



**SAN RAFAEL**  
THE CITY WITH A MISSION  
*established 1874*

**Agenda Item No: 4.b**

**Meeting Date: January 21, 2025**

## **SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: City Attorney**

**Prepared by: Robert F. Epstein**  
City Attorney

**City Manager Approval:** \_\_\_\_\_

A handwritten signature in blue ink, appearing to be 'A. R. P.', is written over the line for City Manager Approval.

**TOPIC: MEMORIAL BENCH FOR JUDGE RICHARD H. BREINER**

**SUBJECT: APPROVAL OF LICENSE AGREEMENT AND MEMORIAL BENCH**

### **RECOMMENDATION:**

Adopt a resolution approving license agreement with SHM Loch Lomond LLC and plan for Memorial Bench for Judge Breiner.

### **BACKGROUND:**

The Honorable Richard H. Breiner (known as "Dick" to his friends) was a long-time resident of the City prior to his death on February 26, 2022. Dick was a lawyer for 17 years and a judge on the Superior Court for 20 years. He was a mensch who was loved, cherished, and respected beyond measure. In 1960, Dick married Dorothy ("Dottie") Landau. (In 1981, Dottie was the first woman elected to the City Council.) In 1964, Dick answered a nationwide call from CORE (Congress of Racial Equality) and SNCC (Students Nonviolent Coordinating Committee) for lawyers from around the country to go to Mississippi and take depositions of African Americans in that state who were not allowed to register to vote, resulting in losses for the newly formed Freedom Democratic party. He bravely went to Mississippi, enduring threats on his life while there. The depositions were bound and delivered to the House of Representatives, and it is believed that those depositions helped facilitate the passage of the Civil Rights Act of 1965. In 1965, Dick began a private law practice in San Rafael. He served as Deputy Public Defender for the County of Marin from 1965 to 1970, Deputy City Attorney for the Town of Tiburon from 1965 to 1977, City Attorney for the City of Belvedere from 1976 to 1977, and Special Counsel for the Cities of San Rafael, Sausalito, Mill Valley, and Ross. He was also President of the Marin County Bar Association in 1977. Dick was appointed to the Marin County Superior Court in 1977 by Governor Jerry Brown. He served as the Presiding Judge of the Marin County Superior Court from 1980-1981, 1985, 1987-1988, and 1993. He also served as Associate Judge Pro Tem on the California Court of Appeal in 1983, as Associate Justice Pro Tem for the California Supreme Court in 1985, and Presiding Judge for the Marin County Superior Court Appellate Court in 1982 and 1984. He was re-elected to the Superior Court without opposition in 1978, 1984, and 1990.

### **ANALYSIS:**

From time to time, the City chooses to recognize the unique contributions of an outstanding member of the community through the installation of a memorial bench. Through consultation with the Breiner family,

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**FOR CITY CLERK ONLY**

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

a site was selected at the end of the breakwater path at Loch Lomond. There currently is a bench in place at that location. The attached resolution authorizes (1) the City's execution of a license agreement with the property owner to allow for the City's installation and maintenance of the memorial; and (2) the installation and maintenance of a memorial plaque and, if and when necessary, a new bench.

**FISCAL IMPACT:**

The cost of a bench with plaque varies from \$1,600 to \$3,500. Therefore, the maximum cost would be \$3,500. This cost can be absorbed in the approved fiscal year (FY) 24-25 budget.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Adopt resolution.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Adopt a resolution approving license agreement with SHM Loch Lomond LLC and plan for Memorial Bench for Judge Breiner.

**ATTACHMENTS:**

1. Proposed resolution with attached license agreement.

## RESOLUTION NO.

### RESOLUTION AUTHORIZING EXECUTION OF LICENSE AGREEMENT WITH SHM LOCH LOMOND LLC AND INSTALLATION OF MAINTENANCE OF MEMORIAL BENCH AND PLAQUE HONORING THE LATE HONORABLE RICHARD M. BREINER, JUDGE OF THE SUPERIOR COURT

**WHEREAS**, the late Richard M. ("Dick") Breiner, who died on February 26, 2022, was a beloved member of the San Rafael community; and

**WHEREAS**, Dick was a lawyer for 17 years and a judge on the Superior Court for 20 years; and

**WHEREAS**, he was a mensch who was loved, cherished, and respected beyond measure; and

**WHEREAS**, in 1960, Dick married Dorothy ("Dottie") Landau who, in 1981, became the first woman elected to the San Rafael City Council; and

**WHEREAS**, in 1964, Dick answered a nationwide call from CORE (Congress of Racial Equality) and SNCC (Students Nonviolent Coordinating Committee) for lawyers from around the country to go to Mississippi and take depositions of African American residents of the state who were not allowed to register to vote, resulting in losses for the newly formed Freedom Democratic party. He bravely went to Mississippi, enduring threats on his life while there. The depositions were bound and delivered to the House of Representatives, and it is believed that those depositions helped facilitate the passage of the Civil Rights Act of 1965; and

