the depreciating marina property, and shall estimate

as to when each component of the depreciating property will need to be replaced. The borrower shall then estimate costs of replacement for the capital item in the year of projected replacement. Finally, the Capital Outlay Budgetary Plan is to include expected funding sources for each capital outlay item (i.e., the Capital Outlay Reserve Account or alternative sources). If the future needed estimated capital outlay costs exceed the two percent minimum reserve requirement, the needed amount of extra funds shall be accumulated in the reserve fund.

It is the responsibility of the borrower to maintain sufficient funding in the Capital Outlay Reserve Account to meet the projected capital outlay requirements in the Capital Outlay Budgetary Plan, regardless of the two percent minimum requirement. Capital Outlay Reserve Account funds shall never be commingled with the operating or maintenance marina funds. [Appendix E](#) provides an example of projected capital outlay projects and [Appendix F](#) provides a ten-year projected marina cash flow that incorporates long-term capital outlay projections.

## 4. Marina Capital Outlay Reserve Account Reporting

The marina borrower shall complete, sign, and submit a Capital Outlay Reserve Account Report (see [Appendix G](#)) to DBW each year. Public marinas should submit the form by August 1<sup>st</sup> each year, and private marinas should submit the form by April 1<sup>st</sup> of each year.

## VI. Summary of Responsibilities and Reporting

### 1. Marinas

Borrowers are responsible for a number of reports and information as a result of the Marina Operations, Maintenance, and Capital Outlay Requirements. These reports are summarized below:

- Completed and signed Marina Operations, Maintenance, and Capital Outlay Master Checklist (Appendix A)
- Completed and signed Marina Operations Report (Appendix B)
- Annual actual fiscal year operation costs and maintenance expenses (Appendix C)
- Completed and signed Marina Maintenance Report (Appendix D)
- Job descriptions for marina staff
- Projected Capital Outlay Projects (Appendix E)
- Ten Year Capital Outlay Budgetary Plan (Appendix F), and
- Completed and signed Capital Outlay Reserve Account Report (Appendix G)
- Response to the DBW site visit inspection Master Checklist (after DBW site visit only).

### 2. DBW

The Marina Operations, Maintenance, and Capital Outlay Requirements require oversight of borrowers by DBW Boating Facilities staff:

- DBW staff will periodically conduct a site visit and inspection of the borrower's facility. At the site visit, the DBW staff person will use the Operations, Maintenance, and Capital Outlay Master Checklist, and/or the marina's customized version of the checklist, to conduct the site inspection. At, or before, the site visit DBW staff will review the marina's Maintenance Budget and Capital Outlay Budgetary Plan for completeness. DBW staff will provide the borrower with a copy of the completed DBW inspection checklist, and the borrower shall submit the final checklist, with action dates, when all necessary deficiencies have been corrected, but at least within three months
- DBW staff will prepare and complete the Site Visit Checklist (see [Appendix H](#)) for each marina inspection completed
- Upon receipt of the marina borrower reports, DBW staff will review all reports and attachments and complete the Annual Reporting Checklist (see [Appendix I](#)). DBW staff will follow-up with the borrower on any items that are not submitted, are incomplete, or indicate that the marina is not operating or maintaining the facility adequately or fulfilling their capital outlay obligations.

### 3. Remedy for Violation of Requirements

The Marina Operations, Maintenance, and Capital Outlay Requirements are incorporated into the loan contracts. Non-compliance with the requirements in this document may result in a technical loan default. A borrower found to be in noncompliance of these requirements shall be given 180 days to remedy the problem(s). An occurrence of default shall exist if the borrower is not in compliance

within 180 days, and DBW may exercise all rights and remedies accorded to them by law. However, DBW also may choose to hire a contractor to remedy the deficiencies and to charge the borrower for such efforts. The borrower shall submit payment for the remedies work with the next loan payment following receipt of the invoice for correcting the deficiencies. Failure of borrower to submit payment shall also be an occurrence of default.

Marina Operations, Maintenance, and Capital Outlay — Master Checklist

Inspection Date: \_\_\_\_\_ Inspector: \_\_\_\_\_

| Marina Feature                                | Meets Standards |    | Potential Next-Year Capital Outlay Item | Repairs Needed Now | Repair Completion Date | Notes |
|-----------------------------------------------|-----------------|----|-----------------------------------------|--------------------|------------------------|-------|
|                                               | Yes             | No |                                         |                    |                        |       |
| <b>A Operation Issues</b> For Operations      |                 |    |                                         |                    |                        |       |
| 1 Litter collection                           |                 |    |                                         |                    |                        |       |
| 2 Trash/recycling collection                  |                 |    |                                         |                    |                        |       |
| 3 Restrooms                                   |                 |    |                                         |                    |                        |       |
| 4 Shower facilities                           |                 |    |                                         |                    |                        |       |
| 5 Laundry facility                            |                 |    |                                         |                    |                        |       |
| 6 Mowing/pruning                              |                 |    |                                         |                    |                        |       |
| 7 Buildings                                   |                 |    |                                         |                    |                        |       |
| 8 Windows                                     |                 |    |                                         |                    |                        |       |
| 9 Waste pumpout service                       |                 |    |                                         |                    |                        |       |
| <b>B Waterside Conditions</b> For Maintenance |                 |    |                                         |                    |                        |       |
| 10 Breakwater                                 |                 |    |                                         |                    |                        |       |
| 11 Shoreline                                  |                 |    |                                         |                    |                        |       |
| 12 Rip rap                                    |                 |    |                                         |                    |                        |       |
| 13 Marina depth                               |                 |    |                                         |                    |                        |       |
| 14 Channels                                   |                 |    |                                         |                    |                        |       |
| 15 Plumbing/water lines                       |                 |    |                                         |                    |                        |       |
| 16 Hazard removal                             |                 |    |                                         |                    |                        |       |
| 17 Fire suppression system                    |                 |    |                                         |                    |                        |       |
| 18 Underwater dock conditions                 |                 |    |                                         |                    |                        |       |
| 19 Buoys/navigation aids                      |                 |    |                                         |                    |                        |       |
| 20 Fuel dispensing unit                       |                 |    |                                         |                    |                        |       |
| 21 Fuel storage system                        |                 |    |                                         |                    |                        |       |
| 22 Pumpout unit                               |                 |    |                                         |                    |                        |       |
| 23 Pilings                                    |                 |    |                                         |                    |                        |       |
| <b>C Docks</b> For Maintenance                |                 |    |                                         |                    |                        |       |
| 24 Decking/surface                            |                 |    |                                         |                    |                        |       |
| 25 Dock framework                             |                 |    |                                         |                    |                        |       |
| 26 Freeboard height                           |                 |    |                                         |                    |                        |       |
| 27 Flotation                                  |                 |    |                                         |                    |                        |       |
| 28 Walers                                     |                 |    |                                         |                    |                        |       |
| 29 Tensioning rods                            |                 |    |                                         |                    |                        |       |
| 30 Rub strips                                 |                 |    |                                         |                    |                        |       |
| 31 End pilings                                |                 |    |                                         |                    |                        |       |
| 32 Metal fittings                             |                 |    |                                         |                    |                        |       |
| 33 Power pedestals                            |                 |    |                                         |                    |                        |       |
| 34 Transformers                               |                 |    |                                         |                    |                        |       |
| 35 Switch gears                               |                 |    |                                         |                    |                        |       |
| 36 Water system                               |                 |    |                                         |                    |                        |       |
| 37 Storage lockers                            |                 |    |                                         |                    |                        |       |
| 38 Gates/security system                      |                 |    |                                         |                    |                        |       |
| 39 Handrails                                  |                 |    |                                         |                    |                        |       |
| 40 Lighting                                   |                 |    |                                         |                    |                        |       |

| Marina Feature                   | Meets Standards |    | Potential Next-Year Capital Outlay Item | Repairs Needed Now | Repair Completion Date | Notes |
|----------------------------------|-----------------|----|-----------------------------------------|--------------------|------------------------|-------|
|                                  | Yes             | No |                                         |                    |                        |       |
| <b>D Gangways</b>                |                 |    |                                         |                    |                        |       |
| For Maintenance                  |                 |    |                                         |                    |                        |       |
| 41 Decking/surface               |                 |    |                                         |                    |                        |       |
| 42 Hinges                        |                 |    |                                         |                    |                        |       |
| 43 Slides                        |                 |    |                                         |                    |                        |       |
| 44 Rollers                       |                 |    |                                         |                    |                        |       |
| <b>E Walkways and Boardwalks</b> |                 |    |                                         |                    |                        |       |
| 45 Decking/surface               |                 |    |                                         |                    |                        |       |
| 46 Metal fittings                |                 |    |                                         |                    |                        |       |
| 47 Lighting                      |                 |    |                                         |                    |                        |       |
| 48 Handrails                     |                 |    |                                         |                    |                        |       |
| 49 Pilings/support               |                 |    |                                         |                    |                        |       |
| 50 Fishing piers                 |                 |    |                                         |                    |                        |       |
| <b>F Boat Launch Ramps</b>       |                 |    |                                         |                    |                        |       |
| 51 Ramp surface                  |                 |    |                                         |                    |                        |       |
| 52 Ramp slope                    |                 |    |                                         |                    |                        |       |
| 53 Debris/sediment               |                 |    |                                         |                    |                        |       |
| 54 Drop-offs/erosion             |                 |    |                                         |                    |                        |       |
| 55 Boarding floats               |                 |    |                                         |                    |                        |       |
| 56 Boat washdown area            |                 |    |                                         |                    |                        |       |
| 57 Signs                         |                 |    |                                         |                    |                        |       |
| 58 Lighting                      |                 |    |                                         |                    |                        |       |
| <b>G Marina Buildings</b>        |                 |    |                                         |                    |                        |       |
| 59 Structural condition          |                 |    |                                         |                    |                        |       |
| 60 Paint                         |                 |    |                                         |                    |                        |       |
| 61 Siding                        |                 |    |                                         |                    |                        |       |
| 62 Insulation                    |                 |    |                                         |                    |                        |       |
| 63 Windows                       |                 |    |                                         |                    |                        |       |
| 64 Roof                          |                 |    |                                         |                    |                        |       |
| 65 Doors                         |                 |    |                                         |                    |                        |       |
| 66 Eaves/drainage pipes          |                 |    |                                         |                    |                        |       |
| 67 Walls/flooring                |                 |    |                                         |                    |                        |       |
| 68 Lighting                      |                 |    |                                         |                    |                        |       |
| 69 HVAC systems                  |                 |    |                                         |                    |                        |       |
| 70 Restroom fixtures/facility    |                 |    |                                         |                    |                        |       |
| 71 Shower fixtures/facility      |                 |    |                                         |                    |                        |       |
| 72 Laundry facility              |                 |    |                                         |                    |                        |       |
| 73 Vending machines              |                 |    |                                         |                    |                        |       |
| <b>H Parking/Access Roads</b>    |                 |    |                                         |                    |                        |       |
| 74 Surfaces                      |                 |    |                                         |                    |                        |       |
| 75 Paving/gravel                 |                 |    |                                         |                    |                        |       |
| 76 Striping                      |                 |    |                                         |                    |                        |       |
| 77 Curbs                         |                 |    |                                         |                    |                        |       |
| 78 Wheel stops                   |                 |    |                                         |                    |                        |       |
| 79 Drainage                      |                 |    |                                         |                    |                        |       |
| 80 Signs                         |                 |    |                                         |                    |                        |       |
| 81 Lighting                      |                 |    |                                         |                    |                        |       |
| 82 Hazard removal                |                 |    |                                         |                    |                        |       |

| Marina Feature   | Meets Standards       |    | Potential Next-Year Capital Outlay Item | Repairs Needed Now | Repair Completion Date | Notes |
|------------------|-----------------------|----|-----------------------------------------|--------------------|------------------------|-------|
|                  | Yes                   | No |                                         |                    |                        |       |
| <b>I Grounds</b> |                       |    |                                         |                    |                        |       |
| For Maintenance  |                       |    |                                         |                    |                        |       |
| 83               | Plantings             |    |                                         |                    |                        |       |
| 84               | Trees                 |    |                                         |                    |                        |       |
| 85               | Lawns                 |    |                                         |                    |                        |       |
| 86               | Sprinkler systems     |    |                                         |                    |                        |       |
| 87               | Lighting              |    |                                         |                    |                        |       |
| 88               | Signs                 |    |                                         |                    |                        |       |
| 89               | Pay telephones        |    |                                         |                    |                        |       |
| 90               | Culverts/drainage     |    |                                         |                    |                        |       |
| 91               | Benches               |    |                                         |                    |                        |       |
| 92               | Planters              |    |                                         |                    |                        |       |
| 93               | Trash receptacles     |    |                                         |                    |                        |       |
| 94               | Recycling receptacles |    |                                         |                    |                        |       |
| 95               | Fish cleaning station |    |                                         |                    |                        |       |
| 96               | Hazard removal        |    |                                         |                    |                        |       |
| 97               | Equipment/tools       |    |                                         |                    |                        |       |
| 98               | Sidewalks/walkways    |    |                                         |                    |                        |       |
| 99               | Fencing/gates         |    |                                         |                    |                        |       |
| <b>J Other</b>   |                       |    |                                         |                    |                        |       |
| 100              |                       |    |                                         |                    |                        |       |
| 101              |                       |    |                                         |                    |                        |       |
| 102              |                       |    |                                         |                    |                        |       |
| 103              |                       |    |                                         |                    |                        |       |
| 104              |                       |    |                                         |                    |                        |       |
| 105              |                       |    |                                         |                    |                        |       |
| 106              |                       |    |                                         |                    |                        |       |
| 107              |                       |    |                                         |                    |                        |       |
| 108              |                       |    |                                         |                    |                        |       |
| 109              |                       |    |                                         |                    |                        |       |
| 110              |                       |    |                                         |                    |                        |       |
| 111              |                       |    |                                         |                    |                        |       |
| 112              |                       |    |                                         |                    |                        |       |
| 113              |                       |    |                                         |                    |                        |       |
| 114              |                       |    |                                         |                    |                        |       |
| 115              |                       |    |                                         |                    |                        |       |
| 116              |                       |    |                                         |                    |                        |       |
| 117              |                       |    |                                         |                    |                        |       |
| 118              |                       |    |                                         |                    |                        |       |
| 119              |                       |    |                                         |                    |                        |       |
| 120              |                       |    |                                         |                    |                        |       |

I certify that the inspection was conducted on the date specified above by qualified marina staff, and that all information on the marina condition and maintenance in this checklist is accurate, and complete and reflects the true condition of the marina.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Telephone: \_\_\_\_\_



## Marina Operations Report

### Small Craft Harbor and Recreational Marina Loan Programs

|                          |                                |
|--------------------------|--------------------------------|
| Facility Name: _____     |                                |
| Facility Location: _____ | Date of Report: _____          |
| Contract No.: _____      | Project Completion Date: _____ |
| Amount Funded: _____     | Loan Payoff Date: _____        |

#### Operations Report Requirements

For any items that are not checked, provide a brief explanation in the space provided at the end of this form, or on a separate piece of paper.

- The marina occupancy level for the last year was adequate to maintain positive cash flow. The average marina occupancy level was: \_\_\_\_\_
- The marina has a marketing or business plan to increase occupancy levels if it falls below a threshold needed to maintain adequate cash flow (and is implementing the plan(s) if occupancy is below that level)
- Berth rental rates provide an adequate marina financial return, reflect the value of the facility, and are near the current market rate for similar marinas in the region. Average monthly per linear foot berth rental rates\* for this facility, and the six nearest competitive marinas in the region, are as follows:
  - a) This marina: \_\_\_\_\_
  - b) Facility: \_\_\_\_\_ Rate: \_\_\_\_\_      e) Facility: \_\_\_\_\_ Rate: \_\_\_\_\_
  - c) Facility: \_\_\_\_\_ Rate: \_\_\_\_\_      f) Facility: \_\_\_\_\_ Rate: \_\_\_\_\_
  - d) Facility: \_\_\_\_\_ Rate: \_\_\_\_\_      g) Facility: \_\_\_\_\_ Rate: \_\_\_\_\_

\* The average monthly per linear foot rental rate can be calculated from berth rental rates. For example, for a marina with the following configuration the calculation is as follows:

|                |                 | Total Feet        | Total Cost         |
|----------------|-----------------|-------------------|--------------------|
| 25 foot berths | 50 @ \$125/mo.  | 25 x 50 = 1,250   | 50 x 125 = 6,250   |
| 35 foot berths | 100 @ \$165/mo. | 35 x 100 = 3,500  | 100 x 165 = 16,500 |
| 50 foot berths | 20 @ \$200/mo.  | 50 x 20 = 1,000   | 20 x 200 = 4,000   |
| <b>TOTAL</b>   |                 | <b>5,750 feet</b> | <b>\$26,750</b>    |

Average per linear foot = \$26,750/5,750 ft = \$4.65/foot



- Registers and accurate records are maintained for berth renters, including billing, payment, and insurance information for each vessel
- Marina hours of operation are prominently displayed. Marina staff are available daily, including peak season holidays. Marina staff, or emergency personnel, can be easily contacted on off-hours in case of emergency
- Marina staff are competent, trained, knowledgeable about boats and boating, and professional in appearance
- Marina staff are responsive to customers, and customer complaints are handled within a reasonable time frame
- The marina and tenants are in compliance with standards, as outlined in applicable federal, state, and local laws, rules, regulations, contracts, and restrictions
- Marina security is maintained to appropriate standards for the region. The marina security system is in place and operational, and police incidents at the marina are at levels similar to other marinas in the region
- The marina has a current hazardous materials management plan, and procedures outlined in the plan are followed
- The marina has, is developing, or has plans for ADA compliance (for publicly-owned facilities only)

Explanation of any operations issues:

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I certify that the information provided in this report, and all supporting materials, are accurate and complete. I understand that false reporting or non-compliance could result in default of our DBW loan.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

## Example of Actual Fiscal Year Operation Costs and Maintenance Expenses

### Annual Operation Costs and Maintenance Expenses 2002 Calendar Year (Fiscal Year)

| Personnel                                                       | Total             |
|-----------------------------------------------------------------|-------------------|
| Regular Salaries, Harbor Master                                 | \$ 80,000         |
| Overtime, Payroll Taxes, and Benefits, Harbor Master            | 10,000            |
| Regular Salaries, Maintenance Personnel                         | 30,000            |
| Overtime, Payroll Taxes, and Benefits, Maintenance Personnel    | 6,500             |
| Regular Salaries, Administrative Assistant                      | 25,000            |
| Overtime, Payroll Taxes, and Benefits, Administrative Assistant | 4,000             |
|                                                                 | <b>\$ 155,500</b> |

|                                    | Maintenance Share <sup>a</sup> | Maintenance Amount |
|------------------------------------|--------------------------------|--------------------|
| Harbor Master                      | 10%                            | \$ 8,000           |
|                                    | 10%                            | 1,000              |
| Maintenance Personnel              | 60%                            | 18,000             |
|                                    | 60%                            | 3,900              |
| <b>Total Maintenance Personnel</b> |                                | <b>\$ 30,900</b>   |

| Operation Costs — Non-Personnel |                   |
|---------------------------------|-------------------|
| Office Supplies                 | \$ 1,400          |
| Operating Supplies              | 2,700             |
| Cost of Fuel Sold               | 50,000            |
| Printing and Copying            | 1,200             |
| Insurance (Property, Liability) | 6,000             |
| Accounting Services             | 12,000            |
| Telephone                       | 2,000             |
| Fuel                            | 500               |
| Gas and Electricity             | 9,000             |
| Sewers                          | 1,200             |
| Conferences and Seminars        | 1,000             |
| Clothing Expenses               | 300               |
| Association Memberships         | 700               |
| Advertising                     | 12,000            |
| Janitorial Contracts            | 22,000            |
|                                 | <b>\$ 122,000</b> |

| Maintenance Expenses — Non-Personnel |                 |
|--------------------------------------|-----------------|
| Tools                                | \$ 300          |
| Service Contracts                    | 4,000           |
| Parts                                | 100             |
| Pipes and Fittings                   | 150             |
| Parking Lot Repairs                  | 750             |
| Key/Lock Repair                      | 1,800           |
| Boardwalk Maintenance                | 400             |
| Misc. Repairs and Maintenance        | 2,000           |
|                                      | <b>\$ 9,500</b> |

|                                                 |            |
|-------------------------------------------------|------------|
| Total Operations and Maintenance                | \$ 287,000 |
| Total Maintenance Expenses (\$30,900 + \$9,500) | \$ 40,400  |
| Percent of Gross Revenues                       | 8.98%      |

|                       |            |
|-----------------------|------------|
| Gross Marina Revenues | \$ 450,000 |
|-----------------------|------------|

(see Exhibit C-2 for example calculation)

a/ Allocation should be supported by job descriptions. The harbor master spends approximately ten percent of his/her time on maintenance duties. The maintenance worker spends approximately sixty percent of his/her time on routine operations (i.e. janitorial and housekeeping) and sixty percent of his/her time on maintenance as defined. The administrative assistant spends no time on maintenance.

## Examples of Actual Fiscal Year Gross Marina Revenues (Sample Calculation)

### Example 1: Annual Gross Marina Revenues – Fiscal Year 2001-2002 (Marina with Transfers for Operating Revenues)

| Revenues                                                                  | 2001-2002         |
|---------------------------------------------------------------------------|-------------------|
| Charges for Services                                                      |                   |
| Monthly Berth Rents                                                       | \$ 389,332        |
| Daily Berth Rents                                                         | 23,743            |
| Fuel and Lubricant Sales                                                  | 105,600           |
| Building Rents                                                            | 55,734            |
| Electric Submeter Fee                                                     | 14,866            |
| Miscellaneous Revenues                                                    | 7,944             |
| <b>Total Operating Revenues</b>                                           | <b>\$ 597,219</b> |
| Other Revenues                                                            |                   |
| Discounts Taken                                                           | \$ 794            |
| FEMA Grant                                                                | 30,718            |
| <b>Total Other Revenues</b>                                               | <b>31,512</b>     |
| <b>Total Operating and Other Revenues</b>                                 | <b>\$ 628,731</b> |
| Cash Flows from NonCapital Financing Activities                           |                   |
| InterFund Lending Repayment                                               | \$ (7,947)        |
| Operating Transfers In                                                    | 256,000           |
| Operating Transfers Out                                                   | (12,160)          |
| <b>Net Cash Provided by (Used in)<br/>NonCapital Financing Activities</b> | <b>\$ 235,893</b> |
| <b>Total Gross Revenues</b>                                               | <b>\$ 864,624</b> |
| <b>Two Percent of Total Gross Revenues</b>                                | <b>\$ 17,292</b>  |

### Example 2: Annual Gross Marina Revenues — Calendar Year 2002 (Marina with No Operating Transfers)

| Revenues                                   | 2002              |
|--------------------------------------------|-------------------|
| Charges for Services                       |                   |
| Monthly Berth Rents                        | \$ 189,256        |
| Daily Berth Rents                          | 12,455            |
| Fuel and Lubricant Sales                   | 22,988            |
| Building Rents                             | 15,824            |
| Electric Submeter Fee                      | 7,651             |
| Miscellaneous Revenues                     | 3,468             |
| <b>Total Operating Revenues</b>            | <b>\$ 251,642</b> |
| <b>Total Gross Revenues</b>                | <b>\$ 251,642</b> |
| <b>Two Percent of Total Gross Revenues</b> | <b>\$ 5,033</b>   |



## Marina Maintenance Report

### Small Craft Harbor and Recreational Marina Loan Programs

|                    |                          |
|--------------------|--------------------------|
| Facility Name:     |                          |
| Facility Location: | Date of Report:          |
| Contract No.:      | Project Completion Date: |
| Amount Funded:     | Loan Payoff Date:        |

#### Maintenance Report Requirements

- Maintain and follow a maintenance plan and schedule:
  - Completed master checklist
  - Marina inspections are conducted regularly
  - Maintenance staff responsibilities are delineated and followed
  - Maintenance is completed in a timely fashion and unscheduled maintenance problems and complaints are handled responsively
  - Records for maintenance and inspection are maintained
  - Marina maintenance employees are properly trained

The following items are attached:

- Completed Operations, Maintenance, and Capital Outlay Master Checklist from a recent full inspection of the facility
- Actual Annual Fiscal Year Operation Costs and Maintenance Expenses with maintenance expense allocations
- Job descriptions for all marina staff, including allocation of time for each staff person to operations, maintenance, and capital outlay activities
- Marina maintenance expenses (specify time period: \_\_\_\_\_)
  - a) Gross revenues: \_\_\_\_\_
  - b) Maintenance expenses: \_\_\_\_\_
  - c) Maintenance percentage (b/a X 100): \_\_\_\_\_



## Appendix E

## Example of Projected Capital Outlay Projects

| Number of Years                    | Year    | Description                                 | Estimated Amount |
|------------------------------------|---------|---------------------------------------------|------------------|
| 1                                  | 2003/4  |                                             | \$0              |
| 2                                  | 2004/5  |                                             | —                |
| 3                                  | 2005/6  |                                             | —                |
| 4                                  | 2006/7  | Dredging west basin                         | 100,000          |
| 5                                  | 2007/8  | Partial sidewalk replacement                | 34,000           |
| 6                                  | 2008/9  | Dock vinyl bumper strip replacements        | 100,000          |
| 7                                  | 2009/10 | Repair floatation on Dock B                 | 125,000          |
| 8                                  | 2010/11 | Wood decking repairs around buildings       | 75,000           |
| 9                                  | 2011/12 | Painting all marina structures              | 8,000            |
| 10                                 | 2012/13 | Gangway and gate repairs                    | 35,000           |
| Total projected for next ten years |         |                                             | \$477,000        |
| Long Term Needs                    |         |                                             |                  |
| 11                                 |         | Telephone lines and cable TV connected      | \$100,000        |
| 12                                 |         | Plumbing and electrical system replacements | 1,000,000        |
| 13                                 |         | Marina basin dredging                       | 400,000          |
| Total long-term beyond ten years   |         |                                             | \$1,500,000      |

| Item Description                            | Funding Sources |                   |                        |
|---------------------------------------------|-----------------|-------------------|------------------------|
|                                             | Year #          | Alternate Funding | Capital Outlay Account |
| Dredging west basin                         | 4               | \$—               | \$100,000              |
| Partial sidewalk replacement                | 5               |                   | 34,000                 |
| Dock vinyl bumper strip replacements        | 6               | 100,000           |                        |
| Repair floatation on Dock B                 | 7               | 125,000           |                        |
| Wood decking repairs around buildings       | 8               |                   | 75,000                 |
| Painting all marina structures              | 9               |                   | 8,000                  |
| Gangway and gate repairs                    | 10              | 35,000            |                        |
| Telephone lines and cable TV connected      | 11              | 100,000           |                        |
| Plumbing and electrical system replacements | 12              | 1,000,000         |                        |
| Marina basin dredging                       | 13              |                   | 400,000                |
|                                             | Total           | \$1,360,000       | \$617,000              |

## Appendix F

## Example of Capital Outlay Budgetary Plan

|                                                                       | Year 1            | Year 2            | Year 3            | Year 4             | Year 5            |
|-----------------------------------------------------------------------|-------------------|-------------------|-------------------|--------------------|-------------------|
| <b>Revenues</b>                                                       |                   |                   |                   |                    |                   |
| Charges for Services                                                  |                   |                   |                   |                    |                   |
| Monthly Berth Rents                                                   |                   |                   |                   |                    |                   |
| Daily Berth Rents                                                     |                   |                   |                   |                    |                   |
| Fuel and Lubricant Sales                                              |                   |                   |                   |                    |                   |
| Building Rents                                                        |                   |                   |                   |                    |                   |
| Electric Submeter Fee                                                 |                   |                   |                   |                    |                   |
| Miscellaneous Revenues                                                |                   |                   |                   |                    |                   |
| <b>Total Operating Revenues</b>                                       | <b>\$ 621,821</b> | <b>\$ 640,476</b> | <b>\$ 659,690</b> | <b>\$ 679,481</b>  | <b>\$ 699,865</b> |
| <b>Other Revenues</b>                                                 |                   |                   |                   |                    |                   |
| Discounts Taken                                                       | 0                 | 0                 | 0                 | 0                  | 0                 |
| FEMA Grant                                                            | 0                 | 0                 | 0                 | 0                  | 0                 |
| <b>Total Other Revenues</b>                                           | <b>0</b>          | <b>0</b>          | <b>0</b>          | <b>0</b>           | <b>0</b>          |
| <b>Total Revenues</b>                                                 | <b>\$ 621,821</b> | <b>\$ 640,476</b> | <b>\$ 659,690</b> | <b>\$ 679,481</b>  | <b>\$ 699,865</b> |
| <b>Expenses</b>                                                       |                   |                   |                   |                    |                   |
| Wages and Benefits                                                    |                   |                   |                   |                    |                   |
| Utilities                                                             |                   |                   |                   |                    |                   |
| Contractual Services                                                  |                   |                   |                   |                    |                   |
| Tools and Supplies                                                    |                   |                   |                   |                    |                   |
| Repairs and Maintenance                                               |                   |                   |                   |                    |                   |
| <b>Total Operating Expenses</b>                                       | <b>\$ 449,094</b> | <b>\$ 462,813</b> | <b>\$ 476,944</b> | <b>\$ 490,938</b>  | <b>\$ 506,189</b> |
| <b>Operating Income (Loss)</b>                                        | <b>\$ 172,727</b> | <b>\$ 177,663</b> | <b>\$ 182,746</b> | <b>\$ 188,543</b>  | <b>\$ 193,676</b> |
| <b>Adjustments from Operating Activities</b>                          |                   |                   |                   |                    |                   |
| Depreciation (Non-Cash Item)                                          | 0                 | 0                 | 0                 | 0                  | 0                 |
| Other Adjustments                                                     | 0                 | 0                 | 0                 | 0                  | 0                 |
| <b>Net Cash Provided by (Used in) Operating Activities</b>            | <b>\$ 172,727</b> | <b>\$ 177,663</b> | <b>\$ 182,746</b> | <b>\$ 188,543</b>  | <b>\$ 193,676</b> |
| <b>Cash Flows from NonCapital Financing Activities</b>                |                   |                   |                   |                    |                   |
| InterFund Lending Repayment                                           | 0                 | 0                 | 0                 | 0                  | 0                 |
| Operating Transfers In                                                | 255,035           | 250,379           | 245,584           | 268,645            | 250,557           |
| Operating Transfers Out                                               | 0                 | 0                 | 0                 | 0                  | 0                 |
| <b>Net Cash Provided by (Used in) NonCapital Financing Activities</b> | <b>\$ 255,035</b> | <b>\$ 250,379</b> | <b>\$ 245,584</b> | <b>\$ 268,645</b>  | <b>\$ 250,557</b> |
| <b>Total Gross Revenues</b>                                           | <b>\$ 876,856</b> | <b>\$ 890,855</b> | <b>\$ 905,274</b> | <b>\$ 948,126</b>  | <b>\$ 950,422</b> |
| <b>Cash Flows from Capital and Related Financing Activities</b>       |                   |                   |                   |                    |                   |
| Fixed Asset Additions (Capital Outlay Projects)                       | \$ -              | \$ -              | \$ -              | \$ (100,000)       | \$ (34,000)       |
| Long-Term Principal and Interest Debt Service                         | (410,225)         | (410,225)         | (410,225)         | (410,225)          | (410,225)         |
| <b>Net Cash Used in Capital and Related Financing Activities</b>      | <b>(410,225)</b>  | <b>(410,225)</b>  | <b>(410,225)</b>  | <b>(510,225)</b>   | <b>(444,225)</b>  |
| <b>Reserve Account Deposits</b>                                       |                   |                   |                   |                    |                   |
| Two Percent of Gross Revenues                                         | \$ 17,537         | \$ 17,817         | \$ 18,105         | \$ 18,963          | \$ 19,008         |
| Other Deposits to Reserve Account (Optional)                          |                   |                   |                   | 28,000             | 15,000            |
| <b>Total Deposit to Reserve Account</b>                               | <b>\$ 17,537</b>  | <b>\$ 17,817</b>  | <b>\$ 18,105</b>  | <b>\$ 46,963</b>   | <b>\$ 34,008</b>  |
| <b>Net Increase (Decrease) in Cash and Cash Equivalents</b>           | <b>\$ 17,537</b>  | <b>\$ 17,817</b>  | <b>\$ 18,105</b>  | <b>\$ (53,037)</b> | <b>\$ 8</b>       |
| <b>Reserve Account Balance</b>                                        | <b>\$ 17,537</b>  | <b>\$ 35,354</b>  | <b>\$ 53,459</b>  | <b>\$ 422</b>      | <b>\$ 430</b>     |

## Appendix F

## Example of Capital Outlay Budgetary Plan

|                                                                       | Year 6            | Year 7            | Year 8              | Year 9              | Year 10             |
|-----------------------------------------------------------------------|-------------------|-------------------|---------------------|---------------------|---------------------|
| <b>Revenues</b>                                                       |                   |                   |                     |                     |                     |
| Charges for Services                                                  |                   |                   |                     |                     |                     |
| Monthly Berth Rents                                                   |                   |                   |                     |                     |                     |
| Daily Berth Rents                                                     |                   |                   |                     |                     |                     |
| Fuel and Lubricant Sales                                              |                   |                   |                     |                     |                     |
| Building Rents                                                        |                   |                   |                     |                     |                     |
| Electric Submeter Fee                                                 |                   |                   |                     |                     |                     |
| Miscellaneous Revenues                                                |                   |                   |                     |                     |                     |
| <b>Total Operating Revenues</b>                                       | <b>\$ 720,861</b> | <b>\$ 742,487</b> | <b>\$ 764,762</b>   | <b>\$ 787,704</b>   | <b>\$ 811,336</b>   |
| Other Revenues                                                        |                   |                   |                     |                     |                     |
| Discounts Taken                                                       | 0                 | 0                 | 0                   | 0                   | 0                   |
| FEMA Grant                                                            | 0                 | 0                 | 0                   | 0                   | 0                   |
| <b>Total Other Revenues</b>                                           | <b>0</b>          | <b>0</b>          | <b>0</b>            | <b>0</b>            | <b>0</b>            |
| <b>Total Revenues</b>                                                 | <b>\$ 720,861</b> | <b>\$ 742,487</b> | <b>\$ 764,762</b>   | <b>\$ 787,704</b>   | <b>\$ 811,336</b>   |
| <b>Expenses</b>                                                       |                   |                   |                     |                     |                     |
| Wages and Benefits                                                    |                   |                   |                     |                     |                     |
| Utilities                                                             |                   |                   |                     |                     |                     |
| Contractual Services                                                  |                   |                   |                     |                     |                     |
| Tools and Supplies                                                    |                   |                   |                     |                     |                     |
| Repairs and Maintenance                                               |                   |                   |                     |                     |                     |
| <b>Total Operating Expenses</b>                                       | <b>\$ 521,929</b> | <b>\$ 537,834</b> | <b>\$ 553,816</b>   | <b>\$ 571,087</b>   | <b>\$ 588,467</b>   |
| <b>Operating Income (Loss)</b>                                        | <b>\$ 198,932</b> | <b>\$ 204,653</b> | <b>\$ 210,946</b>   | <b>\$ 216,617</b>   | <b>\$ 222,869</b>   |
| Depreciation (Non-Cash Item)                                          | 0                 | 0                 | 0                   | 0                   | 0                   |
| Other Adjustments                                                     | 0                 | 0                 | 0                   | 0                   | 0                   |
| <b>Net Cash Provided by (Used in) Operating Activities</b>            | <b>\$ 198,932</b> | <b>\$ 204,653</b> | <b>\$ 210,946</b>   | <b>\$ 216,617</b>   | <b>\$ 222,869</b>   |
| <b>Cash Flows from NonCapital Financing Activities</b>                |                   |                   |                     |                     |                     |
| InterFund Lending Repayment                                           | 0                 | 0                 | 0                   | 0                   | 0                   |
| Operating Transfers In                                                | 230,317           | 224,920           | 239,361             | 213,635             | 207,737             |
| Operating Transfers Out                                               | 0                 | 0                 | 0                   | 0                   | 0                   |
| <b>Net Cash Provided by (Used in) NonCapital Financing Activities</b> | <b>\$ 230,317</b> | <b>\$ 224,920</b> | <b>\$ 239,361</b>   | <b>\$ 213,635</b>   | <b>\$ 207,737</b>   |
| <b>Total Gross Revenues</b>                                           | <b>\$ 951,178</b> | <b>\$ 967,407</b> | <b>\$ 1,004,123</b> | <b>\$ 1,001,339</b> | <b>\$ 1,019,073</b> |
| <b>Cash Flows from Capital and Related Financing Activities</b>       |                   |                   |                     |                     |                     |
| Fixed Asset Additions (Capital Outlay Projects)                       | \$ -              | \$ -              | \$ (75,000)         | \$ (8,000)          | \$ -                |
| Long-Term Principal and Interest Debt Service                         | (410,225)         | (410,225)         | (410,225)           | (410,225)           | (410,225)           |
| <b>Net Cash Used in Capital and Related Financing Activities</b>      | <b>(410,225)</b>  | <b>(410,225)</b>  | <b>(485,225)</b>    | <b>(418,225)</b>    | <b>(410,225)</b>    |
| <b>Reserve Account Deposits</b>                                       |                   |                   |                     |                     |                     |
| Two Percent of Gross Revenues                                         | \$ 19,024         | \$ 19,348         | \$ 20,082           | \$ 20,027           | \$ 20,381           |
| Other Deposits to Reserve Account (Optional)                          |                   |                   | 20,000              |                     |                     |
| <b>Total Deposit to Reserve Account</b>                               | <b>\$ 19,024</b>  | <b>\$ 19,348</b>  | <b>\$ 40,082</b>    | <b>\$ 20,027</b>    | <b>\$ 20,381</b>    |
| <b>Net Increase (Decrease) in Cash and Cash Equivalents</b>           | <b>\$ 19,024</b>  | <b>\$ 19,348</b>  | <b>\$ (34,918)</b>  | <b>\$ 12,027</b>    | <b>\$ 20,381</b>    |
| <b>Reserve Account Balance</b>                                        | <b>\$ 19,454</b>  | <b>\$ 38,802</b>  | <b>\$ 3,884</b>     | <b>\$ 15,911</b>    | <b>\$ 36,292</b>    |





