



Office of the City Manager

ACTION CALENDAR

April 29, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Department

Subject: Berkeley Way Development Opportunity: Request for Qualifications

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to release a Request for Qualifications (“RFQ”) to solicit statements from development teams (comprised of developers, service providers, and architects) regarding their capacity, experience, and interest in developing the City-owned property located at 2012 Berkeley Way (“Berkeley Way”).

SUMMARY

On September 10, 2013, Council approved the following referral to the City Manager, Housing Advisory Commission (HAC), and Homeless Commission: “the development of a Request for Proposals (RFP) for the development of the city-owned Berkeley Way Parking Lot to permit site acquisition and construction of an affordable housing project, specifically a permanent supportive housing development.” Council further directed the City Manager, HAC, and Homeless Commission to consider incorporation of the following development program elements into the RFP:

- A ground floor emergency shelter
- Ground floor space for administrative offices, community space, and supportive services
- The replacement of all 112 existing parking spaces or, as an alternative, “contributions for the construction of public parking at a nearby location”
- Achievement of LEED Gold building sustainability and additional energy efficiency features that pursue zero-net energy usage
- Adequate open space for residential use
- Appropriate building design for the site’s location within the Downtown Buffer zone

- Construction scheduling that does not adversely affect public parking availability, given other, pending public parking projects in the City

Finally, at the September 10, 2013 meeting, Council added to the referral that the RFP analysis should include “a resolution of the parking issue, a financial feasibility analysis for the project, and a doubling of the parking capacity [i.e., to 224 parking spaces]....”

Staff’s financial and physical analysis of the site indicates that incorporation of all the main elements requested for the site’s development—permanent supportive housing, an emergency shelter, community service space, and at least 1:1 parking replacement—creates significant financial feasibility problems given currently available resources. See Attachment 2: Berkeley Way Development Opportunities for more information. For this reason, staff recommends issuance of an RFQ rather than RFP, which should confer the following benefits:

- The selected development team will be tasked in a broad way with pursuit of the articulated vision for the site: construction of permanent supportive housing, shelter and community space, and maximized parking capacity.
- To develop each of the site’s component parts to its greatest potential, the selected development team can pursue the possibility of voluntary land acquisitions of adjacent sites, which would be funded through low-income housing tax credits, tax-exempt bond proceeds, and/or bank debt, as negotiated exclusively by the developer and the landowner. Site assemblage of this sort (again, assuming there is any interest among current owners in selling), could provide additional square footage and resources necessary to achieve the stated development goals (through, for example, a mixed-income housing development that cross-subsidizes permanent supportive housing).
- Once the selected development team had explored the possibility of adjacent owners’ interest in selling, if any, it could present a thorough and comprehensive picture to the City and community stakeholders regarding all potential development options for Berkeley Way, including full financial analyses.
- An immediate release of an RFQ will help poise the selected development team to take advantage of all funding opportunities as they arise, while simultaneously working with the community and City to define the exact contours of the development plan.

Staff further recommends that a selection panel be convened by the City that is tasked with interviewing development team applicants, determining which among the teams is most qualified, and making a selection recommendation to Council. The panel’s recommended participants are:

- 1) A representative from the Housing Advisory Commission;
- 2) A representative from the Homeless Commission;

- 3) An Office of Economic Development staff person;
- 4) A Public Works staff person who is knowledgeable about parking;
- 5) A Planning Department staff member; and
- 6) A Health, Housing and Community Services staff member.

Finally, staff recommends that the approved development team commence its analysis under the auspices of an Exclusive Negotiating Rights Agreement and an appropriately-sized predevelopment loan agreement with the City, with anticipated deliverables to include: 1) schematic architectural design documents; 2) full financial projections; 3) a preliminary services plan and budget; 4) negotiated option agreements for site assembly, if applicable; 5) an analysis of parking demand and a corresponding public parking plan; and 6) a community outreach plan.

Staff will return to Council with the proposed Exclusive Negotiating Rights Agreement with the recommended developer team, and a recommendation regarding a predevelopment loan of up to \$50,000, the Housing Trust Fund's maximum predevelopment loan.

