



Office of the City Manager

ACTION CALENDAR  
September 24, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kelly Wallace, Interim Director, Health, Housing, and Community Services  
Subject: Resolution for the Allowance of 3404 King Street to Operate a Shelter for Homeless Youth

RECOMMENDATION

Adopt a resolution that:

1. Authorizes the City Manager to negotiate a lease with Covenant House, for \$1 per year, for the purposes of becoming a lessee at 3404 King Street and establishing a public facility open to the homeless at that property.
2. Authorizes the City Manager to negotiate a management agreement with Covenant House for said facility; and
3. Authorizes the City Manager to amend Contract No. 31900239 with Covenant House to include the operation of a 12-bed transitional housing program and to increase the not-to-exceed amount of the contract by \$357,020 (the amount currently awarded to Fred Finch Youth Center for the Turning Point transitional housing program) to a new total of \$1,630,572.

FISCAL IMPACTS OF RECOMMENDATION

Adopting this recommendation would authorize the City Manager to increase the not-to-exceed amount of the existing 4-year contract with Covenant House (Contract No. 31900239, CMS #AL3FA) by \$357,020 to a new total of \$1,630,572. This \$357,020 in funding would be re-allocated upon the termination of Contract No. 31900257 with Fred Finch Youth Center.

The recommendation would also require staff time from the Planning Department, City Attorney, and HHCS for the purposes of negotiating a lease and management agreement for a shelter at 3404 King Street.

CURRENT SITUATION AND ITS EFFECTS

The building at 3404 King Street is currently the home of Fred Finch Youth Center's (FFYC) Turning Point program, a transitional housing program for transition-aged (18-24) youth. The City of Berkeley provides \$89,255 annually in General Funds for the operation of this program, and FFYC also receives a direct grant from HUD in the amount of \$422,579 annually to support program operations.

In June, FFYC contacted HHCS staff to inform them that operating the program was no longer consistent with their mission nor financially viable for them. To avoid closing the program and terminating the HUD grant, FFYC intends to sell the property to Covenant House California.

Covenant House is a nonprofit for homeless youth that currently contracts with the City to operate the 30-bed YEAH! shelter for transition-aged youth at 1744 University Avenue. Since 2018, Covenant House's current tenancy at Lutheran Church of the Cross on University Avenue has become increasingly unviable, to the point that the organization launched a capital campaign to search for an alternative, permanent site in Berkeley. The organization has searched unsuccessfully for an alternative property in Berkeley for over a year, but have either found any lead to be outside their price range and/or not zoned appropriately for a shelter. Staff at HHCS have been informed that, without a suitable location identified by the end of 2019, Covenant House's executive leadership will likely discontinue the shelter.

Upon acquiring the property from FFYC, Covenant House will continue operating the Turning Point transitional housing program. HUD has already agreed to transfer the federal grant to Covenant House if the program continues uninterrupted. In addition, the proposed purchase of the 3404 King Street property would provide a suitable location for the YEAH! shelter, and for the acquisition of the property to be financially feasible for Covenant House, that agency has proposed operating both the YEAH! shelter and the existing Turning Point program at 3404 King Street after performing some interior renovations to accommodate a shelter.

Staff believe that if this deal were to fall through, the City likely lose the only two programs in Berkeley providing shelter/temporary housing for youth experiencing homelessness: the Turning Point transitional housing program would fold (and \$422,579 in HUD funding would be sacrificed) for lack of an operator (Covenant House will not operate Turning Point at 3404 King Street without the shelter), and the YEAH! shelter would likely need to close or relocate out of Berkeley as well for lack of a viable long-term home.

### *Zoning at 3404 King Street*

In exploring the feasibility of this proposal—namely, the sale of the 3404 King Street property from FFYC to Covenant House; the transfer of the Turning Point program's operations from FFYC to Covenant House; and the relocation of the YEAH! shelter to the same site after renovations by Covenant House—staff identified the following issues:

- First, 3404 King Street is bound by a Development Loan Agreement that restricts the use and affordability of the property for 55 years. Transferring the property from one owner to another requires the prior written approval of the City Manager. Staff have reviewed the terms of the Agreement and believe that

Covenant House's proposed uses are allowable, and are prepared to approve the transaction accordingly.

- Second, 3404 King Street is governed by a 1979 Variance/Use Permit that restricts the use of the property for its current purpose (a "transitional group home for 12 homeless youth 24 hours daily"). That use is not allowable in the parcel's zoning district (R2-A), but is allowable under the terms of the permits, which can be transferred to another operator (as they have twice before in the past).
- Third, the parcel's zoning district (R2-A) does not allow for the addition of a shelter under any circumstances of which City staff are aware. Therefore, Covenant House's proposal to move the shelter to the site is not consistent with existing zoning and would require an amendment to the Zoning Ordinance to proceed.

