BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE

REGULAR MEETING

BERKELEY CITY COUNCIL SPECIAL MEETING

Thursday, June 20, 2019
10:30 AM

2180 Milvia Street, 1st Floor – Cypress Room

Committee Members:

Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Lori Droste

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

None.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

1. **Berkeley Qualified Opportunity Fund**
From: Councilmember Bartlett
Referred: March 19, 2019
Due: September 23, 2019
Recommendation: That the City Council direct the City Manager to enter into a limited partnership agreement with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund. The Fund will be governed by a Berkeley Opportunity Governance Body. The Berkeley Opportunity Governance Body will be privately managed, autonomous, and consist of an Investment Board, Advisory Board, and a Community Investment Board. Berkeley Opportunity Governance Body will leverage the Qualified Opportunity Fund to promote inclusive economic development, affordable housing, arts & culture, and sustainability. The Governance Body will prioritize projects that foster an equitable community such as: job creation, financial inclusion, arts & culture, and sustainable innovation. The Governance Body will work with the City to align technical expertise with municipal support.
Financial Implications: See report.
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

2. **Referral to City Manager to Return to Council with an Amnesty Program for Legalizing Unpermitted Dwelling Units**
From: Councilmembers Wengraf, Harrison, and Hahn, and Mayor Arreguin
Referred: April 8, 2019
Due: October 7, 2019
Recommendation: That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

3. **Prioritizing Affordable Housing for Homeless**
From: Mayor Arreguin
Referred: April 15, 2019
Due: October 7, 2019
Recommendation: Refer to the Housing Advisory Commission to develop an ordinance to set aside 20% of affordable housing units for individuals experiencing homelessness, with preference given to BUSD students.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, 981-7100

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. **Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender**
From: Councilmembers Harrison, Hahn, and Davila
Recommendation: Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, 981-7140

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment

~~~~~~

This is a meeting of the Berkeley City Council Land Use, Housing & Economic Development Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Land Use, Housing & Economic Development Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Land Use, Housing & Economic Development Committee meeting.

Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.

COMMUNICATION ACCESS INFORMATION:
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

~~~~~~

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 13, 2019.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

01

Councilmember Ben Bartlett

City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

RECEIVED AT
COUNCIL MEETING OF:

JUN 1 3 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

CONSENT CALENDAR
~~May 2~~, 2019
June 13

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Berkeley Qualified Opportunity Fund

SUBJECT
Creation of a Municipal Qualified Opportunity Fund to invest in Berkeley's Qualified Opportunity Zones

RECOMMENDATION
Short Term Referral to Planning Commission
City Manager
City Economic Development Officer
Housing Advisory Commission
Office of Economic Development¶

I. Qualified Opportunity Fund - That the City Council direct the City Manager to enter into a limited partnership agreement with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund.

The Fund will be governed by a Berkeley Opportunity Governance Body. The Berkeley Opportunity Governance Body will be privately managed, autonomous, and consist of an Investment Board, Advisory Board, and a Community Investment Board.

A. The Investment Board:
(1) Consists of experts in community development, infrastructure, and investing.
(2) Assesses projects in Berkeley's Opportunity Zones, fundraise for those projects, and drive investment decisions.
(3) Works closely with the City of Berkeley and Berkeley residents to identify and market transformative Opportunity Zone projects.
(4) Drafts an Equitable Development Toolkit that outlines the investment parameters for the zone.

B. The Advisory Board:
(1) Consists of City Councilmembers from each district within the Opportunity Zones (Districts 2, 3, and 4) and the Mayor.
(2) Sets policy guidelines for Opportunity Zone investment projects and approves investments that are within the guidelines.

C. The Community Investment Commission:
(1) Consists of district leaders from Opportunity Zone Council districts and one at-large member.

(2) Sources Opportunity Zone projects that enhance the standard of living for Berkeley residents and foster an inclusive economy through rigorous community engagement.

Berkeley's Opportunity Governance Body will leverage the Qualified Opportunity Fund to promote inclusive economic development, affordable housing, arts & culture, and sustainability.

The Governance Body will prioritize projects that foster an equitable community such as: job creation, financial inclusion, arts & culture, and sustainable innovation. The Governance Body will work with the City to align technical expertise with municipal support.