## Marina Capital Outlay Reserve Account Report

### Small Craft Harbor and Recreational Marina Loan Programs

|                    |                          |
|--------------------|--------------------------|
| Facility Name:     |                          |
| Facility Location: | Date of Report:          |
| Contract No.:      | Project Completion Date: |
| Amount Funded:     | Loan Payoff Date:        |

#### Capital Outlay Reserve Account Report Requirements

- Annual time period: \_\_\_\_\_
- Amount of funds deposited into Capital Outlay Reserve Account (CORA): \_\_\_\_\_
- Amount of funds withdrawn from CORA: \_\_\_\_\_
- Total gross revenues for annual time period: \_\_\_\_\_
- Minimum two percent requirement: \_\_\_\_\_
- Name and account number of CORA: \_\_\_\_\_
- Ten-year Capital Outlay Budgetary Plan is attached
- Capital outlay funds spent during the previous time period are identified in Plan and briefly described on Page 2 of 2





## DBW Site Visit Checklist

### Small Craft Harbor and Recreational Marina Loan Programs

|                    |                             |
|--------------------|-----------------------------|
| Facility Name:     |                             |
| Facility Location: | Date of Report:             |
| Contract No.:      | Project Completion Date:    |
| Amount Funded:     | Site Visitation By:         |
| Loan Payoff Date:  | Most Recent DBW Site Visit: |

#### Marina Inspection Requirements

- Conduct marina walk-through inspection with master checklist
- Provide marina with copy of master checklist and identify any deficiencies
- Follow-up actions by marina conducted within three months (Date reported: \_\_\_\_\_)
- Review marina plan for documentation of:
  - Master checklist for marina inspections
  - Maintenance staff responsibilities and training
  - Maintenance and inspection records
- Review Capital Outlay Budgetary Plan
- Compare marina master checklist self-assessment with DBW inspection results

Overall short- and long-term condition of marina:

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## DBW Annual Reporting Checklist

### Small Craft Harbor and Recreational Marina Loan Programs

|                    |                          |
|--------------------|--------------------------|
| Facility Name:     |                          |
| Facility Location: | Date of Report:          |
| Contract No.:      | Project Completion Date: |
| Amount Funded:     | Loan Payoff Date:        |

#### Operations Requirements

- Reviewed and approved Operations Report
- Operations follow-up completed (describe in attachment if required)
- Reviewed and approved operation items on Master Checklist

#### Maintenance Requirements

- Reviewed and approved Maintenance Report
- Maintenance follow-up completed (describe in attachment if required)
- Reviewed and approved maintenance items on Master Checklist
- Maintenance expenses fall between six percent and ten percent of gross revenues

#### Capital Outlay Requirements

- Reviewed and approve Ten-Year Capital Outlay Budgetary Plan
- Capital outlay follow-up completed (describe in attachment if required)
- Reviewed and approved assessment of marina long-term condition and status
- Capital Outlay Reserve Account meets minimum two percent requirement



## DBW Annual Reporting Checklist

### Small Craft Harbor and Recreational Marina Loan Programs

|                    |                          |
|--------------------|--------------------------|
| Facility Name:     |                          |
| Facility Location: | Date of Report:          |
| Contract No.:      | Project Completion Date: |
| Amount Funded:     | Loan Payoff Date:        |

#### Operations Requirements

- Reviewed and approved Operations Report
- Operations follow-up completed (describe in attachment if required)
- Reviewed and approved operation items on Master Checklist

#### Maintenance Requirements

- Reviewed and approved Maintenance Report
- Maintenance follow-up completed (describe in attachment if required)
- Reviewed and approved maintenance items on Master Checklist
- Maintenance expenses fall between six percent and ten percent of gross revenues

#### Capital Outlay Requirements

- Reviewed and approve Ten-Year Capital Outlay Budgetary Plan
- Capital outlay follow-up completed (describe in attachment if required)
- Reviewed and approved assessment of marina long-term condition and status
- Capital Outlay Reserve Account meets minimum two percent requirement





Office of the City Manager

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront  
 Subject: Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in an amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

FISCAL IMPACTS OF RECOMMENDATION

The maximum total grant award is \$500,000, which would cover all costs to plant trees. This includes costs for project planning and coordination, site preparation to create planting locations, materials, part-time labor, equipment rental, and contractor costs. The remaining portion of the project will be funded through the Parks Tax Fund, which includes project administration and coordination provided by the City's Senior Forestry Climber (estimated at \$50,000). This City staff cost is provided in the grant application as "in-kind match." While a local match is not required, the use of local City-funded Forestry staff as in-kind match will make the grant application more competitive. The grant funding cycle is for four fiscal years through March 2025.

Revenue from this grant will be deposited and expensed from the One-Time Grants Fund (336).

CURRENT SITUATION AND ITS EFFECTS

This program, as provided by California Streets and Highways Code Section 164.56 authorizes the legislature to allocate up to \$7 million each fiscal year from the Highway Users Tax Account (Motor Vehicle Revenues, Section 2100). EEM projects must contribute to the mitigation of the environmental effects of transportation facilities. The California Natural Resources Agency (CNRA) prescribes procedures and criteria to evaluate grant project proposals and submits a list of projects recommended for funding to the California Transportation Commission (CTC).

In January of 2021, the CNRA announced the current round of EEM grant funding. This application window for project proposals will close on March 5<sup>th</sup>. After reviewing the entire applicant pool throughout the state during the summer of 2021, the CNRA will select the project proposals that meet their selection requirements to formally apply for a grant award. If applicable, a field visit will be scheduled. After the field visit, the State will invite the most competitive projects to submit additional documents to complete the grant application. Final awards are expected in fall 2021.

BACKGROUND

The EEMP grant program involves tree planting and other activities that mitigate the negative environmental effects of a local Related Transportation Facility (RTF). The I-80 Widening Project of 1994 has been designated as the RTF for this area and still requires mitigation to offset increased traffic. This project proposes to plant new site-specific trees and related irrigation throughout streets and parks in West Berkeley at the following locations: 1) West side of Aquatic Park; 2) San Pablo Park; 3) University Avenue; and 4) West Berkeley neighborhoods.

The Parks, Recreation & Waterfront Department has received EEM grants to plant trees throughout Berkeley for over two decades. This project would complement the City's current tree planting project funded by a California State Urban Greening grant to create new sites, plant, and water 500 new trees in specific Disadvantaged Communities in West Berkeley through 2024.

ENVIRONMENTAL SUSTAINABILITY

One of the City's Climate Action Plan goals is to maintain the urban forest's present canopy coverage and to provide significant environmental benefits in the form of carbon dioxide absorption and oxygen production as well as storm water retention and climate control. This project will use the natural systems of trees to achieve these goals. Trees also cool temperatures, beautify neighborhoods, add habitat, and provide health benefits to residents and visitors.

RATIONALE FOR RECOMMENDATION

This grant will allow the City to expand the urban forest into historically underserved neighborhoods of West Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSONS

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700  
Dan Gallagher, Senior Forestry Supervisor, 981-6687

Attachments:  
1: Resolution



RESOLUTION NO. ##-###

APPROVING THE APPLICATION FOR GRANT FUNDS FOR CALIFORNIA STREETS AND HIGHWAYS CODE SECTION 164.56 (ARTICLE XIX, SECTION 1, OF THE STATE CONSITUTION) ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROJECT IN THE AMOUNT OF UP TO \$500,000

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above; and

WHEREAS, the California Natural Resources Agency has been delegated the responsibility for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the California Natural Resources Agency require a resolution certifying the approval of an application by the Applicants governing board before submission of said application to the State; and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California to carry out the Project; and

WHEREAS, funds will be deposited into the One-Time Grants Fund (Fund 421).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley:

Authorizes the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in an amount up to \$500,000, to accept the grant, and to execute any resultant revenue agreements and amendments.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley certifies that the applicant understands the assurances and certification in the application, and has or will have sufficient funds to operate and maintain the project consistent with the land tenure requirements; or will secure the resources to do so, and; will comply with the provisions of Section 1771.5 of the State Labor Code.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley certifies that the project will comply with any laws and regulations including, but not limited to, legal requirements for building codes, health and safety codes, disabled access laws, environmental laws and, that prior to commencement of construction, all applicable permits will have been obtained, and will work towards the Governor's State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley appoints the City Manager, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project(s).

BE IT FURTHER RESOLVED that the City of Berkeley authorizes the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

BE IT FURTHER RESOLVED that a record signature copy of said agreements and any amendments be on file in the City of Berkeley's Office of the City Clerk.

## ITEM 12



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

## ITEM 12

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember’s discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### ***Officeholder Accounts***

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.”

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

**Proposed Action:**

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

- (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and
- (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions,  
(510) 981-6998  
Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open  
Government Commissions, (510) 981-6998





Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder accounts

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In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O'Donnell to return at the Commission's September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

## Background

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or

(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

**Attachments:**

1. New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements ("Proposal")
2. Report to the City Council from the Fair Campaign Practices Commission entitled "Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12" (for Public Hearing on February 4, 2020) (with Attachments) ("Report")
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) ("Memorandum")



Fair Campaign Practices Commission

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council  
From: Brad Smith, Chair, Open Government Commission  
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

**Action:**

**Vote:**

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated

by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political

campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

#### Attachments:

1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE  
OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:**Section 2.12.157 Officeholder account.**“Officeholder account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as followsArticle 9. Officeholder Accounts**Section. 2.12.600 Regulation of officeholder accounts.**A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.C. Only a natural person who is a resident of the City may make a donation to an officeholder account.D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for-lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;



3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of [date of agenda posting].

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

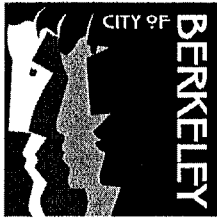
**Published:** [Publication Date in Newspaper]

Pursuant to Berkeley Municipal Code section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on [Enter Date].

Mark Numainville, City Clerk



Fair Campaign Practices Commission

PUBLIC HEARING
February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act to prohibit
Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

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

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder AccountsPUBLIC HEARING
February 4, 2020BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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



GOVERNMENT CODE - GOV

TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321] (Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

- (A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.
- (B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.
- (C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

- (A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.
- (B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.
- (C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS
December 9, 1991
Page 2

in opposition to the nomination or election of one or more candidates (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

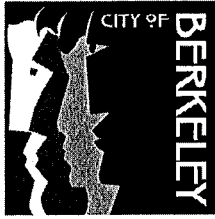
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



[First Last name]  
Councilmember District [District No.]

## SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** February 4, 2020

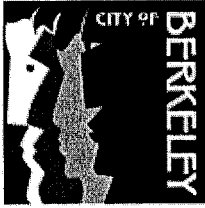
**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Sophie Hahn  
 Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>



always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

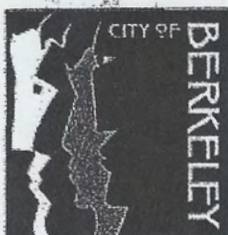
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

**Date:** February 12, 2020  
**To:** FAIR CAMPAIGN PRACTICES COMMISSION  
**From:** Dean Metzger, Commission Chair  
**Subject:** Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

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At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

**Attachments:**

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member

**MAYOR AND CITY COUNCIL FINA**

|                        | FY 2015<br>Actual | FY 2016<br>Actual | FY 2017<br>Adopted | FY 2018<br>Proposed | FY 2019<br>Proposed |
|------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| <b>EXPENDITURES</b>    |                   |                   |                    |                     |                     |
| <b>By Type:</b>        |                   |                   |                    |                     |                     |
| Salaries and Benefits  | 1,660,661         | 1,760,619         | 1,723,617          | 1,833,734           | 1,880,031           |
| Services and Materials | 36,942            | 43,407            | 113,526            | 113,526             | 113,526             |
| Capital Outlay         | 1,953             | 7,674             |                    |                     |                     |
| Internal Services      | 89,100            | 81,181            | 81,181             | 81,181              | 81,181              |
| Indirect Cost Transfer |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Division:</b>    |                   |                   |                    |                     |                     |
| Mayor's Office         | 515,095           | 558,137           | 584,877            | 554,389             | 566,917             |
| Council Offices        | 1,273,561         | 1,334,744         | 1,333,447          | 1,474,052           | 1,507,821           |
| Exiting Officials      |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Fund:</b>        |                   |                   |                    |                     |                     |
| General Fund           | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |

|                         |       |       |       |       |       |
|-------------------------|-------|-------|-------|-------|-------|
| <b>General Fund FTE</b> | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| <b>Total FTE</b>        | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |

**DRAFT**

**DRAFT**

**DRAFT**

**Date:** February 20, 2020

**To:** Dee Williams-Riley  
City Manager

**From:** Fair Campaign Practices Commission

**Subject:** Request for budget details of the Mayor and each individual Council Member.

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At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

**Fair Campaign Practices Commission**



Fair Campaign Practices Commission  
Open Government Commission

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

POLICY COMMITTEE RECOMMENDATION

On February 8, 2021, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to make a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

*Action: Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies*

Vote: M/S/C: Blome/Metzger; Ayes: O'Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### ***Officeholder Accounts***

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FCPC considered three options:

- (1) leaving the law on officeholder accounts unchanged;
- (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or
- (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the



Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D- 13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D- 13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember’s discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization “from the discretionary council budget” of the Councilmember. This line item (“Services and Materials”) from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment – Council Office Budget Summaries). While not technically a “campaign contribution,” those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember’s contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council’s Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember’s D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

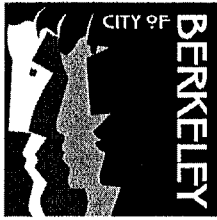
#### CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

#### Attachments:

1. FCPC February 4, 2020 report to Council and attachments
2. Mayor and City Council Financial Summary



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit  
Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

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

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

**Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

**Part 8 - OFFICEHOLDER ACCOUNTS**

**12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

**2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

**2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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




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**GOVERNMENT CODE - GOV**
**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )
**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Raynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.



Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

PAUSERS\BBL2\ofhldr.mem.doc

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991 Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

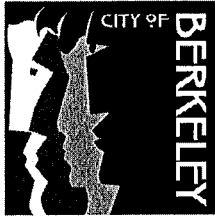
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

Mark Numainville, City Clerk



[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

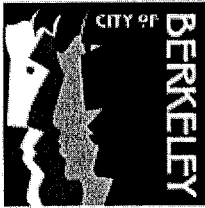
Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



SOPHIE HAHN

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [] delivered, by any means [] to a person's residence, place of employment or business, or post office box."³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

⁶ <http://www2.oaklandnet.com/w/OAK052051>

MAYOR AND CITY COUNCIL FINANCIAL SUMMARY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials	36,942	43,407	113,526	113,526	113,526
Capital Outlay	1,953	7,674			
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Division:					
Mayor's Office	515,095	558,137	584,877	554,389	566,917
Council Offices	1,273,561	1,334,744	1,333,447	1,474,052	1,507,821
Exiting Officials					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Fund:					
General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
General Fund FTE	12.00	12.00	12.00	12.00	12.00
Total FTE	12.00	12.00	12.00	12.00	12.00



Berkeley Homeless Commission

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council
 From: Homeless Commission
 Submitted by: Carole Marasovic, Chairperson, Homeless Commission
 Subject: Amending Source of Income Discrimination Ordinance to Establish
 Administrative Enforcement Procedure

RECOMMENDATION

The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

Stage 1 of enforcement in the complaints procedure shall involve the taking of the complaint which shall be investigated by the designated department expeditiously, within a reasonable period of time no longer than ten days. Upon completion of the investigation, a finding shall be made of substantial evidence of discrimination or no evidence of discrimination.

In the process of the investigation, the investigator shall concurrently, while identifying the facts, attempt to resolve the complaint by seeking to bring the parties to agreement that the complaining party be permitted to rent the premises in question or alternatively, if the premises has otherwise been rented prior to the investigation, be provided the first option for the next available vacancy at the premises.

Where the complaint has not otherwise been resolved through this procedure, and there is a finding of substantial evidence, the complaining party shall be offered the opportunity to have its complaint heard by an administrative hearing officer mirroring a procedure or similar to a procedure afforded by BMC 1.28. If the complainant files for such an administrative hearing, and the rental property remains available, the filing for an administrative hearing, shall constitute a stay of the property being otherwise rented to another applicant.

If at the administrative hearing, the administrative law judge, or hearing officer, finds in favor of the complainant, the administrative hearing officer can order that housing be provided to the complainant and/or direct a fine of no more than five thousand dollars (\$5,000) to be paid to the complainant with an additional penalty to the City of Berkeley for the costs of the administrative appeal. This procedure will be a final administrative decision subject to litigation to be brought in a court of law by a complainant through any legal entity, private or public as the complainant can identify.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

POLICY COMMITTEE RECOMMENDATION

On February 4, 2021, the Land Using, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Hahn/Droste) to send to Council a qualified positive recommendation to refer to the City Manager to: 1) Draft amendments to the Source of Income Discrimination Ordinance to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income, parallel to the Fair Chance Ordinance; 2) Submit to Council in 2022 a report reviewing the effectiveness of the source of income discrimination ordinance in its first five years; and 3) Update and improve information on the City website and elsewhere about legal services for low income residents; and 4) Refer to the 4x4 Committee discussion of feasibility of enforcement of source of income discrimination alongside the fair chance ordinance, and discussion of Homeless Commission's first-in-time standard recommendations.

Vote: All Ayes.

SUMMARY

The current source of income anti-discrimination ordinance has not been enforced because the enforcement provisions are impractical. Amendments to the ordinance will provide for a means of enforcement, through administrative procedures, that will open up housing in Berkeley to persons with Section 8 vouchers, Shelter Plus certificates, VASH vouchers and other subsidies.

Establishing an investigative procedure, prior to an administrative hearing, encourages early resolution of the complaint avoiding additional expense to the landlord/property owner and provides for a timely rental for the complainant.

FISCAL IMPACTS OF RECOMMENDATION

The costs to implement such a program will be substantial and are best calculated by staff. However, implementing an administrative procedure is the only means of

enforcing a law critical to protecting access to rental housing by persons with vouchers and other subsidies.

CURRENT SITUATION AND ITS EFFECTS

On July 25, 2017, Council unanimously passed an ordinance to prohibit discrimination in property rental based on source of income. Since that time, discrimination based on source of income remains pervasive throughout the Berkeley community. The current enforcement provisions in the ordinance are impractical.

The complaining party currently must seek legal redress in court, through a protracted process, when they are only seeking to rent an apartment in a timely manner. An administrative procedure, commencing with an investigation of their complaint, is far more likely to result in an expeditious resolution, concluding in rental.

Even if the complainant wanted to proceed through an untimely litigation route, they would be hard-pressed to identify an attorney to represent them. County counsel or the district attorney, as stated in the current ordinance, would not prioritize such cases. The reference to any other person or entity, in the current ordinance, could include the City Attorney but that undertaking would be excessively burdensome to the City of Berkeley City Attorney, already overstretched with competing demands. This ordinance has not substantially caught fire so as to interest the private bar in bringing these claims.

BACKGROUND

On November 13, 2019, the Homeless Commission voted to pass the recommendation as earlier stated in the recommendation section of this report and herein incorporated by reference.

Action: M/S/C Marasovic/Hill to submit the report on enforcement of source income discrimination to Council as written.

Vote: Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara.

Noes: Mulligan, Behm-Steinberg, Hollyman. *Abstain:* None. *Absent:* None.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects.

RATIONALE FOR RECOMMENDATION

As source of income discrimination continues in Berkeley two years following the adoption of an ordinance prohibiting such, it is clear that the current ordinance is insufficient as to enforcement. An administrative procedure is best in terms of an expeditious resolution.

An increase in a fine, through the administrative procedure, is an incentive for property manager/landlord resolution. The order of an application received is critical because

otherwise, denial is easily justified through a pool of applicants which favors those without vouchers or subsidies. Lack of credit or bad credit can be a basis for denial to a Section 8 voucher/subsidy holder. However, that credit is irrelevant when the voucher or subsidy holder's rent will be largely paid by the funding source.

ALTERNATIVE ACTIONS CONSIDERED

The Commission considered not taking action which would mean that the ordinance is meaningless without lack of enforcement.

CITY MANAGER

See companion report.

CONTACT PERSON

Brittany Carnegie, Commission Secretary, HHCS, 510-981-5415



Office of the City Manager

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
 Subject: Companion Report: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

RECOMMENDATION

The City Manager thanks the Homeless Commission for their concern regarding potential discrimination against residents trying to utilize rental assistance vouchers in Berkeley. She recommends, however, taking no action on the Homeless Commission recommendation since the City already funds legal assistance for low-income residents that may be used to obtain relief under BMC Chapter 13.31.

POLICY COMMITTEE RECOMMENDATION

On February 4, 2021, the Land Using, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Hahn/Droste) to send to Council a qualified positive recommendation to refer to the City Manager to: 1) Draft amendments to the Source of Income Discrimination Ordinance to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income, parallel to the Fair Chance Ordinance; 2) Submit to Council in 2022 a report reviewing the effectiveness of the source of income discrimination ordinance in its first five years; and 3) Update and improve information on the City website and elsewhere about legal services for low income residents; and 4) Refer to the 4x4 Committee discussion of feasibility of enforcement of source of income discrimination alongside the fair chance ordinance, and discussion of Homeless Commission's first-in-time standard recommendations.

Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On November 13, 2019, the Homeless Commission voted to submit a report which recommends that City Council amend BMC Chapter 13.31 "to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income."

Action: M/S/C Marasovic/Hill to submit the report on enforcement of source income discrimination to Council as written.

Vote: Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara.

Noes: Mulligan, Behm-Steinberg, Hollyman. *Abstain:* None. *Absent:* None.

The City of Berkeley provides over \$580,000 each year to non-profit providers of legal assistance to provide free legal advice and representation for low-income residents who may experience the type of discrimination covered under BMC 13.31.

BACKGROUND

BMC Chapter 13.31, passed by Council on July 25, 2017, prohibits discrimination in property rentals based on source of income. Injured parties may file a civil action to enforce the Ordinance. Violations of the ordinance may also be prosecuted as a misdemeanor and may be subject to enforcement through the administration citation process. However, at this time, no funding is has been appropriated for administrative or criminal enforcement of the Ordinance.

ENVIRONMENTAL SUSTAINABILITY

There are no known environmental opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Amending the Ordinance and adopting administrative procedures which would include investigating complaints and assessing fines are activities that would likely be located within the City's Code Enforcement Unit. This unit does not have the capacity to absorb these duties.

ALTERNATIVE ACTIONS CONSIDERED

City Council could consider creating a fund to reimburse landlords renting to Section 8 or Shelter Plus Care tenants for any damages that exceed the value of the deposit or another incentive program that would encourage landlords to participate in the Section 8 or Shelter Plus Care rental assistance programs.

CONTACT PERSON

Kristen Lee, Manager, Housing & Community Services, HHCS, 981-5427



Office of the Mayor

CONSENT CALENDAR

March 9, 2021

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Susan Wengraf,
Councilmember Sophie Hahn

Subject: HelpBerkeley: Relinquishment of Council Office Budget Funds to General Fund
and Grant of Such Fund

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguín, to HelpBerkeley with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

BACKGROUND

The ongoing COVID-19 pandemic has placed a significant strain on the economy and people's ability to travel – even short distances within the City. According to the Office of Economic Development's dashboard presented in February 2021, thousands of jobs have been lost, including 25% of jobs within the food and beverage sector, and a tripling of unemployment in December 2020 compared to December 2019. Access to food became difficult for those who for health reasons needed to shelter in place and could not risk going to grocery stores. Food bank demand has skyrocketed due to people becoming economically impacted by COVID-19 and volunteer services having to reduce services to comply with necessary Health Orders.

HelpBerkeley was created not long after the first Health Order went into effect in March 2020. The program partners with local restaurants to provide dinner and lunch at a cost of \$10. Volunteers then deliver the food from the restaurant directly to the customer's home. What began as an idea to help neighbors has since expanded, providing over 20,000 meals in 2020 with the help of over 300 volunteers and 450 donors.

During the holiday season, HelpBerkeley provided over 1,000 free meals. Recognizing the needs created by food insecurity, in February 2021 HelpBerkeley launched a regular subsidized and free food program, with the aim of providing six meals per person per week. They are currently working on a fundraising campaign to raise \$600k to ensure the long-term viability of the program.

HelpBerkeley has received recognition for its services, including the Jefferson Award for Public Service and a Mayoral Proclamation from the City of Berkeley. Supporting them

as they expand their program will help in providing food assistance to vulnerable members of the Berkeley community.

FINANCIAL IMPLICATIONS

No General Fund impact; \$250 is available from Mayor Arreguin's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution for Council Expenditures

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, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, HelpBerkeley seeks funds in the amount of \$250 to provide the following public services: providing food assistance to people impacted during the COVID-19 crisis while supporting local restaurants; and

WHEREAS, the provision of such services would fulfill the following municipal public Purpose: helping reduce the spread of COVID-19 among vulnerable populations by providing food deliveries to eligible Berkeley, Albany, and Kensington residents, including those over 60 and those who need to self-isolate; supporting the local economy by coordinating with restaurants for preparation of meals.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per office shall be granted to HelpBerkeley to fund the following services of providing meals to people who have been impacted by COVID-19 and supporting local businesses that have seen a reduction in patronage as a result of COVID-19.



Office of the Mayor

CONSENT CALENDAR
March 9, 2021

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Rigel Robinson,
Councilmember Sophie Hahn

Subject: Declaring the 2021 Cesar Chavez-Dolores Huerta Commemorative Period

RECOMMENDATION

Adopt a Resolution declaring the period of March 21, 2021 to April 10, 2021 as the Cesar Chavez/Dolores Huerta Commemorative Period in the City of Berkeley.

BACKGROUND

Cesar E. Chavez is one of the most influential civil rights and labor leaders in American history, who was an advocate for farm workers rights and social justice for all. As the co-founder of the United Farm Workers union with Dolores Huerta, the two formed an amazing organizing team that successfully organized a union for farm workers and won collective bargaining agreements providing increased wages, benefits and improved working conditions for some of the most oppressed workers in our society. They also became leaders and role models for Latinos throughout the United States. Chavez sadly passed away on April 23, 1993.

In honor of Chavez, in 1996 the park that was previously known as North Waterfront Park was renamed after César E. Chávez.

In 1999, the Berkeley City Council adopted a resolution supporting the designation of March 31 as a state and federal holiday in honor of Cesar Chavez.

In 2000, the State of California made César Chávez' birthday, March 31, a legal holiday for state workers and university students. He is the only labor leader and only Latino to have a state holiday. In 2003, the City of Berkeley created a commemorative period to honor César Chávez (March 20th to April 23).

Since 2003, the Cesar Chavez Commemorative Planning Committee, a group made up of community leaders and groups – including the Berkeley Unified School District, the Ecology Center, and the University of California– have organized events and community service opportunities in the Berkeley community in honor of César Chávez's legacy.

In 2004, the Berkeley City Council unanimously approved the Phase I Design for the Chávez Memorial proposed for César Chávez Park. It is in the form of an ancient solar

calendar and honor four virtues of Chávez: Hope, determination, Courage and tolerance/non-violence.

In 2014, the Chavez Commemoration Committee voted to also honor Dolores Huerta in recognition of her vital partnership with Cesar Chavez, her dedicated commitment to farm workers and in the formation of the UFW, and her current work with the Dolores Huerta Foundation and in political activism and organizing on a variety of social causes. The Committee voted to rename the group the “Chavez/Huerta Commemoration Committee”.

This this year, the Chavez/Huerta Commemorative Committee plans on shortening the commemorative period, beginning on the Spring Equinox on March 21, and ending on April 10, to mark Huerta’s birthday – which the State of California officially made April 10 Dolores Huerta Day in 2018.

FINANCIAL IMPLICATIONS

No financial impact

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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

DECLARING THE PERIOD OF MARCH 21, 2021 TO APRIL 10, 2021 AS THE CESAR CHAVEZ & DOLORES HUERTA COMMEMORATIVE PERIOD IN THE CITY OF BERKELEY

WHEREAS, César Chávez is one of the most influential civil rights and labor leaders in American history, and was an advocate for farm workers rights and social justice for all; and

WHEREAS, as the co-founder of the United Farm Workers union with Dolores Huerta, the two formed an amazing organizing team that successfully created a union for farm workers and won collective bargaining agreements providing increased wages, benefits and improved working conditions for some of the most oppressed workers in our society. They also became leaders and role models for Latinos throughout the United States; and

WHEREAS, César Chávez and Dolores Huerta formed an amazing organizing team who believed that service to others was a calling, a mission and a way of life, not merely an occupation or an occasional act of charity. They both believed that people have an obligation to contribute to their communities and to help those in need. Both were and are committed to the idea that service not only strengthened a community, but that service benefited those individuals who joined together to improve a community; and

WHEREAS, César Chávez sadly passed away on April 23, 1993; and

WHEREAS, in 1996 the City of Berkeley changed the name of Waterfront Park to César Chávez Park; and

WHEREAS, in 1999 the Berkeley City Council passed a resolution supporting State Senator Richard Polanco's efforts to establish a César Chávez state holiday, and also support for a federal César Chávez holiday; and

WHEREAS, in 2000 the State of California declared César Chávez's birthday an official state holiday for state workers (March 31); and

WHEREAS, in 2000 the Berkeley City Council voted on a resolution to support the development of the Chávez Memorial Solar Calendar at César Chávez Park; and

WHEREAS, in 2002 the Berkeley School Board adopted a resolution declaring that César Chávez Day is not currently a BUSD or COB holiday in Berkeley; rather it is an experimental service learning alternative to a school and city holiday; and

WHEREAS, the 2002 Berkeley School Board resolution included the intended commitment to follow an approved implementation plan that strongly priorities the following:

- Distribute information on curricula and resources developed by the State for teachers,
- Encourage teachers, through announcements and publications, to incorporate curricula and resources into their lesson plans,
- Encourage each school to have school-wide activities on or around March 31 to honor the legacy of César Chávez; and

WHEREAS, in 2003 the City of Berkeley along with the César Chávez Commemorative Planning Committee began to celebrate a citywide commemorative period – beginning on the Spring Equinox to mark the beginning of the planting season in agriculture, continuing through April 23rd to mark the anniversary of Chávez’s death; and

WHEREAS, in 2004 the Berkeley City Council unanimously approved the Phase I Design for the Chávez Memorial proposed for César Chávez Park. It is in the form of an ancient solar calendar and honor four virtues of Chávez: Hope, determination, Courage and tolerance/non-violence; and

WHEREAS, in 2014 the Chavez Commemorative Planning Committee voted to also honor Dolores Huerta in recognition of her vital partnership with César Chávez, her dedicated commitment to farm workers, an her activism and organizing on a variety of social causes. The Committee voted to rename the group the Chávez/Huerta Commemorative Committee.

WHEREAS, this year, the Chávez Huerta Commemorative Committee plans on shortening the commemorative period, beginning on the Spring Equinox on March 21, and ending on April 10, to mark Huerta’s birthday – which the State of California officially made April 10 Dolores Huerta Day in 2018.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby declares the period of March 21, 2021 to April 10, 2021 as the “César Chávez & Dolores Huerta Commemorative Period” in the City of Berkeley.

BE IT FURTHER RESOLVED that together the School Board of Directors and City Council members are encouraged to participate in the Chávez/Huerta Commemorative events in the Berkeley community.

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Budget Referral: Funding Rectangular Rapid Flashing Beacons (RRFB) at Sixth Street and Addison Street

RECOMMENDATION

That the City Council refers to the budget process the funding of Rectangular Rapid Flashing Beacons (RRFB) at the south end of the intersection of Sixth Street and Addison Street.

CURRENT SITUATION AND ITS EFFECTS

The intersection of Sixth and Addison, a block away from the heavily trafficked University Avenue and close to the University Ave exit of I-580 & I-80, is a reliably busy and often dangerous intersection in an otherwise residential area in West Berkeley. With a pedestrian crosswalk, a traffic light on one side at Sixth and University, and another traffic light on the other side at Sixth and Allston Way, Sixth and Addison is nevertheless characterized by the community around it as a hazardous intersection where drivers regularly violate the 25 m.p.h. speed limit, ignore the pedestrian right-of-way, and even crash their vehicles with or without injuries.

According to the City of Berkeley's Vision Zero Action Plan, a pedestrian was severely injured at the intersection of Sixth and Addison between 2008 and 2018. Unsurprising to the residents of the area, the Vision Zero Action Plan identifies Sixth Street, Addison Street, and the close by University Avenue as "High-Injury Streets", which are defined by having "the most injuries and fatalities" in Berkeley.¹ This intersection is a ticking time bomb for the residents of this area, many of whom are children and the elderly, and must be rectified before tragedy strikes. The dangers this intersection present did not form in a vacuum, but is rather a result of decades of infrastructural disinvestment. This is why the Pedestrian Plan, Vision Zero, and the Bicycle Plan consider this area a "Historically Underserved Area" and target it for prioritized improvements.² The addition of RRFB to this intersection would be an important step for Berkeley's Vision Zero and

¹https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

²https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%202020%20Pedestrian%20Plan_Draft_2020-10.pdf

Pedestrian Plan, take a step forward in the righting of historic wrongs, and very likely save lives.

FISCAL IMPACTS

Staff time and an estimated \$25,000-\$40,000³ for the RFFB pair.

ACTIONS/ALTERNATIVES CONSIDERED

Rather than RRFB, the City Council could pursue two new STOP signs at the north and south ends of the intersection. The costs for this alternative would include staff time and an estimated \$1,200 for 2 STOP signs (\$600 per sign).⁴

ENVIRONMENTAL IMPACTS

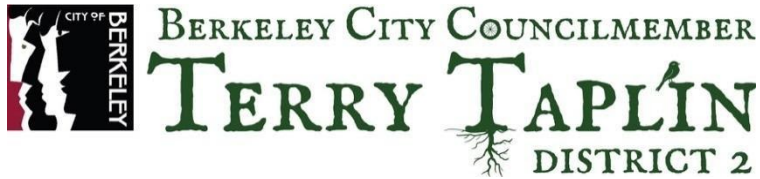
No environmental sustainability impact. Slower traffic.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

³https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%202020%20Pedestrian%20Plan_Draft_2020-10.pdf

⁴https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%202020%20Pedestrian%20Plan_Draft_2020-10.pdf

CONSENT CALENDAR

March 9th, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author) and Mayor Jesse Arreguín (Co-Sponsor)

Subject: Budget Referral: George Florence Park Traffic Calming (Tenth Street between University Avenue and Allston Way)

RECOMMENDATION

That the City Council refers to the budget process the funding of traffic calming measures on Tenth Street between University Avenue and Allston Way including but not limited to:

1. The addition of "SLOW CHILDREN AT PLAY" signs approaching George Florence Park and the West Berkeley YMCA
2. Two speed tables on Tenth Street between Addison and Allston approaching George Florence Park, another speed table in front of the West Berkeley YMCA, and another at the south end of the intersection of Tenth and Allston
3. Repainting of crosswalks along this section of Tenth Street
4. Bulb outs at each corner of Tenth Street and Addison Street

BACKGROUND

The residential area encompassed by Tenth Street between University Avenue and Allston Way is home to dozens of residents, the West Berkeley YMCA, Rosa Parks Elementary School, and George Florence Park, making it a heavily trafficked and highly desired stretch of West Berkeley. Despite the 15 m.p.h speed limit, residents and pedestrians report constant violation of the speed limit and stop signs, disregard for pedestrians, and numerous close calls when families were almost struck by vehicles. This area has seen more than just close calls in the past. According to the City of Berkeley's Vision Zero Action Plan, a bicyclist was severely injured at the intersection of Tenth and Addison since 2008 and the report identifies Addison Street as a "High Injury Street"¹. In addition, the slow traffic on Ninth Street under the Healthy Streets program as well as regular construction along University Avenue and San Pablo Avenue diverts a significant amount of traffic onto Tenth Street.

¹https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

The City of Berkeley's Traffic Calming Program provides for a method by which residents can request for physical traffic calming measures on residential streets². Pursuant to this program, residents of the area around Tenth Street between University Avenue and Allston Way completed their request in writing using the City's Neighborhood Request for Traffic Calming Study form, collected and submitted petition signatures as requested by the Transportation Division of the Public Works Department, and awaited staff collection of speed and traffic volume data as the next step of the program.

