




Office of the City Manager

ACTION CALENDAR

March 25, 2014

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront  
Subject: Lease Agreement: Waterside Workshops for the Property at 90 Bolivar Drive, Aquatic Park

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Waterside Workshops for the use and management of the City's property at 90 Bolivar Drive in Aquatic Park for a term of five years with one five-year option.

FISCAL IMPACTS OF RECOMMENDATION

Waterside Workshops will pay an annual rent of \$300, escalating by \$100 per year. In addition, they will be responsible for completing capital improvements and maintenance to the building over the five-year period of their lease; these improvements are valued at \$61,000. The list of capital improvements and maintenance requirements are described in Exhibit "B" of the lease. Lease revenue will be deposited in Budget Code 450-5808-363.10-00. CMS No. JXDPM.

CURRENT SITUATION AND ITS EFFECTS

In the fall of 2013, the City conducted a competitive process to solicit proposals to lease 90 Bolivar Drive in Aquatic Park (formerly known as the "Rod and Gun Club"). The property is located at the eastern edge of Aquatic Park lagoon, near the corner of Bolivar Drive and Bancroft Way. The City performed extensive advertising of the lease opportunity by posting a sign on the 90 Bolivar building, placing flyers at City buildings, and emailing commercial listing agents and community agencies. At the three site visits and during the application process, significant interest was shown by eleven for-profit and non-profit organizations and the City subsequently received three final proposals. A panel comprised of City staff from different departments was convened to review the proposals. The panel identified Waterside Workshops as the highest ranked proposal according to the criteria established in the lease solicitation. The panel then recommended that interviews be conducted with the top two applicants to clarify the financial and operational viability of their proposals. After conducting the interviews, staff concurred with the recommendation of the panel. Waterside Workshops demonstrated that they have a) the financial means to improve and maintain the building; b) a public-

serving program and well-established organization; and c) the ability to attract the public to enjoy all of Aquatic Park through bicycling.

Waterside Workshops is a non-profit 501(c)(3) whose mission is to use vocational education as a method of promoting youth development, encouraging sustainable and healthy lifestyles, and cultivating positive change in the Bay Area community. They have leased City property at 82 and 84 Bolivar Drive since 2006. During that period, they have fully renovated the facilities and built a diverse and supportive community around their organization and Aquatic Park as a whole. Their organization consists of two primary programs: Street Level Cycles and Berkeley Boathouse. The lease of neighboring 90 Bolivar Drive will allow them to expand Street Level Cycles to include low-cost bicycle rentals, additional youth education, more community hours, a community meeting space, and the possible addition of a small indoor coffee bar.

Waterside Workshops agrees to take over the responsibility for building maintenance, utilities, refuse and janitorial expenses from the City, and perform capital improvements over a five to ten-year period.

#### BACKGROUND

The building at 90 Bolivar Drive has been under a five year lease with the Bay Area Outreach Program, who has not been able to occupy the building and has chosen not to renew the lease. The City recently performed some critical repairs in order to retain the building's value, such as replacing the roof in the summer of 2013. Nevertheless, the building requires a number of significant repairs and improvements. In the fall of 2013, the City conducted a process to identify a tenant that would: a) commit to a 5-year maintenance and capital improvement plan for the properties, in return for a favorable annual rent; and b) attract the public to Aquatic Park.

Staff briefed the Parks & Waterfront Commission on the lease of this property to Waterside Workshops, during the Commission's February 12, 2014 meeting. Staff also briefed the Children, Youth and Recreation Commission (CYRC) on this lease, during the Commission's January 27, 2014 meeting. Both Commissions expressed their support for this lease.

*The Public Trust:* Staff wishes to correct its long-standing erroneous assumption regarding the "public trust" status of Aquatic Park: the properties at 90 Bolivar and 2925/2945 Bolivar are **not** public trust lands, and are **not** subject to the Public Trust Doctrine.

On February 28, 2014, City staff contacted the State Lands Commission to seek clarification on the Berkeley lands under public trust. The State Lands Commission responded promptly, and, referencing the 1980 California Supreme Court ruling in *City of Berkeley v. Superior Court*, 26 Cal. 3d 515 (Supreme Court of California, February 22, 1980), reported that only the waters and submerged lands of Aquatic Park are

subject to the trust. This means the upland areas of the park are not subject to public trust restrictions.

The history of Aquatic Park lands, in brief, is as follows. In 1868, the State created a special body, called the Board of Tide Land Commissioners (BTLC) that was empowered to subdivide and sell parcels of shallow water tidal lands throughout California to private parties for the purpose of furthering the development of commerce and navigation (e.g., developing wharves, docks, and industry). At that time, the BTLC sold the parcels to private owners; in Berkeley, the tidelands now comprising Eastshore State Park and Aquatic Park were sold mostly to the Santa Fe Land Improvement Company. In the mid 1930's, the City purchased the Aquatic Park parcels from the Santa Fe Land Improvement Company.

The public trust status of the privately-held BTLC parcels was disputed from the very beginning. In 1980, the California Supreme Court clarified the public trust status of the BTLC lands. As of 1980, those parcels that were already filled or developed were not subject to the public trust, whereas those parcels still covered by bay water and tidal action were still subject to the public trust.

*Note:* This ruling applies to the "BTLC" lands, which do not include the present-day Berkeley Marina. Marina land was never sold to private parties, and as such continues to be held in the public trust.

#### ENVIRONMENTAL SUSTAINABILITY

The proposed lease contains a requirement that the tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, the tenant is required to minimize waste, recycle, and compost, as per Recycling and Composting Guidelines for City Buildings. In addition, the proposed use – which includes a public bicycle rental and bicycle repair facility – encourages bicycle transportation, which supports the City's environmental sustainability goals of reducing energy consumption in transportation.

#### RATIONALE FOR RECOMMENDATION

The proposed lease offers the following benefits to the City:

- A vacant public building that has fallen into disrepair will be rehabilitated and re-used.
- The proposed use will provide community-serving activities, including public bicycle rentals, community bicycle repair sessions, and a small café; in addition to youth training opportunities.
- Bicycle activities will increase opportunities for the public to explore Aquatic Park, and to connect via the I-80 pedestrian bridge to the new Bay Trail and the Marina.
- These activities are expected to attract greater numbers of people and families and new energy to Aquatic Park

CONTACT PERSON

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Attachments:

1: Ordinance

Exhibit A: Lease Agreement

ORDINANCE NO. –N.S.

LEASE AGREEMENT: WATERSIDE WORKSHOPS, FOR THE USE AND  
MANAGEMENT OF 90 BOLIVAR DRIVE AT AQUATIC PARK

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

Section 1. The City Manager, or designee, is hereby authorized to execute a five-year lease agreement with one-five year option and any amendments thereto with Waterside Workshops for the use and management of 90 Bolivar Drive at Aquatic Park in Berkeley, CA. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be \$300 per year, escalating by \$100 per year and will be deposited in Budget Code 450-5808-363.10-00. In exchange for favorable rent, Waterside Workshops will take over the responsibility for the building maintenance, utility costs, and janitorial costs of the building from the City. In addition, Waterside Workshops will perform a list of capital improvements to the property as described in Exhibit B of the lease. CMS No. JXDPM.

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

Exhibit A:

Lease Agreement