The City of Berkeley and the Berkeley Opportunity Governance Body will:

1. Leverage tax incentives to ensure jobs created in qualified Opportunity Zones go to local residents, pay a livable wage, and offer worker protections and benefits that protect families.
2. Ensure historically disadvantaged entities have access to contracting opportunities in qualified Opportunity Zones.
3. In order to support local OZ residents, require 50% affordable housing with ratios to be determined by process.
4. Invest in small businesses serving the local community.
5. Ensure that populations in qualified Opportunity Zones have access to critical services such as healthcare, green transportation, healthy food, and quality education services by investing in entities that meet these needs.
6. Take steps to include historically underrepresented groups in every aspect of the OZ process including investment, construction, operation, and purchase.
7. Ensure Opportunity Fund projects provide sustainable development which satisfies fundamental human needs.
8. Invest in entities promoting local arts & culture, such as performance spaces, and digital arts and music production.

~~That the City Council refer to the City Manager to enter into a limited partnership with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund. The City of Berkeley will have an advisory role on the Opportunity Fund. The Advisory Board will consist of:~~¶

~~1) Councilmembers from each district with an Opportunity Zone (districts 2, 3, 4, and 7) and the Mayor.~~ ¶
~~2) Community members from districts with Opportunity Zones.~~¶

¶

~~Berkeley's Opportunity Fund shall advance the goals of inclusive economic development, affordable housing, and sustainability. The vendor should prioritize projects that foster an equitable community through job creation, financial inclusion, and sustainable innovation. Vendor will work with the Advisory Board to align technical expertise with municipal support. That the City Council create a municipal qualified Opportunity Fund to invest in qualified Opportunity Zones to stimulate economic growth and createdevelop more affordable housing in Berkeley. The Opportunity Fund and related development of Opportunity Zones will serve the goals of shared economic development, more affordable housing, and economic inclusion by incentivizing investors to direct capital gains toward economically vulnerable neighborhoods in Berkeley while allowing the city to stipulate conditions of on the structures built and jobs created. Creating a municipal Opportunity Fund will convene key stakeholders to drive alignment among the private, public, and academic sectors. An Opportunity Fund will set these interests to work for the neighborhoods harboring Opportunity Zones.~~ ¶

¶

~~The City of Berkeley, the Advisory Board, and the vendor will:~~¶

¶

~~1) Leverage tax incentives to ensure jobs created in Qualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families.~~¶

~~2) Ensure historically disadvantaged businesses have access to contracting opportunities in Qualified Opportunity Zones.~~¶
~~3) Require 50% of housing built in Qualified Opportunity Zones to be affordable to those making 60% of less than Median Area Income and less to support local inhabitants already living in Qualified Opportunity Zones.~~¶
~~4) Ensure that populations in Qualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services.~~¶
~~5) Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.~~¶
~~6) Ensure Opportunity Fund projects provide sustainable development which satisfies fundamental human needs.~~

¶
~~Qualified Opportunity Funds give investors the opportunity to defer delay capital gains taxes by investing in property sited in Qualified Opportunity Zones. After holding the investment for five years investors, can exclude 10% of the deferred gain, After seven years investors can exclude 15% of the deferred gain, and after ten years 100% of the post-acquisition gain. and after ten years investors can exclude from income the post-acquisition gain.[1].~~¶
¶
~~Creating a Municipal Qualified Opportunity Fund will give the City of Berkeley a means of enhancing the existing Opportunity Zone Legislation. A Berkeley Opportunity Fund enables the City to compete with market driven investment by offering alternative models of community-centric, equitable investment in neighborhoods. A Berkeley QOF would feature:~~¶
~~1) Enhanced affordability requirements~~¶
~~2) Growth in good jobs and business opportunities for historically disadvantaged groups~~¶
~~3) Next-generation sustainabilitySustainable development to satisfy fundamental human needs~~

CURRENT SITUATION

Specific areas of Berkeley have been selected by the State of California and certified by the U.S. Treasury Department as Qualified Opportunity Zones. The State of California selected these zones in economically-distressed areas. Provided investors meet certain requirements, they can defer capital gains taxes and eventually exclude value appreciation on investments from taxes by investing in Opportunity Zones. Municipalities can establish their own Opportunity Funds to compete with private Opportunity Funds. A municipal Opportunity Fund can be mutually beneficial to both investors and municipalities by combining the knowledge and vision of the public sector with impact investing capital. ~~the tax on value appreciation when investing in these zones.~~