During the COVID-19 pandemic, the City of Berkeley has placed the Traffic Calming Program on hold in order to deploy and maintain the Healthy Streets network and ensure that pedestrians and bicyclists can comply with social distancing guidelines while travelling. This hold on the Traffic Calming Program interrupted the process residents of the Tenth Street area were undertaking to request traffic calming measures on their street. The prioritization of pedestrian and cyclist infrastructure that ensures maximum safety from the COVID-19 virus is important, but has not decreased the need for traffic calming measures on Tenth Street. Even as use of the West Berkeley YMCA and Rosa Parks Elementary School has declined during the pandemic, the traffic threat to residents and users of George Florence Park, which has become more desirable during the pandemic, is still in need of prioritized remediation.

RATIONALE FOR RECOMMENDATION

On top of supporting the safety of residents along Tenth Street, traffic calming measures are necessary in order to ensure the safety of the children, families, and employees who use and work at the West Berkeley YMCA, Rosa Parks Elementary School, and George Florence Park. Upon the eventual end of the stay-at-home order as mass-vaccinations bring Berkeley out of the COVID-19 pandemic, Tenth Street should have traffic calming measures already present so that the sudden influx of traffic does not endanger the children, families, and workers that make up the pedestrians on this street.

Speed tables, improved signage, repainting of crosswalks, and bulb outs is the least that the City can do to ensure that pedestrians are safe now and in the future when the end of the pandemic brings a return to high traffic levels. Should the residents of this area wait for the hold on the Traffic Calming Program to end after the pandemic, there will likely be months of increased traffic endangering pedestrians without any remediation.

Taking prioritized and proactive action to make this area safe for the community that regularly walks and bikes it is not only in line with Berkeley's Vision Zero, Pedestrian Plan, and Bicycle Plan, it is specifically called on by them:

² https://www.cityofberkeley.info/Public_Works/Transportation/Traffic_Calming_in_Berkeley.aspx

- As a High-Injury Street, Vision Zero calls for Addison Street to receive proactive capital-intensive building and “quick-build safety projects”³.
- As a “Historically Underserved Area”, the Pedestrian Plan, Vision Zero, and the Bicycle Plan all target this area for the rectification of historic underinvestment⁴.
- And as a “Tier 1 Priority Project” and part of the “Bicycle Boulevard Network”, the Bicycle Plan envisions Addison Street as a street “where bicycling is safe, comfortable, and convenient for people of all ages and abilities” and where “traffic calming treatments such as traffic circles, diverters, and chicanes, sometimes in place of existing stop signs, can help prioritize bicycle through-travel and discourage cut-through motor vehicle traffic”⁵.

ENVIRONMENTAL IMPACTS

No environmental sustainability impact. Slower traffic.

FISCAL IMPACTS

Staff time and costs associated with the traffic calming measures:

1. Staff time and sign purchase of “SLOW CHILDREN AT PLAY SIGNS”
2. Estimated \$60,000 for four speed tables⁶
3. Staff time for repainting crosswalks
4. Estimated \$160,000 for bulb outs at Tenth and Addison⁷

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

ATTACHMENTS

1. Community Traffic Calming Program petition
2. Letter from Rosa Parks Elementary School
3. Letter from Nia House Learning Center
4. Letter from West Berkeley YMCA

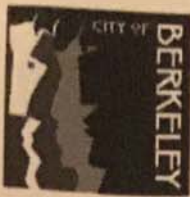
³https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

⁴https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%202020%20Pedestrian%20Plan_Draft_2020-10.pdf

⁵https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf

⁶ https://www.cityofberkeley.info/Public_Works/Transportation/Traffic_Calming_in_Berkeley.aspx

⁷ https://www.cityofberkeley.info/Public_Works/Transportation/Traffic_Calming_in_Berkeley.aspx

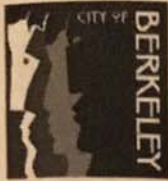


We, the residents of 10th Street and around George Fernald hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

Name	Signature	Address	Telephone
• Mario Moreno	<i>Mario Moreno</i>	1029 Addison St. Berkeley Ca. 94710	(510) 776-6298
NA • Marcel Pasillas	<i>Marcel Pasillas</i>	1033 Addison St Berkeley CA	(510) 693-7305
• Tom Paulson	<i>Tom Paulson</i>	2112 10 th St A	(510) 705-1859
• SANDY SIMS	<i>Sandy Sims</i>	2114 10 th St	(510) 843-2213
• Marcy Rein	<i>marcy rein</i>	2116 10 th St. B	510.847.4443
• Pam Mitchell	<i>Pam Mitchell</i>	2116 10 th St Apt A	510 393 3647
• Rich Meyer	<i>Rich Meyer</i>	2124 10 th St	510-847-5506
• Eddie Mae Eddings	<i>Eddie Mae Eddings</i>	2122-10 th St	510.843 7266
• Albert Brown	<i>Albert Brown</i>	2120 10 th St	415-763-7766
• Joshua Paul	<i>Joshua Paul</i>	1019 ALLSTON WAY	510-325-1014
• Julia Goodman	<i>Julia Goodman</i>	2021 10 th St	404 644 3890
• Shelley McHugh	<i>Shelley McHugh</i>	2012-10 th St	510 207 738
• Procio Martinez	<i>Procio Martinez</i>	2116 10 th St C	510 1860 9480
• Murray Gerson	<i>Murray Gerson</i>	1020 Addison St	510 712 0741
• Susan M. Blair	<i>Susan M. Blair</i>	2016 10 th St	510 548 3346
• Sarah Roggero	<i>Sarah Roggero</i>	1023 Allston Way	415-694-1278
• Jing Ma	<i>Jing Ma</i>	2021 tenth, Berkeley	510 874 4195
• Tyra Herr	<i>Tyra Herr</i>	1030 Addison	510-499-8842

Please submit completed forms to:

Jesse Peoples
 City of Berkeley
 Public Works Transportation Division
 1947 Center Street, 4th Floor
 Berkeley, CA 94704



We, the residents of 10th Street and around George Flacner Park, hereby request that our location be included in the City of Berkeley Traffic Calming Process in accordance with City Council Resolution No. 64,732-N.S. We have read a copy of the original Neighborhood Request for Traffic Calming Study circulated with this petition and agree with the contents.

Name	Signature	Address	Telephone
Amy Twite	<i>[Signature]</i>	2020 10 th St	913-461-6204
AMIT PRICE PATEL	<i>[Signature]</i>	1019 ADDISON ST.	510-204-9260
Ilah Jarvis	<i>[Signature]</i>	1015 Addison	(510) 499-8358
Maureen Clearfield	<i>[Signature]</i>	2125 10th St B	(510) 717-5579
Aisha Gorson	<i>[Signature]</i>	1020 Addison St. Bk	(520) 712-0743
Jordan Bentley	<i>[Signature]</i>	2113 Tenth St	(925) 231-5926
Chris Horgan	<i>[Signature]</i>	1033 Allston Way	415-744-3786
Rosa Perez	<i>[Signature]</i>	1036A 11th St	510-684-0104
Rebecca Falyone	<i>[Signature]</i>	1027 Allston Way	510-499-8194
Deborah Marks	<i>[Signature]</i>	2014 10 th St Berkeley	510 981-1188
Jorge Calderon	<i>[Signature]</i>	2010 10th St Berkeley	510 725 2700
Allyson Gaddard	<i>[Signature]</i>	2010 10th st Berkeley	(800) 785-6312
Julia Brady	<i>[Signature]</i>	1028 addison st	510-292-8856
Eunhe Kim	<i>[Signature]</i>	2204 10th St	510-548-9324
Margaret Fauchier	<i>[Signature]</i>	2000 10 th St.	510 388 8414
Jim Swift	<i>[Signature]</i>	2113 10 th St.	509-933-7361
Javier Molina	<i>[Signature]</i>	2113 10 th St Apt 3	(909) 258-9553
Rebekah Adeyemo	<i>[Signature]</i>	2113 10 th St Apt	7(909) 851-8332

NA
NA
EBECCA
FAZAR

different units
different units

Please submit completed forms to:

Jesse Peoples
City of Berkeley
Public Works Transportation Division
1947 Center Street, 4th Floor
Berkeley, CA 94704
jpeoples@cityofberkeley.info

ROSA
PARKS
SCHOOL



March 8, 2020

To whom it may concern;

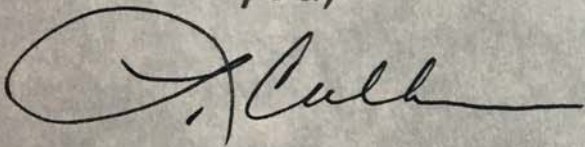
We are very concerned regarding traffic safety in the surrounding area of our school, Rosa Parks Elementary, 920 Allston Way, Berkeley and our neighborhood. There are many Students, Parents and Guardians who walk, ride a bike, scooter, skateboard etc. and drive to school before and after school. Our school population is 470 students, plus staff and parents. We have a small drop off which is always congested, along with through flowing traffic cutting through from University Ave.

We have witnessed too many close calls with cars speeding through the neighborhood and not abiding by the 15 mph speed limit. Not to mention how the cars totally disregard the stops signs; running through and not coming to a complete stop. We do have 2 crossings guards, one located in front of school (Allston & 8th St.) and just recently this year Berkeley Police Dept. Traffic had assigned us a second crossing guard who is located on (Allston & 9th St.)

We are asking for more signage, speed bumps and repainted cross walks.

We have had many families almost hit by cars trying to cross the street. We have trucks of all sizes not abiding by the traffic signs and it's just a matter of time until someone is hurt or a fatality.

Thank you,

A handwritten signature in black ink, appearing to read "Lisa Cullen". The signature is fluid and cursive, with a large initial "L" and "C".

Rosa Parks School

Lisa Cullen/ School Service Asst.

Rosa Parks Elementary

920 Allston Way, Berkeley, 94710

(510) 644-8812



Nia House Learning Center

2234 9th Street
Berkeley, California 94710

March 1, 2020

Jesse Peoples, PE
Assistant Traffic Engineer
City of Berkeley, Public Works – Transportation Division
1947 Center Street, 4th Floor
Berkeley, CA 94704

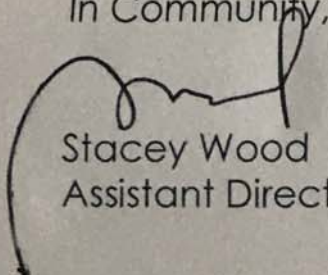
Dear Jesse Peoples,

The Nia House Learning Center community is very excited to see the new changes at George Florence Park! Nia House has a long standing history of taking summer time walks over to this park.

Nia House is a community comprised of children 18 months through six years old. We were so grateful when speed bumps were put along 9th Street, helping to ensure the safety of our children, families, and bikers in the community.

The improvements at George Florence Park will certainly attract more families and children to the area. I write this letter in hopes that the City of Berkeley will keep children safe when visiting the George Florence Park by ensuring a safe flow of traffic along 10th Street. Nia House is in support of the effort to place speed bumps along 10th Street. We are thankful for your consideration and commitment to children's (& all people's) safety.

In Community,



Stacey Wood
Assistant Director, Nia House Learning Center



March 6, 2020

To: Jesse Peoples-City of Berkeley
From: Melanie Mueller-YMCA of the East Bay-Early Childhood Impact
RE: Traffic on Tenth Street-George Florence Park

On behalf of the staff and families at the West Y center on Tenth Street and University Avenue, I am writing a letter of concern regarding the traffic in front of our building and on the next block where George Florence Park is located.

The West Y center serves children from age 12 months through 5 years. On a daily basis, staff and families experience dangers and hazards due to speeding vehicles, and lack of adherence to traffic and parking rules. The street is very narrow and is quite busy. In addition to parking being a challenge due to resident and school needs, there is also a steady flow of delivery trucks and service/emergency vehicles using the street on a daily basis. Even when the street is temporarily blocked by vehicles, it does not seem to deter speeding traffic coming around the corner from University avenue.

We would like to urge the city to consider additional measures to decrease speeding vehicles and increase safety such as speed bumps and more frequent monitoring by traffic enforcement. There is a great concern for the safety of our young children, as just getting in and out of the car and getting into the school can be a challenge with little ones.

When George Florence Park re-opens, there will be an increase in young children using the space. This will create additional safety concerns in the area. This is a good time to make changes while the park is not in use.

Thank you for your consideration. I can be reached at (510) 809-2261 or mmueller@ymcaeastbay.org.

Sincerely,

Melanie Mueller
Executive Director

CONSENT CALENDAR

DATE: 3/9/2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Mayor Jesse Arreguin,
Councilmember Susan Wengraf, Councilmember Sophie Hahn

Subject: Resolution Supporting HR 25, Calling for Federal Investigation on Seditious
at U.S. Capitol and Expulsion of Complicit Members of Congress

RECOMMENDATION

Adopt a resolution condemning the violent attack on the U.S. Capitol on January 6, 2021 by a seditious mob intent on preventing the certification of the 2020 Presidential Election, in support of House Resolution 25, calling for a federal investigation on the attack and the expulsion of Members of Congress found complicit in incitement of insurrection.

BACKGROUND

On January 6, 2021, U.S. President Donald J. Trump rallied armed supporters and instructed them to storm the U.S. Capitol, where the House and Senate would be certifying the election of the next President, Joseph R. Biden. Encouraged by other Republicans in Congress, the violent mob rioted in the Capitol with weapons, intending to murder Congressmembers and stop the certification. By the end of the attack, five were dead, including one Capitol Police officer¹.

The following week, the U.S. House of Representatives impeached President Trump for "incitement of insurrection." Additionally, Rep. Cori Bush (D-Mo.) has introduced House Resolution 25, "Directing the Committee on Ethics to investigate, and issue a report on, whether any and all actions taken by Members of the 117th Congress who sought to overturn the 2020 Presidential election violated their oath of office to uphold the Constitution or the Rules of the House of Representatives, and should face sanction, including removal from the House of Representatives."

¹ Healy, Jack. "These Are the 5 People Who Died in the Capitol Riot." *New York Times*. Jan 11, 2021.

RATIONALE FOR RECOMMENDATION

The City of Berkeley ultimately depends on a stable federal government in order to provide services for its residents, establish rule of law, and maintain civil order. Removing members of Congress who violated their oath to uphold the Constitution by participating in seditious acts is essential for preserving the legitimacy and functionality of all levels of government in the United States.

ENVIRONMENTAL IMPACTS

None.

FISCAL IMPACTS

None.

CONTACT

Councilmember Terry Taplin, (510) 981-7120

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution
2. House Resolution 25

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

CONDEMNING VIOLENT ATTACK ON U.S. CAPITOL, ENDORSING HOUSE RESOLUTION 25 BY REP. CORI BUSH (D-MO) TO INVESTIGATE MEMBERS OF CONGRESS COMPLICIT IN INCITEMENT OF INSURRECTION

WHEREAS, President Donald J. Trump incited a violent mob to attack the U.S. Capitol on January 6, 2021, which left five people dead, including a Capitol Police officer; and,

WHEREAS, the U.S. House of Representatives passed articles of impeachment against President Trump on January 13, 2021; and,

WHEREAS, over 140 Republican members of Congress supported President Trump's baseless, evidence-free allegations of "voter fraud" by objecting to the certification of electors in key states won by President-elect Joseph R. Biden; and,

WHEREAS, the 14th Amendment to the Constitution of the United States reads in part, "No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."; and,

WHEREAS, the stability of the federal government, and its elected representatives' faithful observance of their oaths to uphold the Constitution, are essential to the well-being of Berkeley residents;

THEREFORE, BE IT RESOLVED, that the City of Berkeley categorically condemns the violent, seditious attack on the U.S. Capitol;

BE IT FURTHER RESOLVED, that the City of Berkeley calls upon duly elected Rep. Barbara Lee (D-CA) and the U.S. House of Representatives to pass House Resolution 25, directing the Committee on Ethics to investigate the involvement of over 140 members of Congress in incitement to insurrection.

117TH CONGRESS
1ST SESSION

H. RES. 25

Directing the Committee on Ethics to investigate, and issue a report on, whether any and all actions taken by Members of the 117th Congress who sought to overturn the 2020 Presidential election violated their oath of office to uphold the Constitution or the Rules of the House of Representatives, and should face sanction, including removal from the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2021

Ms. BUSH (for herself, Ms. PRESSLEY, Ms. OCASIO-CORTEZ, Mr. BOWMAN, Ms. OMAR, Ms. TLAIB, Mr. JONES, Mr. PASCRELL, Ms. ADAMS, Ms. BARRAGÁN, Ms. CLARKE of New York, Ms. CHU, Mr. CICILLINE, Mr. COOPER, Mr. CONNOLLY, Mr. DANNY K. DAVIS of Illinois, Mrs. DEMINGS, Mr. DESAULNIER, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. EVANS, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. HASTINGS, Mr. HORSFORD, Mr. HUFFMAN, Mr. JOHNSON of Georgia, Mrs. KIRKPATRICK, Ms. LEE of California, Mr. LIEU, Mr. MCNERNEY, Ms. MOORE of Wisconsin, Ms. NEWMAN, Mr. PAYNE, Ms. PINGREE, Mr. POCAN, Mr. RUSH, Ms. SCHA-KOWSKY, Ms. SPEIER, Mr. SIRES, Mr. TAKANO, Mr. TORRES of New York, Ms. VELÁZQUEZ, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. VARGAS, Ms. JACOBS of California, and Mr. KAHELE) submitted the following resolution; which was referred to the Committee on Rules, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

RESOLUTION

Directing the Committee on Ethics to investigate, and issue a report on, whether any and all actions taken by Members of the 117th Congress who sought to overturn the

2020 Presidential election violated their oath of office to uphold the Constitution or the Rules of the House of Representatives, and should face sanction, including removal from the House of Representatives.

Whereas nearly 160,000,000 people, or two-thirds of the United States voting population, voted in the November 2020, presidential election, electing President-elect Joseph R. Biden Jr. and Vice President-elect Kamala Harris, with the highest turnout in over 120 years;

Whereas despite losing the popular vote by more than 7,000,000 votes, Donald J. Trump, together with Republican Members of Congress, have commenced a near daily assault on the legitimacy of the 2020 election that includes filing frivolous lawsuits seeking to have election results invalidated and the outcome overturned, and making unsubstantiated claims of systematic election and voter fraud;

Whereas in a politically motivated and last-ditch effort to overthrow the election, over 140 Members of Congress, led by Representative Mo Brooks of Alabama, Senator Josh Hawley of Missouri, and Senator Ted Cruz of Texas, have taken unprecedented steps to defy the will of the American people who overwhelmingly voted for President-elect Joe Biden and Vice President-elect Kamala Harris by voting against the certification of the votes of the Electoral College;

Whereas the decision by Republican Members of Congress to join efforts to invalidate votes in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin suppresses the votes of millions of people, including Black, Brown, and Indigenous people who turned out in historic numbers to deliver

this victory to President-elect Joe Biden and Vice President-elect Kamala Harris;

Whereas turnout of Black, Brown, and Indigenous voters was astounding considering the extraordinary COVID–19 pandemic that has stunted organizing in communities across the country, along with exhaustive delays in poll centers, mass closure of polling precincts in predominantly Black, Brown, and Indigenous communities, and deliberate efforts to discount mail-in ballots and spread misinformation on vote by mail;

Whereas refusing to concede the outcome of the 2020 Presidential election and raising baseless allegations of fraud in States in which Black, Brown, and Indigenous people have been instrumental to the election outcome suggests racial animus and a continuation of efforts by Republican Members of Congress to disenfranchise Black, Brown, and Indigenous voters;

Whereas senseless attacks on the results of the 2020 Presidential election that seek to question the credibility of and will of Black, Brown, and Indigenous voters betrays the text and spirit of the Constitution of the United States, which each Member swears to support and defend, and violates the Rules of the House of Representatives, which explicitly forbid Members from committing unbecoming acts that reflect poorly on our chamber;

Whereas section 3 of the Fourteenth Amendment to the Constitution posits that no individual can serve in the House of Representatives who has engaged in disloyalty or sedition against the United States, stating, “No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state,

who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.”;

Whereas clause 1 of rule XXIII of the Rules of the House of Representatives states, “A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.”;

Whereas each Member of the House of Representatives must be dedicated to the United States, the Constitution of the United States, the Rules of the House of Representatives, and upholding the oath of office;

Whereas efforts by Republican Members of Congress to denounce the votes of millions of Americans is a continuation of Jim-Crow era measures to suppress Black, Brown, and Indigenous voters;

Whereas House Republicans have refused to vote in support of voter protections aimed at supporting disenfranchised Black, Brown, and Indigenous voters, including H.R. 1, the For the People Act and H.R. 4, the John Lewis Voting Rights Advancement Act, in the 116th Congress, and the Republican Senate majority has been a legislative graveyard for these critical efforts to empower and expand voting rights for the American people;

Whereas the House must rebuke the relentless assault on foundational democratic principles at the heart of our representative democracy and implement measures to

protect the will of American voters by abolishing the electoral college, providing resources and funding for poll centers in predominantly Black, Brown, and Indigenous communities, restoring key pieces to protect voters that were gutted in the *Shelby v. Holder* Supreme Court decision, and overturning Federal felony disenfranchisement laws; and

Whereas efforts by Members of Congress, regardless of party, that seek to undermine our democracy, disenfranchise Black, Brown, and Indigenous voters, erode faith in the Federal Government, and attack the popular will of the American public without merit must be condemned, and those Members should be held accountable for their actions: Now, therefore, be it

1 *Resolved*, That—

2 (1) the Committee on Ethics shall investigate,
3 and issue a report on, whether any and all actions
4 taken by Members of the 117th Congress who
5 sought to overturn the 2020 Presidential election
6 violated their oath of office to uphold the Constitu-
7 tion or the Rules of the House of Representatives,
8 and should face sanction, including removal from the
9 House of Representatives; and

10 (2) the House of Representatives condemns all
11 targeted and malicious efforts to disenfranchise
12 Black, Brown, and Indigenous voters.

○

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author), Councilmember Rigel Robinson, Councilmember Ben Bartlett, and Mayor Jesse Arreguín (Co-Sponsors)

Subject: Support for SB 260

RECOMMENDATION

Send a letter of endorsement for SB 260, the Climate Corporate Accountability Act, to Senator Scott Wiener and the Senate Standing Committee on Environmental Quality, and urge the CA Senate to lead the nation in pursuing real emissions reductions and holding corporations accountable.

BACKGROUND

As Californians, we are no strangers to climate disaster. In recent years, California has suffered from record-breaking drought, loss of snowpack, rising sea levels, and extreme temperature fluctuation. Just in the past year, we saw five of our largest wildfires on record, and we can only expect these patterns to worsen.

The science behind climate change is clear – excessive pollution of greenhouse gases (GHG) is burning our atmosphere and destroying our planet. It is clear to many of us that corporations are largely responsible for this pollution, but we do not have the hard numbers to prove this. Based on estimates, we know that 100 corporations have been responsible for roughly 71% of all GHG emissions since 1998, but without knowing which corporations, how much they pollute, and whether they are increasing or decreasing pollution, we are unable to properly regulate, reduce, and restrict the emissions that are killing our planet.

SB 260 aims to solve this problem. SB 260 will require corporations doing business in California to report all of their emissions – including emissions produced all the way down their supply chain. Corporations often promise to publicize and decrease their emissions, but rarely follow through. As the first bill of its kind nationally, SB 260 will establish a right for the public to know who is polluting our communal environment, and if they are working to decrease their emissions. As residents of a state that is often at

the epicenter of climate change catastrophe, we have a responsibility to take a bold stand in holding these perpetrators accountable.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

ATTACHMENTS

1. Letter

The Honorable Scott Wiener
Senator, District 11
State Capitol, Room 5100
Sacramento, CA 95814-4900

Re: SB 260 (Wiener) - The Climate Corporate Accountability Act - SUPPORT

Dear Senator Wiener,

The Berkeley City Council expresses its support for Senate Bill 260, the Climate Corporate Accountability Act, which will require all US-based businesses with over \$1 billion in gross annual revenue, who do business in California, to report their greenhouse gas emissions and set science-based emissions reduction targets in coordination with the Air Resources Board.

Climate catastrophes are already beginning to ravage landscapes across the globe and California is no different. In 2020 alone, California saw five of its twenty largest wildfires on record and this trend is only projected to get worse. Further, while wildfires have certainly been the face of California's climate struggles, the state is no stranger to drought and loss of snowpack, sea level rise, diminishing agricultural return in certain areas, and innumerable other impacts that often compound on one another. All of this is due to excessive pollution of greenhouse gases (GHG) into our atmosphere. What may be worse still – we know many of the common culprits of this pollution are corporations, but we simply don't have the data available to prove this or force change. Generally speaking, we know 100 corporations have been responsible for roughly 71% of all GHG emissions since 1998, but without knowing which corporations, how much they pollute, and whether they are increasing or decreasing pollution, we are unable to properly regulate, reduce, and restrict the emissions that are killing our planet.

SB 260 solves this issue by requiring reporting of not only direct emissions from these corporations, but any emissions produced from their supply chain as well. This level of transparency is not only a national first, but establishes a right for the public to know who is polluting our communal environment, how much, and if they are decreasing their emissions – something that is often promised by corporations but rarely verified.

The Council of the City of Berkeley strongly supports SB 260 and hopes that the Environmental Quality Committee and Legislature at large will take the opportunity to lead the nation in corporate emissions accountability. This bill is a crucial step to pursuing real emissions reductions and ensuring corporations cannot get away with greenwashing while they profit off of the destruction of our planet.

Sincerely,

The Council of the City of Berkeley

CC: Standing Committee on Environmental Quality

Senator Nancy Skinner

Assemblymember Buffy Wicks

Assemblymember David Chiu

Assemblymember Phil Ting

Assemblymember Rob Bonta



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila (Author)

Subject: Support Vision 2025 for Sustainable for Sustainable Food Policies

RECOMMENDATION

1. Adopt a Resolution Supporting Vision 2025 for Sustainable Food Policies
2. Join [San Francisco](#), [Chicago](#) and [Austin](#) in signing the [Milan Urban Food Policy Pact \(MUFPP\)](#) which includes forming an advisory body on sustainable food policies.
3. Support adoption of a Climate-Friendly Food Purchasing Policy as described by [Friends of the Earth](#) to replace 50% of the City's annual animal-based food procurement with plant-based food.
4. Short Term Referral to the City Manager to:
 - a. Track the amount of animal-based food replaced with plant-based food
 - b. Use Friends of the Earth's Municipal Guide to Climate-Friendly Food Purchasing for the procurement of plant-based food.

POLICY COMMITTEE RECOMMENDATION

On February 8, 2021, the Health, Life Enrichment, Equity and Community Committee moved the item to Council with a qualified positive recommendation to take the following action:

1. Express support for the Milan Urban Food Policy Pact (MUFPP)
2. Refer aspects of the original item to the Community Health Commission (or future commission addressing public health) to take the following actions: a) Consult with appropriate City staff to evaluate the feasibility of altering food sources within the City's existing food service contracts - with a specific focus on the feasibility of replacing meat and dairy-based offerings with plant-based options - given contractor procurement practices and any federal or state nutrition requirements for seniors and other affected populations; and (b) Solicit input from potentially affected communities, particularly seniors, for their feedback on shifting to more plant-based foods through a short survey or other means; and
3. Adopt the resolution as amended. Vote: All Ayes.

RATIONALE FOR RECOMMENDATION

In June, 2018 the City of Berkeley unanimously passed a Climate Emergency Declaration, then in September, 2018 passed the Resolution Establishing Green Monday. Berkeley should understand the impact of our food sector on the environment, sustainability of natural resources, health, and social equity. By adopting Vision 2025 for Sustainable Food Policies, Berkeley will

sign MUFPP and join C40 Cities in developing sustainable food systems through forming an advisory body with local activists, organizations, and business owners. Berkeley would join the C40 North America cities, Austin, Boston, Chicago, Houston, Los Angeles, Miami, Montreal, New Orleans, New York, Philadelphia, Phoenix, Portland, San Francisco, Toronto, Vancouver, and Washington DC and more cities may follow suit. Adopting the Vision 2025, the City of Berkeley would be committed to making food purchasing decisions that protect animal welfare, environmental sustainability, and provide healthy food options. By adopting the proposed Vision, Berkeley would also pass Climate-Friendly Food Purchasing Policy and commit to replacing 50% of annual animal-based food purchasing with plant-based food.

OUTCOMES AND EVALUATIONS:

Berkeley City Council would receive policy recommendations from the established advisory body for increasing climate-friendly, healthy and sustainable plant-based food options. The City Council should evaluate and update contracts with food vendors.

BACKGROUND

According to MUFPP, our food choices are directly linked to our environmental, health and social wellbeing. What we put on our plates every day either contributes to, or harms our physical wellbeing, our local economy, and our global resources. Approximately, 80% of the U.S. population lives in urban areas.¹ This means that urban cities are responsible for a significant portion of the national food consumption, and with it, the environmental and social impacts of those food choices. As a result, the C40 cities like San Francisco, Chicago and Austin have signed MUFPP agreements in order to develop environment-friendly, healthy and socially equitable food policies.² The City of Berkeley has wisely adopted Green Monday and the Good Food Purchasing Program (GFPP). But there is certainly a need to develop broader policies for significant improvement. Vision 2025 is designed to achieve this significant change over the next five years without causing a financial burden to the City of Berkeley. In fact, could result in overall cost savings.

By adopting Vision 2025, the City would be agreeing to sign MUFPP developed with the support of international organizations including the United Nations Farm and Agriculture Organization (UN FAO). The MUFPP suggests forming an advisory committee that would include local activists, organizations, business owners and other stakeholders to propose sustainable food policies. The second action item under the resolution is to pass a Climate-Friendly Food Purchasing policy that requires the City to replace 50% of animal-based food procurement with plant-based food.

Globally, several agencies are reporting the devastating impacts of a meat- and dairy-based diet for our physical and environmental health. The UN FAO reports that animal agriculture is responsible for emitting 18% of our planet's total greenhouse gas (GHG).³ These numbers are larger than the total GHG emissions from fossil fuels burned by the global transportation sector. The agriculture sector is expected to contribute 70% of total allowable GHG emissions by 2050, risking the Paris Agreement.⁶ Livestock and poultry account for more than 60% of the global

agricultural GHG emissions and, therefore, addressing the emissions from animal agriculture is crucial in order to meet the Paris Agreement.^{3,6} According to the consumption-based GHG inventory described in Berkeley's Climate Action Plan, the food sector contributes more than 7 metric tons of CO₂ Eq. per household.⁵ Most of these emissions are from animal products like meat and dairy.⁵ The GHG emissions from meat consumption alone is more than the combined natural gas emissions in the City of Berkeley.

The negative impact of producing meat and dairy goes beyond global warming. In a drought-affected state, the average Californian consumes 1,500 gallons of water, and 50% of it is associated with meat and dairy consumption.⁷ According to UN FAO, we have enough cropland to feed 9 billion people by 2050 if 40% of all crops produced today for livestock is directly used for human consumption.⁸ Globally, animal agriculture is the leading cause of tropical deforestation and it has massive impacts on climate change and biodiversity.^{9,10}

The destruction of forests and biodiversity forces wildlife to live closer to human populations, risking the spread of infectious diseases like Ebola and COVID-19.¹¹ Additionally, the production of meat and dairy puts us in close contact with domesticated animals resulting in the spillover of zoonotic pathogens like the influenza virus. The consumption of meat and dairy is associated with an increased risk of chronic illnesses like diabetes, heart disease, and cancer.^{12,13} This type of diet significantly increases our healthcare costs, disproportionately jeopardizing the well-being of low-income families. The growing livestock biomass within confined spaces demands the increased use of antibiotics. According to the Center for Disease Control and Prevention (CDC), the excessive use of antibiotics serves as a breeding ground for antibiotic-resistant bacteria like Salmonella¹⁴. As a result, we are facing an uphill battle of antibiotic resistance. Recently, the World Health Organization (WHO) declared Antibiotic Awareness Week in November.

According to multiple reports, the single solution to achieve environmental sustainability within the food sector is by reducing the overall number of livestock and increasing our plant-based food options. The University of Oxford's most comprehensive meta-analysis reports that 83% of world farmland is used for livestock production to provide only 18% and 37% of our calories and protein, respectively.⁴ The replacement of animal products with plant based food can free-up farmland that could remove additional 8.1 billion metric tons of CO₂ Eq. every year for next 100 years.⁴ As a result, the 50% replacement of animal products with plant-based food can reduce 20% of total anthropogenic GHG emissions across all sectors.⁴ According to World Resource Institute, the almost 50% reduction of animal products in the average U.S. diet can reduce more than 40% of the country's agriculture GHG emission and land use.⁶

The City of Berkeley purchases almost \$5 million worth of food for places like senior centers, the Police Department's jail facility, public meetings, and events. As a result, Berkeley's purchasing power has a huge role to play in increasing plant-based food options. The municipal guide from Friends of the Earth (FOE) on Climate-Friendly Food Purchasing is an effective tool for increasing plant-based food options. It provides a stepwise process for municipalities to meet their target of increasing plant-based food options. Berkeley's potential to provide sustainable

food is beyond the city's purchasing power. It includes, but is not limited to City parks, public schools, restaurants, and other food businesses.

Berkeley would join a good company by adopting Vision 2025. Recently, U.S. legislators have identified the importance of increasing plant-based food and milk options across various cities, states, as well as in Congress. Senator Cory Booker has introduced the Farm System Reform Act to completely phase out of Concentrated Animal Feeding Operations (CAFO). Senator Elizabeth Warren and Bernie Sanders are co-sponsoring the bill, and Representative Ro Khanna has introduced a companion bill in the House. California Assembly Bill 479 encourages public schools to provide healthy, climate-friendly (plant-based) food and milk options. This active bill has been well-received by both the State Assembly and Senate. Los Angeles and other C40 Cities have committed to establish a planetary diet of consuming only 300 grams of meat per person in a week. New York City Council recently declared a plan to phase out processed meat and to cut down its beef purchasing by 50% in city facilities. The decision was part of the City's Green New Deal for addressing global warming. More locally, Oakland Unified School District decreased carbon footprint by 14%, water consumption by 6% and saved \$42,000 through increasing fruits, vegetables and legumes purchase and reducing meat and dairy consumption by 30%.¹⁵ This low-carbon commitment by one of California's largest school districts has shown the potential for protecting the environment and natural resources through healthy and cost-effective plant-based food options.

REVIEW EXISTING PROGRAMS, POLICIES, AND LAWS

Vision 2025 is aligned well with Berkeley's Green Monday initiative and GFPP. Green Monday recommends serving plant-based food once a week along with raising awareness about the positive impacts of plant-based food choices on the environment. Various reports suggest that animal products alone can jeopardize the Paris Agreement to keep the global surface temperature below 2C and could threaten scarce natural resources by 2050. Significant changes in our food choices need to happen for the wellbeing of our environment and global sustainability. It demands us to extend our efforts in increasing plant-based options through specific policies in the next 5 years.

GFPP is a certification-based program that also promotes antibiotic-free and grass-fed beef. The increasing demand for animal products requires that livestock are kept in confined spaces making them vulnerable to diseases. Therefore, it is not feasible to harvest animal products at a global scale without using antibiotics in livestock. The excessive use of antibiotics has already resulted in many antibiotic-resistant bacteria, pushing countries like India and China to use last-resort antibiotic drugs, like colistin.¹⁶ It will also be socially inequitable if we were to use excessive resources, like pastureland, to harvest grass-fed and antibiotic-free animal products only for wealthy families and developed nations. Additionally, the grass-fed cows contribute more methane than the grain-fed cows in CAFO.¹⁷ As a result, these existing initiatives and programs require Berkeley to extend plant-based options through other programs and policies.

FINANCIAL IMPLICATIONS

There is no imposed cost but could result in savings associated with adopting this recommendation.