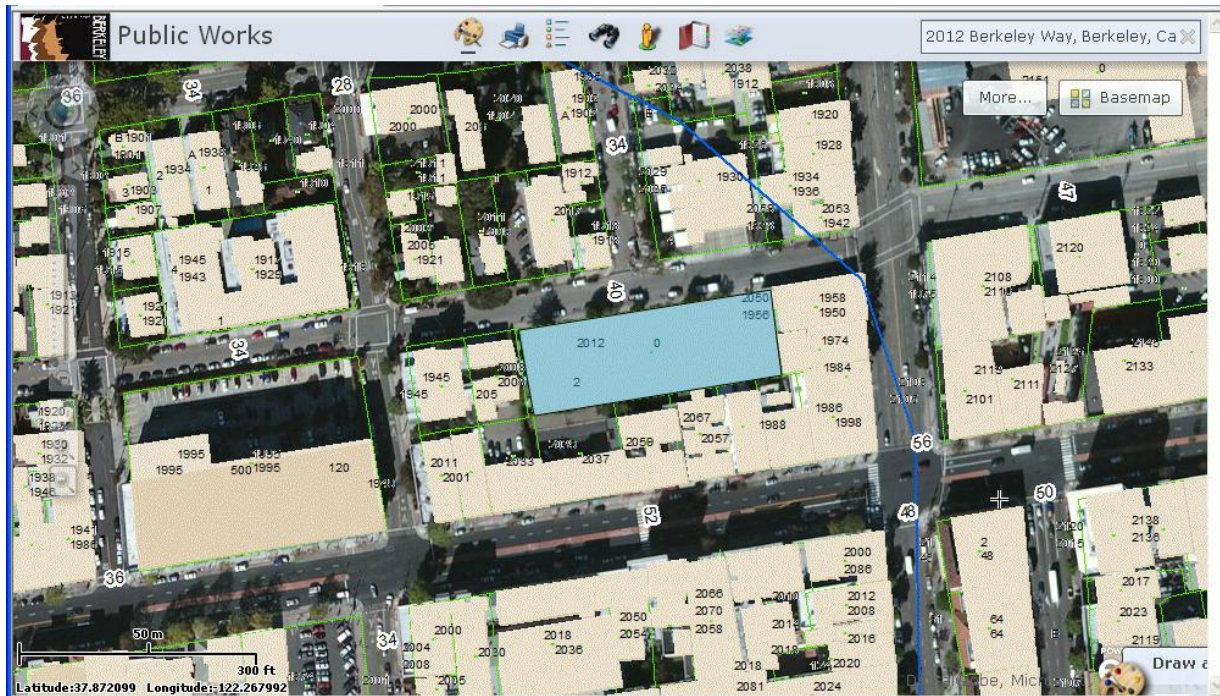
FISCAL IMPACTS OF RECOMMENDATION

Staff time and expenses related to issuance of the RFQ, review of submissions, and development of a draft Exclusive Negotiating Rights Agreement (ENRA).

CURRENT SITUATION AND ITS EFFECTS

2012 Berkeley Way is a 40,945 square foot site located between Shattuck Avenue and Milvia Street, one block north of University Avenue. Its dimensions are 350 ft. x 115 ft., producing, with applicable setbacks, a net buildable area of approximately 34,000 s.f. Its zoning is C-DMU (Commercial-Downtown Mixed-Use), and it resides within the Downtown "Buffer" zone. Other development restrictions include a maximum 60' height (with a Use Permit); required 1:3 residential parking; and 80 s.f. of open space per residential unit.

Berkeley Way is bordered to the south and east by low-density commercial structures. Low-density residential buildings are located at the site's west and north sides. The City's Fire Station #2 is across the street to the north.



With its excellent “walkability” and easy access to major bus lines and BART, the site is well-suited for affordable housing. Its location is also a strong fit for emergency shelter and services space, given its proximity to other service resources. And, as demonstrated by the site’s current use, it provides essential parking for services and commercial concerns located on University and Shattuck Avenues.