BACKGROUND

The Tax Cuts and Jobs Act of 2017 created a vehicle for individuals to invest in their communities while realizing tax savings. When an individual sells an investment which generates capital gains, that person can invest any portion of those gains into a Qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Qualified Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Qualified Opportunity Funds must invest in property ~~, either directly or indirectly,~~ in distressed communities designated as q~~Q~~ualified Opportunity Zones by the IRS[2]. Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until

~~[1] https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions~~ ¶
[2] https://www.congress.gov/bill/115th-congress/house-bill/1

52nd Street (often referred to as the "Adeline Corridor"), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way[3].

Qualified Opportunity Funds can invest in ~~be invested into~~ specific q~~Q~~ualified Opportunity Zones which have been selected by the Internal Revenue Service and state governments across the United States. q~~Q~~ualified Opportunity Zones are eligible investments for q~~Q~~ualified Opportunity Funds anywhere within the state they exist, and from other parts of the U.S. By establishing a municipal q~~Q~~ualified Opportunity Fund, the city of Berkeley will take a proactive approach to its development and be able to tailor that development to meet the specific needs of current Berkeley residents.

Investors can defer capital gains which are invested into q~~Q~~ualified Opportunity Funds. I~~Moreover,~~ ~~i~~nvestments in q~~Q~~ualified Opportunity Funds held longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds.

These new q~~Q~~ualified Opportunity Funds are not without critiques, however. As structures in the q~~Q~~ualified Opportunity Zones become replaced or refurbished and the neighborhood itself becomes more appealing, there is a risk that housing prices will rise, driving out the existing low-income residents, disproportionately ~~and~~ people of color, in Berkeley. Furthermore, locally-owned small businesses could face increased competition from large franchises and may also be unable to meet rising rental costs from the developing q~~Q~~ualified Opportunity Zones. New locations of existing franchised businesses may bring new jobs, but those jobs may not pay a living wage or benefits that allow Berkeley workers to support themselves. In short, the city of Berkeley must also leverage the creation of the q~~Q~~ualified Opportunity Fund to ensure that current Berkeley residents living in q~~Q~~ualified Opportunity Zones are able to benefit from the revitalized and new buildings.

~~The City of Berkeley should consider the following policies in the creation of a Qualified Opportunity Fund to protect current Berkeley residents from adverse effects of the expected development:~~

7) ~~Leverage tax incentives to ensure jobs created in qQualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families~~
8) ~~Ensure historically disadvantaged businesses have access to contracting opportunities in qQualified Opportunity Zones~~
9) ~~Require 50% of housing built in qQualified Opportunity Zones to be affordable to those making 60% of less than Mmedian Aarea Iincome and less to support local inhabitants already living in Qualified Opportunity Zones~~
10) ~~Ensure that populations in qQualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services~~
11) ~~Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.~~
12) ~~Ensure Opportunity Funds provide sustainable development satisfies fundamental human needs~~

~~In short, a municipal Qualified Opportunity Fund should ensure integration forward housing~~

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

Qualified Opportunity Funds and Zones were created as part of the Tax Cuts and Jobs Act of 2017. The City of Birmingham has already established a municipal Opportunity Fund. Birmingham's Opportunity Fund is a

[3] https://opzones.ca.gov/oz-map/

public-private partnership, with an Investment Board made up of investment and community development experts assessing projects and fundraising for Birmingham's Fund. A Community Investment Board, made up of members from each Council district, complements the private Investment Board, and designs and executes a community engagement strategy. The Birmingham Fund was used as a template for this proposal, and this proposal builds off of the Birmingham framework.