ENVIRONMENTAL SUSTAINABILITY

This item is in alignment with Berkeley's commitment to environmental sustainability and programs like Green Monday and GFPP. The adoption of Vision 2025 for Sustainable Food Policies will significantly reduce Berkeley's food sector associated GHG emissions, deforestation, fresh water and antibiotic consumption. It will also help Berkeley to transition towards healthy and globally sustainable food practices.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

REFERENCES

1. United States Census Bureau <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html>
2. Milan Urban Food Policy Pact Signatories <http://www.milanurbanfoodpolicypact.org/signatory-cities/>
3. Food and Agriculture Organization of the United Nations (FAO) <http://www.fao.org/news/story/en/item/197623/icode/>
4. Oxford Meta-Analysis on Food's Environmental Impacts <https://science.sciencemag.org/content/360/6392/987>
5. Berkeley Climate Action Plan Updates 2020 [https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_\(6pm\)_Pres_CMO_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_(6pm)_Pres_CMO_pdf.aspx)
6. World Resource Institute Report, 2019 <https://research.wri.org/wrr-food>
7. Pacific Institute Report, 2012 https://pacinst.org/wp-content/uploads/2013/02/ca_ftprint_full_report3.pdf
8. UN FAO report, Livestock and Landscape <http://www.fao.org/3/ar591e/ar591e.pdf>
9. NASA Earth Observatory https://earthobservatory.nasa.gov/features/Deforestation/deforestation_update3.php
10. UN FAO report, Cattle Ranching and Deforestation <http://www.fao.org/3/a-a0262e.pdf>
11. World Economic Forum <https://www.weforum.org/agenda/2020/03/biodiversity-loss-is-hurting-our-ability-to-prepare-for-pandemics/>
12. National Institute of Health <https://www.nih.gov/news-events/nih-research-matters/risk-red-meat>
13. Physicians Committee for Responsible Medicines <https://www.pcrm.org/good-nutrition/nutrition-information/health-concerns-about-dairy>
14. Center for Infectious Disease Research and Policy, University of Minnesota <https://www.cidrap.umn.edu/news-perspective/2016/12/fda-antibiotic-use-food-animals-continues-rise>

15. Good Food Purchasing Program <https://goodfoodcities.org/less-meat-better-food-happier-kids-oakland-unified-reinvents-its-school-lunch/>
16. The Statesman <https://www.thestatesman.com/supplements/8thday/heading-for-a-disaster-1502677575.html>
17. A Well-Fed World <https://awellfedworld.org/issues/climate-issues/grass-fed-beef/>

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,
ADOPTING VISION 2025 FOR SUSTAINABLE FOOD POLICIES

WHEREAS, roughly 80% of the U.S. population live in urban areas, suggesting the important role of U.S. Cities for establishing a culture of sustainability; and

WHEREAS, the City of Berkeley has declared a Climate Emergency for protecting our environment, human population and biodiversity; and

WHEREAS, the City of Berkeley is putting best efforts to reducing greenhouse gas (GHG) emissions in order to reverse global warming as quickly as possible; and

WHEREAS, Berkeley's consumption-based GHG inventory shows significant emissions associated with the City's food system; and

WHEREAS, the World Resource Institute (WRI) reports that the agriculture sector will be responsible for 70% of the total allowable emissions by 2050, risking Paris Agreement; and

WHEREAS, the United Nations Food and Agriculture Organization (UNFAO) reports that more than 60% of agriculture emissions come from the livestock sector, and it is estimated to be higher than fossil fuel emissions from the entire transportation sector; and

WHEREAS, the scientific analysis shows the urgency to reduce GHG emissions from animal agriculture in order to meet the Paris Agreement of keeping an average global surface temperature below 2C; and

WHEREAS, California is one of the most drought-affected states, and almost 50% of Californian's water footprint is associated with consumption of meat and dairy; and

WHEREAS, the cattle industry is the leading cause of deforestation in the Amazon rainforest that is home to 10% of the world's species and a major source of vital oxygen; and

WHEREAS, the U.S. food sector is globally interconnected because of the import-export trading and therefore, our food choice directly impacts the Amazon deforestation and biodiversity loss; and

WHEREAS, 83% of agriculture land is used for raising livestock and producing their feed, but meat and dairy only provide 18% of the world's calories; and

WHEREAS, the WRI estimates a 56% increase in crop calorie demand in order to feed 9 billion people by 2050, requiring an extra 593 million hectares of agriculture land, which is twice the size of India; and

WHEREAS, the world already produces enough food to feed 9 billion people if we use crop calories to directly feed the human population; and

WHEREAS, the U.S. pours significant agriculture resources to grows crops for feeding livestock and poultry while more than 800 million people are food insecure, and 45% of children die under 5 years of age due to malnutrition; and

WHEREAS, the WHO reports that 60% of all human disease originates in animals and the Center for Disease Control and Prevention (CDC) estimates 3 out of every 4 emerging infectious diseases come from animals; and

WHEREAS, the Concentrated Animal Feeding Operations (CAFO) risk spillover of zoonotic pathogens by confining animals and bringing human beings into proximity with them; and

WHEREAS, the CAFO negatively impacts the health of surrounding communities through air and water pollution, and the majority of these homes belong to African Americans; and

WHEREAS, the Physicians Committee for Responsible Medicines (PCRM) reports that meat and dairy consumption is associated with the increased risk of chronic illness like cancer, diabetes and heart disease in the U.S.; and

WHEREAS, the International Agency for Research on Cancer (IARC) has classified processed meat like ham, bacon, hotdogs, sausage, and some deli meat as carcinogenic and red meat as a probable carcinogen; and

WHEREAS, studies show that over 90% of the people dying from COVID-19 have had pre-existing conditions, mostly from chronic diseases such as heart disease and type 2 diabetes; and

WHEREAS, the COVID-19 pandemic has disproportionately impacted communities of color, with black Americans hospitalized at 4.5 times the rate of white Americans and Hispanic Americans hospitalized at 4 times the rate of white Americans; and

WHEREAS, communities of color experience higher rates of heart disease, type 2 diabetes, and other chronic diseases; and

WHEREAS, the socio-economic and cultural factors that cause poor health conditions in many communities of color can be found in all of our nation's struggling communities; and

WHEREAS, hundreds of thousands of the slaughterhouse workers are undocumented and forced to meet ever-growing line speed under the threat of deportation; and

WHEREAS, the U.S. workers in meat plants are three times more likely to suffer a serious injury with an average of two amputations per week; and

WHEREAS, the slaughterhouse workers are exposed to extremely stressful environments including physical, psychological and sexual abuse and many of them develop post-traumatic stress disorder (PTSD); and

WHEREAS, overfishing is destroying marine biodiversity, and aquaculture imposes a threat to our environment; and

WHEREAS, Project Drawdown reports shifting our diet towards plant-based food as one of the most significant solutions to climate change; and

WHEREAS, WRI recommends shifting our diet to plant-based in order to reduce GHG emissions, agriculture land-use and protect public health; and

WHEREAS, WRI reports that replacing almost 50% of animal-based food in the average U.S. diet with plant-based options could reduce more than 40% of agriculture land and GHG emissions; and

WHEREAS, Milan Urban Food Policy Pact (MUFPP) summit delivered a letter signed by 65 scientists calling world mayors to reduce the consumption of animal-based food; and

WHEREAS, Los Angeles and 13 other C40 Cities have signed a declaration to reduce procurement of meat products to 300 grams (two burger patties) per person per week by 2030; and

WHEREAS, the City of Berkeley has already started establishing sustainable food systems through passing Green Monday and Good Food Purchasing Program (GFPP) and recognizes the need of expanding these efforts; and

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Berkeley hereby adopts Vision 2025 for establishing sustainable food systems, wherein the City of Berkeley joins San Francisco, Chicago and Austin in signing the Milan Urban Food Policy Pact (MUFPP) along with referring to the Community Health Commission and Environmental Commission or relevant future commissions to explore the implementation of the City adopted sustainable food programs, identify gaps and propose new policies.

BE IT FURTHER RESOLVED, that the City Council of the City of Berkeley supports adoption of a Climate-Friendly Food Purchasing Policy as described by Friends of the Earth for working towards replacing 50% of the City's annual animal-based food procurement with plant-based food.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison, Councilmember Sophie Hahn
Subject: Resolution in Support of Establishing Statewide Targets for 100% Zero-Emission Vehicle Sales No Later Than 2025 and Comprehensive Legislative Program to Achieve an Equitable and Just Statewide Transition Towards 100% Zero-Emission Transportation and Mobility by 2030

RECOMMENDATION

Adopt a resolution in support of establishing (1) statewide binding legislative targets for 100% zero emission vehicle sales no later than 2025, and (2) comprehensive statewide legislative program to achieve an equitable and just transition towards 100% zero-emissions transportation and mobility by 2030.

Send copies of the resolution to Governor Newsom, State Senator Nancy Skinner, Assemblywoman Buffy Wicks, copying President Biden, Vice President Harris, Senators Feinstein and Padilla, and Congresswoman Lee.

BACKGROUND

According to the best available science, wealthy nations must achieve near net-zero emissions by 2030 or earlier in order to delay the onset of extremely catastrophic warming. Implicit in the U.N.'s global 2050 net-zero targets to keep emissions as close as possible to 1.5 degrees Celsius is the assumption that advanced industrialized nations will reach zero *decades before* less wealthy nations lacking basic human necessities.¹

In January 2021 Climate researchers released an alarming study suggesting that the world has already locked-in at least a devastating 2 degrees Celsius of warming from

¹ IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. *World Meteorological Organization, Geneva, Switzerland, 32 pp.*
<https://www.ipcc.ch/sr15/chapter/spm/>.

existing emissions.² The study's authors advise that humans *have agency to determine whether we will reach this existential milestone within a few decades or over centuries*. By achieving net-zero at an emergency pace, humans may secure precious time to adapt and potentially postpone the onset of a drastically warmer climate.

California's targets for phasing out the sale of new fossil fuel vehicles by 2035 is radically out of step with this science and related geopolitical realities, and risks the welfare of all current and future generations of Californians. Eliminating total statewide emissions by 2030 will not only require phasing out the sale of new fossil fuel vehicles, but more significantly a phase out of all *existing fossil fuel vehicles* through an equitable and just transition towards zero-emissions public transportation and other forms of electric mobility.

Even under a best-case scenario, transitioning existing vehicles will take years, and it is hard to comprehend a scenario where California can continue to sell new fossil vehicles past mid-decade and still meet its 2030 obligations. In addition, assuming California permits the sale of new internal combustion vehicles after 2030, and therefore fails to transition existing vehicles, it may have to resort to relying on exceedingly challenging, uncertain, dangerous or unproven net emissions reductions strategies in order to meet global reduction targets obligations.

Even if California were to ban the sale of fossil fuel vehicles tomorrow, Americans are holding onto cars for longer than before: according to research by R.L. Polk the average age of all vehicles on the road is 11.4 years and on average American keeps their newly purchased vehicles for approximately 6 years.³ In other words, market forces and turnover alone will not be sufficient to phase out California's fossil fuel vehicles, especially when considering the urgency of meeting California's climate obligations. Furthermore, even if California were to replace every existing fossil fuel vehicle on the road today with an electric version, it is likely that the sheer embodied emissions and related environmental destruction related to manufacturing such vehicles would not be consistent with global climate and ecological imperatives.

Therefore, California's targets and programs for phasing out new and existing vehicles must be rethought and expanded to include a comprehensive legislative program to achieve equitable and reliable public transit and other forms of zero-emissions mobility.

The City of Berkeley is committed to reduce emissions at an emergency speed regardless of state and federal commitments and resources, however there is little doubt that Berkeley's efforts could be significantly enhanced with additional state and federal leadership, coordination and resources. Nearly 60% of Greenhouse Gasses in

² Seth Borenstein, "Study: Warming already baked in will blow past climate goals," Associated Press, January 4, 2021, <https://apnews.com/article/climate-climate-change-pollution-3f226aed9c58e36c69e7342b104d48bf>.

³ Doug Demuro, "Buying a Car: How Long Can You Expect a Car to Last?," Autotrader, June 30, 2019, <https://www.autotrader.com/car-shopping/buying-car-how-long-can-you-expect-car-last-240725>.

Berkeley come from transportation emissions, according to the most recent climate action plan update.⁴

In recognition of these the escalating climate emergency, the City of Berkeley has already committed to a policy of decarbonization, including through Measure G (Resolution No. 63,518-N.S.) in 2006, the 2009 Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), the 2018 Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), and the Fossil Free Referral establishing a process to study and set targets to complete phase out of fossil fuel citywide by 2030.

More recently, for example, the City has prohibited the installation of natural gas infrastructure for buildings applying for land use entitlement as of January 1, 2020 (Ord. 7672-NS), referred measures to facilitate the retrofit of Berkeley's existing building stock, established a policy of entirely phasing out its municipal fossil fuel fleet by at least 2030, implemented a tax on transport network company trips, required minimum paving and street upgrade requirements to facilitate bicycle and mobility goals, and eliminated parking minimum requirements for new housing construction.

With regard to the sale of new vehicles, the Council recently referred to City staff to draft an ordinance prohibiting the sale of fossil fuel passenger vehicles as early as 2025-2027, but state and federal leadership will help determine how quickly Berkeley can act.

If ultimately adopted as proposed, Berkeley's ordinance would be implemented nearly a decade ahead of Governor Newsom's September 23, 2020 executive order, which phases out the sale of gasoline-powered cars and drayage trucks across California by 2035, and zero emission heavy-duty trucks by 2045 where feasible. The Governor has also set aside approximately \$1.5 billion to subsidize electric car purchases and leases and for charging infrastructure.⁵

While the City welcomes recent progress at the state level, as well as recent executive orders by the Biden administration, it recognizes that they are nonetheless insufficient in the face of stark scientific realities. By contrast, nations such as Norway have committed to phase out the sale of new fossil vehicles no later than 2025. While California is not a nation, the size of California's economy consistently ranks within the top ten in the world—a fact that raises the stakes for transitioning quickly and also provides it with resources to do so.

Meanwhile, automobile manufacturers are moving rapidly toward all-electric vehicle sales, and it is conceivable that they could completely transition their Californian manufacturing within four years. California increased the number of zero emission

⁴ "Climate Action Plan Update," Office of Energy and Sustainable Development, July 21, 2020, [https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_\(6pm\)_Pres_CMO_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_(6pm)_Pres_CMO_pdf.aspx).

⁵ Governor Newsom, "Executive Order N-79-20," September 23, 2020, <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-text.pdf>

vehicles in the state by more than 3,000% in 8 years, growing from 25,000 in 2012 to 763,816 in 2020. The manufacturers supporting major dealerships in Berkeley, including Honda, Toyota, Fiat and BMW, already produce a wide range of electric vehicles. BMW recently announced that it plans to have electric alternatives for each of its most popular gasoline models.⁶ Even General Motors, a laggard in the electric market, [recently announced](#) to halt manufacturing fossil fuel vehicles by 2035.⁷ With state leadership through binding targets consistent with science, mere pledges can be transformed into bold, but also reasonable (in light of catastrophic climate change) requirements.

Berkeley is therefore calling on its state leaders, with the assistance of federal government, to adopt binding legislation committing California to phase out the sale of all fossil fuel vehicles no later than 2025, and establishing and funding a comprehensive statewide legislative program to achieve an equitable and just transition towards public transit and other forms of electric or zero-emissions mobility by 2030.

While the City recognizes that such goal will be extremely challenging, nothing less is necessary to achieve California's global reduction obligations.

FISCAL IMPACTS OF RECOMMENDATION

Clerk time is necessary to send letter.

ENVIRONMENTAL SUSTAINABILITY

This item would help facilitate Berkeley's local transportation emission reductions targets and obligations.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

1. Resolution
2. Letter

⁶ Sean O'Kane, "BMW will make an all-electric 5 Series, 7 Series, and X1," The Verge, July 28, 2020, <https://www.theverge.com/2020/7/28/21345464/bmw-5-7-series-x1-electric-car-ev-plug-in>.

⁷ Neal E. Boudette and Coral Davenport, "G.M. Will Sell Only Zero-Emission Vehicles by 2035," January 28, 2021, <https://www.nytimes.com/2021/01/28/business/gm-zero-emission-vehicles.html>.

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

RESOLUTION IN SUPPORT OF ESTABLISHING STATEWIDE TARGETS FOR 100% ZERO-EMISSION VEHICLE SALES NO LATER THAN 2025 AND COMPREHENSIVE LEGISLATIVE PROGRAM TO ACHIEVE AN EQUITABLE AND JUST STATEWIDE TRANSITION TOWARDS 100% ZERO-EMISSION TRANSPORTATION AND MOBILITY BY 2030

WHEREAS, the Intergovernmental Panel on Climate Change tells us we have until 2030 to transform our economy and the way we live to avoid the most catastrophic and irreversible effects of the climate crisis; and

WHEREAS, a recent climate study suggests that the world has already locked-in at least a devastating 2 degrees Celsius of warming from existing emissions, but that humans likely have agency to delay its onset with rapid emissions reductions; and

WHEREAS, the transportation sector is the largest contributor of Greenhouse Gas emissions in California, with light duty vehicles (LDVs) making up 70% of those emissions; and

WHEREAS, electrifying transportation needs to be at the forefront of any attempt to combat the climate crisis; and

WHEREAS, California increased the number of zero emission vehicles in the state by more than 3,000% in 8 years, growing from 25,000 in 2012 to 763,816 in 2020; and

WHEREAS, the City of Berkeley has committed to a policy of phasing out the entirety of its municipal fossil fuel fleet by at least 2030 and is exploring an ordinance prohibiting the sale of fossil fuel passenger vehicles as early as 2025-2027; and

WHEREAS, even under a best-case scenario transitioning existing vehicles will take years, and it is hard to comprehend a scenario where California can continue to sell new fossil vehicles past mid-decade and still meet its 2030 obligations; and

WHEREAS, all new vehicles sold in California by at least the year 2025 need to be zero emission vehicles to decarbonize California's most polluting sector; and

WHEREAS, zero emission vehicle technology continues to progress, making a transition to a 100% electric transportation system both feasible and achievable; and

WHEREAS, zero emission vehicles and services are an opportunity for quality jobs and tax revenue that puts part of the Green New Deal in practice in our state; and

WHEREAS, market forces and turnover of new vehicles alone will neither be sufficient nor necessarily sustainable towards phasing out all of California's fossil fuel vehicles consistent with California's urgent climate and ecological obligations, and will not provide for reliable and equitable public transit and mobility options for all; and

WHEREAS, a statewide legislative program is needed to achieve an equitable and just transition for workers towards equitable and reliable public transit and other forms of electric or zero-emissions mobility by 2030; and

NOW, THEREFORE BE IT RESOLVED that the Council of the City of Berkeley calling on its state leaders, with the assistance of federal government, to adopt binding legislation committing California to phase out the sale of all fossil fuel vehicles no later than 2025, and establishing and funding a comprehensive statewide legislative program to achieve an equitable and just transition towards public transit and other forms of electric or zero-emissions mobility by 2030.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Governor Newsom, State Senator Nancy Skinner, Assemblywoman Buffy Wicks, Congresswoman Barbara Lee, President Biden, Vice President Harris and Senators Dianne Feinstein and Alex Padilla.

The Honorable Gavin Newsom
Governor, State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

Re: Support for Establishing Statewide Targets for 100% Zero-Emission Vehicle Sales No Later Than 2025 and Comprehensive Legislative Program to Achieve an Equitable and Just Statewide Transition Towards 100% Zero-Emission Transportation and Mobility by 2030

Dear Governor Newsom:

The Berkeley City Council would like to convey its urgent support for adopting binding climate legislation committing California to phase out the sale of all fossil fuel vehicles no later than 2025, and establishing and funding a comprehensive statewide legislative program to achieve an equitable and just transition towards public transit and other forms of electric or zero-emissions mobility by 2030.

While the City welcomes recent progress at the state level committing California to phasing out the sale of gas vehicles by 2035, as well as recent executive orders by the Biden administration, it recognizes that these actions will not be enough in face of stark scientific realities. By contrast, nations such as Norway have committed to phase out the sale of new fossil vehicles no later than 2025.

The City of Berkeley has committed to a policy of phasing out the entirety of its municipal fossil fuel fleet by at least 2030 and is exploring an ordinance prohibiting the sale of fossil fuel passenger vehicles as early as 2025-2027. State and federal leadership and support will help determine how quickly Californian cities like Berkeley can act.

According to the best available science, wealthy nations, cities and states must achieve near net-zero emissions by 2030 or earlier in order to delay the onset of extremely catastrophic warming. Implicit in the U.N.'s global 2050 net-zero targets to keep emissions as close as possible to 1.5 degrees Celsius is the assumption that advanced industrialized nations will reach zero *decades before* less wealthy nations lacking basic human necessities.

Even under a best-case scenario, transitioning existing vehicles will take years, and it is hard to comprehend a scenario where California can continue to sell new fossil vehicles past mid-decade and still meet its 2030 obligations. However, market forces and turnover of new vehicles alone will neither be sufficient nor necessarily sustainable towards phasing out all of California's fossil fuel vehicles consistent with its urgent climate and ecological obligations, and will not provide for reliable and equitable public transit and mobility options for all. Therefore, in addition to phasing out the sale of fossil fuel vehicles, the state must also rapidly adopt a legislative program providing 100%

zero-emissions, reliable, and equitable public transit and mobility options for all Californians in order to meet out 2030 obligations.
Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

CC: President Joe Biden
Vice President Kamala Harris
Senator Diane Feinstein
Senator Alex Padilla
Congresswoman Barbara Lee

The Honorable Nancy Skinner
California State Senator
State Capitol, Room 5094
Sacramento, CA 95814

Re: Support for Establishing Statewide Targets for 100% Zero-Emission Vehicle Sales No Later Than 2025 and Comprehensive Legislative Program to Achieve an Equitable and Just Statewide Transition Towards 100% Zero-Emission Transportation and Mobility by 2030

Dear Senator Skinner:

The Berkeley City Council would like to convey its urgent support for adopting binding climate legislation committing California to phase out the sale of all fossil fuel vehicles no later than 2025, and establishing and funding a comprehensive statewide legislative program to achieve an equitable and just transition towards public transit and other forms of electric or zero-emissions mobility by 2030.

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Californians in order to meet out 2030 obligations.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

CC: President Joe Biden
Vice President Kamala Harris
Senator Diane Feinstein
Senator Alex Padilla
Congresswoman Barbara Lee

The Honorable Buffy Wicks
California State Senator
Capitol Office, Room 5160
Sacramento, CA 94249-0015

Re: Support for Establishing Statewide Targets for 100% Zero-Emission Vehicle Sales No Later Than 2025 and Comprehensive Legislative Program to Achieve an Equitable and Just Statewide Transition Towards 100% Zero-Emission Transportation and Mobility by 2030

Dear Assemblywoman Wicks:

The Berkeley City Council would like to convey its urgent support for adopting binding climate legislation committing California to phase out the sale of all fossil fuel vehicles no later than 2025, and establishing and funding a comprehensive statewide legislative program to achieve an equitable and just transition towards public transit and other forms of electric or zero-emissions mobility by 2030.

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zero-emissions, reliable, and equitable public transit and mobility options for all Californians in order to meet out 2030 obligations.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

CC: President Joe Biden
Vice President Kamala Harris
Senator Diane Feinstein
Senator Alex Padilla
Congresswoman Barbara Lee



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison, Mayor Arreguín, Councilmembers Robinson and Taplin

Subject: Budget Referral: Allocate Transportation Network Companies User's Tax Proceeds and other General Fund Revenues to Support Priority Protected Bicycle Boulevards and the Street Repair Program

RECOMMENDATION

1. Refer to the June 2021 budget process:
 - a. The first \$500,000 in expected Transportation Network Companies (TNC) User's Tax General Fund revenue toward the construction and maintenance of 18.4 miles of priority protected bicycle boulevards; and
 - b. \$410,000 in expected TNC Tax revenue as revenues become available and an additional \$90,000 from other General Fund revenue to supplement demonstration projects under the Street Repair Program that either directly or indirectly reduce greenhouse gas emissions.
2. Refer to the Transportation Commission to make recommendations to the Council as to allocation of TNC User's Tax in subsequent budget cycles.

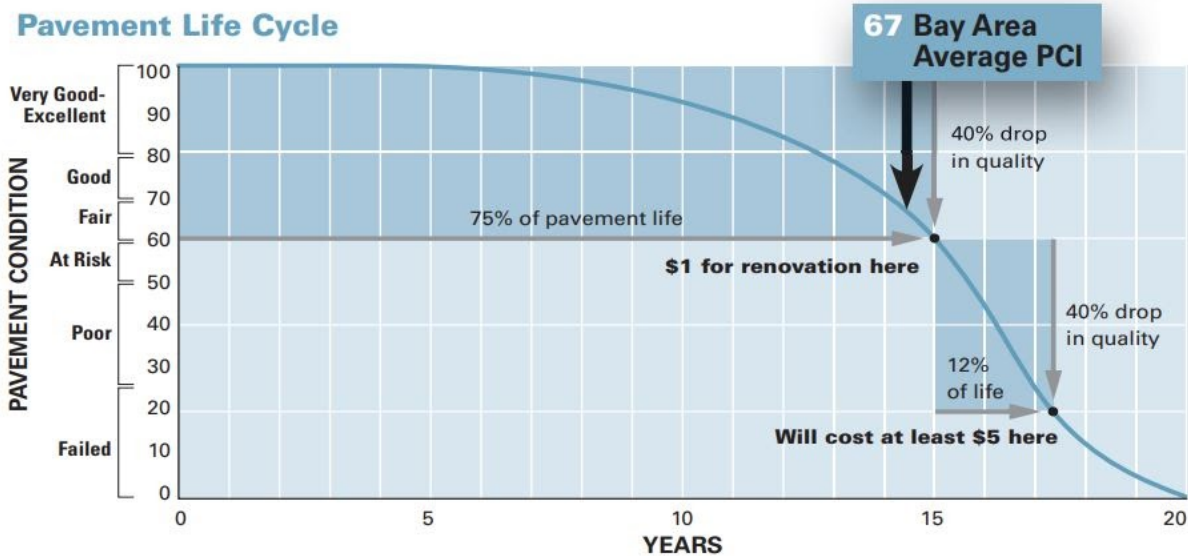
BACKGROUND

A Metropolitan Transportation Commission report warns that Berkeley's overall paving condition is "At Risk," meaning on the cusp of falling into "Failing" category.¹ The current five-year paving plan is the result of historic deferred maintenance and an underfunded, imperfect and complex balance between arterial, collector and residential streets distributed across Council districts.

¹ "The Pothole Report: Bay Area Roads At Risk," Bay Area Metropolitan Transportation Commission, September 2018, https://mtc.ca.gov/sites/default/files/Pothole%20Report%20III_September%202018.pdf

Residential streets across the entire city are largely categorized as failing and bicycle, pedestrian and Vision Zero projects are severely underfunded. Meanwhile, neighboring cities in the Bay Area, such as Richmond, El Cerrito, San Francisco have “Excellent/Very Good” to “Fair/Good” streets conditions.

The Public Works Department has advised that ongoing funding under the rolling 5-Year Street Plan will not be enough to stabilize Berkeley’s streets. In fact, if street investment is not increased, Public Works warns that the City could face \$1 billion in future repair costs as the cost of deferred paving maintenance increases exponentially each year.

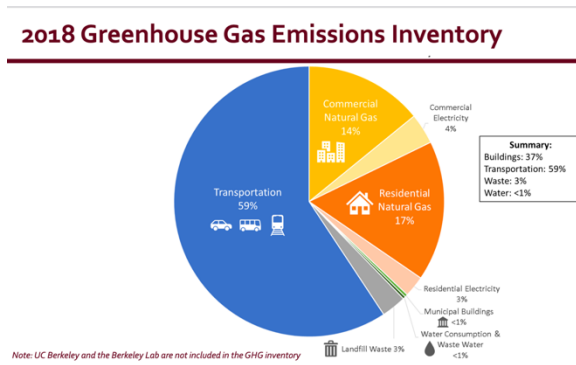


Since January 2020, the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee has been working with the Public Works Department and Public Works Commission to explore funding opportunities to enhance the Paving Condition Index (PCI) of Berkeley’s streets. In addition, it has been reviewing the City’s Paving Policy, which was last updated in 2009, and has been working to develop a Paving Master Plan.

To stabilize street conditions, the City will likely need to pursue a combination of investment strategies ranging from increasing General Fund allocations, initiating transfers from waste and sewer accounts, initiating impact fees in response to heavy vehicle use and potentially issuing bonds. However, before going to the voters for new bonds, it is critical that the Council exhaust all equitable alternatives, including leveraging the proceeds of existing taxes and fees on private corporations who

contribute disproportionately to the deterioration of Berkeley’s streets and greenhouse gas emissions.

A recent University of Oxford study concluded that even partial substitution of vehicle travel with walking, cycling or e-biking are critical strategies for addressing climate change and lower mobility-related lifecycle CO₂, and that cyclers have 84% lower CO₂ emissions impact as compared to non-cyclers.² According to the study, urban residents substituting one vehicle trip per day with cycling reduced their carbon footprint by 0.5 tons per year, and “[i]f just 10% of the population were to change travel behaviour, the emissions savings would be around 4% of lifecycle CO₂ emissions from all car travel.”



Berkeley voters overwhelmingly passed the TNC User’s Tax (Measure GG) in 2020 with a 50-cent fee per rideshare trip specifically in order to generate “at least \$900,000 annually to support general municipal services like paving streets and improving pedestrian and bicycle infrastructure.”³ City staff estimated the tax will bring in approximately \$910,000 per year.⁴

This budget referral proposes to allocate \$500,000 from TNC Tax proceeds directly to projects aimed at building out priority protected bicycle boulevards, which will enhance

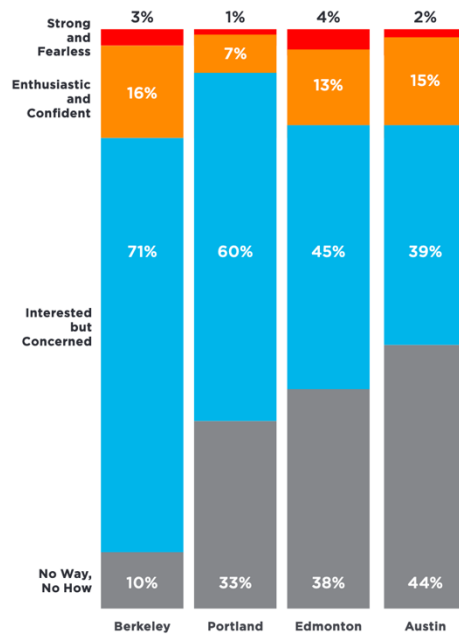
² “Study Shows Walking, Cycling, & e-Biking Make Significant Impact On Carbon Emissions,” CleanTechnica, February 3, 2021, <https://cleantechnica.com/2021/02/03/study-shows-walking-cycling-e-biking-make-significant-impact-on-carbon-emissions/>.

³ “Argument in Favor of Measure GG,” Berkeley City Clerk, August 2020, <https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/GG%20-%20Primary%20in%20Favor%20-%20FINAL.pdf>

⁴ “Placing a Tax Measure on the November 3, 2020 Ballot to Adopt a Tax on Transportation Network Companies,” Berkeley City Clerk, July 21, 2020, [https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_\(4pm\)_Special_Item_04_Placing_a_Tax_Measure_on_the_November_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_(4pm)_Special_Item_04_Placing_a_Tax_Measure_on_the_November_pdf.aspx)

bicycle and micro mobility safety, offset vehicle miles travelled and paving impact, and lower greenhouse gas emissions.

Surveys conducted as part of the 2017 Berkeley Bicycle Plan provided key data about the eagerness of Berkeley residents to bicycle or use other forms of mobility, assuming the City provides safe infrastructure and routes. An astonishing 70% of Berkeley residents expressed interest in bicycling but were concerned about safety. The 2017 Plan concluded: “90 percent of Berkeley residents already bicycle or would consider bicycling if the right bikeway facility or roadway conditions were available. That is a larger percentage than any other city that has conducted a similar study, including Portland, as shown at right.”⁵



Roger Geller’s “Four Types of Transportation Cyclists” distribution for Berkeley, Portland, OR, Edmonton, AB, and Austin, TX.

Berkeley has struggled to address its transportation GHG emissions, but the data suggest that biking and mobility options could dramatically offset vehicle miles travelled. It is in the public interest to invest general fund revenue, namely TNC Tax revenue, in street enhancements that can encourage mode shifts from vehicles to carbon-free transportation.

⁵ “City of Berkeley Bicycle Plan,” May 2, 2017, https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf

If Council were to allocate the TNC Tax accordingly over next ten years, the period scientists consider critical to meet global emissions reductions targets, the City could fund 50% of the total “Class 4: Cycletrack” costs provided in the Bike Plan, and thus maximize the number of Berkeleyans who deem the streets safe enough to ride. Certainly, the expenditures proposed herein will not be enough to adequately fund Berkeley’s entire bike network, but they represent an important down payment.

Table ES-3: Summary of Project Recommendations and Cost Estimates

TYPE	MILEAGE	COST ESTIMATE
Class 1A: Paved Path	1.5 miles	\$5,285,700
Class 2A: Standard Bike Lane	0.1 miles	\$10,700
Class 2B: Upgraded Bike Lane	3.0 miles	\$541,500
Class 3C: Sharrows	13.9 miles	\$71,600
Class 3E: Bicycle Boulevard	12.4 miles	\$621,900
Class 4: Cycletrack	18.4 miles	\$9,903,300
Complete Street Corridor Interim Treatments	17.0 miles	\$1,181,400
Intersection and Traffic Calming Improvements	-	\$16,855,000
Total	66.3 miles	\$34,471,100

In addition, it is in the public interest to allocate remaining \$410,000 TNC Tax revenues as they become available and approximately an additional \$90,000 in General Fund revenues per year to the Street Repair Program which is aimed at generally improving the paving condition of all streets and may include alternative mobility, public transit and Vision Zero, and complete streets upgrades.

In subsequent budget cycles, this item refers to the Transportation Commission to weigh in with regard to the allocation of TNC User’s Tax. The Transportation Commission is not currently authorized to meet remotely due to COVID-19 restrictions.

FINANCIAL IMPLICATIONS

The item would have a net \$90,000 impact on the General Fund after considering the estimated \$910,000 revenue credited from the TNC Tax.

ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is a necessary step to meet the goals of the Climate Action Plan and Climate Emergency Declaration.

CONTACT PERSON

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

**SOPHIE HAHN**

Berkeley City Council, District 5
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 (510) 981-7150
 shahn@cityofberkeley.info

CONSENT CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Sophie Hahn (Author), Councilmember Terry Taplin
 (Co-Sponsor), Mayor Jesse Arreguin (Co-Sponsor),
 Councilmember Susan Wengraf (Co-Sponsor)
 Subject: Kala Art Institute 2021 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 \$250 from Councilmember Hahn, to the Kala Art Institute, a 501(c)(3) non-profit organization, to support Art Kala 2021, an exhibition, auction, and benefit to support Kala's artistic, cultural, and educational programs, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.

BACKGROUND

Founded in 1974, by Archana Horsting and Yuzo Nakano, as an international residency program rooted in the local community and a forum for ideas, Kala Art Institute encourages artistic experimentation. Over four decades -- from a garage studio with one etching press and a single hot plate to a 15,200 sq. ft. facility in the historic West Berkeley Heinz building -- Kala has grown steadily in the breadth of its offerings and in the size of its operation, yet remains true to its mission to be a workshop of ideas and to engage the community through exhibitions, education, and public programs.

In 2009, Kala dynamically expanded its facility providing new opportunities for artists and the community. With improved studios, project rooms, classrooms, and a 2,200 sq. ft. light-filled gallery with an accessible street level location, Kala is working to maximize its capacity to serve the community as a vital center for artistic experimentation.

Kala serves 35,000 individuals yearly through artist residencies, exhibitions, and community workshops. In addition, Kala's Artists-in-Schools program provides curriculum-based visual arts education to children in neighboring public schools in

Berkeley, Emeryville, and Oakland. Overall, their constituents range from 5 to 95 years old and represent a diverse group of participants including local residents, visiting artists from all state, country, and abroad – representing an international spectrum of backgrounds and experience. Bay Area artists represent 85% of participants in Kala’s artist residencies.

Kala Art Institute’s mission is to help artists sustain their creative work over time through its Artist-in-Residence and Fellowship Programs, and to engage the community through exhibitions, public programs, and education.

The heart of Kala’s mission as a vital, California art-making hub is supporting artists and engaging the community. Kala offers professional facilities to those working in and across print and digital media, new media, and performance. Artists at Kala are encouraged to work across disciplines, produce innovative artwork of the highest quality, and are given total freedom to realize their artistic vision using media that span the Gutenberg to digital eras. Kala offers access to equipment, time, and space to cultivate creative projects. Kala’s studios provide tools for printmaking, photography, video, installation, and digital media. Kala fosters a fresh approach to experimentation, as artists investigate the interface of digital work, work made by hand, work made in the studio, performance-based work that engages the community and everything in between. A spirit of exchange and education is nurtured through all Kala’s community programs.

Kala’s creative community builds bridges between the intense art-making environment of the Kala studios, located in the historic Heinz ketchup factory in Berkeley and life outside the studio in Kala’s immediate neighborhood and far beyond. Additionally, Kala is committed to offering quality art education to the general public and public school children through its on-site and online program of classes and workshops, summer programs and its Artists-in-Schools program, established in 1991, providing multiple-week artist-led instruction to students in neighboring East Bay public schools.

Celebrating Kala’s 47th year, Art Kala 2021 brings together Kala’s creative community and features the inventive and meaningful art being made in the Bay Area. Art Kala 2021 will honor Demetri Broxton, Jordan Ann Craig, and Carissa Potter as the 2021 recipients of Kala’s Master Artist Award. The exhibition will include work by Kota Ezawa, Jim Melchert, Masako Miki, Kelly Ording, Steuart Pittman, Ron Moultrie Sanders, Seiko Tachibana, Tara Tucker, Ryan Whelan, Lena Wolff, Chelsea Wong, and more.

On Friday, March 12, Art Kala 2021 will be visible on Artsy and open to the public and remain open through Sunday, May 16 by appointment to maintain social distancing. All

proceeds from this event support educational and cultural programs that directly serve artists, children, and the community-at-large. More information can be found at: <http://www.kala.org/gallery/spring-gala-and-auction/>.

FISCAL IMPACTS

A total of up to \$4,500 from Councilmembers' discretionary budgets.