#### *City Council Authority under the Shelter Crisis Resolution*

In October of 2017, the City Council passed Resolution No. 68,206-N.S., an extension of a declaration of a shelter crisis, which stipulates that, "for the term of this Resolution, no planning, zoning, building, or other permit requirements for the interim establishment of shelters for the homeless shall be required to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis." Staff believe that, in the unique circumstance of 3404 King Street, "strict compliance" with the land use allowances in the R2-A zoning district would certainly delay the mitigation of the effects of Berkeley's shelter crisis, and in fact would exacerbate these effects by risking the closure of up to 42 beds for homeless transition-aged youth.

Importantly, however, Resolution No. 68,206-N.S. only allows the waiver of zoning requirements for "public facilities." The City derives its authority for this waiver from California Gov. Code sec. 8698(c), which defines public facilities as facilities that are "owned, operated, leased, or maintained" by the City for the crisis waiver to apply. A lease agreement between the City and Covenant House would bring the facility within the definition of "public facilities" and would allow the City Council to invoke its authority under Resolution No. 68,206-N.S. to waive certain requirements of the Zoning Ordinance. Staff anticipates that the project would comply with the requirements of the Building Standards Code, in addition to minimum health and safety standards adopted by the City pursuant to Government Code section 8698.4.

For these reasons, staff recommend that the City Council adopt a resolution that:

1. Authorizes the City Manager to negotiate a lease with Covenant House, for \$1 per year, for the purposes of establishing a public facility open to the homeless at 3404 King Street. Under the terms of this lease, Covenant House would maintain

access to the property as operator of shelter and transitional housing programs, and the City would maintain a contractual relationship with Covenant House as a funder of these programs. As a lessee of the building at 3404 King Street, the City Council would be allowed, by resolution, to invoke the shelter crisis, waive the restrictions of the R2-A zoning district, and allow the relocation of the YEAH! shelter to the 3404 King Street site. Once this lease is negotiated, staff will return to Council with a Lease Ordinance.

2. Authorizes the City Manager to negotiate a management agreement with Covenant House for this facility. The resolution makes clear that this management agreement will only initiate at such point as Council invokes the Shelter Crisis Resolution at 3404 King Street. Because the Shelter Crisis Resolution requires that the City lease 3404 King Street and that Council approve “detailed plans for the project and the standards and requirements being applied to the facility and its operation,” staff cannot ask Council to formally invoke the resolution at this time, and will return to Council as soon as these plans have been determined. Instead, the purpose of this clause in the resolution is to demonstrate Council’s intent to support the eventual relocation of the YEAH! shelter to 3404 King Street, giving Covenant House reasonable assurance of the viability of their investment in the property.
3. Authorizes the City Manager to amend Contract No. 31900239 with Covenant House to include the operation of a 12-bed transitional housing program and to increase the not-to-exceed amount of the contract by \$357,020 (the 4-year amount currently awarded to Fred Finch Youth Center for Turning Point) to a new total of \$1,630,572.

#### *Long-term Consequences of this Proposal*

A critical consideration for evaluating this proposal is that the waiver of zoning considerations for the establishment of a shelter pursuant to an invocation of the Shelter Crisis Resolution is only allowable only “for the term of this Resolution.” The City Attorney’s Office is evaluating whether an established shelter could remain in place after the conclusion of the term of the Resolution as a lawful nonconforming use under the Zoning Ordinance. If not, the City would either need to close the shelter at 3404 King Street for operations that are inconsistent with the parcel’s land use allowance, or undertake the process of amending the Zoning Ordinance to allow a shelter at 3404 King Street.

Staff have communicated these long-term issues to Covenant House, and Covenant House has indicated its clear understanding of the risk and desire to proceed with the arrangement, notwithstanding the risks. Staff have also advised Covenant House to work closely with the City on any plans for interior renovations prior to shelter installation, in order to ensure compliance with all relevant building and fire codes.

## BACKGROUND

The building at 3404 King Street was permitted by Variance / Use Permit to operate as a group home for troubled adolescents in 1979, transferred to another operator in 1998 for a “transitional group home for 12 homeless youth 24 hours daily,” and transferred again to its most recent operator (Fred Finch Youth Center) in 2003.

As noted above, in June of 2019, Finch Youth Center informed HHCS staff of their intent to discontinue operations of this program, sell the property to Covenant House California, and transfer the HUD grant supporting the transitional housing program to Covenant House. Covenant House intends to continue operating the transitional housing program, but only if 3404 King Street also becomes the eventual long-term location for the 30-bed YEAH! shelter, which is at risk of closure by the end of 2019 for lack of a viable long-term location. However, 3404 King Street is located in the R2-A zoning district, which does not allow any shelter.

In October of 2017, Council passed Resolution No. 68,206-N.S., extending the declaration of a shelter crisis. This resolution authorizes, for the term of the Resolution, the waiver of planning, zoning, building, or other permit requirements for the purposes of establishing an interim shelter to address the crisis. This waiver applies to “City facilities or facilities leased by the City as shelters.”

## ENVIRONMENTAL SUSTAINABILITY

The present Resolution has no immediate environmental impacts. The eventual allowance of a shelter at 3404 King Street would have minimal to no environmental impact, as the 30-bed shelter currently at 1744 University Avenue would simply relocate to 3404 King Street.

## RATIONALE FOR RECOMMENDATION

The circumstances pertaining to this recommendation are urgent: staff have been advised that the only two programs offering shelter for transition-aged youth in Berkeley are at risk of closure by the end of the 2019 calendar year if Council does not indicate eventual support for the use of the shelter crisis declaration to allow a shelter at 3404 King Street. Staff are aware of the serious implications of waiving the restrictions of a zoning district, but believe the recommendation is warranted given the City’s 22% increase in unsheltered homelessness between 2017 and 2019.

## ALTERNATIVE ACTIONS CONSIDERED

The City Council could:

1. Identify a viable alternative site whose zoning district allows for the operation of the 12-bed Turning Point transitional housing program and 30-bed YEAH! shelter;
2. Take no action, and risk the closure of both the 12-bed Turning Point program and the 30-bed YEAH! shelter.

Allowance for a Shelter at 3404 King Street

ACTION CALENDAR  
September 24, 2019

CONTACT PERSON

Peter Radu, Homeless Services Coordinator, HHCS, (510) 981-5435.

Attachments:

1: Resolution

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

AUTHORIZATION TO NEGOTIATE A LEASE, MANAGEMENT AGREEMENT, AND  
CONTRACT AMENDMENT FOR A SHELTER AT 3404 KING STREET

WHEREAS, the City of Berkeley experienced a 22% increase in the people experiencing unsheltered homelessness from 2017 to 2019, with 82 homeless, unaccompanied youth and young adults in Berkeley on any given night in 2019; and

WHEREAS, the building at 3404 King Street is currently owned by the nonprofit Fred Finch Youth Center and home to the 12-bed Turning Point transitional housing program for homeless transition-aged youth, allowable per the terms of a 1979 variance/use permit; and

WHEREAS, Fred Finch Youth Center is seeking to discontinue operations of Turning Point, sell 3404 King Street (with written approval from the City Manager, per the terms of the Development Loan Agreement governing the property), and transfer the program's operations and supporting HUD grant to the buyer of the property; and

WHEREAS, Covenant House California, which currently operates the 30-bed YEAH! shelter for transition-aged youth at 1744 University Avenue, has offered to purchase 3404 King Street from Fred Finch Youth Center and continue operations of the Turning Point program; and

WHEREAS, the YEAH! shelter's long-term future at 1744 University Avenue is in jeopardy because of disagreements with the landlord, and Covenant House has searched for an alternative site for the shelter unsuccessfully since early 2018; and

WHEREAS, Covenant House has stated its intent to only enter into contract for the sale of 3404 King Street if they can move the YEAH! shelter to the property as well, ensuring the long-term financial viability of the investment; and

WHEREAS, City staff have been advised that the failure of this property deal may risk the closure of both homeless programs by the end of calendar year 2019; and

WHEREAS, 3404 King Street is located in the R2-A Zoning district, which does not permit the operation of a homeless shelter; and

WHEREAS, the City Council passed Resolution No. 68,206-N.S. on October 31, 2017, extending the declaration of a Shelter Crisis and allowing the City Council to waive planning, zoning, building, or other permit requirements for the interim establishment of shelters for the homeless, to the extent that strict compliance would in any way hinder, or delay the mitigation of the effects of the shelter crisis; and

WHEREAS, Resolution No. 68,206-N.S. applies to public facilities, including facilities leased by the City.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into lease negotiations with Covenant House California, upon their purchase of 3404 King Street, to enter into a lease for \$1/year for the purposes of establishing a public facility open to the homeless at 3404 King Street. The City Manager will return to the City Council for approval of this lease as soon as it is finalized.

BE IT FURTHER RESOLVED that the City Manager is authorized to negotiate a management agreement with Covenant House for the operation of a 30-bed shelter for Transition Aged Youth at 3404 King Street.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley, if upon receipt of this lease and management agreement for a shelter, finds them to be satisfactory, shall by resolution invoke Resolution No. 68,206-N.S. at 3404 King Street, thereby permitting the operation of a 30-bed shelter in compliance with all applicable building and fire codes for the term of Resolution 68,206-N.S. or an extension thereof.

BE IT FURTHER RESOLVED that the City Manager is authorized to amend Contract No. 31900239 with Covenant House to add the operation of a 12-bed transitional housing program to Exhibit A and increase the contract's not-to-exceed amount by \$357,020 to a new total of \$1,630,572. The \$357,020 in additional funding shall be re-allocated from Contract No. 31900257 with Fred Finch Youth Center. A copy of any agreements or amendments shall be on file with the City Clerk.