ACTIONS/ALTERNATIVES CONSIDERED

Opportunity Funds and Zones exist outside of any actions taken by the city of Berkeley. If no action is taken, Berkeley's Opportunity Zones can be invested in regardless. Establishing a Berkeley Opportunity Funds merely provides the city with a resource to direct investment to protect and actually benefit current Berkeley residents.~~Because qQualified Opportunity Funds and Zones are new, there are no other jurisdictions to draw from as an example.~~

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

External stakeholders include residents and businesses in the q~~Q~~ualified Opportunity Zones, their neighbors, potential investors, and contractors. Internal stakeholders include the Berkeley City Office of Economic Development, City Manager, City Planner, and Zoning Advisory Board.

RATIONALE FOR RECOMMENDATION

Qualified Opportunity Funds can exist independently of a municipal Fund set up by the city of Berkeley. It is legal, however, for the city to set up its own q~~Q~~ualified Opportunity Fund to compete with other Funds to invest in q~~Q~~ualified Opportunity Zones. If the city sets up its own Fund it can direct investments in a deliberate manner, using its municipal q~~Q~~ualified Opportunity Fund to set de facto housing and planning policy through which properties it invests in and how it chooses to renovate those properties. Creating a municipal q~~Q~~ualified Opportunity Fund will give the city of Berkeley greater influence over how investments into its neighborhoods are directed, and how those neighborhoods develop. This is an avenue through which the goals of economic inclusion, affordable housing, and continued neighborhood authenticity and character can be achieved.

Investors can and will create q~~Q~~ualified Opportunity Funds to invest in Berkeley's q~~Q~~ualified Opportunity Zones independent of a municipal q~~Q~~ualified Opportunity Fund. The purpose of creating a municipal q~~Q~~ualified Opportunity Fund is to allow the city of Berkeley to centralize and focus investments into the city, leveraging those investments to ensure current Berkeley residents realize the benefits of q~~Q~~ualified Opportunity Zones. The San Francisco Bay Area has a large community of impact investors, those desiring their investments to benefit communities, and a municipal q~~Q~~ualified Opportunity Fund will serve as a vehicle to centralize and direct these investments. The City has the broadest purview of its own neighborhoods, what community members needs, and which investments will yield the greatest return for both investors and Berkeley residents. The City is uniquely equipped with vehicles such as zoning permitting, and other incentives, to direct investment in a way that will actually benefit its neighborhoods without displacement or gentrification.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The City of Berkeley would create a q~~Q~~ualified Opportunity Fund to serve as a "bucket" for funds to invest in q~~Q~~ualified Opportunity Zones designated by the State of California and certified by the U.S. Treasury Department.

ENVIRONMENTAL SUSTAINABILITY

Creating a municipal q~~Q~~ualified Opportunity Fund will allow the city of Berkeley more influence in how q~~Q~~ualified Opportunity Zones are developed. Though new construction and renovation can offer environmental risks and hazards, the City can use q~~Q~~ualified Opportunity Funds to set specific terms for development, such as requiring buildings be carbon neutral. Thus, establishing a q~~Q~~ualified Opportunity Fund could yield a positive environmental effect relative to allowing purely independent q~~Q~~ualified Opportunity Funds to develop the same areas of Berkeley.

FISCAL IMPACTS

The potential revenue capture for the city of Berkeley is difficult to calculate, but increased property taxes, sales tax revenue, and other forms of revenue for the city are extremely likely outcomes. As q~~Q~~ualified Opportunity Zones are refurbished or developed and new housing and shopping is created, the city of Berkeley will benefit from the economic stimulation created by development.

OUTCOMES AND EVALUATION

To be determined by an impact study.

¶

¶

¶

¶

CONTACT PERSON

Councilmember Ben Bartlett:	510-981-7130
Matthew Napoli	510-981-7131 ~~napoli.matthew@gmail.com~~

ATTACHMENTS/SUPPORTING MATERIALS

Councilmember Ben Bartlett
City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

RECEIVED AT COUNCIL MEETING OF:
MAY 16 2019
OFFICE OF THE CITY CLERK
CITY OF BERKELEY

CONSENT CALENDAR
May 2, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Berkeley Qualified Opportunity Fund

SUBJECT
Creation of a Municipal Qualified Opportunity Fund to invest in Berkeley's Qualified Opportunity Zones

RECOMMENDATION
Short Term Referral to Planning Commission
City Manager
City Economic Development Officer
Housing Advisory Commission
Office of Economic Development¶

I. Qualified Opportunity Fund - That the City Council direct the City Manager to enter into a limited partnership agreement with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund.