ENVIRONMENTAL SUSTAINABILITY

This item is consistent with the City's vision on sustainability.

CONTACT: Councilmember Sophie Hahn, District 5, 510-682-5905 cell

ATTACHMENT:

1: Resolution

RESOLUTION #####-N.S.

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

WHEREAS, Kala Art Institute is a nonprofit organization dedicated to helping artists sustain their creative work over time through its Artist-in-Residence and Fellowship Programs, and to engaging the community through exhibitions, public programs, and education; and

WHEREAS, since 1974, Kala has grown steadily in the breadth of its offerings and in the size of its operation, yet remains true to its mission to be a workshop of ideas and to engage the community through exhibitions, education, and public programs; and

WHEREAS, Kala serves 35,000 individuals yearly through artist residencies, exhibitions, and community workshops, and through its Artists-in-Schools program provides curriculum-based visual arts education to children in neighboring public schools in Berkeley, Emeryville, and Oakland; and

WHEREAS, Kala's constituents range from 5 to 95 years old and represent a diverse group of participants including local residents, visiting artists from all state, country, and abroad – representing an international spectrum of backgrounds and experience – with Bay Area artists representing 85% of participants in Kala's artist residencies; and

WHEREAS, Art Kala 2021 brings together Kala's creative community and features the inventive and meaningful art being made in the Bay Area, honoring Demetri Broxton, Jordan Ann Craig, and Carissa Potter as the 2021 recipients of Kala's Master Artist Award; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by Councilmember Hahn of \$250 and any funds, up to \$500 per Council Office Budget, from the Mayor and other Councilmembers shall be granted to the Kala Art Institute to support Art Kala 2021 and to celebrate Kala's 47th year helping artists sustain their creative work in Berkeley and beyond.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (author), Councilmember Robinson (co-sponsor) and Councilmember Kesarwani (co-sponsor), Mayor Arreguin (co-sponsor)

Subject: Resolution Condemning Anti-Asian Hate and Violence

RECOMMENDATION

Adopt a Resolution Condemning Anti-Asian Hate and Violence

FINANCIAL IMPLICATIONS

None

BACKGROUND

The City of Berkeley has taken a strong stand condemning racist incidents of hate against all people as codified in Resolution No. 68,508 –N.S. passed July 10, 2018. On November 17, 2020 Council voted to improve hate crimes reporting and response in the City of Berkeley. As a community, Berkeley has zero tolerance for hate incidents against any racial or ethnic group.

While the pandemic's long-lasting impact has affected public health and the economy, the Asian-American community has also experienced the fallout of COVID-19, being unfairly blamed for the pandemic and becoming the target of discrimination and violence.

South Asian, Muslim, Sikh, Hindu and Middle Eastern communities all faced a surge in recurring harassment and violence in the wake of 911 and after the election of Donald Trump. Since the onset of the pandemic, anti-Asian hate incidents have been primarily directed at East Asians with more than 2,500 reports of anti-Asian hate incidents related to COVID-19 between March and September 2020, nationally. And this number understates the actual number of anti-Asian hate incidents because most incidents are not reported.

California leads the nation in numbers of anti-Asian hate incidents. California Asian and Pacific Islander Legislative Caucus member, Assemblyman David Chiu, D-San Francisco, announced at a news conference on February 12, 2021 the reintroduction of

his 2017 bill “to require the California Department of Justice to establish toll-free hotlines in an online form to report hate incidents and hate crimes.”

In the Bay Area there has been a recent surge of violent assaults and attacks on Asian American elders including an assault against a 91-year old man who was shoved violently into a cement sidewalk in Oakland’s Chinatown on January 31st and an elderly Asian man who was fatally assaulted in San Francisco earlier in the month.

The organization, Stop AAPI Hate, reports that, “Chinese made up the ethnic group most often targeted, making up 40.7% of incidents. Asian Americans as a whole, though, are being racially profiled and attacked. Koreans (15.1%); Vietnamese (8.2%) and Filipinos (7.2%) have also faced COVID-19 discrimination in high numbers.”

By passing a resolution condemning all verbal and physical assaults against Asians, the City is taking the important step to both acknowledge and denounce the racist actions publicly. The resolution also reminds residents to speak up, and intervene if possible, when witnessing anyone being targeted by anti-Asian hate.

ENVIRONMENTAL SUSTAINABILITY

No direct impact to environmental sustainability

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: California Asian and Pacific Islander Legislative Caucus Press Conference, Feb 12, 2021: <https://fox40.com/news/california-connection/california-lawmakers-address-recent-spike-in-violence-against-asian-american-community/>

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

RESOLUTION CONDEMNING ANTI-ASIAN HATE AND VIOLENCE

WHEREAS, The City of Berkeley has taken a strong stand condemning racist incidents of hate against all people as codified in Resolution No. 68,508 –N.S. passed July 10, 2018; and

WHEREAS, As a community, Berkeley has zero tolerance for hate incidents against any racial or ethnic group; and

WHEREAS, While the pandemic's long-lasting impact has affected public health and the economy, the Asian-American community has also experienced the fallout of COVID-19, being unfairly blamed for the pandemic and becoming the target of discrimination and violence; and

WHEREAS, South Asian, Muslim, Sikh, Hindu and Middle Eastern communities all faced a surge in recurring harassment and violence in the wake of 911 and after the election of Donald Trump; and

WHEREAS, Since the onset of the pandemic, anti-Asian hate incidents have been primarily directed at East Asians with more than 2,500 reports of anti-Asian hate incidents related to COVID-19 between March and September 2020, nationally. And this number understates the actual number of anti-Asian hate incidents because most incidents are not reported; and

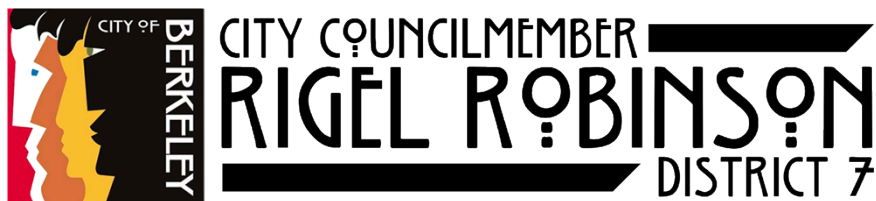
WHEREAS, California leads the nation in numbers of anti-Asian hate incidents; and

WHEREAS, In the Bay Area there has been a recent surge of violent assaults and attacks on Asian American elders including an assault against a 91-year old man who was shoved violently into a cement sidewalk in Oakland's Chinatown on January 31st and an elderly Asian man who was fatally assaulted in San Francisco earlier; and

WHEREAS, The organization, Stop AAPI Hate, reports that, "Chinese made up the ethnic group most often targeted, making up 40.7% of incidents. Asian Americans as a whole, though, are being racially profiled and attacked. Koreans (15.1%); Vietnamese (8.2%) and Filipinos (7.2%) have also faced COVID-19 discrimination in high numbers."

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Berkeley condemns all racist verbal and physical assaults against Asians.

BE IT FURTHER RESOLVED that the City of Berkeley encourages all residents to speak up, and intervene if possible, when witnessing anyone being targeted by anti-Asian hate.



CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Rigel Robinson, Mayor Jesse Arreguin
Subject: Affirming the City of Berkeley's Support for the People of Tibet

RECOMMENDATION

Adopt a resolution affirming the City of Berkeley's support for the people of Tibet.

BACKGROUND

The City of Berkeley has a diverse population including many Tibetan Americans. Tibetan Americans, including those residing in the City of Berkeley, have expressed concern at the Chinese Government's (1) travel restrictions against Tibetans and United States citizens; (2) restrictive regulations on religious affairs in Tibet; (3) censorship of Buddhist literature and information in Tibet; (4) demolition of Tibetan Buddhist sites; (5) imprisonment of Tibetan prisoners of conscience; and (6) declarations that "Decision-making power over the reincarnation of the Dalai Lama and over the end of survival of his lineage resides with the central government of China."

On March 10, 2021, Californians, including Tibetan Americans, residing in Berkeley and surrounding regions will commemorate the 62nd anniversary of the Tibetan National Uprising against the Chinese invasion and occupation of Tibet.

The United States has a long history of support to the Tibetan people, including the passage of the Tibetan Policy Act of 2002 (subtitle B of title VI of Public Law 107-228; 22 U.S.C. 6901 note), signed into law on September 30, 2002, which encapsulates policy and programmatic initiatives and supports the aspirations of the Tibetan people to safeguard their distinct identity.

The City of Berkeley was pleased to welcome His Holiness the Dalai Lama, a true champion of world peace and religious harmony, when he visited the Tibetan Community Center in February 2014.

This resolution would establish March 10th, 2021 as "Tibet Day" in Berkeley, acknowledging the struggles and hardships for Tibetan residents of the City of Berkeley. It would also recognize and support current and historic Congressional initiatives on Tibet.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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

Attachments:

1: Resolution

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

AFFIRMING THE CITY OF BERKELEY'S SUPPORT FOR THE PEOPLE OF TIBET

WHEREAS, On March 10, 2021, Californians, including Tibetan Americans, residing in Berkeley and surrounding regions will commemorate the 62nd anniversary of the Tibetan National Uprising against the Chinese invasion and occupation of Tibet; and

WHEREAS, the City of Berkeley has a diverse population, including many Tibetan Americans, who are concerned about human rights and freedom in the United States and throughout the world; and

WHEREAS, the United States has a long history of support to the Tibetan people, including the passage of the Tibetan Policy Act of 2002 (subtitle B of title VI of Public Law 107-228; 22 U.S.C. 6901 note), signed into law on September 30, 2002, which encapsulates policy and programmatic initiatives and supports the aspirations of the Tibetan people to safeguard their distinct identity; and

WHEREAS, on October 17, 2007, His Holiness the 14th Dalai Lama was awarded the Congressional Gold Medal in recognition of his many enduring and outstanding contributions to peace, nonviolence, human rights, and religious understanding; and

WHEREAS, the City of Berkeley was pleased to welcome His Holiness the Dalai Lama, a true champion of world peace and religious harmony, when he visited the Tibetan Community Center in February 2014; and

WHEREAS, The State Department's 2017 Country Reports on Human Rights Practices said of the situation in Tibet: "The most significant human rights issues included: disappearances; torture by government authorities; arbitrary detentions, including political prisoners; and government curtailment of the freedoms of speech, religion, association, assembly, and movement"; and

WHEREAS, Tibetan Americans, including those residing in Berkeley City, have expressed concern at the Chinese Government's: (1) travel restrictions against Tibetans and United States citizens; (2) restrictive regulations on religious affairs in Tibet; (3) censorship of Buddhist literature and information in Tibet; (4) demolition of Tibetan Buddhist sites; (5) imprisonment of Tibetan prisoners of conscience; and (6) declarations that "Decision-making power over the reincarnation of the Dalai Lama and over the end of survival of his lineage resides with the central government of China"; and

WHEREAS, Tibetan Americans residing in California have faced discrimination at the hands of Chinese consulates while applying for visas to visit Tibet; and

WHEREAS, the Reciprocal Access to Tibet Act signed into law on December 19, 2018 highlights China's attempts to isolate Tibet and seeks to promote access for United

States diplomats and officials, journalists, and other citizens, including Tibetan Americans, to Tibet; and

WHEREAS, since 2009, 166 Tibetans have self-immolated to protest China's rule in Tibet and most Tibetans publicly call for the return of the Dalai Lama to Tibet; and

WHEREAS, the city of Berkeley has a long history of support for Tibet and the Tibetan people; and

WHEREAS, The Berkeley City Council affirms the determination of the Tibetan people in Tibet and outside, including the Tibetan Americans, to retain their heritage and protect it from destruction against overwhelming odds through non-violent and peaceful means.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that March 10, 2021, the 62nd anniversary of the Tibetan national uprising, shall be officially recognized as "Tibet Day" and the Tibetan flag shall be raised at the City Hall.

BE IT FURTHER RESOLVED, that the City of Berkeley stands in solidarity with His Holiness the Dalai Lama, the Tibetan people and their just, peaceful and non-violent movement to remind the world of the occupation and ongoing oppression of human rights and freedom in Tibet and the continuous degradation of culture, religion, land and identity of the Tibetan people by China.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, elected federal representatives, the Governor of California, and the United Nations High Commissioner for Human Rights in Geneva, Switzerland.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison and Hahn

Subject: Resolution Clarifying Eligibility for Historic Landmark Designation for Residences and Other Structures, Sites and Areas of Importance for Notable Community Members Who Contributed to the Cultural and Historic Values of Berkeley

RECOMMENDATION

Adopt a resolution clarifying eligibility for historic landmark designation for residences and/or other structures, sites and areas of importance for notable community members who contributed to the cultural and historic values of Berkeley, including to allow the childhood home of Vice President Kamala Harris to be eligible for designation.

BACKGROUND

At the Jan 21, 2021 Special Council Meeting regarding the Appeal of Landmarks Preservation Commission Decision: Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street (LMIN2020-0003), staff restated the opinion that in order to satisfy the historic value criterion of the Landmarks Preservation Ordinance, the applicant must establish a direct connection between the subject property and the inhabitant's historical contributions (i.e., that the notable contributions occurred in the subject property). On page 7 of the August 6, 2020 1915 Berryman staff report, staff indicated that: "The Landmark application, however, has not demonstrated how the extant residential building at 1915 Berryman Street currently embodies or represents Payson's contributions [as]... his activities within religious and political organizations (if found significant) would be more correctly associated with the institutions and locations in which they occurred. Because the subject site served as his personal residence, productive activities would not be attributed to it."

This opinion is not supported by the Landmarks Preservation Ordinance itself, nor the National Register guidelines, and would preclude the landmarking of Vice President Kamala Harris's childhood home. Vice President Harris was raised in Berkeley and made history as the first woman, African-American, and South Asian American to be elected to the second highest office in the executive branch. These achievements did not take place while she was a resident of Berkeley.

This resolution would clarify Council's intent with respect to the Landmarks Preservation Ordinance that residences and/or other structures, sites and areas of importance for

Berkeley community members who contributed to the cultural and historic values of Berkeley, as these terms are identified in subsections A., A.4, and B.1 of Section 3.24.110 of the Landmark Preservation Ordinance, are eligible for historic landmark designation or structure of merit designation.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impacts.

ENVIRONMENTAL SUSTAINABILITY

No known environmental impacts.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

1. Resolution

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

RESOLUTION CLARIFYING ELIGIBILITY FOR HISTORIC LANDMARK DESIGNATION FOR RESIDENCES AND OTHER STRUCTURES, SITES AND AREAS OF IMPORTANCE FOR NOTABLE COMMUNITY MEMBERS WHO CONTRIBUTED TO THE CULTURAL AND HISTORIC VALUES OF BERKELEY

WHEREAS, Kamala Harris has just been elected Vice-President of the United States, one of the nation's highest positions; and

WHEREAS, Kamala Harris has made history as the first woman, first African-American, and first South Asian American to be elected Vice-President; and

WHEREAS, prior to becoming Vice-President of the United States Kamala Harris served with distinction as a United States Senator for California, only the third female Senator from California, and only the 58th female Senator in the history of the United States; and

WHEREAS, the City of Berkeley and its community members are proud to claim Kamala Harris as a former resident of Berkeley; and

WHEREAS, there is strong support for making Kamala Harris' home while in Berkeley a historic landmark to recognize her ground-breaking achievements; and

WHEREAS; Under the current guidelines used by the City of Berkeley's Planning Department, a historic structure can be landmarked or designated a structure of merit only if the person actually performed his or her historic or cultural acts within the structure itself; and

WHEREAS; This interpretation is not supported by the City of Berkeley's Landmarks Preservation Ordinance or National Register guidelines; and

WHEREAS; This interpretation would preclude the City of Berkeley from even considering the landmarking of Kamala Harris's residence;

NOW, THEREFORE BE IT RESOLVED that the Council of the City of Berkeley confirms and clarifies that the residences and/or other structures, sites and areas of importance for notable Berkeley community members who contributed to the cultural and historic values of Berkeley as these terms are identified in subsections A., A.4, and B.1 of Section 3.24.110 of the Landmark Preservation Ordinance, are eligible for historic landmark designation or structure of merit designation, or as otherwise deemed to qualify.



Office of the City Manager

ACTION CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Economic Development Manager

Subject: Berkeley Economic Dashboards Update

INTRODUCTION

The Office of Economic Development (OED) is pleased to present the Citywide Economic Dashboard update for December 2020 (Attachment 1), and the updated Commercial District Dashboards (Attachment 2).

CURRENT SITUATION AND ITS EFFECTS

Over the past five years, Berkeley has experienced economic growth comparable with that of the Bay Area region. By a variety of indicators, Berkeley's economy was on track for continued healthy performance in the beginning of 2020.

Due to the rapidly spreading COVID-19 virus, on March 17, 2020, the City of Berkeley, along with the health officers of six Bay Area counties issued health orders for residents to stay at home ("Shelter-in-Place") and for all but a few *essential* businesses to cease operations. The halting of economic activity had widespread impacts on the Berkeley economy, resulting in significant revenue reductions and job losses in sectors like performing arts, hospitality, and retail, while others, including healthcare and biotechnology, saw new investment and opportunities for growth. This dashboard includes the latest citywide data available through the fourth quarter of 2020, with much of it collected through direct business outreach and on-the-ground fieldwork conducted during the pandemic period.

Key findings include:

- **The pandemic left thousands unemployed in key Berkeley industry sectors.** As the countywide unemployment rate nearly tripled (from 2.6% in Dec. 2019 to 7.6% in Dec. 2020), job losses were most significant in Berkeley sectors like tourism & hospitality (especially lodging, food & beverage, and arts & cultural industries); retail (especially clothing & accessories); durable manufacturing; education and childcare providers; and personal & professional service industries (e.g. gyms and fitness studios, salons, employment services). Although Berkeley-specific unemployment numbers are not available at this time, Berkeley's

average unemployment rate has historically been below that of Alameda County and the State of California (reported at 8.8% for Dec. 2020).

- **Growth opportunities remain in Berkeley’s “innovation sector”.** 400 Berkeley-based tech, biotech, R&D and other STEM industry businesses were either able to adapt to having a remote workforce or continued work (with modified operations to ensure health and safety) in *essential* medical, life science and health manufacturing facilities. In 2020 Berkeley startups raised more than \$700 million through venture, angel-backed financing and convertible securities and 10 Berkeley companies received nearly \$6 million in federal grants for Research & Development (R&D). More than a third of Berkeley innovation companies are in the biotech & healthcare sectors, industries that witnessed tremendous global investment in 2020. (Some estimates show that venture capital funding in biotech has increased more than 4x since 2013.¹)
- **Office vacancy rates in Berkeley remain low compared to neighboring cities.** Overall office availability in Berkeley increased half of a percent from Q3 2019 (4.8%) to Q3 2020 (5.3%). For context, the East Bay office market area average during this same period was 14. 1%. Though demand for office space has lessened due to the pandemic, Berkeley’s inventory continues to remain low; asking office rents in the City average \$3.53 per square foot, which is up by approximately \$0.20 cents per square foot from the same period last year.

Average citywide ground floor commercial vacancy rates increased, but do not yet exceed levels associated with normal market churn. Based on data collected in November 2020, before the latest round of regional and statewide stay-at-home orders further restricted indoor retail and outdoor commerce during the usual winter/indoor holiday surge period, the citywide ground floor commercial vacancy rate had increased to 6.9%, an increase of 1.5% since Q3 2019. The Telegraph, Downtown Berkeley and Solano districts have experienced the largest increases in their vacancy rates since the COVID-19 pandemic began (each district increased by 12.8%, 4.8% and 4.1%, respectively). Vacancy rates also increased in Berkeley’s other commercial districts, as all food, personal service, and retail operations had to reduce volume and could no longer afford to maintain traditional ‘in-person’ operations due to shelter in place measures associated with the pandemic. Among Berkeley’s commercial districts, the smallest increase in vacancy rate (0.2%) was along the San Pablo corridor.

- **Retail in commercial districts, as a share of total square footage, continues to decline.** The percentage of ground floor commercial square footage occupied by retail uses has decreased from 43% in 2015 to 37% in 2020. As retail has

¹ *Life Sciences Real Estate – State of the Market Q4’20*, Capital Brain, January 18, 2021.
<https://capitalbrain.co/blog/life-sciences-real-estate-state-of-the-market-q420/>

declined, ground floor commercial spaces have been increasingly occupied by office uses, personal service industries, and food and beverage services (including non-conforming uses, leased spaces and pending development projects). In Q4 of 2020, Office and Non-Retail uses also declined, from 18.3% (observed in Q3 2019) to 16.4%.

- **The City of Berkeley's sales tax revenue was deeply impacted by the COVID-19 pandemic.** Berkeley's total annual sales tax revenues decreased by 13.2% from the four quarters from Q4 2019 to Q3 2020. For context, Alameda County (including all 14 cities) reported an annual sales tax decrease of 7.8% over the same period and the State of California only witnessed a 4.2% decline. Overall, the Retail and Food & Beverage subsectors were the largest contributors to the city's sales tax revenue (45.3% and 29.7% in Q3 2020, respectively). The easing of Health Order restrictions impacting these sectors likely account for the significant variance in quarterly sales tax collections: Q2 2019 vs. Q2 2020 comparisons show a 35% decline; whereas Q3 2019 vs. Q3 2020 sales tax revenue comparisons show a decrease of 22.3%. Overall, in Q3 2020, sales tax collection decreases were due largely to lower-than-usual activity in the *Food and Beverage* sector (-34.3% vs Q3 2019), *Personal Services* sector, *i.e. Automotive Repair and Salons* (-32.4%), and *Retail* (-18.7%). There were, however, some increases: *Other Non-Retail* collections (including health and government services) ticked up by \$28,166 (20.5%) in the third quarter of 2020.
- **Housing costs in Berkeley remain high for buyers, and costs are decreasing for renters, consistent with the Bay Area region overall.** As of Q4 2020, Berkeley's median home sale price (\$1.32M) was higher than its neighboring communities, (save for Piedmont at \$2.47M), and driven by an increased demand for larger homes with accessible outdoor space and limited housing inventory. As of December 2020, market rate rents for multi-family units in Berkeley had decreased by 3% from the same period last year to a median of \$3,099 per month. In comparison, rental prices in nearby San Francisco dropped by 25% from 2019's pre-pandemic levels. Berkeley's median rental home prices for studio apartments (including rent-controlled units) have remained relatively stable at \$1,895 per month (a \$100 increase from 2019).
- **The City of Berkeley took advantage of a wide range of approaches to support businesses' pandemic response and enable economic recovery.** From direct cash transfers to new programs enabling outdoor commerce to holiday marketing support, the City used all the tools in its toolkit to support businesses to weather pandemic impacts and enable economic recovery. Highlights included the distribution of Berkeley Relief Grants and low-interest loans, the development of new rules for parklets, sidewalk seating and outdoor commerce, and the Discovered in Berkeley and #BerkeleyHolidays marketing

campaigns, among a variety of other business outreach, communications, and direct assistance.

BACKGROUND

Since 2015, OED has consistently released two companion publications, the *Citywide Economic Dashboard* and *Commercial District Dashboards*, which analyze a wide variety of economic trends and indicators in Berkeley. Attached to this report is the updated version of the Citywide Economic Dashboard and Commercial District Dashboard for December 2020 (Attachments 1 and 2). These dashboards are designed to make current economic and community data and information more accessible to Council, City staff, and community stakeholders. Providing this information also allows investors to evaluate potential markets and provides vital information for policy-makers to better direct different social and economic programs. The reports provide updated information through Q4 2020. OED staff will continue to update these dashboards on a semi-annual basis, as staffing allows, and has posted the most recent version on the City's website at: <https://www.cityofberkeley.info/oed/reports/>.

To produce these publications, OED staff compiled and analyzed a wide variety of data sources including the Monthly Labor Force Data (California Employment Development Department), WARN notices provided to the Alameda County Workforce Development Board, commercial real estate data (Newmark Cornish & Carey), housing market data (Berkeley Rent Stabilization Board, MLS, YardiMatrix) and sales tax data (MUNIServices). Staff also analyzed data from City databases including business licenses, building permits and planning permits, and City publications such as rent board reports and the housing pipeline report. Information on Berkeley startups and other innovation companies was obtained from Pitchbook, Crunchbase, LinkedIn, the U.S. Small Business Administration, tech industry news sources, and direct communications with businesses or the [Berkeley Startup Cluster](#)'s partners including UC Berkeley, the Berkeley Lab, and Berkeley's startup incubators and accelerators such as SkyDeck and Cyclotron Road. Finally, in the fourth quarter of 2020 OED staff updated its periodic field occupancy survey of ground floor commercial spaces in Berkeley commercial districts (Attachment 2).

Due to a lag in availability of some data, some of the traditional findings including employment data were omitted in this publication because they were most relevant to the first quarter of 2020 or late 2019, before the sweeping economic impacts of the COVID-19 coronavirus pandemic took hold in California (widely acknowledged to be mid-March 2020). These publications support the City's Strategic Plan, advancing our goal *to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.*

ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Staff believes that the continued pursuit of sustainable economic goals, represents a strength and source of resilience for Berkeley.

POSSIBLE FUTURE ACTION

OED staff will, as directed by Council through previous and future referral items, partner with other City departments and community partners to implement programs and policies that foster a dynamic, sustainable, and locally-based economy, and assist in economic recovery throughout 2021 and beyond.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Actions that facilitate increased economic activity will increase revenues related to sales tax and property tax, and thus have a positive fiscal impact on the city.

CONTACT PERSON

Eleanor Hollander, Acting Economic Development Manager, (510) 981-7536
Elizabeth Redman Cleveland, Chief Strategist, Sustainable Growth (510) 981-7532

Attachments:

- 1: Citywide Economic Dashboard
- 2: Commercial District Dashboards



city of

BERKELEY

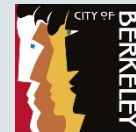


Economic Dashboard & COVID-19 Impacts & Response

December 2020
Office of Economic Development

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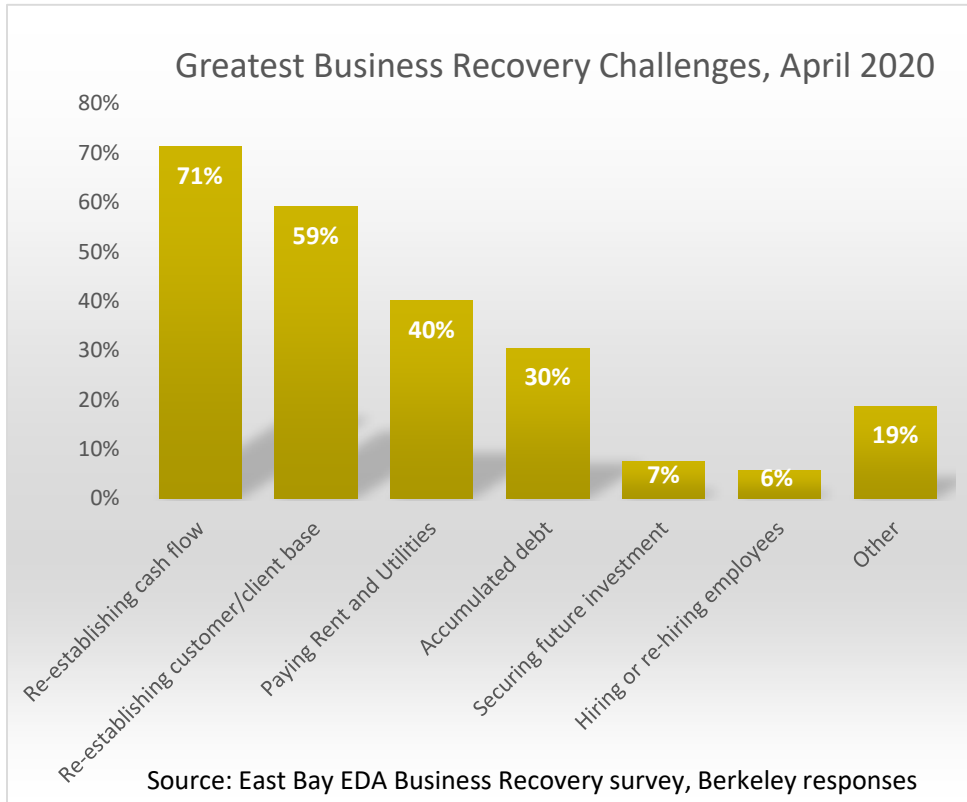
15-21

- Business & Arts Support



preliminary impacts

In collaboration with the East Bay Economic Development Alliance, the City of Berkeley Office of Economic Development (OED) surveyed businesses by phone and email about the impact of COVID-19 in late April 2020. Most of the Berkeley respondents were *small* businesses: 97% had less than 10 employees; 40%+ were sole proprietors.* Respondents spanned industries including Professional and Technical Services (22%), Retail & Services (14%), Arts, Culture & Creative (12%), Healthcare (9%), Food & Beverage (8%) and Beauty/Personal Care (8%). 22% were Minority-Owned; 46% were Woman-Owned.



The pandemic took a steep toll

- More than two fifths of businesses surveyed expected greater than 80% revenue loss over the 3 months from when the pandemic began impacting our community.
- More than half (56%) expected to close permanently if they had to stay closed for 3-4 months.
- 37% “Shifted to online sales or virtual services” and 33% “Reduced salaries or staff hours” to avoid business closure.
- About two thirds applied for the Federal Paycheck Protection Program (PPP) forgivable loan.

*While Berkeley does have a business community comprised largely of small businesses (95% employ 100 or less), this survey sample skews toward a sample of smaller businesses than the Berkeley business community in general.



impacts by industry sector - employment

Sector (in Alameda County)	Employment
Accommodation	-42.0%
Arts, Entertainment & Recreation	-35.2%
Personal & Laundry Services	-33.6%
Clothing & Clothing Accessories Stores	-30.4%
Building Equipment Contractors	-29.7%
Employment Services	-26.5%
Food Services & Drinking Places	-25.0%
Durable Goods Manufacturing	-15.4%
Educational services	-15.2%

Source: Employment Development Department, 2020

Small businesses weren't the only ones affected

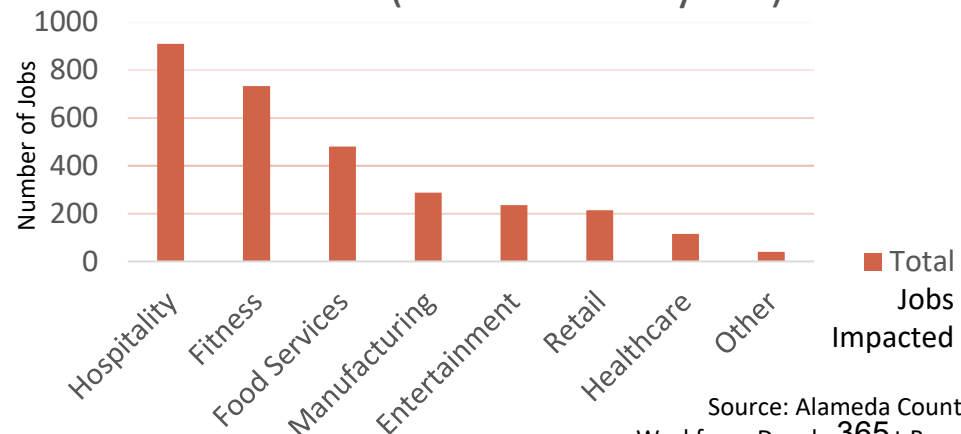
Among Berkeley's largest employers (those with 75 or more full-time employees), more than 3,000 layoffs (~4.6% of the Berkeley labor force) were reported through WARN notices* since the pandemic began.

*The Worker Adjustment Retraining Notification (WARN) protects employees, their families, and communities by requiring employers to give a 60-day notice to the affected employees and both state and local representatives prior to a plant closing or mass layoff. California WARN is applicable to a covered establishment with 75 or more employees full or part-time.

The impacts spanned industries

Alameda County's Dec. 2020 unemployment rate jumped to 7.6%, almost three times the rate a year prior (2.6%). Berkeley sectors most impacted included tourism & hospitality (especially lodging, food & beverage, and arts & cultural industries); retail (especially clothing & accessories); durable manufacturing; education and childcare providers; and personal & professional service industries (e.g. gyms and fitness studios, salons, employment services).

Affected Workers - 2020 (Closures & Layoffs)



Source: Alameda County Workforce Development Board



impacts by industry sector – hospitality

In 2020, Berkeley hospitality* industries suffered deeply from COVID-19 and related health orders.

Tourism & Lodging



Source: DoubleTree by Hilton Berkeley Marina

- 100% of meetings, conferences and events were cancelled indefinitely
- 90% of Berkeley hotel employees were laid off or furloughed from March – Oct. 2020
- ~75% of Berkeley hotel rooms were temporarily closed during that period
- Lodging tax revenues declined by 70% (a loss of \$4.7 million) year-over year from March – Nov. 2020

Food & Beverage Services

- Health orders banned indoor dining for more than three-quarters of 2020 forcing restaurants to earn revenues through delivery and takeout services, catering, outdoor dining (June-Nov. 2020) and new business models.
- More than 40 Berkeley restaurants and bars closed forever.
- The greatest number of closures were in Downtown Berkeley (17) and the Telegraph district (9), both near UC Berkeley’s campus.

*Berkeley hospitality includes lodging, food & beverage establishments, event centers and planning, and more.

Many historic Berkeley institutions closed their doors permanently in 2020 including the Albatross Pub (est. 1964) and Au Coquelet Coffee Shop (est. 1976).



Photo credits: Twitter (top), Berkeleyside (lower), OED (left)



COVID-19 BUSINESS IMPACT:



impacts by industry sector – arts & culture



Berkeley's arts and culture industry, which typically generates nearly \$165 million in annual economic activity and provides close to 7,000 local jobs, was hit especially hard by the pandemic. Based on Q2 2020 survey data collected by the City of Berkeley's Civic Arts Program from 65 Berkeley arts organizations, more than \$7.5 million of total revenue was lost for April - June and 288 employee positions were eliminated in the same quarter.

170,800 92% ATTENDANCE/VISITORS
LOSS FOR THE QUARTER

\$5,219,486 TOTAL LOSS OF
ADMISSIONS/BOX OFFICE



\$595,174*

Total amount spent on COVID-19 related expenses

- Cleaning Supplies, masks, hand sanitizers, cleaning services
- New IT software to enlarge digital presence
- Technology equipment for working at home

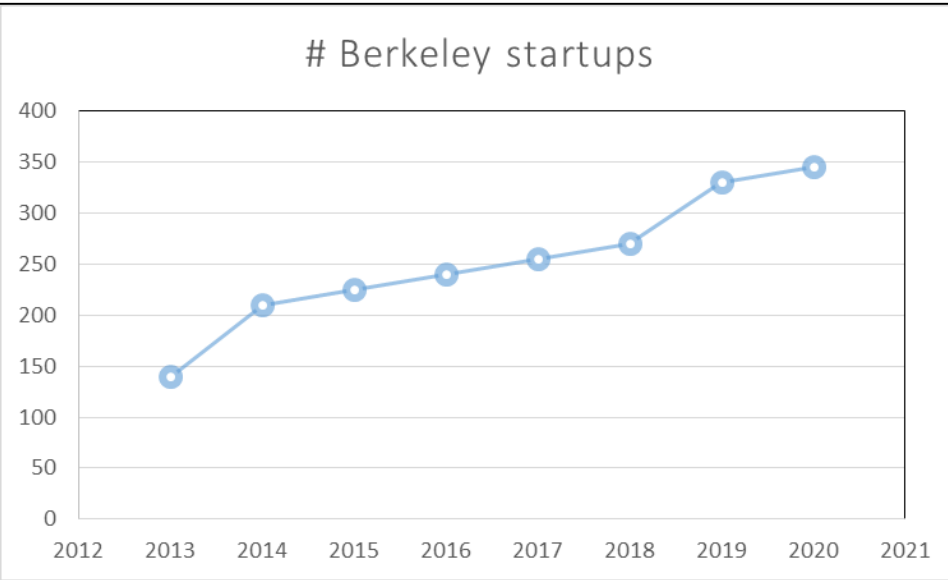


*Numbers based on Q2 2020 survey data - see full survey results [here](#). Updated numbers will be posted on the City of Berkeley's [Civic Arts webpage](#).



impacts by industry sector – innovation sector

Nearly 400 Berkeley-based “innovation sector” companies (including tech, biotech, Research & Development [R&D] and other STEM industries) had employees either working from home or in other *essential* medical, life science or health manufacturing facilities.

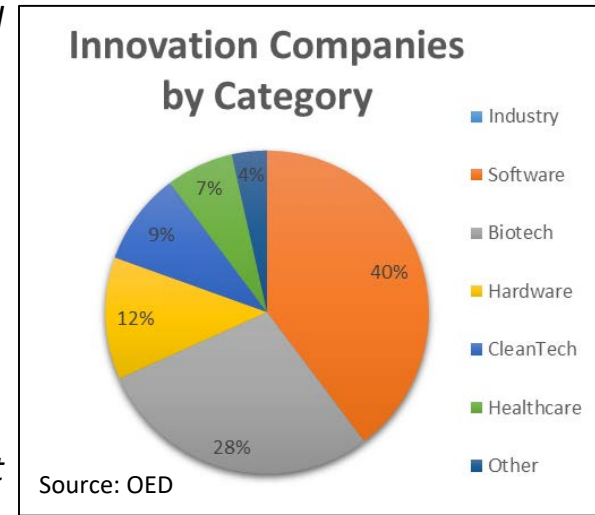


Source: OED, UC Berkeley IPIRA

In 2020 Berkeley startups* raised more than \$700 million through venture, angel-backed financing and convertible securities.