Staff’s preliminary analysis—conducted pursuant to the terms of Council’s referral—included the following assumptions:

- Access to all available Housing Trust Fund Resources (including projected federal funding for FY 2015, this amount is now approximately \$1,500,000)
- The City’s donation of the land that would be occupied by the affordable housing, service space, and parking to the project (potentially through a long-term ground lease)
- Use of New Market Tax Credits to finance the shelter, community service space, and parking structure
- Use of 9% low-income housing tax credits, rather than 4% credits, given 1) the lack of currently available state funding (such as Multi-family Housing Program funds, which were fully expended in 2013); 2) the low level of HTF funding available; and 3) limitations on available rental subsidies for permanent supportive housing, which are necessary to support mortgage debt

- A pay-in value of \$1.05¹ for the 9% tax credits; \$10,000 per unit from the Affordable Housing Program funded by the Federal Home Loan Bank; and 20-30 year bank loans at 6% interest
- For scenarios involving family housing, the potential for an award of up to 50 project-based Housing Choice Vouchers (“HCVs”) from the Berkeley Housing Authority (“BHA”). (Note that BHA’s stated priority for its project-based HCVs is family housing, and it is limited by federal rules on the number of project-based HCVs it has available. In addition, regardless of the housing type (e.g., family, senior, veterans, etc.), all permanent supportive housing requires rental subsidies in order to make up the gap between the cost of operations and the rents extremely low-income households can afford. Currently, HCVs from BHA are the only viable project-based subsidies for the project.)

Staff then began its modeling, per Council’s request, with a full build-out of all proposed uses, i.e., as much affordable housing as the site could support (in conjunction with other uses); inclusion of a large percentage of units serving extremely low-income households; and 224 parking spaces, the bulk of which were located subgrade. This proposal generated the largest gap in financing: over \$35 million. Subsequent modeling scaled back from that point, but significant funding gaps remained, with the value of the gap fluctuating in direct proportion to the number of parking stalls and square footage of the service space and indirectly with the income levels of the tenants.

Approaching the project from the angle of financial feasibility as a first priority, a buildable/financeable development does appear possible if 1) the site is split into two roughly equal parts and one half is sold for market value; 2) the unit count is limited to approximately 45; and 3) 100% of the units are subsidized with HCVs. However, what this scenario achieves in feasibility it gives up in program scope: bifurcating the site not only requires a reduced unit count, but forces a reduction in the shelter/service square footage and parking count as well. In addition, development of small sites (in the 17,000 – 20,000 s.f. range) is generally very difficult, and feasibility may ultimately be hard to attain for both the market-rate and affordable program if two sites are created out of one.

¹ The “pay-in” value of 9% tax credits reflects the amount an investor is willing to pay for every \$1.00 of tax credits received. In good markets, investors will pay more than \$1.00 per credit because projects usually generate additional tax benefits beyond the credit itself, such as the ability to deduct project losses.

The table below provides a sample of the various development programs staff modeled.

| | Housing Type | Unit Count | Assumes Rental Subsidies? | Affordability Range (as percentage of Area Median Income) | Service /Shelter sq. ft. | Parking Stall Count | Approximate Funding Gap |
|---|--------------|------------|----------------------------------|---|--------------------------|---------------------|-------------------------|
| A | Family | 110 | No - only 10% units at 30% AMI | 30%-60% | 34,000 | 224 (187 subgrade) | \$35 million |
| B | Family | 67 | No - only 10% units at 30% AMI | 30%-60% | 15,000 | 120 | \$15 million |
| C | Family | 67 | Yes - 50 Housing Choice Vouchers | 50 units able to serve extremely low-income households | 15,000 | 120 | \$7 million |
| D | Family | 44 | Yes, 100% | 43 units able to serve extremely low-income households | 8,500 | 58 | \$4 million |

Since development of Berkeley Way as currently configured appears to force a choice between achieving the City's articulated goals for the site and financial feasibility, selecting an experienced, qualified development team that can formulate creative options for Council's consideration (for example, by negotiating land acquisitions financed with tax credits and debt that produce a net financial and physical benefit) emerges as the best way to move the vision forward.

In the proposed RFQ process, the selected development team will demonstrate the following:

- A commitment to and extensive experience in affordable housing development and, specifically, the development and operation of permanent supportive housing
- Experience negotiating site assembly in populated urban locales for the purpose of financing and building affordable housing developments
- Experience financing complex, mixed-use transactions
- Experience building energy efficient, sustainable, affordable housing and mixed-use structures
- Experience, through the team's service provider, providing high-quality services to chronically homeless, special needs, and extremely low-income populations

- Experience, through the team’s architect, designing mixed-use developments in urban infill areas that include potentially conflictive uses, such as family housing adjacent to a homeless shelter and commercial parking open to the public
- The ability to bring to the project unique skills, advantages, financial benefits, or any other element that will best position the project as envisioned for rapid advancement through the development stages

Once responses have been received, staff will convene a selection panel that will be tasked with interviewing development team applicants, determining which among the teams is most qualified, and making a selection recommendation to Council. The panel’s recommended participants are a representative from the Housing Advisory Commission, a representative from the Homeless Commission, a person knowledgeable about Downtown commercial activities, a person knowledgeable about environmental sustainability and transit-oriented development, a Planning Department staff member; and a Health, Housing and Community Services staff member.

Staff will then work with the recommended development team to develop an Exclusive Negotiating Rights Agreement (ENRA) and an appropriately sized predevelopment loan agreement of up to \$50,000, to be presented to and reviewed by Council. Anticipated deliverables of the ENRA include:

1. Schematic architectural design documents;
2. Full financial projections;
3. A preliminary services plan and budget;
4. Negotiated option agreements for site assembly, if applicable;
5. An analysis of parking demand and a corresponding public parking plan; and
6. A community outreach plan.

BACKGROUND

As reviewed in the September 10, 2013 Council Report regarding the Berkeley Way RFP, there are extensive policy bases for development of the Berkeley Way parking lot as affordable housing or a mixed-use project. See, for example,

- 1) **General Plan, Housing Element, Policy H-31 Publicly Owned Sites:** “Encourage use of publicly owned or controlled sites for affordable housing and/or mixed-use residential projects with a substantial portion of affordable units consistent with the provisions of Measure L.”
- 2) **Downtown Area Plan, Policy ES-2.5(g):** “The City-owned Berkeley Way parking lot should become a “super-green” affordable housing project with zero net energy use (with enough energy generated on-site to cover on-site energy used), while

simultaneously avoiding a reduction in off-street parking spaces in the area (see Policy HC-4.2).”

- 3) **Downtown Area Plan, Policy HC-4.2: Affordable Housing & Supportive Services.** “Promote the creation of permanent affordable housing with supportive services in Downtown, especially for homeless individuals and families. Encourage provision of appropriate supportive services for tenants at all functional levels.
- a) Identify opportunities to expand permanent housing with supportive services in Downtown.
 - b) Develop a model “net-zero energy” affordable housing and green demonstration project on the City-owned Berkeley Way parking lot site (see Policy ES-2.3). Provide a level of underground parking, if feasible, or contributions toward the construction of public parking at a nearby location, with the goal of not reducing the overall number of off-street parking spaces (see policies under Goal AC-3).
 - c) Develop programs and partnerships among service providers and non-profit housing developers for rehabilitating and converting existing SRO properties, and by using a permanent supportive housing model, such as Berkeley’s “Housing First” program.”

ENVIRONMENTAL SUSTAINABILITY

The proposed RFQ would require a demonstration of experience building energy-efficient, sustainable, mixed-use developments. The stated goal for the Berkeley Way development program should be zero-net energy usage.

RATIONALE FOR RECOMMENDATION

Given the financial and physical limitations applicable to the Berkeley Way site, the most effective way to achieve Council’s stated goals and implement City policies regarding Downtown development is to issue an RFQ and select a strong, experienced development team that can pursue expanded development opportunities.

ALTERNATIVE ACTIONS CONSIDERED

Staff and the Homeless and Housing Advisory Commissions could continue to analyze and debate various options for Berkeley Way in its current configuration, and recommend a Request for Proposals.

HOUSING ADVISORY AND HOMELESS COMMISSIONS

City staff presented development considerations to the HAC on February 6, 2014 and to the Homeless Commission on February 12, 2014. The HAC took no action on February 6, but members’ comments included a general concern for prioritizing affordable housing and for the need to gather additional information regarding parking demand and

supply before any decision should be made on the amount of parking required at the site.

The Homeless Commission unanimously voted to recommend that Council prioritize the development of permanent supportive housing at the Berkeley Way lot (M/S/C: Bastone/Elgstrand: Ayes: Bastone, Becker, Davis, Elgstrand, Gresher, Marasovic, Peterson, Sempari. Noes: None. Absent: Nado).

At the HAC's meeting of March 6, 2014, the Commission considered this recommendation for issuance of an RFQ, and voted unanimously to recommend the attached resolution, with minor changes that are incorporated therein (M/S/C: Skjerpung/Wolfe. Ayes: Casalaina, Darrow, Drake, Droste, Magofna, Skjerpung, Soto-Vigil, Tregub, Wolfe. Noes: None. Absent: None).

CONTACT PERSON

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Attachments:

- 1: Resolution
- 2: Berkeley Way Development Opportunities, PowerPoint slides

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

AUTHORIZING THE CITY MANAGER TO RELEASE A REQUEST FOR QUALIFICATIONS FROM DEVELOPMENT TEAMS, CONSISTING OF DEVELOPERS, SERVICE PROVIDERS, AND ARCHITECTS, FOR THE DEVELOPMENT OF 2012 BERKELEY WAY

WHEREAS, the City owns the property located at 2012 Berkeley Way, which is approximately 40,945 square feet in size, lies within the Downtown Buffer zone, and which is currently improved with a surface parking lot (“Berkeley Way”); and

WHEREAS, Policy H-31 of the Housing Element of the City’s General Plan calls for the use of publicly-owned or -controlled sites for affordable housing and/or mixed-use residential projects; and

WHEREAS, Policy ES-2.5(g) of the City’s Downtown Area Plan calls for Berkeley Way to become a “super-green” affordable housing project with zero-net energy usage while avoiding a reduction in off-street parking spaces in the area; and

WHEREAS, Policy HC-42 of the Downtown Area Plan calls for the creation of permanent affordable housing with supportive services in Downtown, especially for homeless individuals and families; and

WHEREAS, on September 10, 2013, Council referred to the City Manager and the Homeless and Housing Advisory Commissions the development of a Request for Proposals for the Berkeley Way lot to permit construction of affordable, permanent, supportive housing, with additional consideration provided for:

- Inclusion of an emergency shelter
- Inclusion of administrative offices, community space, and supportive services
- A doubling of the existing parking, or 1:1 replacement of existing parking, or, in the alternative, paying parking contributions for public parking elsewhere
- Sustainable building elements that exceed the LEED Gold standard and pursue zero-net energy usage
- Appropriate open space for residents
- Appropriate building design for the site’s context
- Construction scheduling cognizant of other public parking projects so that parking is not negatively impacted
- Financial feasibility

WHEREAS, staff’s analysis concluded that incorporation of all desired elements for Berkeley Way as it is currently configured forces a choice between financial feasibility and full realization of the articulated development goals; and

WHEREAS, an experienced developer may be able to independently assemble and finance site acquisitions that provide the opportunity to enhance overall financing while achieving the development vision; and

WHEREAS, the Homeless Commission voted unanimously on February 12, 2014 to recommend that Council prioritize permanent supportive housing at Berkeley Way; and

WHEREAS, the Housing Advisory Commission advised on February 6, 2014, that additional fact-finding is in order, especially with regard to parking supply and demand, before decisions should be made which commit the City to a particular development program; and

WHEREAS, the Housing Advisory Commission again considered Berkeley Way's development on March 6, 2014, and unanimously voted to recommend the issuance of an RFQ, with the proviso that the site's public parking be replaced at a ratio of one-to-one or less, and that the Exclusive Negotiating Rights Agreement for the selected development team require the team to return to the HAC at regular intervals to provide project updates and to receive feedback; and

WHEREAS, a Request for Qualifications, rather than a Request for Proposals, will solicit statements of interest from experienced development teams who can work with the City and community stakeholders, including the Homeless and Housing Advisory Commissions, to pursue all available development options and thereby further refine the best features of the development plan.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager may release a Request for Qualifications for Berkeley Way.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all documents required to effectuate this action.