The Fund will be governed by a Berkeley Opportunity Governance Body. The Berkeley Opportunity Governance Body will be privately managed, autonomous, and consist of an Investment Board, Advisory Board, and a Community Investment Board.

A. The Investment Board:
(1) Consists of experts in community development, infrastructure, and investing.
(2) Assesses projects in Berkeley's Opportunity Zones, fundraise for those projects, and drive investment decisions.
(3) Works closely with the City of Berkeley and Berkeley residents to identify and market transformative Opportunity Zone projects.
(4) Drafts an Equitable Development Toolkit that outlines the investment parameters for the zone.

B. The Advisory Board:
(1) Consists of City Councilmembers from each district within the Opportunity Zones (Districts 2, 3, and 4) and the Mayor.
(2) Sets policy guidelines for Opportunity Zone investment projects and approves investments that are within the guidelines.

C. The Community Investment Commission:
(1) Consists of district leaders from Opportunity Zone Council districts and one at-large member.

(2) Sources Opportunity Zone projects that enhance the standard of living for Berkeley residents and foster an inclusive economy through rigorous community engagement.

Berkeley's Opportunity Governance Body will leverage the Qualified Opportunity Fund to promote inclusive economic development, affordable housing, arts & culture, and sustainability.

The Governance Body will prioritize projects that foster an equitable community such as: job creation, financial inclusion, arts & culture, and sustainable innovation. The Governance Body will work with the City to align technical expertise with municipal support.

The City of Berkeley and the Berkeley Opportunity Governance Body will:

1. Leverage tax incentives to ensure jobs created in qualified Opportunity Zones go to local residents, pay a livable wage, and offer worker protections and benefits that protect families.
2. Ensure historically disadvantaged entities have access to contracting opportunities in qualified Opportunity Zones.
3. In order to support local OZ residents, require 50% affordable housing with ratios to be determined by process.
4. Invest in small businesses serving the local community.
5. Ensure that populations in qualified Opportunity Zones have access to critical services such as healthcare, green transportation, healthy food, and quality education services by investing in entities that meet these needs.
6. Take steps to include historically underrepresented groups in every aspect of the OZ process including investment, construction, operation, and purchase.
7. Ensure Opportunity Fund projects provide sustainable development which satisfies fundamental human needs.
8. Invest in entities promoting local arts & culture, such as performance spaces, and digital arts and music production.

~~That the City Council refer to the City Manager to enter into a limited partnership with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund. The City of Berkeley will have an advisory role on the Opportunity Fund. The Advisory Board will consist of:¶~~

~~1) Councilmembers from each district with an Opportunity Zone (districts 2, 3, 4, and 7) and the Mayor. ¶~~
~~2) Community members from districts with Opportunity Zones.¶~~

¶

~~Berkeley's Opportunity Fund shall advance the goals of inclusive economic development, affordable housing, and sustainability. The vendor should prioritize projects that foster an equitable community through job creation, financial inclusion, and sustainable innovation. Vendor will work with the Advisory Board to align technical expertise with municipal support. That the City Council create a municipal qualified Opportunity Fund to invest in qualified Opportunity Zones to stimulate economic growth and createdevelop more affordable housing in Berkeley. The Opportunity Fund and related development of Opportunity Zones will serve the goals of shared economic development, more affordable housing, and economic inclusion by incentivizing investors to direct capital gains toward economically vulnerable neighborhoods in Berkeley while allowing the city to stipulate conditions of on the structures built and jobs created. Creating a municipal Opportunity Fund will convene key stakeholders to drive alignment among the private, public, and academic sectors. An Opportunity Fund will set these interests to work for the neighborhoods harboring Opportunity Zones. ¶~~

¶

~~The City of Berkeley, the Advisory Board, and the vendor will:¶~~

¶

~~1) Leverage tax incentives to ensure jobs created in Qualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families.¶~~

2) ~~Ensure historically disadvantaged businesses have access to contracting opportunities in Qualified Opportunity Zones.~~¶
3) ~~Require 50% of housing built in Qualified Opportunity Zones to be affordable to those making 60% of less than Median Area Income and less to support local inhabitants already living in Qualified Opportunity Zones.~~¶
4) ~~Ensure that populations in Qualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services.~~¶
5) ~~Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.~~¶
6) ~~Ensure Opportunity Fund projects provide sustainable development which satisfies fundamental human needs.~~