*Startup = For-profit businesses that sell innovative technology products or services OR substantively use innovative technologies to develop and manufacture their products or provide their services AND are developing repeatable and scalable business models that aren't yet profitable.

More than a third of Berkeley innovation companies are in the biotech & healthcare sectors, industries that witnessed tremendous global investment in 2020.



Other 2020 Highlights

- 2 Nobel prize winners at UC Berkeley: Jennifer Doudna (Chemistry) and Reinhard Genzel (Physics)
- 2 Berkeley companies were listed in TIME Magazine's [100 Best Inventions of 2020](#): Perfect Day Foods & Pivot Bio
- 10 Berkeley companies received nearly \$6 million in federal SBIR & STTR[†] grants for Research & Development (R&D)

[†] Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs are highly competitive programs that encourage US small businesses to engage in Federal Research and Development with the potential for commercialization.



impacts by industry sector – office based businesses

In Q4 2020, OED conducted a survey of Berkeley office-based businesses to better understand how their commercial real estate needs changed in light of the COVID-19 pandemic. Of 80 respondents, the vast majority (82%) occupied small offices (< 5000 sf). The majority were either in professional services (43%) or technology (24%) industries in Downtown Berkeley (zip code 94704) or West Berkeley (zip 94710). 58% rate having a private office as “extremely important” and almost two thirds were still renting their Berkeley office despite SIP restrictions. 37% have a long term lease that won’t expire until 2023 or after.

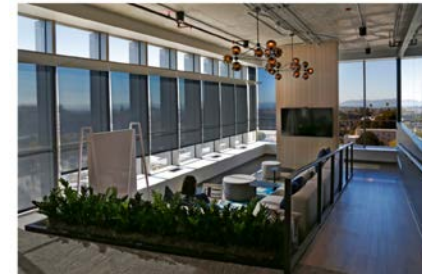
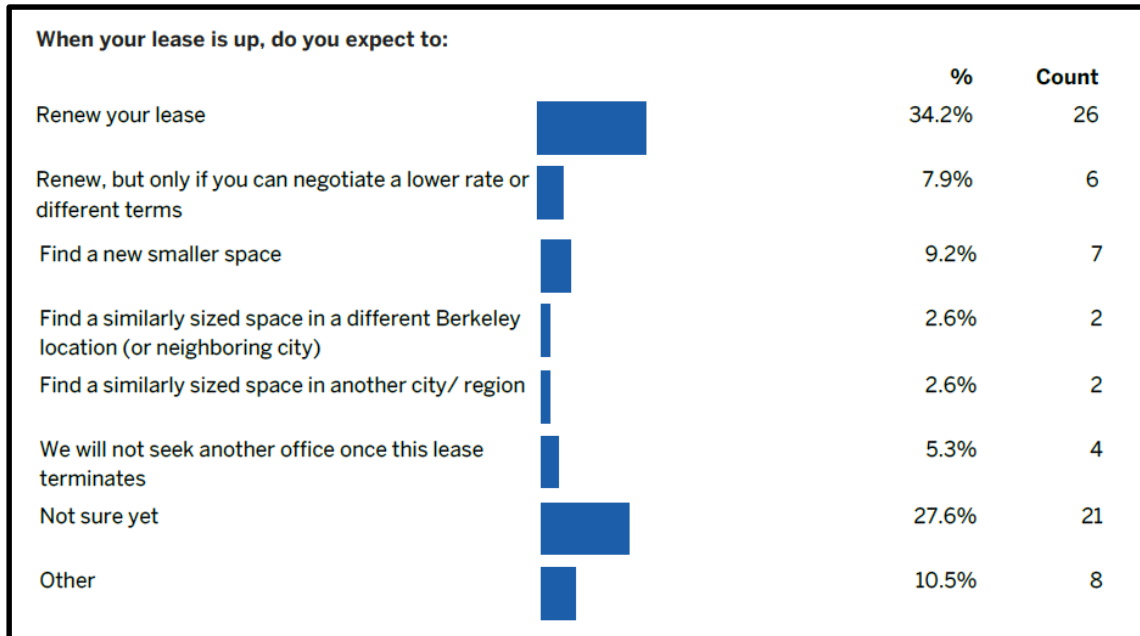


Photo credit: AAA

Despite many firms being firmly rooted in Berkeley, expect changes ahead

Nearly 50% have leases that will expire before the end of 2021. More than a quarter aren’t sure yet what they will do when their lease expires; 8% do not plan to have an office in Berkeley after their lease expires.



Help is possible for those who ask

- 46% of office survey respondents haven’t requested any changes to their rental or mortgage costs
- 18% have been able to negotiate lower rental fees because of the pandemic’s business impact

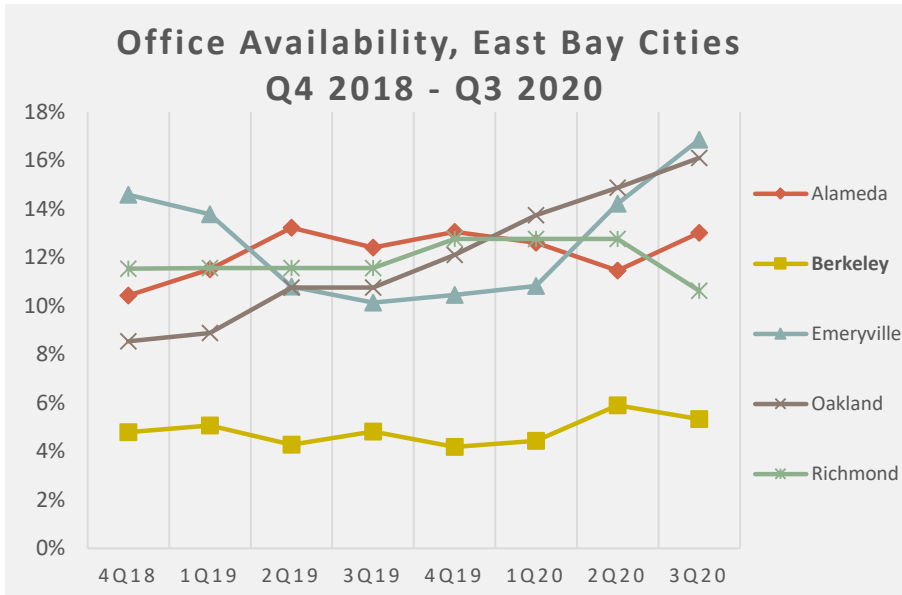
Source: OED Survey of Berkeley Office-Based Businesses 3Q4 2020



office trends & transactions

Q3 2020 Office Market, Berkeley	Indicators
Total Inventory	3,455,150 SF
Under Construction	0 SF
Availability Rate	5.33%
Qtr Gross Absorption	115,960
Qtr Net Absorption	-52,916
YTD Net Absorption	-114,282
Average Asking Rent	\$3.53 / SF

Source: Newmark Cornish & Carey, 3Q20 East Bay Office Market Report

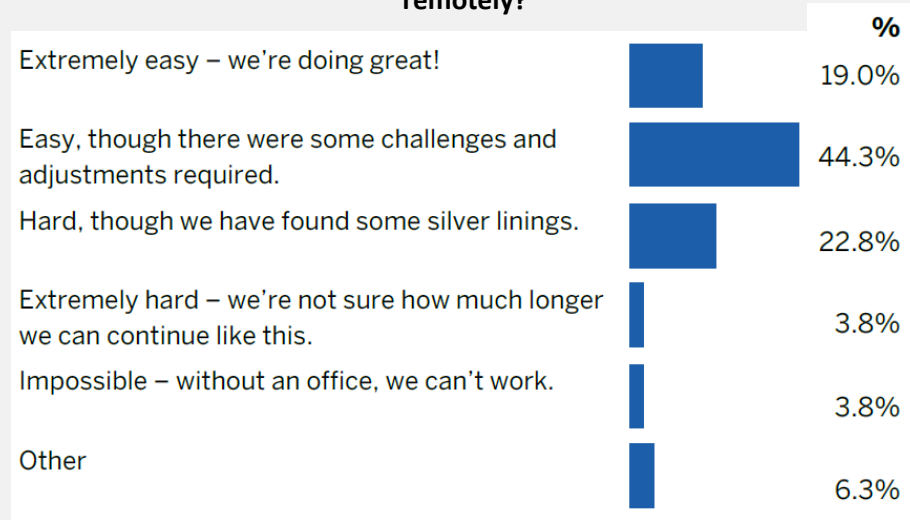


Source: Newmark Cornish & Carey, Q320 East Bay Office Market Report

Office-Based Businesses Work Remotely

Office-based businesses were closed for the majority of 2020 due to COVID-19 health orders. However, in OED’s Q4 2020 survey of office-based businesses, **63% indicated that they were easily able to operate with employees working remotely** and, of those that found remote working difficult, 23% “found silver linings”.

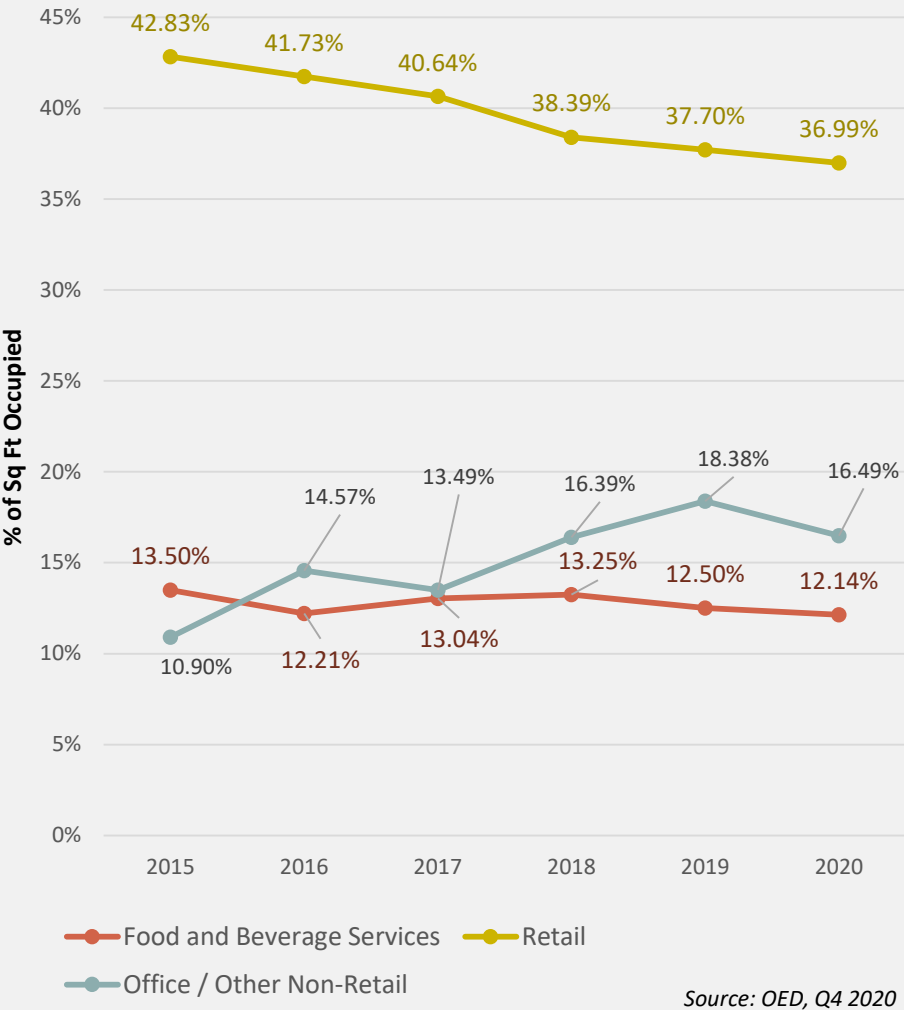
Q: From the perspective of business productivity, how easy has the transition been for your business to operate with employees working remotely?



Source: OED Survey of Berkeley Office-Based Businesses, Q4 2020 **370**

commercial trends & transactions

Citywide Commercial Inventory, Select Categories, By Square Footage, 2015-2020



Source: OED, Q4 2020

New Development

Wareham Development started leasing 16,297 square feet of laboratory and office space at 999 Anthony St in West Berkeley.



Source: Kidder Mathews, Wareham Development

Construction on Kaiser Permanente’s new 61,000-square-foot medical offices at 2621 10th St. (San Pablo Avenue/ Parker St) put the ball in motion for a 2021 opening.

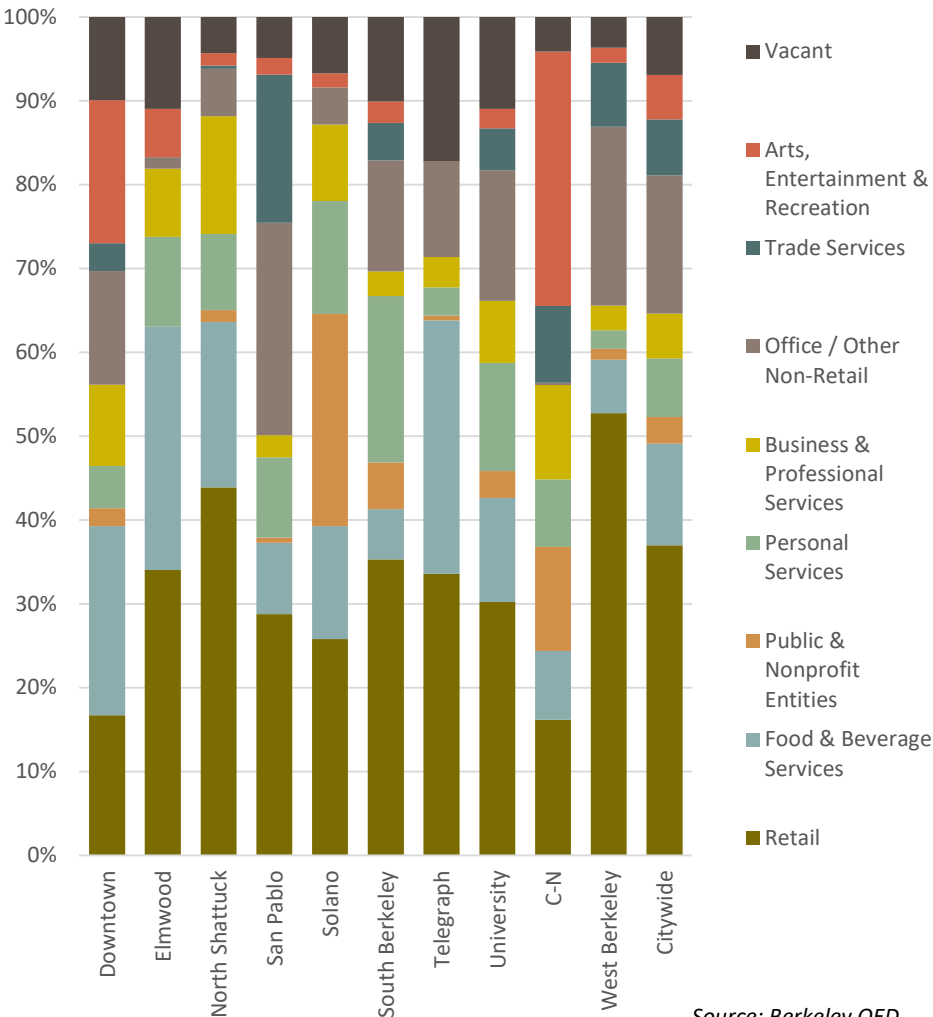


Source: Gould Evans



commercial districts & vacancy rates

Ground Floor Commercial Occupancy By Category, 2020 Q4



Citywide, the ground floor commercial vacancy rate has increased to 6.9%*, an increase of 1.5% since Q3 2019. The Telegraph, Downtown, and Solano districts have experienced the largest increases in their vacancy rates since the COVID-19 pandemic began.

Vacancy Rates by District, Calculated by Square Footage, 2015-2020

District	2015	2016	2017	2018	2019	2020
Downtown	8.4%	4.7%	4.6%	3.1%	5.1%	9.9%
Elmwood	2.0%	1.5%	5.4%	7.3%	7.3%	10.9%
North Shattuck	2.1%	2.6%	0.4%	1.7%	0.7%	4.3%
San Pablo	7.3%	5.9%	5.5%	4.9%	4.6%	4.8%
Solano	3.5%	7.5%	4.8%	4.1%	2.6%	6.7%
South Berkeley	7.9%	8.2%	9.6%	9.7%	7.6%	10.1%
Telegraph	7.1%	5.1%	7.1%	7.9%	4.4%	17.2%
University	9.4%	14.2%	12.0%	11.0%	7.8%	11.0%
Neighborhood Commercial (C-N)						7.3%
West Berkeley	3.3%	8.8%	1.9%	3.7%	5.8%	3.7%
Citywide Avg.	5.9%	6.5%	4.6%	5.0%	5.4%	6.9%

*Typical commercial district storefront vacancy rates range from 4-8% due to natural market churn.

Source: Berkeley OED
372

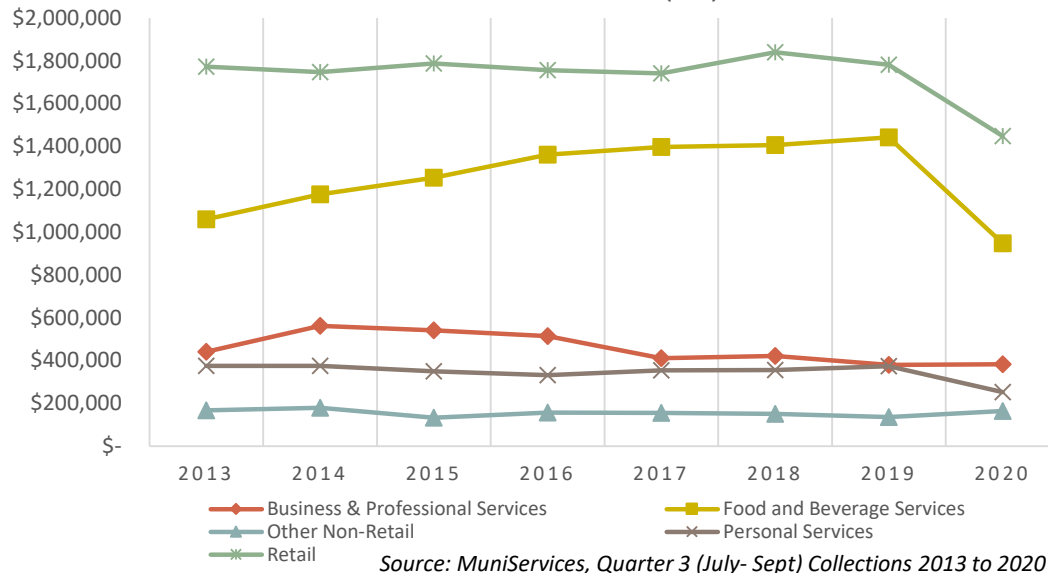


sales tax revenues – the pandemic hits

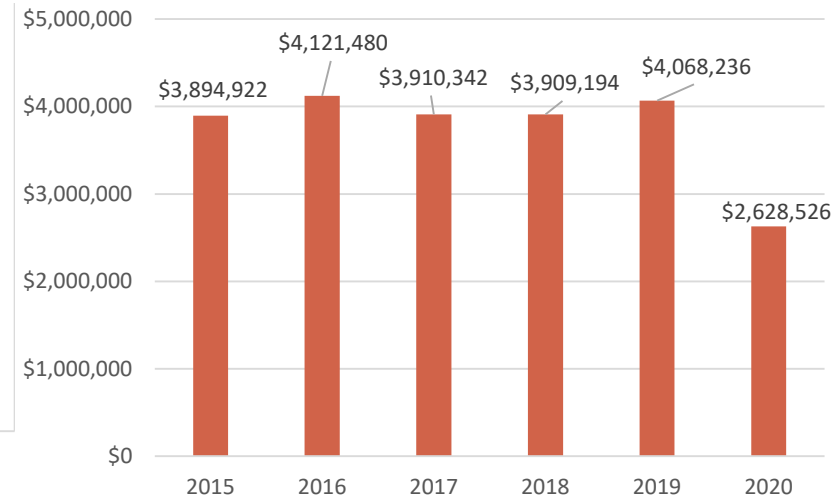
Total Annual Sales Tax Revenue - Past 4 Quarters	Q4 2018- Q3 2019	Q4 2019- Q3 2020	Change
City of Berkeley	\$18,839,486	\$16,355,379	-13.2%*
Alameda County (total including cities)	\$356,111,846	\$328,424,125	-7.8%
State of California	\$7,363,034,598	\$7,050,811,392	-4.2%

*While increases in *Food & Beverage* sales helped to make up for decreases in *Retail* sales tax in past years, due to the COVID-19 Pandemic, both *Retail* and *Food & Beverage* sales declined in 2020.

BERKELEY SALES TAX REVENUES (Q3) BY BUSINESS CATEGORY



TOTAL CITY OF BERKELEY Q2 SALES TAX REVENUES

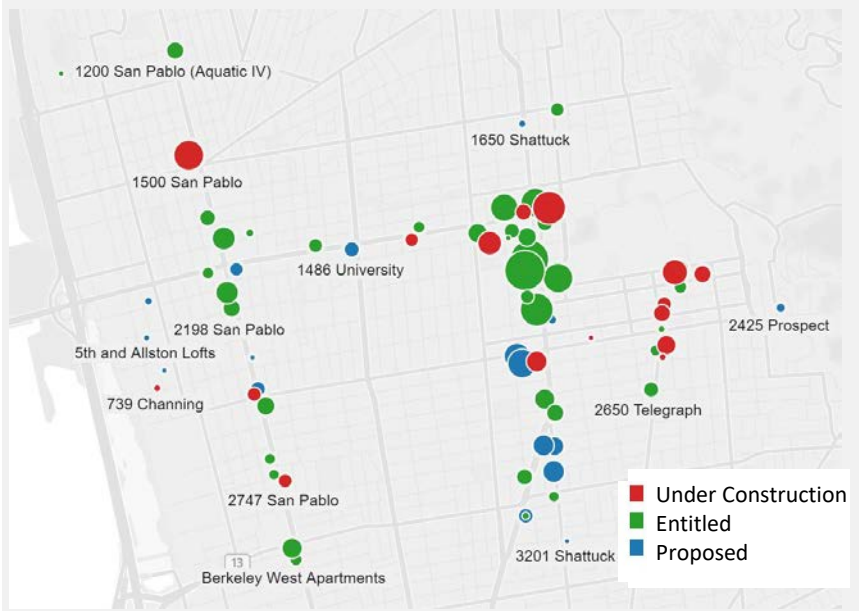


Source: MuniServices, Quarter 2 (April-June) 2015 to 2020, Nominal Values.

In Q3 2020, the *Retail* subsector was the largest contributor to the city's sales tax revenue (45.3%), with *Food & Beverage* second (29.7%). Health Order restrictions impacting these sectors account for the significantly higher decline in sales tax collections in Q2 2020 (-35% vs Q2 2019) than in Q3 2020 (-22.3% vs Q3 2019). The decline in Q3 sales tax collection was largely due to significant decreases in the *Food and Beverage* sector (-34.3% vs Q3 2019), *Personal Services* sector, i.e. *Automotive Repair* and *Salons* (-32.4%), and *Retail* (-18.7%). There were, however, some increases: *Other Non-Retail* collections (including health and government services) ticked up by \$28,166 (20.5%).

construction & pipeline

Multi-Family Residential Developments, 2020



Data Source: City of Berkeley Planning Department Pipeline Report (May 2020); Map: [Red Oak Realty](#) (September 2020).

Housing Development Pipeline

As of mid-2020, 72 distinct housing developments were proposed, entitled for development, or under construction. The buildings currently under construction will contain 1,351 net new units, a small increase from the number of units under construction in 2019 (1,141). Overall, in the last two years, Berkeley has seen increasing numbers in the development pipeline: 1,790 dwelling units received entitlements in 2020, up from 1,573 in 2019.

Pipeline Project Highlights



Image above and right: Trachtenberg Architects

2650 Telegraph is a 5-story, 45-unit project on Telegraph Avenue at Derby Street. The project was approved by the Berkeley Zoning Adjustments Board (ZAB) in March 2020 and by City Council in June 2020. It will have 50 bike parking spaces and over 4,000 sq. feet of usable open green space.

3000 San Pablo is a 6-story, 78-dwelling unit project approved for the busy corner of Ashby and San Pablo Avenues. 1,248 sq. feet of commercial space for one tenant is planned for the ground floor at the northeast corner of the property.



Modera Achenson Commons is currently under construction. The 205 unit building will boast 14,000 sq. feet of retail space. The building is next to the UC Berkeley campus and in the heart of Downtown at the intersection of Shattuck and University Avenues. It is due to open in the middle of 2021.

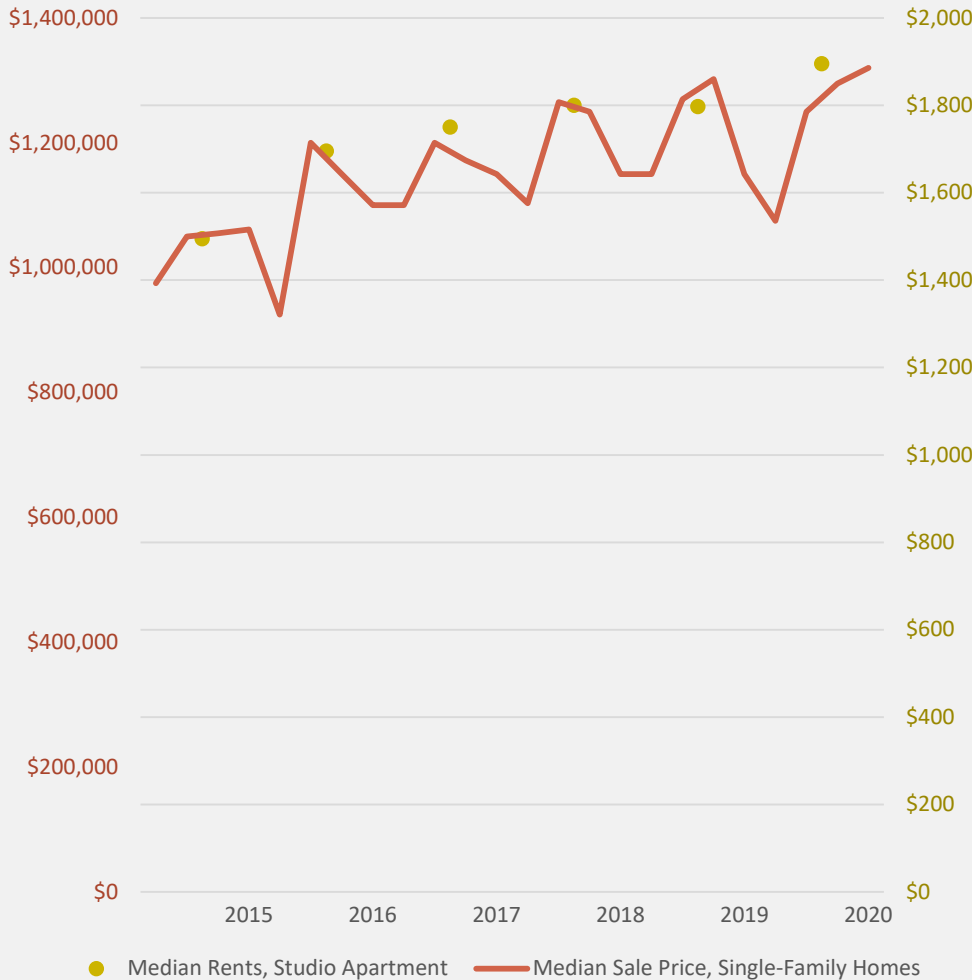


Image: Mill Creek Residential



housing costs

Housing Prices in Berkeley 2015-2020



Sources: MLS, Redfin, and City of Berkeley Rent Stabilization Board

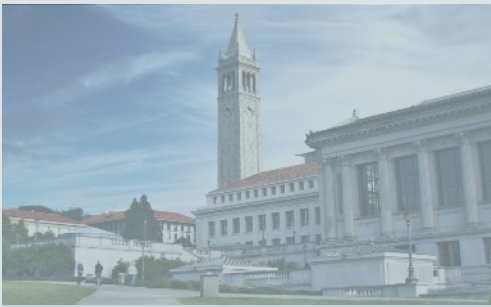
Median Sale Price, Single-Family Homes, Dec 2020

Alameda	\$1,073,750
Albany	\$784,000
Berkeley	\$1,320,000
El Cerrito	\$1,051,028
El Sobrante	\$660,000
Emeryville	\$635,000
Oakland	\$855,000
Richmond	\$550,000
Piedmont	\$2,470,000
San Leandro	\$770,000

Sources: Redfin (top), CalMatters.org, RentCafe.com (bottom)

Home sales prices remain high but rents drop

Berkeley's single family home values increased 14.8% from Nov. 2019 to Nov. 2020, with a 4.1% increase in sales volume over the same period. 76 single family homes were sold in Berkeley in Nov. 2020 alone and 79% sold above list price. Since stay-at-home orders began in March 2020, the median price of single family homes in California (\$700,000) hit an all time high in August. Meanwhile, median rents in larger cities have dropped: San Francisco's median rent decreased 25% since Q1 2020 and Berkeley's market rate rents for multi-bed units decreased by 3% year over year to \$3,099. 375



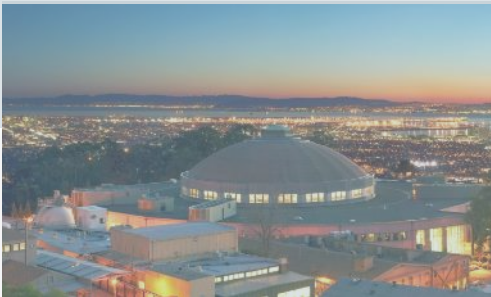
**FACE COVERINGS
REQUIRED**



- ✓ CUSTOMERS
- ✓ STAFF
- ✓ VENDORS

Everyone must cover their nose and mouth with a mask, bandana, or other cloth barrier.

CITYOFBERKELEY.INFO/COVID-19



COVID-19 CRISIS RESPONSE & RECOVERY

small business revolving loan fund & resiliency loan program

The City of Berkeley's Revolving Loan Fund (RLF) is federally funded by the Economic Development Administration (EDA) and provides access to capital for businesses that don't qualify for traditional commercial loans. All current RLF recipients were offered a six month pause in monthly payments due to the pandemic.

Portfolio Summary 2020	Total Loans	Active Loans
Number of RLF Loans	44	8
RLF \$ Loaned	\$2,693,417	\$760,000
Total Non-RLF \$ Leveraged	\$7,870,426	\$2,364,010
Private Sector Jobs Created	218.5	51
Private Sector Jobs Saved	102.5	77
Total Minority Jobs Created and Saved		124
Total Women Jobs Created and Saved		133
Totals Jobs Created/Saved		267

Source: Berkeley OED, June 2020

Current RLF Borrowers Include:



NABOLOM BAKERY



KITCHEN on FIRE
cooking school since 2005
1509 Shattuck Ave, Berkeley CA 94709



Supporting Berkeley's existing small businesses

Berkeley's small businesses are key to the economic health of the City of Berkeley. Recognizing the enormous negative impact of COVID-19 on businesses' finances, OED applied for a CARES Act grant to provide additional funding to existing businesses. The City was awarded the grant and launched the **COVID-19 Resiliency Loan Program (RLP)** for Berkeley businesses that are at least two years old and with 50 employees or less. This program streamlines the approval of 0%-1% interest loans for businesses in need of working capital with a six month non-payment and non-accrual period to provide additional assistance and flexibility for entrepreneurs.



Photos: RLF recipients pivot to new COVID-safe practices -- an outdoor handwashing station at Nabolom Bakery (above) and online cooking classes at Kitchen on Fire (right).

The Loan Administration Board (LAB) and City Council acted swiftly to modify the existing Revolving Loan Fund (RLF) Administrative Plan to incorporate the RLP. In addition, the LAB worked with staff and partner organizations to conduct targeted outreach to the hardest-hit businesses, including many that didn't receive previous grant funding from the Berkeley Relief Fund.



Business & Arts Relief Grants

Continuity Grant Awards

In April of 2020, the [City awarded grants to businesses and arts organizations](#) whose revenues were significantly impacted by the COVID-19 pandemic. The Business and Arts Organization Continuity Grant Programs were funded through a \$3M allocation of the City's catastrophic reserve fund on March 17, 2020 to provide assistance to renters, small businesses and arts organizations significantly impacted by the COVID-19 pandemic and state of emergency. Of that funding, \$1 million was allocated to expand the Housing Assistance Program, which provides assistance to low-income renters; \$1 million was allocated to create the Business Continuity Grant Program; and \$1 million was allocated to create the Arts Organization Continuity Grant Program. In addition, community leaders launched the Berkeley Relief Fund, a campaign to raise private donations to match the City's contribution.

COVID-19 Small Business & Arts Organization Emergency Grant Program Impact



MARCH 2020



- Berkeley City Council allocates \$2,000,000 for the Business and Arts Continuity emergency relief grant program

1,058 Business Grant Applications Received

APRIL 2020



- Grant applications go Live
- Berkeley Relief Fund campaign raises additional \$842,000 in private donations for the relief grant program

71 Arts Grant Applications Received

700 Business Grants Awarded Totalling \$1,669,999

MAY 2020



- Grant awards are processed and recipients receive funding

63 Arts Grants Awarded Totalling \$954,542

SMALL BUSINESS & ARTS ORGANIZATIONS SUPPORTED BY THE COVID-19 EMERGENCY RELIEF GRANT PROGRAMS

SMALL BUSINESS CONTINUITY GRANTS BY SECTOR



TOTALING: \$1,669,999

378



COVID-19 Emergency Operations Center Response

New avenues for City-Business communications

Throughout the pandemic, OED found a number of ways to communicate with – and hear from – businesses citywide:

- Established an Emergency Business Outreach Team (April 2020) which conducted ~5000 business surveys and ~800 phone calls to assess preliminary COVID-19 impacts
- Fielded thousands of direct business inquiries by phone & email
- Hosted 40+ [recovery listening sessions](#) for key industry sectors and arts organizations
- Issued 24 [OED newsletters](#) (viewed 33,000+ times) with relevant information and opportunities for businesses
- Partnered with the Berkeley Chamber to organize 13 digital Berkeley Business Forums for the business community at large to gain information, ask questions and share resources
- Conducted field surveys in Berkeley’s commercial districts to document business closures, pivots and vacancies
- Published COVID-19 resources for businesses & arts organizations on the [City of Berkeley](#) + [Berkeley Chamber](#) websites

Protecting Public Health – Through Our Business Community

FACE COVERINGS REQUIRED

- ✓ CUSTOMERS
- ✓ STAFF
- ✓ VENDORS

Everyone must cover their nose and mouth with a mask, bandana, or other cloth barrier.

Get tested, Berkeley!

Stop the spread of COVID-19. Schedule your appointment today.

- ✓ Testing is free
- ✓ No insurance required
- ✓ Open to everyone
- ✓ Results in 2-3 days

To make an appointment, visit cityofberkeley.info/get-tested.

Berkeley businesses quickly implemented *site specific protection plans* to keep customers and employees safe, and worked tirelessly to educate customers and employees on the importance of masking and physical distancing to contain airborne disease transmission.

Image Credits: City of Berkeley

Berkeley employers participated in group testing programs for front line workers to help ensure safe workplaces.

Everyone must wear a face covering...

To prevent COVID-19 spread, covering your nose and mouth is now mandatory. You can use a cloth mask, bandana, or scarf.

...and stay 6 feet apart

We are required to refuse service to anyone who does not comply.

CITYOFBERKELEY.INFO/COVID-19

FRIDAY, MARCH 13TH | 3-4PM

MODERATED BY HUSTLEHUNTERS

SHARE Q'S, CONCERNS & TIPS

BERKELEY BUSINESS FORUM ON OUTBREAK RESPONSES

DIGITAL FORUM

OFFICE OF ECONOMIC DEVELOPMENT
SUPPORTING BERKELEY BUSINESSES

Our mission is to assist businesses, entrepreneurs, artists, and community organizations to access services, feel welcome in Berkeley, and thrive.

Updates from the Office of Economic Development (OED)

Ask Your Questions, Share Your Experience

New COVID-19 restrictions
Emergency rules seek to save lives amidst pandemic's worst phase yet

OPEN	CLOSED
critical infrastructure	allow to restaurants
grocery stores (25% capacity)	playgrounds
delivery & essential business	childcare
non-urgent medical & dental	retail stores (25% capacity)
childcare	bars & taverns
retail stores (25% capacity)	gyms & fitness
laundry (essential travel only)	hair & nail salons
	personal care services
	museums & galleries

City Council Public Hearing on Adeline Corridor Specific Plan
Tonight, December 8, 2020 6:00PM

The Adeline Corridor Specific Plan, General Plan and zoning amendments along with environmental review documents will be considered for adoption by the City Council.