**WHEREAS**, in 1965, Dick began a private law practice in San Rafael. He served as Deputy Public Defender for the County of Marin from 1965 to 1970, Deputy City Attorney for the Town of Tiburon from 1965 to 1977, City Attorney for the City of Belvedere from 1976 to 1977, and Special Counsel for the Cities of San Rafael, Sausalito, Mill Valley, and Ross. He was also President of the Marin County Bar Association in 1977. Dick was appointed to the Marin County Superior Court in 1977 by Governor Jerry Brown. He served as the Presiding Judge of the Marin County Superior Court from 1980-1981, 1985, 1987-1988, and 1993. He also served as Associate Judge Pro Tem on the California Court of Appeal in 1983, as Associate Justice Pro Tem for the California Supreme Court in 1985 and Presiding Judge for the Marin County Superior Court Appellate Court in 1982 and 1984. He was re-elected to the Superior Court without opposition in 1978, 1984, and 1990; and

**WHEREAS**, the City desires to permanently honor Dick's contributions to the community and his memory by installation of a permanent memorial bench and plaque at the end of the breakwater path at Loch Lomond marina;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of San Rafael does as follows:

AUTHORIZES the City Manager or her designee to execute a license agreement with SHM Loch Lomond LLC in the form attached hereto; and

DIRECTS that a permanent memorial bench and plaque be installed in Judge Breiner's memory.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Tuesday the 21<sup>st</sup> day of January 2025, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

## **LICENSE AGREEMENT FOR INSTALLATION OF MEMORIAL BENCH**

**THIS LICENSE AGREEMENT** (this “**Agreement**”) is made and entered into as of November \_\_, 2024 (the “**Effective Date**”) by and between SHM LOCH LOMOND, LLC, a Delaware limited liability company (“**Owner**”), and CITY OF SAN RAFAEL, a charter city (“**Licensee**”), with respect to the following:

Licensee desires to obtain from Owner and Owner agrees to provide to Licensee a license to use space at the end of the Loch Lomond promenade to install and maintain a memorial bench in memory of the Honorable Richard H. Breiner (deceased) (the “**Bench**”), who was a long-time San Rafael resident and Marin County Superior Court judge. The area in question is designated on Exhibit A attached hereto and by this reference incorporated herein (“**Bench Area**”), all under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **SECTION 1. GRANT OF LICENSE**

Owner hereby grants Licensee a non-exclusive license (the “**License**”) to occupy and use, subject to all of the terms and conditions of this Agreement, the Bench Area during the term described in Section 2 solely for purposes of installation and maintenance of the Bench for public use and enjoyment. The Bench will feature a plaque memorializing Judge Breiner to be designed by Licensee in consultation with Judge Breiner's family.

### **SECTION 2. TERM**

The term of this Agreement shall continue indefinitely unless and until terminated by Owner by a signed writing delivered to Licensee. Termination of this Agreement shall in no way release Licensee from the indemnity provisions hereunder or any other provisions which survive termination, nor from any obligation to Owner which has accrued prior to the date this Agreement has terminated and Licensee has vacated and surrendered the Bench Area in accordance with this Agreement. Upon the termination of this Agreement, Licensee shall, at its sole cost and expense, promptly remove the Bench and any other personal property from the Bench Area and repair all damage, if any, resulting from such removal to restore the Bench Area to substantially the same condition as existed prior to installation of the Bench, which obligation shall survive termination of this Agreement.

### **SECTION 3. REPAIRS AND MAINTENANCE**

Licensee shall keep the Bench Area and all Licensee's property in good, safe and attractive order, condition and repair, normal wear and tear excepted. Licensee shall use and occupy the Bench Area in compliance with all applicable local, State, and

Federal laws, regulations and ordinances now in force or which may hereafter be in force. No work performed by, through, under or for Licensee pursuant to this Agreement shall be deemed to be for the use or benefit of Owner to the end that no mechanic's or other liens shall be allowed against the estate of Owner. Licensee shall keep the Bench Area free and clear of all liens and encumbrances arising from any act or omission of Licensee, including any work performed for, materials furnished or obligations incurred by or on behalf of Licensee. All of Licensee's personal property, including the Bench, and Licensee's contractors, subcontractors, agents, employees, workmen or vendors personal property, located within the Bench Area is at Licensee's and Licensee's contractors, subcontractors, agents, employees, workmen or vendors sole risk and, under no circumstances, is Owner responsible for any loss or damage to same.

#### **SECTION 4. INSURANCE**

Certificates of insurance evidencing Licensee's insurance and issued by a duly authorized agent shall be delivered to Owner annually.