¶

~~Qualified Opportunity Funds give investors the opportunity to defer delay capital gains taxes by investing in property sited in Qualified Opportunity Zones. After holding the investment for five years investors, can exclude 10% of the deferred gain, After seven years investors can exclude 15% of the deferred gain, and after ten years 100% of the post-acquisition gain. and after ten years investors can exclude from income the post-acquisition gain.~~[1]. ¶

¶

~~Creating a Municipal Qualified Opportunity Fund will give the City of Berkeley a means of enhancing the existing Opportunity Zone Legislation. A Berkeley Opportunity Fund enables the City to compete with market driven investment by offering alternative models of community-centric, equitable investment in neighborhoods. A Berkeley QOF would feature:~~ ¶

1) ~~Enhanced affordability requirements~~¶
2) ~~Growth in good jobs and business opportunities for historically disadvantaged groups~~¶
3) ~~Next-generation sustainabilitySustainable development to satisfy fundamental human needs~~

CURRENT SITUATION

Specific areas of Berkeley have been selected by the State of California and certified by the U.S. Treasury Department as Qualified Opportunity Zones. The State of California selected these zones in economically-distressed areas. Provided investors meet certain requirements, they can defer capital gains taxes and eventually exclude value appreciation on investments from taxes by investing in Opportunity Zones. Municipalities can establish their own Opportunity Funds to compete with private Opportunity Funds. A municipal Opportunity Fund can be mutually beneficial to both investors and municipalities by combining the knowledge and vision of the public sector with impact investing capital. ~~the tax on value appreciation when investing in these zones.~~

BACKGROUND

The Tax Cuts and Jobs Act of 2017 created a vehicle for individuals to invest in their communities while realizing tax savings. When an individual sells an investment which generates capital gains, that person can invest any portion of those gains into a Qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Qualified Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Qualified Opportunity Funds must invest in property ~~, either directly or indirectly,~~ in distressed communities designated as q~~Q~~ualified Opportunity Zones by the IRS[2]. Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until

~~[1] https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions~~ ¶
[2] https://www.congress.gov/bill/115th-congress/house-bill/1

52nd Street (often referred to as the "Adeline Corridor"), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way[3].

Qualified Opportunity Funds can invest in ~~be invested into~~ specific q~~Q~~ualified Opportunity Zones which have been selected by the Internal Revenue Service and state governments across the United States. q~~Q~~ualified Opportunity Zones are eligible investments for q~~Q~~ualified Opportunity Funds anywhere within the state they exist, and from other parts of the U.S. By establishing a municipal q~~Q~~ualified Opportunity Fund, the city of Berkeley will take a proactive approach to its development and be able to tailor that development to meet the specific needs of current Berkeley residents.

Investors can defer capital gains which are invested into q~~Q~~ualified Opportunity Funds. I~~Moreover, i~~nvestments in q~~Q~~ualified Opportunity Funds held longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds.

These new q~~Q~~ualified Opportunity Funds are not without critiques, however. As structures in the q~~Q~~ualified Opportunity Zones become replaced or refurbished and the neighborhood itself becomes more appealing, there is a risk that housing prices will rise, driving out the existing low-income residents, disproportionately ~~and~~ people of color, in Berkeley. Furthermore, locally-owned small businesses could face increased competition from large franchises and may also be unable to meet rising rental costs from the developing q~~Q~~ualified Opportunity Zones. New locations of existing franchised businesses may bring new jobs, but those jobs may not pay a living wage or benefits that allow Berkeley workers to support themselves. In short, the city of Berkeley must also leverage the creation of the q~~Q~~ualified Opportunity Fund to ensure that current Berkeley residents living in q~~Q~~ualified Opportunity Zones are able to benefit from the revitalized and new buildings.