See the special Council meeting agenda and participate virtually.

Presentation to City Council (Oct. 27, 2020)

BUSINESS & ARTS SUPPORT

- Administering the City's Emergency Response to Small Business Administration (SBA) Loans assistance grant
- Distributing 763 business and arts certificate grants (valuing \$1.8MM) to 6,000 businesses
- Implementing a Fast Enrollment program to help businesses registering to the state
- Establishing an Emergency Business Checkup System, which conducted ~ 8,000 business surveys, ~ 1000 phone calls and COVID-19 audits
- Field surveys in Berkeley's 10 commercial districts to document business closures and pivots
- Launching Berkeley's Chamber Commerce Program
- Working with various agencies, business and arts community groups, statewide and digital forums to share resources and coordinate COVID-19-related response
- Publishing regular newsletters and web updates to keep Berkeley's business and arts community informed about health order amendments.

OUR LIBRARY

3:12:59 / 4:59:46

Regular City Council Meeting - 6 p.m.

Index | Share | Download | Embed

2020 Summary Report COVID-19 RESPONSE



Source: Lessons Learned in Organizational Management During Crisis and COVID-19 Response 2020 Summary Report, [Item 24](#).

Outdoor Commerce

Berkeley's business community pivoted quickly to offer innovative "to-go" service models and embraced outdoor dining and commerce during the pandemic.



Outdoor Commerce

Berkeley's City Council authorized an [urgency ordinance](#) in June 2020 to permit outdoor dining and commerce.

Over **50 installations** of both public and private outdoor commerce were established in Berkeley in 2020.



Credit: City of Berkeley Outdoor Commerce Guide

Technical Assistance for Businesses

OED coordinated a [webpage](#) and a [guide](#) to assist businesses with outdoor commerce installations and worked with local architects and designers to provide design templates and pro-bono assistance.



Street Bar
And Casual Outdoor Dining in front of The UC Theatre
Open to the Public Every Friday & Saturday



Clockwise: 'Outfront' at the UC Theater, online orders at Café Buenos Aires, pick up food at Imm Thai Restaurant, and curbside service at Picante.



Which permit is right for my business?



SIDEWALK SEATING (PAGE 3)

- For applicants wishing to serve food and/or alcohol or increase their outdoor dining capacity a sidewalk seating application is likely the most appropriate.
- For applicants conducting personal service businesses outdoors (i.e. hair and nail salons) with reservations and personal protective equipment (PPE) in place.
- Sidewalk seating or sidewalk area for personal service is controlled by the permittee and may be used for patrons with reservations.



PARKLETS (PAGE 4)

- For applicants that want to provide extra outdoor space for queuing, or "to-go" food consumption, or fitness classes construction of a parklet may be a better fit.
- Parklets are considered public space. The parklet sponsor(s) is/are required to maintain the space.

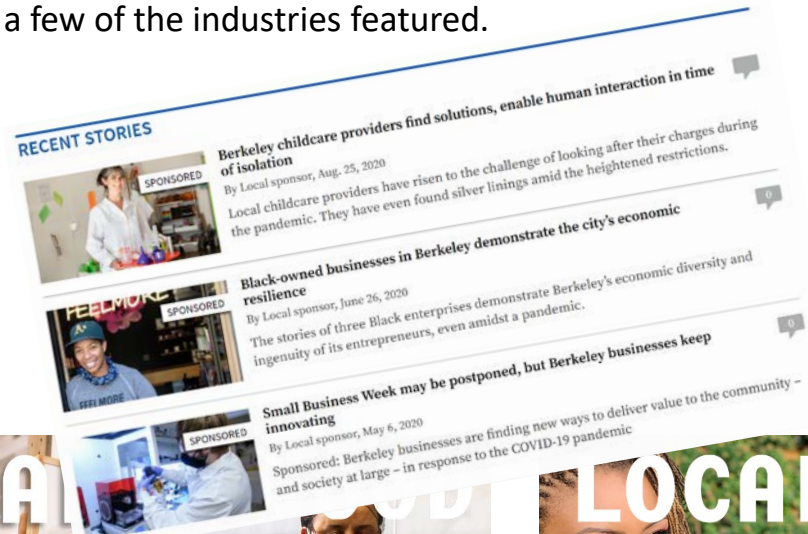


#DiscoveredinBerkeley business marketing campaign

The **Discovered in Berkeley** marketing campaign highlighted local businesses with notable pandemic “pivots” and entrepreneurs demonstrating perseverance and creativity. Women-owned businesses, black-owned businesses, childcare providers, healthy food manufacturers, artists and curators were a few of the industries featured.

Throughout 2020:

- More than 2,700 users visited DiscoveredinBerkeley.com
- 1000+ uses of #DiscoveredinBerkeley were found on Instagram
- 9 Berkeleyside articles generated 24,000+ page views and 1000+ outbound clicks to Berkeley businesses’ websites
- 27 Berkeleyside banner ads generated 1.1 million+ impressions and nearly 1,500 “clicks”



Discover how Berkeley childcare providers are finding solutions and enabling human interaction in time of isolation.

[Learn more](#) about childcare providers across Berkeley



Berkeley-based food businesses are responding to the shelter-in-place order with ingenuity and community support.

[Learn more](#) about Berkeley's innovative businesses



BERKELEYHOLIDAYS.COM Gift Guide

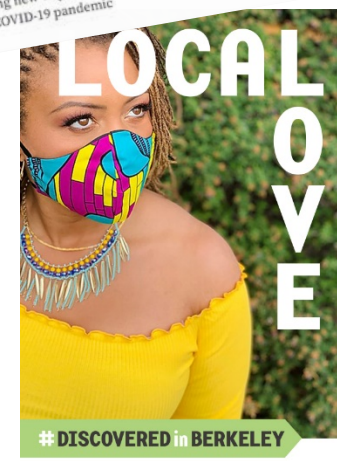
Spoil your friends and family over the holidays—and enable economic recovery—with gifts from **Fourth Street Fine Art**.

Support local businesses this holiday season



A host of Berkeley makers and bakers are nourishing locals and building community, despite the challenges of 2020.

[Learn more](#) about Berkeley's innovative businesses



Discover Black-owned businesses in Berkeley, like **Lola's African Apparel**, which employs Nigerian tailors and seamstresses to make contemporary and traditional styles.

[Learn more](#) about Black-owned businesses in Berkeley



#BerkeleyHolidays Gift Guide and marketing campaign

A partnership between OED, the Berkeley Chamber, Visit Berkeley and business districts citywide, the #BerkeleyHolidays Gift Guide and marketing campaign promoted safe local shopping during the holiday season.

- **155 Berkeley businesses** were featured, including 86 Woman-owned and 36 Minority-owned businesses.
- BerkeleyHolidays.com received **12,000 page views** generating nearly **4,000 clicks to merchant sites**.
- The social media campaign generated **~1,300 unique #BerkeleyHolidays posts** on Instagram – & more on Facebook.
- Advertising on social media (Facebook & Instagram) and in local publications (*The Daily Cal* & *Berkeleyside*) generated **450,000+ impressions**
- 3,800 unique viewers saw the Discovered in Berkeley articles featuring select Gift Guide businesses in *Berkeleyside*
- 97% of businesses surveyed would participate in the campaign again*

*Based on Jan. 2021 Berkeley Chamber survey results from 32 participating businesses





city of

BERKELEY



Office of Economic Development (OED)

See the OED website for past Economic Dashboards and other economic reports:

<https://www.cityofberkeley.info/oed/reports/>

Contact OED for more information:

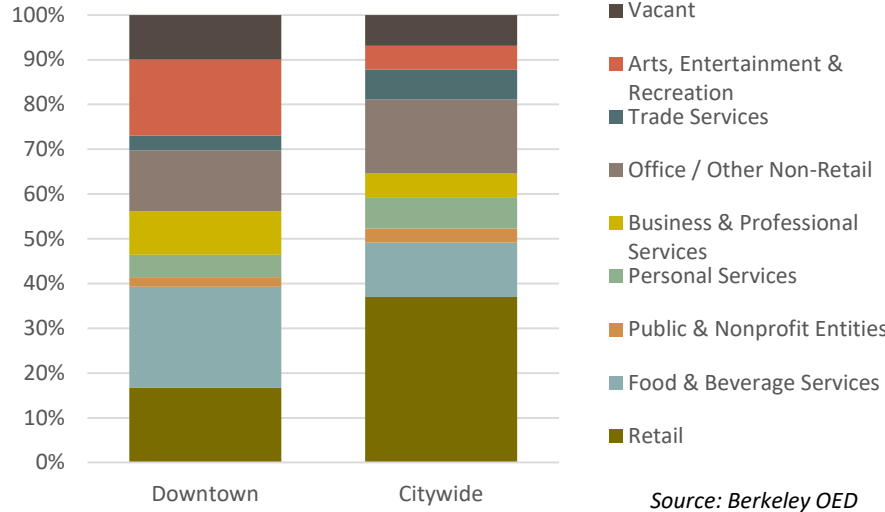
oedmailbox@cityofberkeley.info



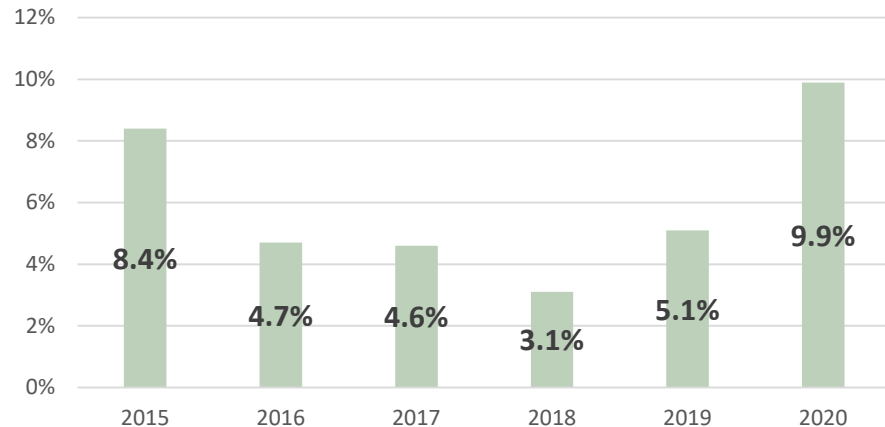
Downtown Berkeley serves as the City's core commercial district, meeting the daily needs of residents, students, workers, and visitors. The district benefits from a significant concentration of arts and entertainment uses, which occupy 17% of total ground floor commercial space in the district compared to 6.9% citywide. As of Q4 2020, the vacancy rate in Downtown is 9.9%, which has nearly doubled since late 2019 (5.1%). Sales tax revenue generated in 2020 by Food & Beverage services dropped to \$755,043, from its peak of \$1.17 million dollars in 2019 (-36%), and Retail sales tax collected also decreased by \$125,000 (-26%).



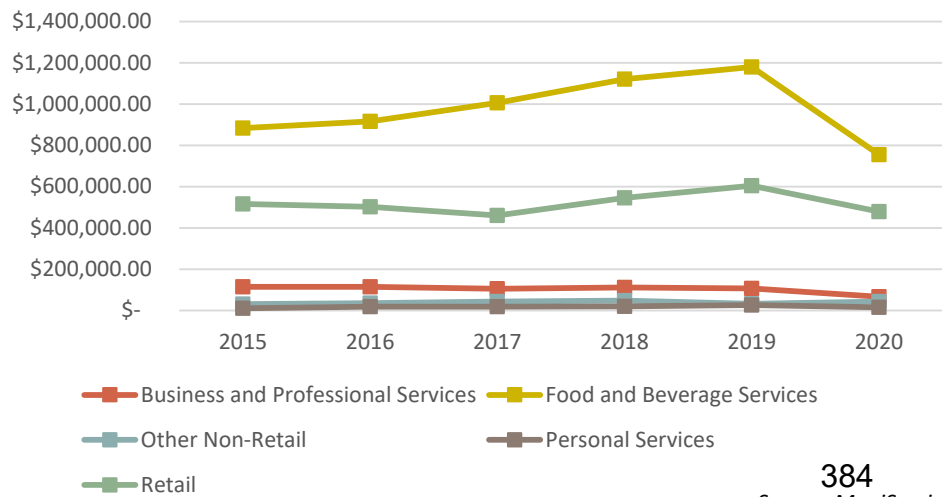
Ground Floor Commercial Business Mix (by Square Footage), 2020 Q4



Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Sales Tax Revenue by Sector, 2015-2020

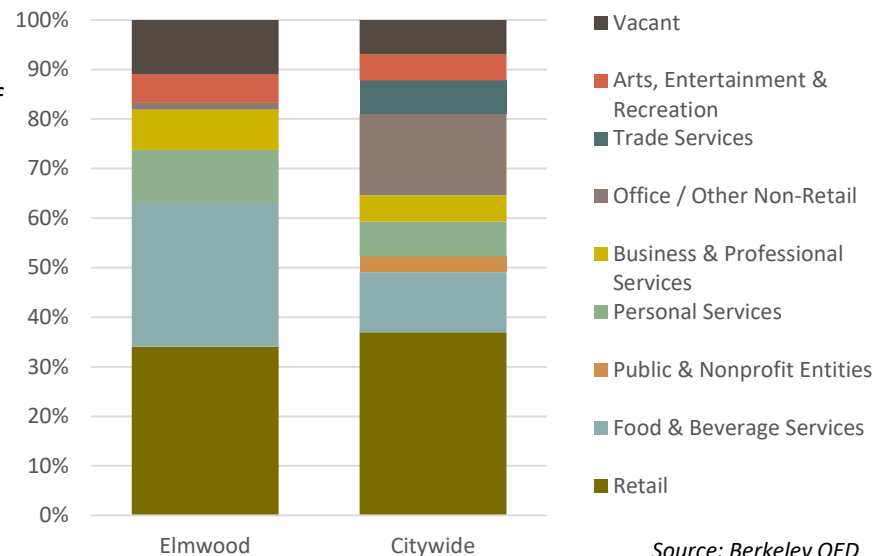




The Elmwood is a compact three block commercial district along College Avenue near the Berkeley-Oakland border and the neighboring Rockridge shopping district. The Elmwood district is characterized by a high concentration (29.0%) of Food & Beverage services and personal services (10.7%), and is a walkable, neighborhood-serving commercial district. As of Q4 2020, the district's vacancy rate by square footage is 10.9%, a 3.6% increase from Q3 2019 (7.3%). Sales tax collected from the Food and Beverage sector in the Elmwood decreased by \$42,953, from 2019 to 2020, and by \$40,642 for Retail, as indoor capacity for retail shopping was limited, and indoor dining was prohibited due to the pandemic.

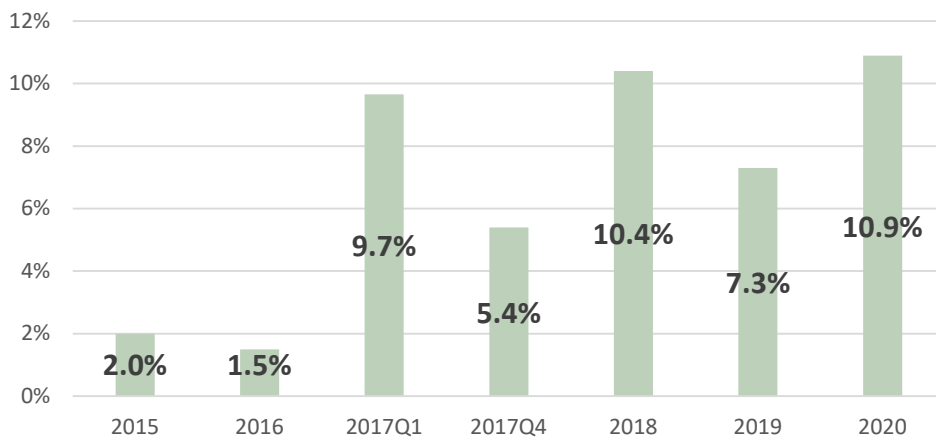


Business Mix (by Square Footage), 2020 Q4



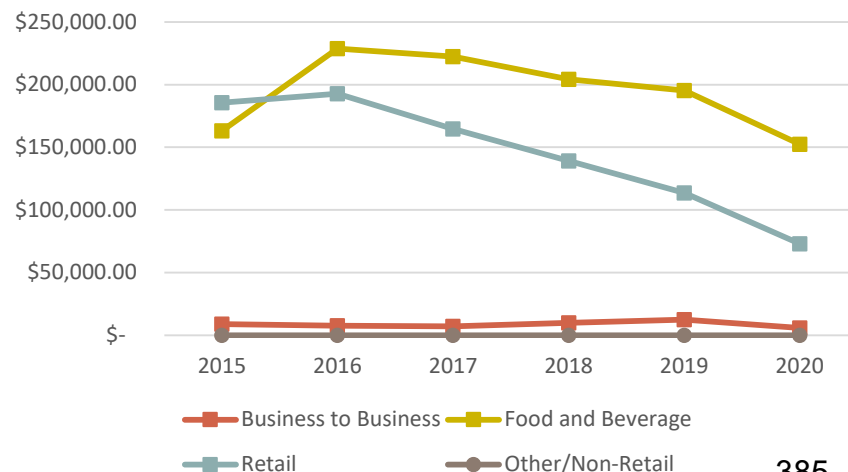
Source: Berkeley OED

Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



385

Source: MuniServices

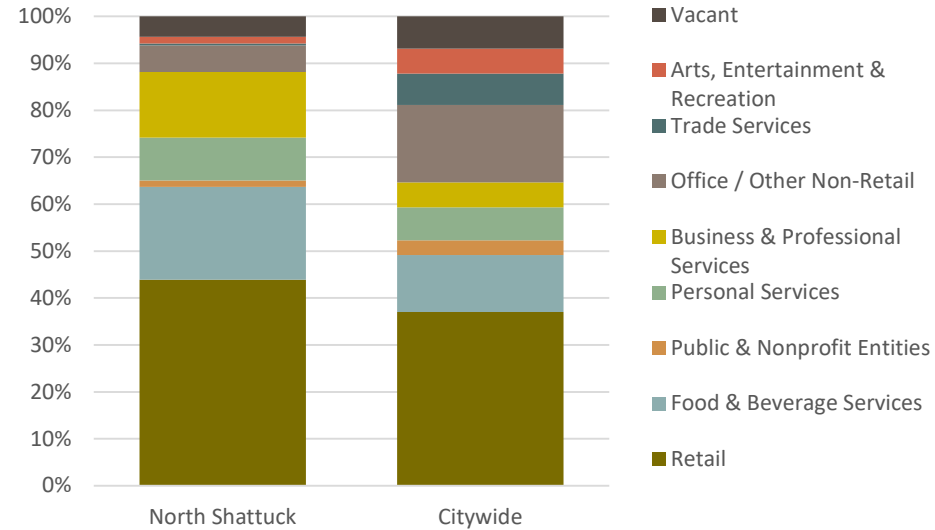


North Shattuck is one of Berkeley's oldest commercial districts, just north of Downtown. The district is characterized by a high concentration of well-known, long-standing, and celebrated restaurants, including Chez Panisse and the Cheeseboard. North Shattuck is both a walkable, neighborhood-serving commercial district as well as a global destination for food and dining. As of Q4 2020, the district's vacancy rate by square footage is 4.3%, which is up by over 3% from one of the lowest ever vacancy rates of 0.7% in 2019.

Sales tax collected from the Food and Beverage sector in North Shattuck decreased by \$117,811, from 2019 to 2020, and by \$48,532 for Retail, as indoor capacity for retail shopping was limited, and indoor dining was prohibited due to the pandemic.

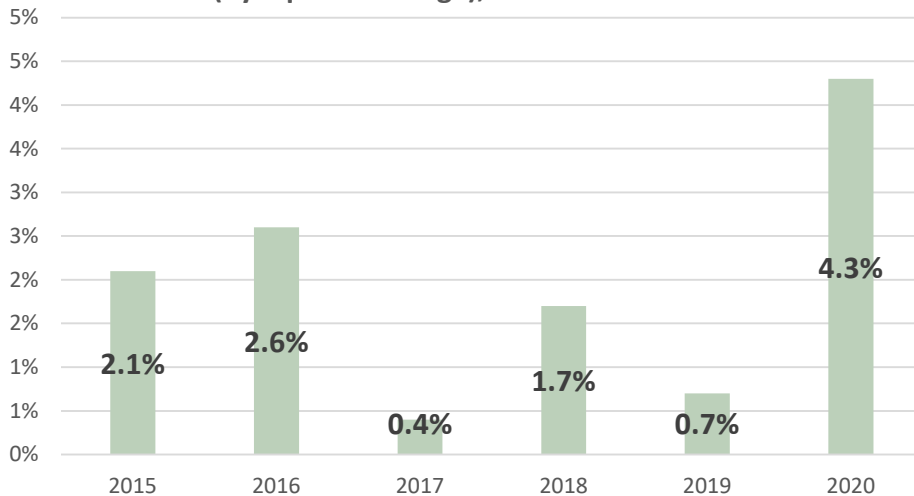


Business Mix (by Square Footage), 2020 Q4



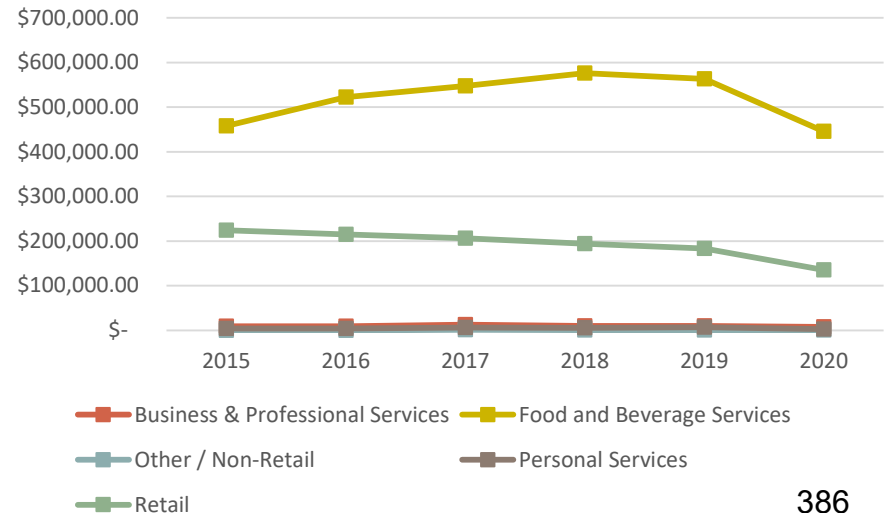
Source: Berkeley OED

Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



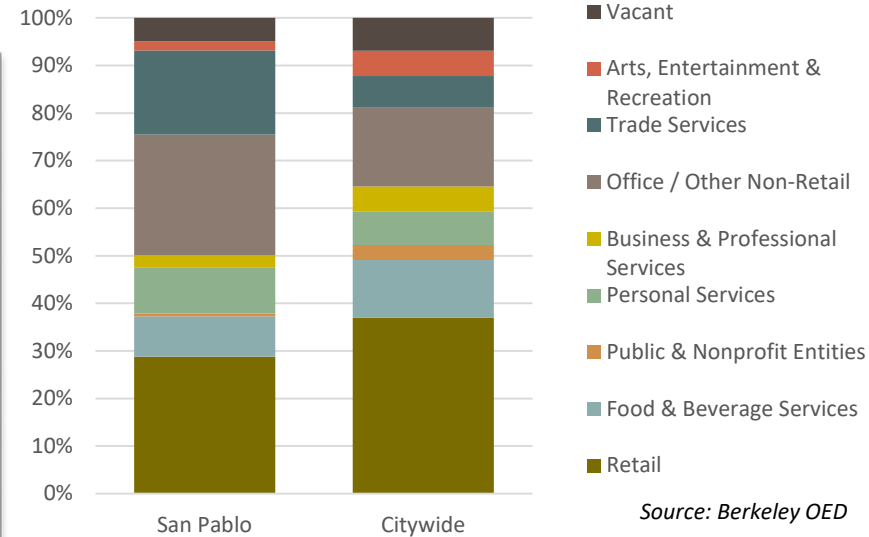
386
Source: MuniServices



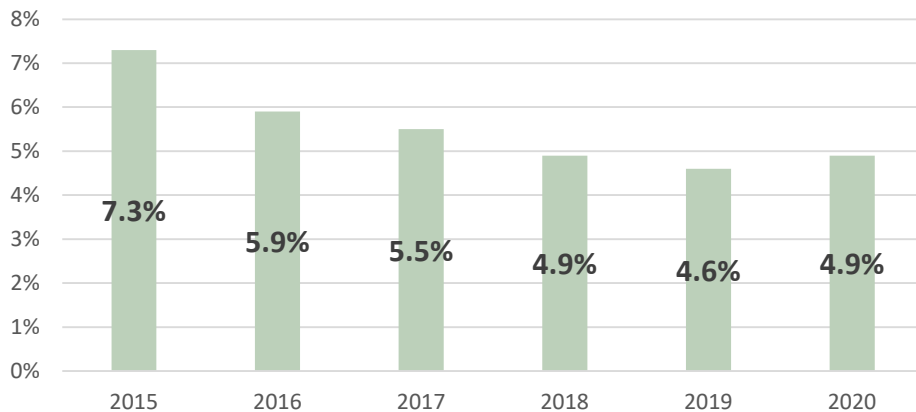
San Pablo Avenue is Berkeley's largest commercial corridor, running the entire north-south length of the City. San Pablo is characterized by a high concentration of Trade Services (17.7%), including over 60 automobile services. San Pablo functions more as a regional destination for specific uses rather than a walkable, neighborhood-serving commercial district; as such, it features smaller percentages of Food & Beverage Services (8.5%) and Personal Services (9.6%). In Q4 2020, the district's vacancy rate by square footage was 4.9%, the same rate as Q4 of 2018, and up three tenths of a percent from late 2019. Retail Sales tax revenue collected in 2020 has decreased by \$166,972 since 2019, but continues to be the largest source of tax revenue for the area.



Business Mix (by Square Footage), 2020 Q4

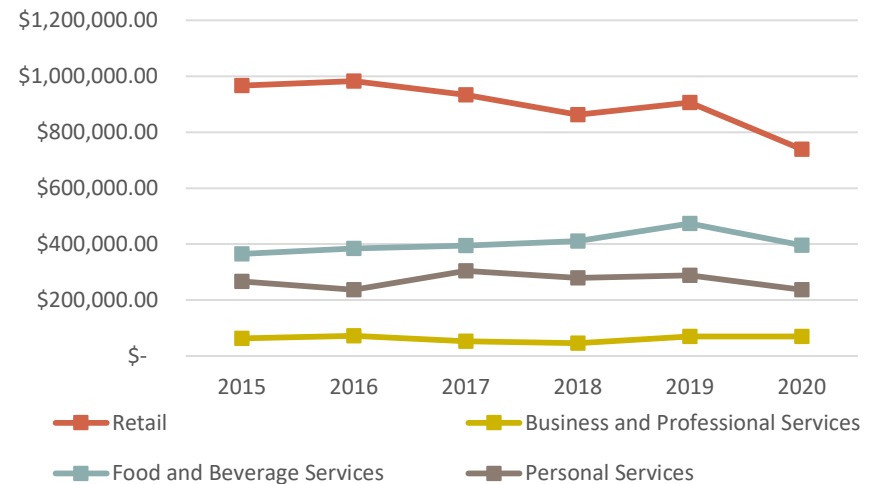


Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



387

Source: MuniServices

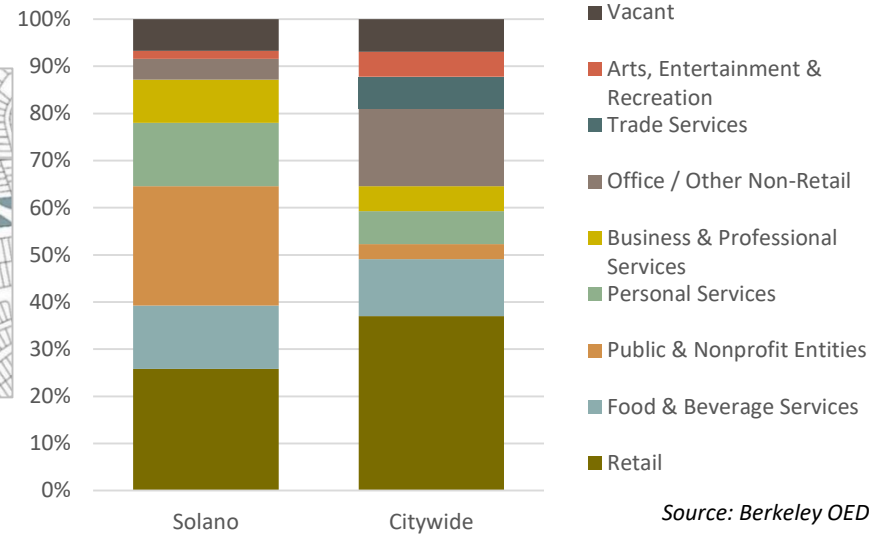


Solano is a small commercial district in North Berkeley, with a total of 147 commercial spaces and approximately 274,800 square feet of commercial space. It shares a border with Albany and is situated next to a large elementary school and an active neighborhood of single-family homes. Solano has a large key asset (the former Oaks Theatre) that is due to be occupied by a climbing gym in late 2021. The district's vacancy rate by square footage is 6.7%, a 4.1% increase from Q3 2019 (2.6%).

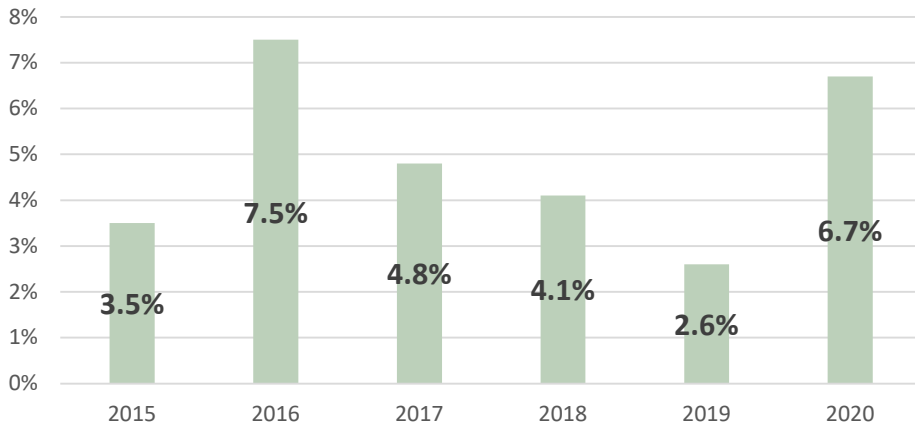


Sales tax collected from the Food and Beverage sector along Solano Avenue decreased by \$20,678, from 2019 to 2020, and by \$28,514 for Retail, as indoor capacity for retail shopping was limited, and indoor dining was prohibited due to the pandemic.

Business Mix (by Square Footage), 2020 Q4

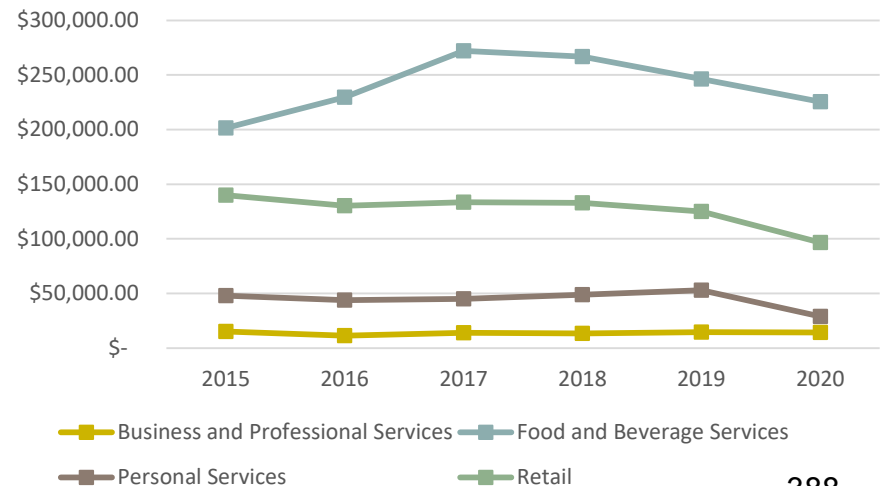


Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



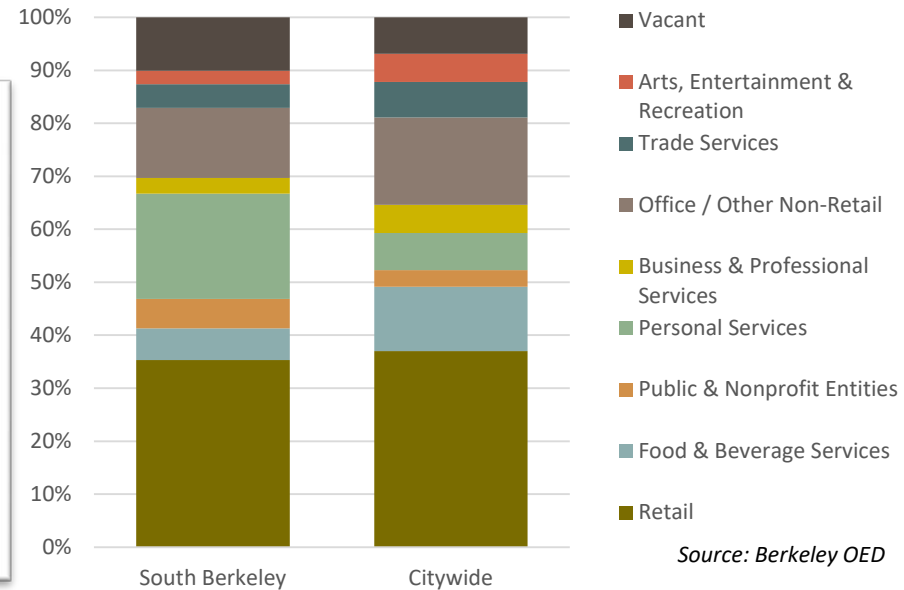
388
Source: MuniServices



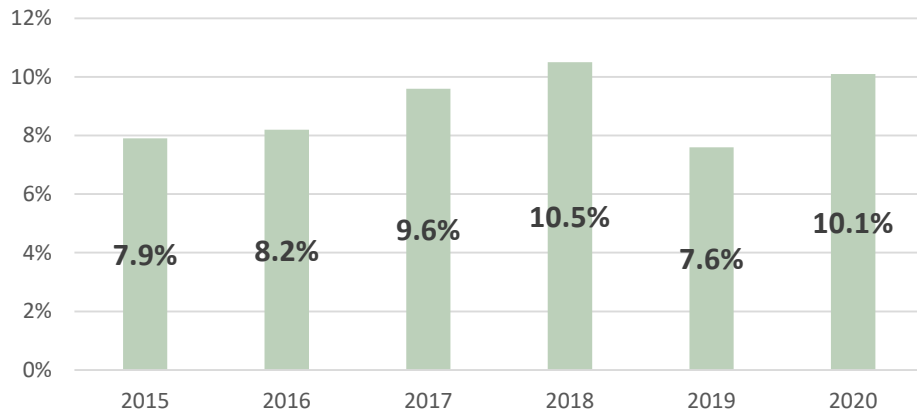
South Berkeley is a large district stretching over an area known for its cultural diversity and includes the Lorin District, the Sacramento corridor, and the South Shattuck area. South Berkeley includes several car dealerships, which accrue significant retail sales tax revenue for the City. The area also features a high concentration of Personal Services businesses (19.8% vs. 7.0% citywide) but is under-served by Food & Beverage services, which account for only 6.0% of ground floor commercial space, as compared to 12.1% citywide. As of Q4 2020, the district's vacancy rate by square footage was 10.1%, a 2.5% increase from 2019.