#### **SECTION 5. INDEMNIFICATION**

Licensee shall defend, protect, indemnify and hold harmless Owner from any liability, losses, costs, claims, demands, suits, actions expenses, and damages (including defense costs which shall include all attorneys' fees, investigation costs, expert witnesses, court costs, and other costs and expenses actually incurred by Owner), arising out of or relating (directly or indirectly) to this Agreement or the use of the Bench Area by Licensee, its agents, employees or contractors, or members of the public. No defense, indemnification or hold harmless obligations hereunder shall relieve any insurance carrier of its obligations under any insurance policies carried by Licensee pursuant to this Agreement. The indemnification obligations hereunder shall survive the expiration or earlier termination of this Agreement until all Claims involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

#### **SECTION 6. ASSIGNMENT**

This Agreement and the license granted hereunder are personal to Licensee, and shall not, without the prior written consent of Owner, which may be withheld in the sole and absolute discretion of Owner, be assignable in whole or in part.

#### **SECTION 7. MISCELLANEOUS PROVISIONS**

##### **7.1. No Lease.**

No legal title or leasehold interest in the Bench Area or appurtenances thereto shall be construed to have been created or vested in Licensee as a result of this Agreement,

the license granted hereunder, or the use or occupancy of the Bench Area by Licensee or any members of the public.

### **7.3. Entire Agreement.**

This Agreement constitutes the final, complete and exclusive statement among the parties hereto, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors and permitted assigns. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. Without limiting the foregoing, Owner makes no representations, warranties, guaranties or promises in connection with the condition or suitability of the Bench Area. Any agreement made after the date of this Agreement is ineffective to modify, waive, or terminate this Agreement, in whole or in part, unless such agreement is in writing, signed by the parties to this Agreement, and specifically states that such agreement modifies this Agreement.

### **7.4. Notices.**

Any notices, demands or consents which are to be given hereunder or which either party may desire to give to the other (collectively, "Notices") shall be given in writing by: (a) mailing the same by certified or registered United States mail, postage prepaid; or (b) sending the same by Federal Express or other reputable overnight courier service providing evidence of delivery and paid by sender, in each case addressed to the other party at the addresses shown below or at such other addresses as either party may from time-to-time designate by notice as herein provided, or may be served personally on the parties at said addresses:

Owner: SHM Loch Lomond, LLC, c/o Safe Harbor Marinas, 14785 Preston Road, Suite 975, Dallas, TX 75254, Attn: Legal

With a copy to: SHM Loch Lomond, LLC, 110 Loch Lomond Drive, San Rafael, CA 94901, Attn: General Manager

Licensee: City of San Rafael, c/o City Attorney, 1400 Fifth Avenue, San Rafael, CA 94901

Delivery of notice shall be effective upon actual delivery or attempted delivery as indicated by return receipt.

### **7.5. Time.**

Time is of the essence of each and every term, condition and provision of this Agreement in which time of performance is a factor.

#### **7.6. Governing Law.**

This Agreement shall be governed, enforced and construed under the laws of the State of California, without regard to any choice of law principles requiring the application of the law of another jurisdiction. Each party hereby submits to local jurisdiction in such State and agrees that any action by either party against the other shall be instituted in California and that each of them shall have personal jurisdiction over the other for any action brought by either of them in California.

#### **7.7. Severability.**

If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall not be affected, and any provision found to be invalid shall be enforceable to the extent permitted by Law.

#### **7.8. Counterparts.**

This Agreement shall only become effective and binding upon full execution hereof by Owner and delivery of a signed copy to Licensee. This Agreement may be executed in one or more counterparts, and each of which, so executed, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

#### **7.9. Representations.**

Each party represents and warrants to the other that: (i) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement and there is no known legal or contractual prohibition or restriction applicable to thereto, (ii) it has taken all requisite action to approve the execution, delivery, acceptance and performance of this Agreement, and (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms.

#### **7.10. Encumbrances.**

This Agreement and the license granted herein is subject to easements, restrictions, reservations, covenants, encumbrances and all other matters of record affecting the Bench Area.

#### **7.11. No Recording.**

Neither Owner nor Licensee shall record this Agreement.

#### **7.12. Governing Law.**

This Agreement and the performance hereof shall be interpreted, governed and enforced in accordance with the laws of the State of California.



**7.13. Construction.**

The headings in this instrument are for convenience only. The headings do not limit, expand or otherwise affect the provisions of this Agreement. All of the parties to this Agreement have participated fully in the negotiation of this Agreement, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

**7.14. No Third Party Beneficiaries; No Dedication.**

No person not a party to this Agreement will have any rights under this Agreement as a third party beneficiary or otherwise. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Bench Area to the general public or for any public purpose whatsoever.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the date first set forth above.

OWNER:

SHM LOCH LOMOND, LLC

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

Name: Baxter Underwood

Title: CEO

LICENSEE:

CITY OF SAN RAFAEL

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

Cristine Alilovich

Its: City Manager