~~The City of Berkeley should consider the following policies in the creation of a Qualified Opportunity Fund to protect current Berkeley residents from adverse effects of the expected development:~~

7) ~~Leverage tax incentives to ensure jobs created in qQualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families~~
8) ~~Ensure historically disadvantaged businesses have access to contracting opportunities in qQualified Opportunity Zones~~
9) ~~Require 50% of housing built in qQualified Opportunity Zones to be affordable to those making 60% of less than Mmedian Aarea Iincome and less to support local inhabitants already living in Qualified Opportunity Zones~~
10) ~~Ensure that populations in qQualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services~~
11) ~~Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.~~
12) ~~Ensure Opportunity Funds provide sustainable development satisfies fundamental human needs~~

~~In short, a municipal Qualified Opportunity Fund should ensure integration-forward housing~~

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

Qualified Opportunity Funds and Zones were created as part of the Tax Cuts and Jobs Act of 2017. The City of Birmingham has already established a municipal Opportunity Fund. Birmingham's Opportunity Fund is a

[3] https://opzones.ca.gov/oz-map/

public-private partnership, with an Investment Board made up of investment and community development experts assessing projects and fundraising for Birmingham's Fund. A Community Investment Board, made up of members from each Council district, complements the private Investment Board, and designs and executes a community engagement strategy. The Birmingham Fund was used as a template for this proposal, and this proposal builds off of the Birmingham framework.

ACTIONS/ALTERNATIVES CONSIDERED

Opportunity Funds and Zones exist outside of any actions taken by the city of Berkeley. If no action is taken, Berkeley's Opportunity Zones can be invested in regardless. Establishing a Berkeley Opportunity Funds merely provides the city with a resource to direct investment to protect and actually benefit current Berkeley residents.~~Because qQualified Opportunity Funds and Zones are new, there are no other jurisdictions to draw from as an example.~~

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

External stakeholders include residents and businesses in the q~~Q~~ualified Opportunity Zones, their neighbors, potential investors, and contractors. Internal stakeholders include the Berkeley City Office of Economic Development, City Manager, City Planner, and Zoning Advisory Board.

RATIONALE FOR RECOMMENDATION

Qualified Opportunity Funds can exist independently of a municipal Fund set up by the city of Berkeley. It is legal, however, for the city to set up its own q~~Q~~ualified Opportunity Fund to compete with other Funds to invest in q~~Q~~ualified Opportunity Zones. If the city sets up its own Fund it can direct investments in a deliberate manner, using its municipal q~~Q~~ualified Opportunity Fund to set de facto housing and planning policy through which properties it invests in and how it chooses to renovate those properties. Creating a municipal q~~Q~~ualified Opportunity Fund will give the city of Berkeley greater influence over how investments into its neighborhoods are directed, and how those neighborhoods develop. This is an avenue through which the goals of economic inclusion, affordable housing, and continued neighborhood authenticity and character can be achieved.

Investors can and will create q~~Q~~ualified Opportunity Funds to invest in Berkeley's q~~Q~~ualified Opportunity Zones independent of a municipal q~~Q~~ualified Opportunity Fund. The purpose of creating a municipal q~~Q~~ualified Opportunity Fund is to allow the city of Berkeley to centralize and focus investments into the city, leveraging those investments to ensure current Berkeley residents realize the benefits of q~~Q~~ualified Opportunity Zones. The San Francisco Bay Area has a large community of impact investors, those desiring their investments to benefit communities, and a municipal q~~Q~~ualified Opportunity Fund will serve as a vehicle to centralize and direct these investments. The City has the broadest purview of its own neighborhoods, what community members needs, and which investments will yield the greatest return for both investors and Berkeley residents. The City is uniquely equipped with vehicles such as zoning permitting, and other incentives, to direct investment in a way that will actually benefit its neighborhoods without displacement or gentrification.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The City of Berkeley would create a q~~Q~~ualified Opportunity Fund to serve as a "bucket" for funds to invest in q~~Q~~ualified Opportunity Zones designated by the State of California and certified by the U.S. Treasury Department.

ENVIRONMENTAL SUSTAINABILITY

Creating a municipal q~~Q~~ualified Opportunity Fund will allow the city of Berkeley more influence in how q~~Q~~ualified Opportunity Zones are developed. Though new construction and renovation can offer environmental risks and hazards, the City can use q~~Q~~ualified Opportunity Funds to set specific terms for development, such as requiring buildings be carbon neutral. Thus, establishing a q~~Q~~ualified Opportunity Fund could yield a positive environmental effect relative to allowing purely independent q~~Q~~ualified Opportunity Funds to develop the same areas of Berkeley.