Business Mix (by Square Footage), 2020 Q4

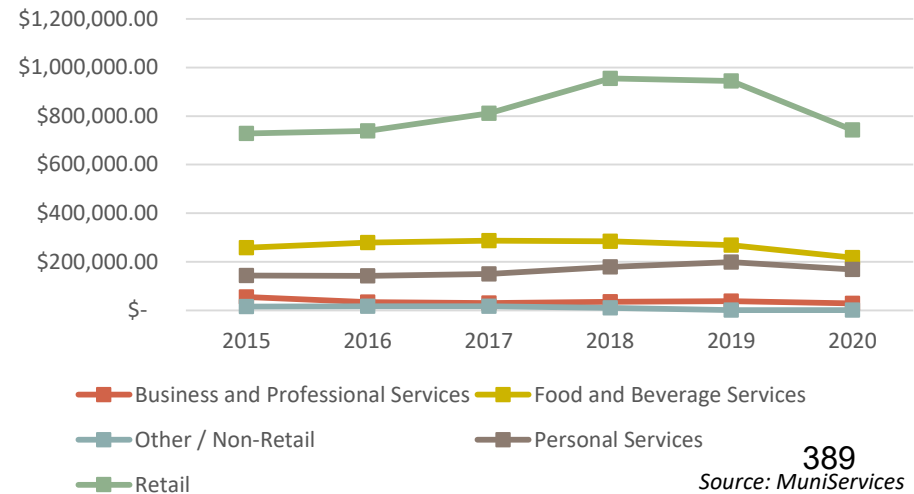


Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



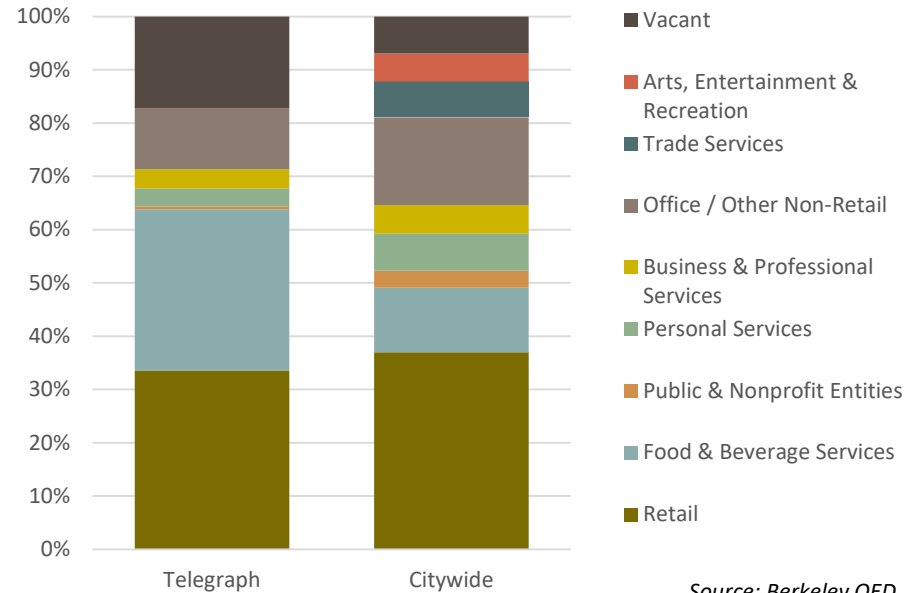
389
Source: MuniServices



The Telegraph district has undergone significant change with respect to its ground floor inventory over the past several years. Food & Beverage services have shown a dramatic increase since 2012, with 30.3% of Food & Beverage services accounting for ground floor commercial space in the district, as compared to 12.1% Citywide. As of Q4 2020, the district's ground floor commercial vacancy rate at 17.2% has increased dramatically from 2019's 4.4%, nearly matching the past peak of 17.9% in 2012. New ground floor leases and developments are anticipated along Telegraph Avenue in 2021, including the large Enclave Building at Telegraph and Haste St.

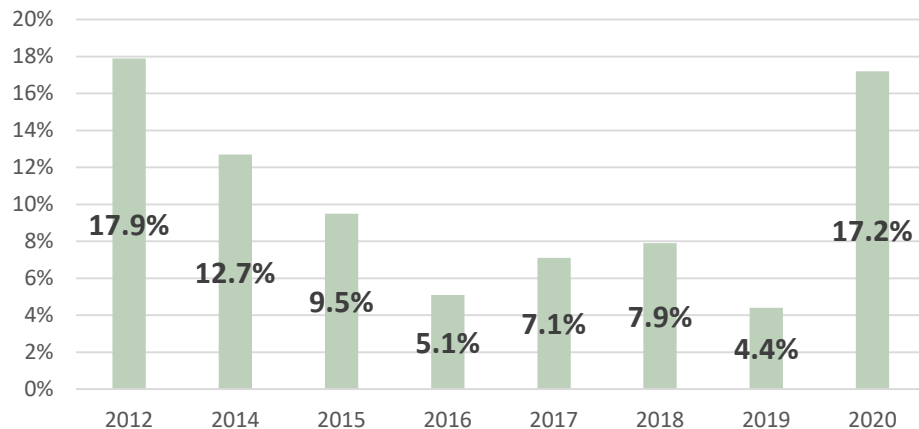


Business Mix (by Square Footage), 2020 Q4



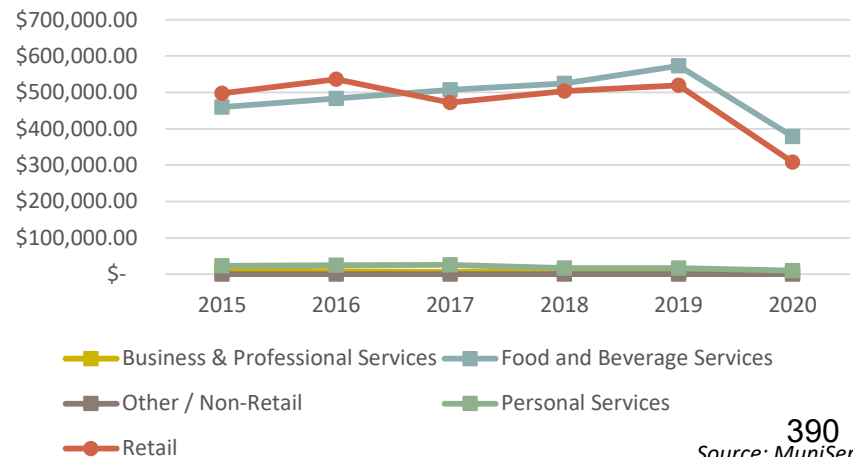
Source: Berkeley OED

Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



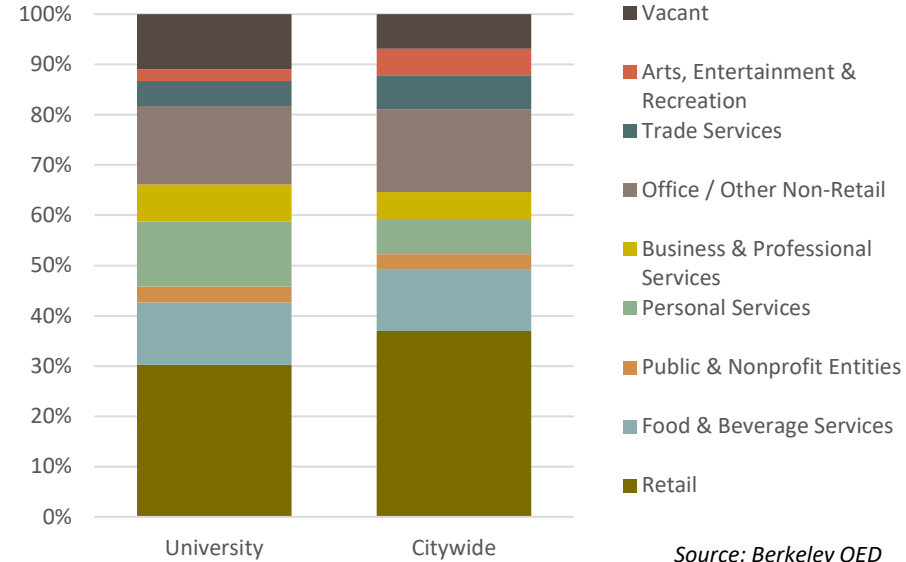
390
Source: MuniServices



University Avenue, from Martin Luther King Jr Way to the waterfront, spans many of the City's neighborhoods and serves as the gateway to the UC Berkeley Campus. Since 2015, Personal Services (including Transportation receipts) and Food & Beverage Services have generated the most sales tax revenue for the district. Retail sales tax collected in 2020 decreased by \$28,674 from 2019 due chiefly to the pandemic. The 2020 vacancy rate matches 2018's number at 11% but has increased by 2.2% from 2019's rate of 7.8%.

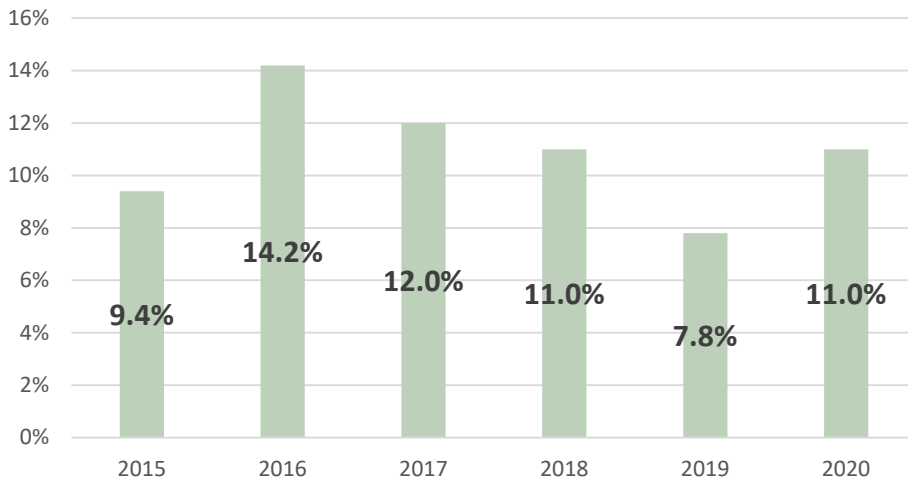


Business Mix (by Square Footage), 2020 Q4



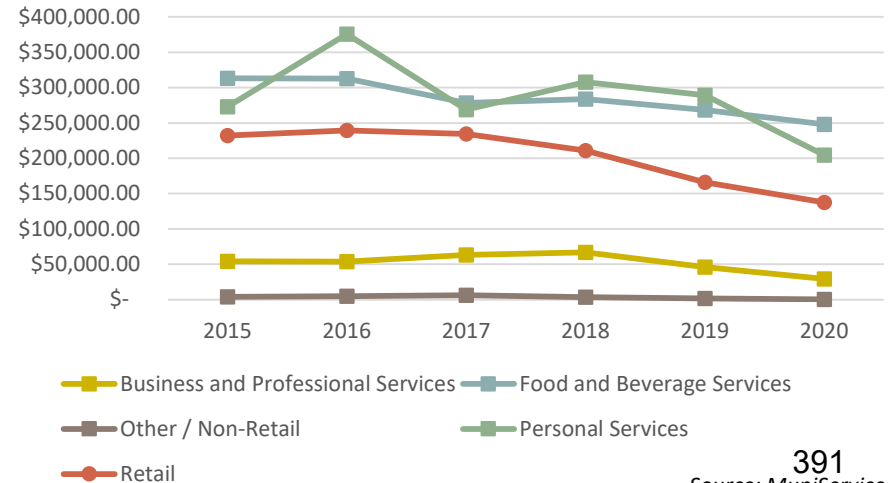
Source: Berkeley OED

Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



391
Source: MuniServices

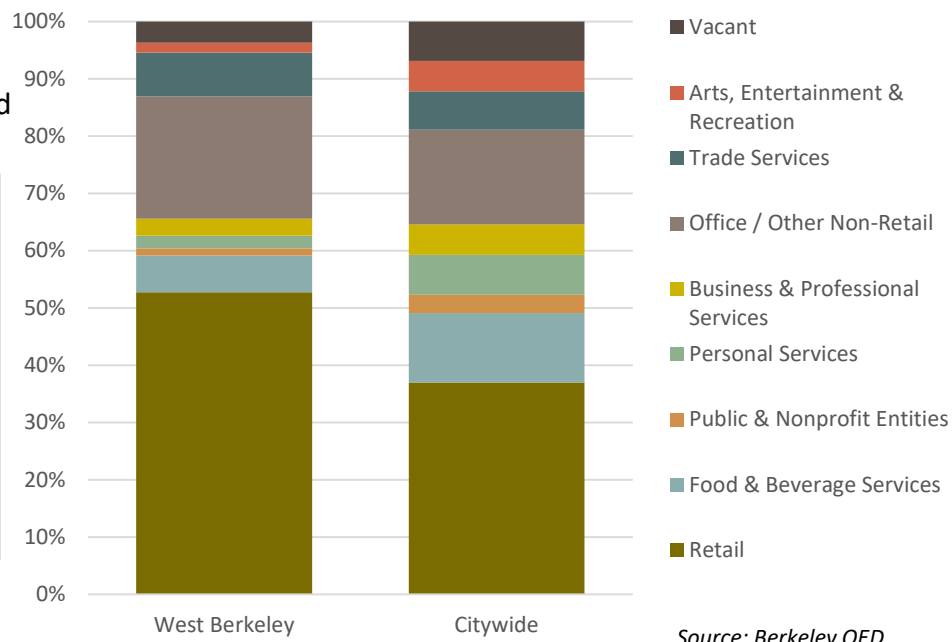


West Berkeley represents all commercial spaces west of San Pablo Avenue, including 4th Street and the Gilman Corridor. There are a number of major, large-floor-plate retailers, and a dense cluster of home supplies and construction businesses. There is also a higher percentage of non-retail commercial uses, including manufacturing and warehousing. Retail accounts for 52.7% of ground floor commercial space in the district, as compared to 36.9% citywide.

West Berkeley also has a smaller percentage of square footage devoted to Food and Beverage (6.4%) businesses than the citywide rate of 12.1%. The commercial vacancy rate in Q4 of 2020 is 3.7%, a decrease from 2019's 5.4%. Sales tax revenue has decreased in this area for all industries except for "Other / Non-Retail" health care related sales tax collection (up by \$7,144 or +21%).

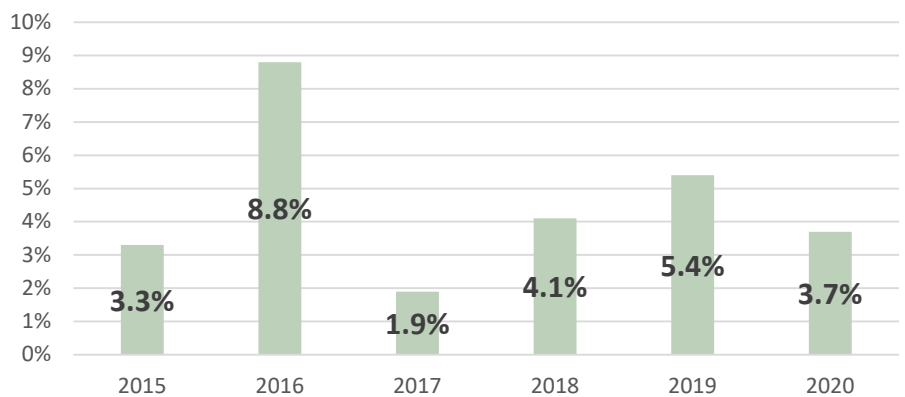


Business Mix (by Square Footage), 2020 Q4

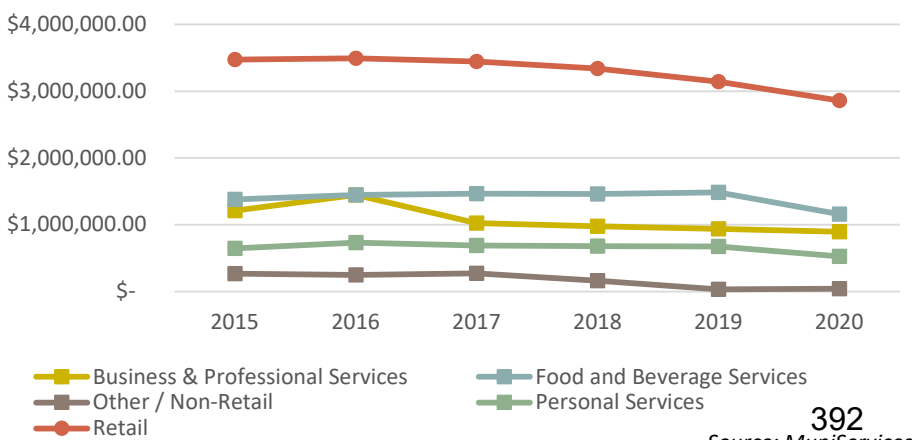


Source: Berkeley OED

Ground Floor Commercial Vacancy Rate (by Square Footage), 2015-2020



Sales Tax Revenue by Sector, 2015-2020



392
Source: MuniServices

Source: Berkeley OED



Across Berkeley there are **11** smaller commercial pockets, zoned as “C-N” or “Neighborhood Commercial.” These areas are not more than one or two block collections of commercial enterprises that are distributed throughout Berkeley (see map).

Taken together, the “C-N” areas represent nearly 190 commercial spaces, and approximately 300,000 square feet of commercial space. The C-N areas collectively generate 3% of the city’s total sales tax. They also include a few large Arts, Entertainment and Recreation facilities (30% by square footage) and Public and Non-Profit entities (12.4% compared to 3% citywide).

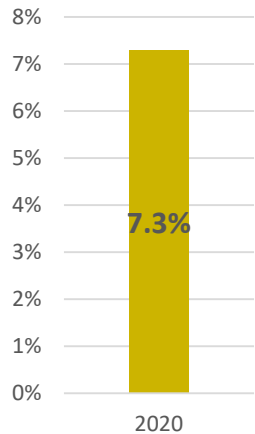


These areas include commercial nodes at the following intersections:

- Claremont and Prince
- Claremont and Tunnel
- College and Alcatraz
- Gilman and Curtis
- Hearst and Euclid
- Hopkins and El Dorado
- Hopkins and Monterey
- Martin Luther King Jr Way (MLK) and Dwight
- MLK and Hearst
- MLK and Rose
- MLK and Virginia

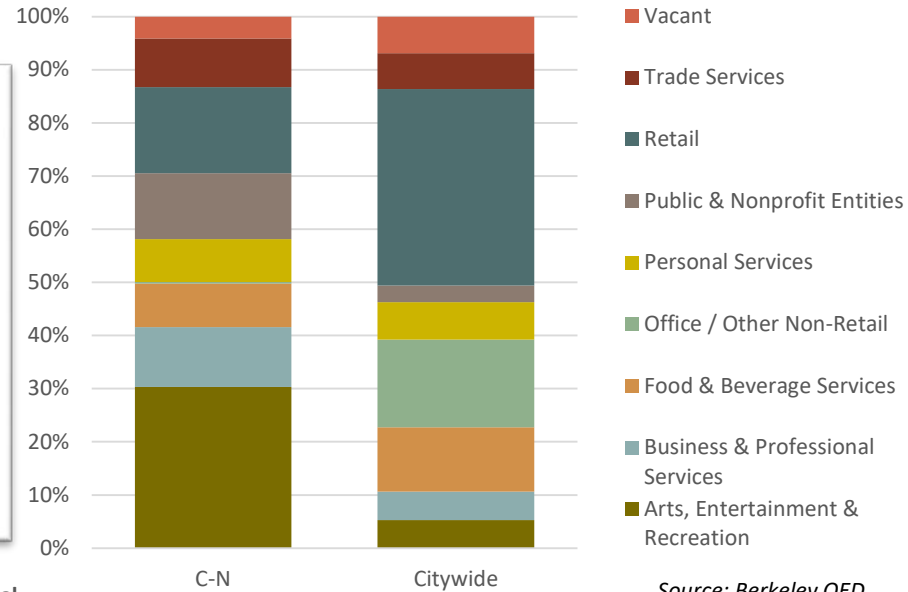
The first field data from the C-N areas was collected during the COVID-19 Pandemic of 2020 to track the impact of shelter-in-place orders on neighborhood-serving retail and service businesses.

Ground Floor Commercial Vacancy Rate (by Square Footage), Q4 2020



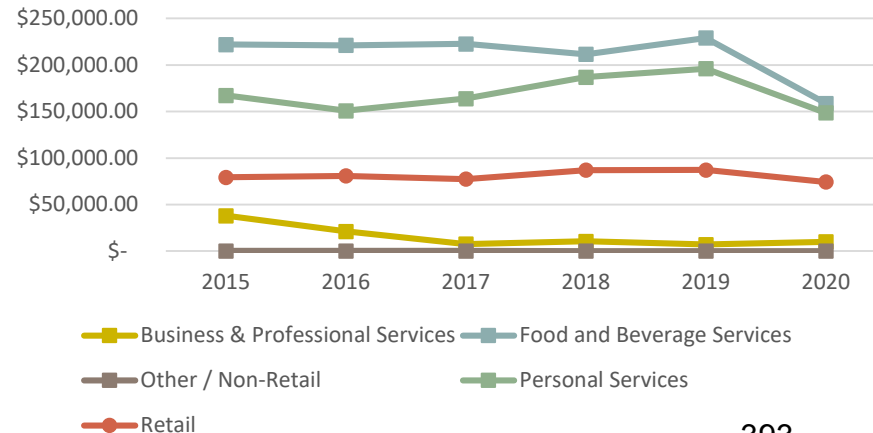
Source: Berkeley OED

Business Mix (by Square Footage), 2020 Q4



Source: Berkeley OED

Sales Tax Revenue by Sector, 2015-2020



393
Source: MuniServices



Peace and Justice Commission

INFORMATION CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council
 From: Peace and Justice Commission
 Submitted by: Igor Tregub, Chairperson, Peace and Justice Commission
 Subject: FY 2021-2022 Peace and Justice Commission Work Plan

INTRODUCTION

At its January 25, 2021 meeting, the Peace and Justice Commission adopted its Fiscal Year (FY) 2021-2022 Work Plan (Attachment 1).

CURRENT SITUATION AND ITS EFFECTS

On January 25, 2021, the Peace and Justice Commission adopted the attached work plan through the action detailed below.

Work Plan

Motion to adopt and submit to City Council the Peace and Justice Commission Work Plan, with amendments to: (1) authorize the Chair to revise the Plan for clarity (e.g., updating dates), and (2) add language indicating that, "The Commission's ability to do the work identified in the Plan is contingent upon the Commission's ability to meet regularly" and that, "The Commission commits itself to carrying out, in this current year, the work identified in the Plan."

M/S/C: Meola, Pierce

Ayes: Askary, Bohn, Gussmann, Jacquelin, Lippmann, Maran, Meola, Morizawa, Perry, Tregub

Noes: None

Abstain: None

Absent: Rodriguez

Excused: None

BACKGROUND

In 2016, the City Council adopted direction to commissioners to submit a work plan annually.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental sustainability impact associated with the adoption of this work plan.

POSSIBLE FUTURE ACTION

The commission is working on several priorities in alignment with this work plan, and may bring them to the Council for action in the future.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts will depend on the actions recommended and the Council's decision.

CONTACT PERSON

Melissa McDonough, Interim Secretary, City Manager's Office, (510) 981-7402

Attachment 1: FY 2021-2022 Work Plan

Appendix 1: Peace and Justice Committee Fiscal Years 2021-2022 Work Plan

Participation in Community Engagement Process to Develop a New Paradigm of Public Safety and Racial Justice

The Commission shall focus its work in Fiscal Years 2021-2022 on contributing to two priority Council initiatives: “Community Engagement Process to Develop a New Paradigm of Public Safety in Berkeley” and “Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley.”

The Commission brings to bear on this initiative a history of engagement with subjects at the heart of re-imagining public safety, as well as a practice of community engagement. Over the last decade, it has sponsored community roundtables on such issues as “breaking the prison cycle,” sex-trafficking, immigration, and the international human rights framework. Our practice has been to bring together stakeholders concerned with a common issue but with diverse perspectives. Using a social justice lens, Peace and Justice views community concerns that are typically stovepiped in a holistic manner. The search for positive and non-punitive solutions to social problems such as conflict and anti-social behavior, providing healthcare, education, housing, and counseling at the front end rather than policing at the back end, has been fundamental to the Commission dating back to our founding mandate in 1986.

Some elements of the Commission’s participation in the re-imagining process may include:

1. Participating in the Reimagining Public Safety Task Force if invited, or else in a structured relationship with the Task Force.
2. The Commission’s participation recognizes that the Task Force’s charter integrates public safety with the public’s health. This concept is critical not only because safety and health are integrally connected, and because of the emerging awareness that armed police intervention should be minimized in mental and behavioral health incidents. Most importantly, the Commission will help ensure that a consciousness of public health shall include the social and racial determinants of health. This understanding of the interrelatedness of key human needs has long been an integral part of the Commission’s practice.
3. The Commission will pursue an anti-racist approach, recognizing and committing in our proposals to dismantle the institutional and social structures of white supremacy, and committing in our process to, as the Council has stated, “centering the voices of those who are most impacted by our current system of public safety.”
4. The Council recommended on December 15, 2020 that “Berkeley leverage our commissions and community organizations to provide additional input and research to inform the Task Force’s work.” The Peace and Justice Commission is uniquely situated to assist in coordinating work of other civic boards and commissions due to its holistic social justice

approach, its long history of work with multiple commissions, and its practice of public education on social issues.

5. Recognizing the City's priority of work on the Covid-19 pandemic, city management has asked that all commissions' work have a focus on efforts to fight the pandemic. Under the Council's "holistic, anti-racist approach to community safety," the public's health is key to community safety. Racial disparities in pandemic infection rates are gravely concerning from a human rights perspective. According to City statistics, infection rates per 100,000 of City population are over five times as high for the Latinx population as for White people, and for African Americans, twice as high as for White people. The holistic approach demands of us who seek a new paradigm of public safety that we envision an end to racial discrimination in the pandemic.
6. The "Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley" proposal, passed by Council on January 19, 2021, provides an additional framework and greater depth for Peace and Justice participation in the Council initiative for a new paradigm in public safety.¹

Ongoing Projects

Nuclear-Free Berkeley

The Nuclear Free Berkeley Act came into force in 1986 (Chapter 12.90.070 Section 030D). The Peace & Justice Commission established the Subcommittee on The Nuclear Free Berkeley Act (NFBA) to oversee and reinforce compliance with the terms of the Act. The Subcommittee's activities have included:

- recommendation against a waiver for continuation of the Berkeley Public Library's contracts with 3M (2009-2010);
- consideration of a waiver for the City of Berkeley Public Health Division's proposal on medical supplies (2012);
- recommendation of a waiver for the SkyDeck Business Incubator-Accelerator Contract

¹ The "Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley" proposal reflects on both the disparate impact of Covid-19 on Black, Latinx, Native American, and Asian American communities, and the heightened understanding of structural and institutionalized racism nationally. The proposal commits the City to eliminate all socioeconomic barriers to health equity. Specifically, it calls for a series of town hall meetings throughout the sessions to address the concerns of people of color and marginalized community members and to strengthen the anti-racist capacity building; establishment of a working group to promote racial equity; the City Manager to explore greater health disparities that have emerged as a result of the COVID-19 crisis; to propose a Health in All Policies Ordinance; mandatory anti-racist training for City employees; a Strategic Plan for Health Equity; an anti-racism dashboard; work with BUSD to study whether "race-based differential access means that some students have less access to educational opportunities."

(2012);

- recommendation (February 7, 2013) to the Regents of the University of California that it phase out responsibility for operating the Nuclear Weapons Laboratories in Livermore and Los Alamos;
- a letter from the City of Berkeley to President Obama in 2014 urging support of a ban on nuclear weapons.

More recently, in light of the Award of the Nobel Peace Prize in 2017 to the International Campaign to Abolish Nuclear Weapons (ICAN), whose goal is international adherence to and full implementation of the Treaty on the Prohibition of Nuclear Weapons (the Treaty), the Peace and Justice Commission will seek to collaborate further with ICAN on activities of mutual concern. We would note that the California State Senate and the California State Assembly voted affirmatively on a bill in September 2018 to urge U.S. Senate adoption of the Treaty. Strong support comes also from the International Red Cross Red Crescent Movement; Nuclear Ban US; The City of Los Angeles, California; the City of Takoma Park, Maryland; Physicians for Social Responsibility; and the U.S. Conference of Mayors, among others.

Indigenous Peoples

Between December 2015 and January 2016, the Berkeley City Council, upon the recommendation of the Peace and Justice Commission, adopted five important resolutions supporting the treaty rights of indigenous people in Berkeley. The resolutions included: recognition of the Ohlone people as the original inhabitants of Berkeley and the Bay Area, pledging to work in good faith with Ohlone representatives; implementing the UN Declaration on the Rights of Indigenous Peoples as municipal policy; endorsing the upgrading of the Declaration to a Convention; honoring the Berkeley Shellmound indigenous site; and urging the East Bay Regional Parks District to protect the Ohlone place of origin sacred site.

The resolution on the Berkeley Shellmound mandated that “free, prior, and informed consent of the Ohlone and other indigenous peoples of the region should be integral to any alteration planning for the Berkeley Shellmound site, in accordance with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.”

Socially Responsible investment and Procurement Policy (SRIPP) and Sustainable Sweatshop-Free Berkeley

The SRIPP Subcommittee of the Peace and Justice Commission was chartered by resolution of the Berkeley City Council on July 16, 2019. Its immediate charge is to develop a proposed policy to “govern the Commission’s advisory role in socially responsible investing and socially responsible procurement.” Prior to March 2020, the subcommittee held several meetings

including one discussion with City Finance Department staff and used those conversations to craft a draft SRIPP ordinance that is responsive to the City Council's request.

The Sweatshop-Free Berkeley Policy now has a zero-dollar threshold per supplier per year for textile products purchased by the City. This threshold is an improvement over the previous minimum of \$1,000 purchase per supplier for the Policy to apply. However, the policy is complaint-driven, so the burden is on community members to research the supply chain for each supplier. The SRIPP Subcommittee proposes to establish a mechanism for suppliers to show that they are using Sweatshop Free products for City purchases.

The Policy governs textile purchases only. The goal is to identify sweat-free alternatives for technology purchases so tech can be covered as well.

The BUSD, through the School Board Policy Committee, is in the process of establishing a Sweatshop-Free Schools Policy for athletic supplies. The SRIPP Subcommittee and the Commission are supporting the BUSD to ensure the development of an effective policy.

Subcommittee on the Convention on the Rights of Persons with Disabilities

The mandate of the Peace & Justice Commission's "Subcommittee on the Convention on the Rights of Persons with Disabilities" (CRPD) expired in 2019. During its five years of operations, the Subcommittee educated broadly about the CRPD via public newsletters, public conferences, and initiatives with educators, non-governmental organizations, and legislators of the City of Berkeley, the State of California, and the U.S. Congress.



Youth Commission

INFORMATION CALENDAR

March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Youth Commission

Submitted by: Samuel Kaplan-Pettus, Chairperson

Subject: Youth Commission Work Plan 2021

CURRENT SITUATION AND ITS EFFECTS

At a regular meeting on December 20, 2020, the Youth Commission approved the Commission's 2021 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Schlosberg/Cline/U).

Ayes: Draves; Zhou; Kaplan-Pettus; Birenbaum; Jay; Schlosberg; Abrahamson; Cline.

Noes: None

Abstain: None

Absent: Orlando; Vazquez

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public input, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No fiscal impacts identified at this time.

CONTACT PERSON

Ginsi Bryant, Secretary, Children, Youth, and Recreation Commission, 981-6700

Samuel Kaplan-Pettus, Chairperson

Attachment: Youth Commission 2021 Work Plan

City of Berkeley Youth Commission Work Plan

Mission:

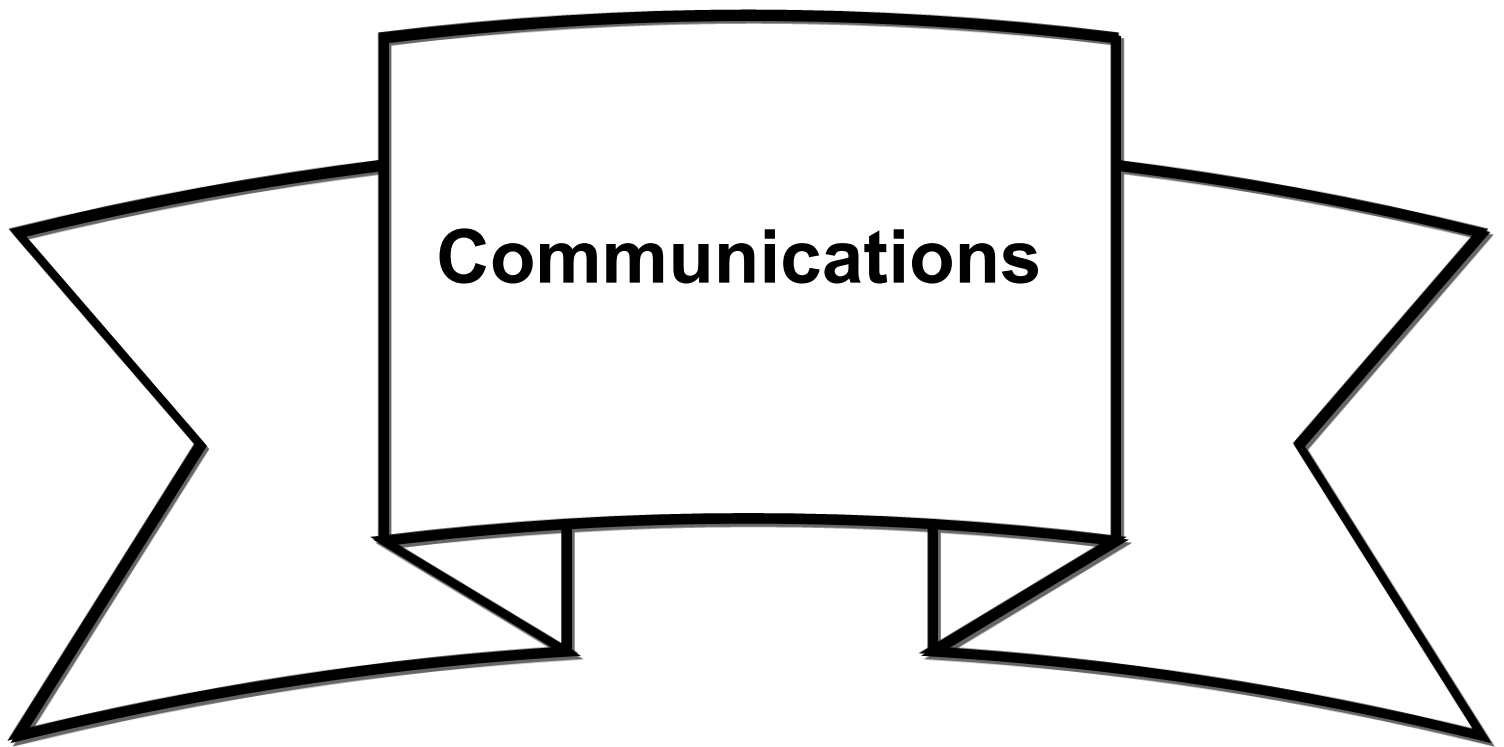
Identifies the needs of youth, reviews, and recommends youth services and programs.

Activity	Resources	Outputs (What Has Happened So Far?)	Next Step	Goal	People
Berkeley Environmental Initiative	BHS Green Team BUSD Green Teams BHS Zero Waste club Sunrise CM Taplin	Letter sent to Berkeley Unified School District Board of Directors	Gather information and draft proposals	Help the City of Berkeley and Berkeley Unified School District reduce its impact on climate change	
Sexual Harm	Berkeley High Stop Harassing Title IX Officer Berkeley High Women's Student Union Commission on the Status of Women Juan Raygoza Sexual Harassment Advisory Committee	Letter sent to Berkeley Unified School District Board of Directors	Finalize subcommittee Hold Hearing Look into Sexual assault support group funding	Address widespread sexual harm at Berkeley Unified Schools	

Distance learning	Miles Miller	NA	Communication	Promote successfully equitable distance learning	
Expanding Youth Commission Influence	Laura Babbit Ana Vasudeo Other City Commission	NA	Investigating other youth commissions and youth city engagement policies	Increase the role and influence of the youth in the School District and City decision making	
Racial Justice at Berkeley Unified School District	Berkeley High Black Student Union Ethnic studies Department	NA	Discussing and Exploring: <ul style="list-style-type: none"> ● Professional Development (micro-aggressions) ● Student Survey ● Anti-racist education ● Instagram allegations ● The culture of Berkeley International High School 	Address widespread Racism at Berkeley Unified Schools	

<p>Filling Youth Commission</p>	<p>Mr. Dopman Berkeley High Administration</p>	<p>NA</p>	<p>Disseminate information on Youth Commission Communicate with City Clerk to ensure a speedy appointment</p>	<p>Work to fill all vacancies on the Youth Commission</p>	
<p>Gender Neutral bathrooms</p>		<p>NA</p>	<p>Form a Sub-Committee Reinstate the Gender Neutral Bathroom</p>	<p>Work to ensure that all students have a safe and appropriate bathroom</p>	
<p>Sexual health education Diversity--bodies we see- LGBTQ--</p>	<p>Sexual Health Information From Teens (SHIFT) club at Berkeley High</p>	<p>NA</p>	<p>Form a Sub-committee Explore Policy Changes Recommend Policy Changes to School Board</p>	<p>Work to improve Sexual Health Curriculum to better represent diversity in sexuality and body types, teach more about consent, include the emotional and pleasure aspects and be more inclusive.</p>	

Trigger Warning, Graphic violence, and derogatory slurs policy		NA	Form a sub-committee Investigate current policies Explore other policies Recommend Policy Changes to School Board	Explore a District-wide policy to address the impact of inappropriate, graphic, and derogatory content upon students learning and safety.	
Vision 0 and free transit	Bike east bay CM Taplin Transportation	NA	Explore Youth Implementation	Ensure that all students have a safe way to get to school and around the city.	
Public Common Spaces	CM Robinson Director Vasudeo	NA	Explore current and proposed city planning projects to promote the interest and accessibility of youth	Promote the equitable and social use of common spaces for young people	



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<http://www.cityofberkeley.info/recordsonline>

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2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF