



Health, Life Enrichment, Equity,
and Community Committee

CONSENT CALENDAR
January 21, 2020

To: Honorable Mayor and Members of the City Council
 From: Health, Life Enrichment, Equity, and Community Committee
 Subject: Recommendations Related to Code Enforcement and Receivership Actions

RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
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Vote: All Ayes.

CONTACT PERSON

Sophie Hahn, Councilmember, District 5, (510) 981-7150

Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Cheryl Davila, Councilmember, District 2, (510) 981-7120

Attachments:

1: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (Housing Advisory Commission)

2: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants (Peace and Justice Commission)

3: Draft Plan for Public Meeting on Receivership (Councilmember Ben Bartlett)



Housing Advisory Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission
Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

POLICY COMMITTEE RECOMMENDATION

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Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdesahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114



Peace and Justice Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

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- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

Nina Goldman, Commission Secretary, 981-7000

Attachments:

1. Letter to Judge Brand

**RESOLUTION
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR
HOMEOWNERS AND TENANTS**

Whereas Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

Whereas since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

Whereas the conversion from a duplex to a single family home was done without permits and inspections; and

Whereas several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

Whereas although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

Whereas since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

Whereas many more repairs were made than were requested, bringing the total costs to over \$600,000; and

Whereas the house is now certified by the City for occupancy; and

Whereas Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

Whereas Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

Whereas at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast; and

; and

Whereas the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

Whereas PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

Now, Therefore, Be it Resolved that the Berkeley City Council adopt the actions recommended by the PJC.

[Month] [Day], 2019

The Honorable Jeffrey Brand
Judge, Alameda County Superior Court
24405 Amador Street, Department 511
Hayward, California 94544

Fax: (510) 690-2824
Email: dept511@alameda.courts.ca.gov

Re: **Mr. Leonard Powell - Alameda County Case No. RG1576267**
1911 Harmon Street
Berkeley, California

Dear Judge Brand:

The Berkeley City Council writes to express concern over the case of Mr. Leonard Powell, a longtime resident, homeowner and valued member of our community. We write to thank you for the fairness and justice of your recent decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and for allowing Mr. Powell and his friends and family time to make the necessary financial arrangements. We hope to see a speedy and just resolution to this longtime case.

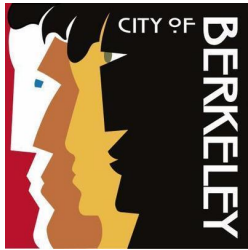
This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to more than \$700,000, threatening Mr. Powell and his family with the loss of their home, loss of the inheritance, loss of their equity and security.

While we understand that the court appointed a receiver to correct the outstanding code violations, the work appears to have exceeded the original purpose and now the outstanding fines are too much for Mr. Powell to pay. Certainly Mr. Powell should not have let conditions deteriorate to the point of requiring such drastic action. However, given his age and limited income, we hope that you continue to exercise your discretion toward an outcome that is in the interest of justice.

Thank you for your time and consideration.

Sincerely,

Jesse Arreguin
Mayor, City of Berkeley
On behalf of the Berkeley City Council



Councilmember Ben Bartlett

Attachment 3

City of Berkeley, District
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE: 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

September 23rd, 2019

Draft Plan for Public Meeting on Receivership

Format of the Public Meeting:

1. Community Panel discussing their experience
2. Take Public Comments
3. Presentation from City Staff/ Departments
4. Councilmembers make comments
5. Take questions from Public
 - a. 5-10 questions at a time
6. City/Panel answers questions
7. Councilmembers make comments
8. A second round of questions if time permits

Goals for the meeting and what's to be presented:

- Understand how receivership works
- City of Berkeley's role in receivership
- Who ends up under receivership
 - Circumstances leading to receivership
- Opportunities/Challenges
 - Listening session: Hear from the community

Potential invites

Departments:

Planning/ Code-Enforcement Department
City Manager/ City Attorney Office
City Finance Department

City Staff (from Community Input):

Greg Daniel – Director of Code Enforcement
Mark Adams – Berkeley City Inspector
Alex Roshal – Official in Berkeley Housing Dept.
Raquel Molina – Official in Berkeley Housing Dept.
Shallon Allen – Official in Berkeley Finance Dept.
Brent Nelson – Housing Dept. Inspector
Zach Cowan – Berkeley City Attorney
Savith Iyengar – Deputy City Attorney
Laura McKinney – Deputy City Attorney
Dee Williams-Ridley – Berkeley City Manager
Farimah Brown – City Attorney

Community members (from Community Input):

Leonard Powell – Owner of the house
Roland Powell – Mr. Powell's son
Audrey Shields – Current Attorney for Mr. Powell
Gerard Keena – Court-appointed receiver
Nathaniel Marston – Attorney for Mr. Keena
Steve Martinot – Writer, reporter on the affair, member of Friends of Adeline
Willie Phillips – Community Organizer, Member of Friends of Adeline
Eugene Turitz – Writer on the affair, Member of Friends of Adeline
Mr. Willis and members of the Probate Court protest group
Manuel Juarez – Attorney for Mr. Powell

POLICY COMMITTEE RECOMMENDATION

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Vote: All Ayes.

