To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

Subject: Modifications to BMC Chapters 9.49 and 13.44 for Activation of Downtown Berkeley BART Plaza

RECOMMENDATION
Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 9.49 (Food Vending on Sidewalks and Rights-of-Way) and Chapter 13.44 (Permits for Street Events and Block Parties) to facilitate the activation of Downtown Berkeley BART Plaza.

FISCAL IMPACTS OF RECOMMENDATION
Vending activities will likely generate a small amount of business license tax and sales tax revenues.

CURRENT SITUATION AND ITS EFFECTS
On January 23, 2018, City Council adopted Resolution No. 68,284–N.S. authorizing the City Manager to implement programs to activate Downtown Berkeley BART Plaza, including arts and cultural programming and a food vending pilot project (Attachment 2). In order to implement these programs as authorized by Council, staff recommends modifications to two relevant chapters of the Berkeley Municipal Code (BMC).

BACKGROUND
The Office of Economic Development (OED), Civic Arts Commission, Downtown Berkeley Association, and other partners have planned activities to activate Downtown Berkeley BART Plaza (“BART Plaza” or “the Plaza”), the public space on the western portion of Shattuck Avenue between Center Street and Allston Way, with public art, arts and cultural activities, commerce, and other public space enhancements.

Guidelines for permitting food vending on sidewalks and rights-of-way are established via BMC chapter 9.49. Section 9.49.040.A limits food vending to locations specified by the City Manager on Bancroft Way, College Avenue, and Telegraph Avenue. Staff is recommending that Shattuck Avenue be added to the section so that BART Plaza can be designated as an eligible location. No other locations on Shattuck Avenue are under consideration. In addition, this section formerly established a process by which the University of California could pursue cancellation of food vending permits issued by the
City of Berkeley for businesses operating on University property. The City no longer issues such permits, so this subsection was deleted.

Guidelines for permitting street events and block parties are established via BMC chapter 13.44. Staff is recommending modifications to this chapter to clarify specific guidelines for BART Plaza related to transit access, insurance requirements, and application time period.

ENVIRONMENTAL SUSTAINABILITY
Enhancements to Downtown Berkeley BART Plaza are intended to improve transit riders’ experience and encourage greater transit usage. Thus this recommendation is supportive of the City’s environmental sustainability goals.

RATIONALE FOR RECOMMENDATION
Downtown Berkeley BART Plaza is an essential place in Berkeley, and directly affects the City’s economic, social and civic wellbeing. Programs to activate BART Plaza will leverage significant other resources that the City and other public, private and nonprofit partners have invested in the space.

ALTERNATIVE ACTIONS CONSIDERED
No alternative actions were considered.

CONTACT PERSON
Jordan Klein, Economic Development Manager, (510) 981-7534

Attachments:
1: Ordinance
2: Resolution 68,284–N.S.
ORDINANCE NO. #,####-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 9.49 (FOOD VENDING ON SIDEWALKS AND RIGHTS-OF-WAY) AND CHAPTER 13.44 (PERMITS FOR STREET EVENTS AND BLOCK PARTIES) TO FACILITATE THE ACTIVATION OF DOWNTOWN BERKELEY BART PLAZA

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

Section 1. That Berkeley Municipal Code section 9.49.040 is amended to read as follows:

9.49.040 Designation of sites for food vending—Cancellation of sites on University property.
A. Food vending shall be allowed only in commercially zoned areas along Bancroft Way, and College Avenue, and Telegraph Avenues, and Shattuck Avenue, at locations specified by the City Manager from time to time.

B. Allocations of sites on property owned by the University of California that are outside the City’s right of way are subject to cancellation upon 60 days written notice by the University of California. In such event the University or City may, but need not, offer an alternative site for relocation of any displaced food vendor(s).

Section 2. That Berkeley Municipal Code section 13.44.020 is amended to read as follows:

13.44.020 Definitions.
A. “Block party” means a gathering, sponsored solely by owners, residents or tenants of properties fronting a street, which causes a closure of the entire street, or a portion thereof, to vehicular traffic and use of the street for the gathering.

B. “Certified Farmers’ Market” means a market operated in accordance with regulations established by the California Department of Food and Agriculture, Sections 47000-47026, and California Code Title III, Division 3, Chapter 1, Subchapter 4, Article 6.5, Direct Marketing; and those sections of the Health and Safety Code applicable to Certified Farmers’ Markets.

C. “City Manager” shall mean the City Manager of the City of Berkeley and any designee of the City Manager, except as context dictates otherwise.

D. “Downtown Berkeley BART Plaza” means the portion of the public right-of-way on the western portion of Shattuck Avenue between Center Street and Allston Way, bounded on its north by the sidewalk curb face on the south side of Center Street, on its east by the sidewalk curb face on the west side of Shattuck Avenue, on its south by the sidewalk curb face on the north side of Allston Way, and on its west by the eastern edge of the parcels fronting the west side of Shattuck Avenue.”
"High impact event" means an event (1) occupying all or a portion of a major street, collector or scenic route street, or (2) occupying more than two adjacent blocks of a local street, where a detour, including a temporary detour during only part of the event, is required, and/or (3) where AC Transit, UCB or LBNL buses would need to be re-routed.

“Local streets” means those streets defined in the circulation element of the Berkeley General Plan as local streets.

“Low impact event” means an event occupying all or a portion of not more than two adjacent blocks of a local street (other than a major, collector or scenic route street) where a formalized detour is not required, and where AC Transit, University of California-Berkeley (UCB) or Lawrence Berkeley National Laboratory (LBNL) buses would not have to be re-routed.

“Street event” includes any march, demonstration, assembly, parade, festival, street fair, concert or any other gathering which takes place in the public street or right-of-way, and which is likely to impede, obstruct, or interfere with the normal flow of vehicular or pedestrian traffic. “Street event” does not include “block party”.

Section 3. That Berkeley Municipal Code section 13.44.040 is amended to read as follows:

13.44.040 Street event permits--Application--Information required--Timing--Issuance.
A. Application for a permit for a street event shall be made to the City Manager, or to his/her designee.

B. Application for (1) high impact events, or (2) street events that involve the use of pyrotechnics, or (3) Certified Farmers' Markets, or (4) street events that involve the use of the Downtown Berkeley BART Plaza shall be made at least 30 business days prior to the street event.

C. Applications for all other street events shall be made at least 10 business days prior to the street event.

D. The application for such permit shall be made in writing on a form approved by the City Manager. In order that adequate arrangements may be made for the proper policing of the street event, including the security of participants, and to ensure that the event is conducted in a lawful manner, the application shall contain the following information, as applicable:

1. The name, address and telephone number of the applicant, including photo identification. If the street event will be conducted for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the
organization, and of the authorized head of such organization shall also be supplied. Where a street event will be conducted for, on behalf of or by an organization, the organization will be considered a co-applicant;

2. The name, address and telephone number of all persons who are or will be responsible for the conduct of the street event, including a photo identification of each and effective means by which to reach them during the event, such as cell phone and pager numbers and likely location during the street event;

3. A description of the street event, including its purpose. These requirements are intended to allow the City to anticipate and provide for additional police and other services, if necessary, to protect the safety of participants and bystanders;

4. The date(s) of the street event;

5. The estimated times that the street event will start and terminate, including assembly and disassembly involving the use of public property;

6. The route of the street event, if applicable, the maximum length of any parade and whether the street event will occupy all or only a portion of the streets proposed to be traveled, if applicable;

7. The locations, if any, of the assembly area and dispersal areas of any street event;

8. If the dispersal area of a street event is located in another city, the location of such dispersal area, and if the required permit has not been issued by such other city, an alternate route and alternate dispersal area in the City of Berkeley;

9. As far as is reasonably practicable, the approximate number of persons; the number and kind of vehicles, animals, musical instruments, sound units, and any other equipment that produces sound or noise during the street event that will be involved in the street event, and whether amplified sound is proposed. In the event the applicant seeks or needs an amplified sound permit, a temporary food permit or a temporary liquor license, the application for the street event should be accompanied by copies of applications for such permits and/or licenses;

10. The number and location of portable sanitation facilities and other equipment and services necessary to conduct the street event and other equipment and services proposed for participants, if applicable, with due regard for participant and public health and safety;

11. A description of arrangements that have been made for first aid or emergency medical services, or both, if applicable;

12. A description of arrangements that have been made for security, including the name and telephone number of the lead contact person for the security contractor;
13. Any proposed reasonable rules and regulations necessary for the safe and orderly conduct of the street event and the movement of persons, in furtherance of the goals and purposes of the street event. Such proposed rules may include, but are not limited to, prohibition or other regulation of the use of skates and wheeled vehicles, other than wheelchairs, if necessary for the safety or orderly circulation of persons attending the street event. For purposes of this subdivision, "wheeled vehicles" includes, but is not limited to, bicycles, tricycles, scooters, skateboards or any motorized vehicles of any sort. For purposes of this subdivision, "skates" includes roller skates, roller blades and in-line skates;

14. Insurance information, if applicable; and

15. Such other information, in conformity with the requirements of this Chapter, as the City Manager may reasonably require.

Section 4. That Berkeley Municipal Code section 13.44.060 is amended to read as follows:

13.44.060 Permits--Standards for issuance or denial--Notification.

A. The City Manager shall issue a permit for a street event unless one or more of the following conditions exist:

1. The application is incomplete for failure to provide the information required by Section 13.44.040;

2. The information contained in the application, including supplemental information, if any, is found to be false in any material respect, the purpose of the street event is contrary to law, and/or the applicant has failed to meet the City requirements for a permit;

3. A prior application for a street event to be held at the same time and place has been received or granted;

4. The street event will unduly interfere with pedestrian access or with vehicular ingress to, egress from, or travel on a freeway, state designated highway, public transit stop, or major arterial or collector street of the City;

5. The street event will unreasonably interfere with fire or police protection; or

6. The event applicant, whether an individual or an organization, has substantially failed to comply with the terms and/or conditions of prior events, of any type, permitted by the City.
B. The applicant shall be notified in writing of the action of the City Manager with respect to the application as early as possible, but no less than two days prior to the date of the proposed event, unless the application was made late, in which case notification shall be given as soon as reasonably possible and by any reasonable means.

C. If a permit is denied, the written notice shall set forth reasons explaining the denial.

D. If a permit is denied pursuant to the criteria set forth in this chapter, because the proposed time, route, or assembly and dispersal sites are unacceptable, the denial shall contain a statement of alternative acceptable times, routes and sites.

Section 5. That Berkeley Municipal Code section 13.44.110 is amended to read as follows:

13.44.110 Insurance—Exemption.
A. If a street event involves one of the following conditions, the permittee must obtain insurance in the amount of one million dollars for the duration of the event, which names the City of Berkeley, its officers, agents and employees as additional insured:

1. Closure of a major arterial or collector City street, as defined in the City of Berkeley General Plan;

2. An anticipated crowd in excess of one thousand people; or

3. A street closure anticipated to have a major effect on the flow of traffic in the area; i.e., closure of two or more intersections and rerouting of AC Transit or other public transportation; or

4. Use of any part of the Downtown Berkeley BART Plaza.

B. With the exception of street events involving use of any part of the Downtown Berkeley BART Plaza, no permit applicant shall be required to comply with the insurance requirement of this section if the activity proposed is protected by the First Amendment to the United States Constitution and the applicant produces satisfactory evidence that complying with the insurance provision would preclude the proposed street event from occurring.

C. The amount of insurance required shall not be based on the existence or content of any expression involved in the event, or on the expected reactions of observers.

D. If insurance is required pursuant to this section, a certificate of insurance shall be provided to the City and must be approved as to form and sufficiency by the City no later than 5 days before the event. If the applicant is unable to obtain insurance or does not provide the City with the certificate of insurance, the City Manager may obtain such insurance on behalf of the permit applicant and charge the permit applicant for the cost.
Section 6. 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.
RESOLUTION NO. 68,284–N.S.

AUTHORIZING THE CITY MANAGER TO IMPLEMENT PROGRAMS TO ACTIVATE
DOWNTOWN BERKELEY BART PLAZA

WHEREAS, Downtown Berkeley BART Plaza is an essential place in Berkeley, and
directly affects the City’s economic, social and civic wellbeing; and

WHEREAS, a renovation of Downtown Berkeley BART Plaza is currently underway that
will improve the quality of public open space and provide infrastructure for public
performances, ambient sound and light installations, and public address; and

WHEREAS, Downtown Berkeley Association and the Civic Arts Commission have
developed a plan for activation of the soon to be reopened BART Plaza with public art,
arts and cultural activities, commerce, and other public space enhancements; and

WHEREAS, the goal of this activation plan is to ensure that the new BART Plaza is a
successful public space that is welcoming and accessible for everyone, with a strongly
defined sense of place that emphasizes Berkeley’s rich arts community and cultural
fabric; and

WHEREAS, programs to activate BART Plaza will leverage significant other resources
that the City and other public, private and nonprofit partners have invested in the space.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the
City Manager is authorized to execute a one-year contract for up to $10,000 with
Downtown Berkeley Association for the non-exclusive production of arts and cultural
programming at Downtown Berkeley BART Plaza, and to renew that contract for up to
two additional years, for a total amount not to exceed $30,000 over three years. This
contract has been assigned CMS No. N2CAZ.

BE IT FURTHER RESOLVED that the City Manager is authorized to implement a pilot
program whereby permits will be issued to up to two food vendors at Downtown Berkeley
BART Plaza for up to one year.

The foregoing Resolution was adopted by the Berkeley City Council on January
23, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and
Arreguin.

Noes: None.

Absent: None.

Attest: Mark Numainville, City Clerk

Jesse Arreguin, Mayor