FISCAL IMPACTS

The potential revenue capture for the city of Berkeley is difficult to calculate, but increased property taxes, sales tax revenue, and other forms of revenue for the city are extremely likely outcomes. As q~~Q~~ualified Opportunity Zones are refurbished or developed and new housing and shopping is created, the city of Berkeley will benefit from the economic stimulation created by development.

OUTCOMES AND EVALUATION

To be determined by an impact study.

¶
¶
¶
¶

CONTACT PERSON

Councilmember Ben Bartlett: 510-981-7130
Matthew Napoli 510-981-7131 ~~napoli.matthew@gmail.com~~

ATTACHMENTS/SUPPORTING MATERIALS

03

Councilmember Ben Bartlett
City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

RECEIVED AT
COUNCIL MEETING OF:
MAY 02 2019
OFFICE OF THE CITY CLERK
CITY OF BERKELEY

CONSENT CALENDAR
May 2, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Berkeley Qualified Opportunity Fund

SUBJECT
Creation of a Municipal Qualified Opportunity Fund to invest in Berkeley's Qualified Opportunity Zones

RECOMMENDATION
Short Term Referral to Planning Commission
City Manager
City Economic Development Officer
Housing Advisory Commission
Office of Economic Development

I. Zoning Overlay - That the City Council direct the City Manager to create a Qualified Opportunity Zone, zoning overlay. This zoning overlay will cover the five Berkeley Federal Opportunity Zones. The zoning overlay will set parameters for development within the confines of the Opportunity Zone districts. These equitable development standards are meant to prevent displacement and create shared prosperity. The standards include enhanced housing affordability levels, local job creation, arts & culture, small business retention, and environmental sustainability.

II. Qualified Opportunity Fund - That the City Council direct the City Manager to enter into a limited partnership agreement with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund.

The Fund will be governed by a Berkeley Opportunity Governance Body. The Berkeley Opportunity Governance Body will be privately managed, autonomous, and consist of an Investment Board, Advisory Board, and a Community Investment Board.

A. The Investment Board:
  (1) Consists of experts in community development, infrastructure, and investing.
  (2) Assesses projects in Berkeley's Opportunity Zones, fundraise for those projects, and drive investment decisions.
  (3) Work closely with the City of Berkeley and Berkeley residents to identify and market transformative Opportunity Zone projects.
  (4) Drafts an Equitable Development Toolkit that outlines the investment parameters for the zone.

B. The Advisory Board:

(1) Consists of City Councilmembers from each district within the Opportunity Zones (Districts 2, 3, 4, and 7) and the Mayor.
(2) Sets policy guidelines for Opportunity Zone investment projects and approves investments that are within the guidelines.

C. The Community Investment Commission:
(1) Consists of district leaders from Opportunity Zone Council districts and one at-large member.
(2) Sources Opportunity Zone projects that enhance the standard of living for Berkeley residents and foster an inclusive economy through rigorous community engagement.

Berkeley's Opportunity Governance Body will leverage the Qualified Opportunity Fund to promote inclusive economic development, affordable housing, arts & culture, and sustainability.

The Governance Body will prioritize projects that foster an equitable community such as: job creation, financial inclusion, arts & culture, and sustainable innovation. The Governance Body will work with the City to align technical expertise with municipal support.

The City of Berkeley and the Berkeley Opportunity Governance Body will:

1. Leverage tax incentives to ensure jobs created in qualified Opportunity Zones go to local residents, pay a livable wage, and offer worker protections and benefits that protect families.
2. Ensure historically disadvantaged entities have access to contracting opportunities in qualified Opportunity Zones.
3. In order to support local OZ residents, require 50% affordable housing with ratios to be determined by process.
4. Invest in small businesses serving the local community.
5. Ensure that populations in qualified Opportunity Zones have access to critical services such as healthcare, green transportation, healthy food, and quality education services by investing in entities that meet these needs.
6. Take steps to include historically underrepresented groups in every aspect of the OZ process including investment, construction, operation, and purchase.
7. Ensure Opportunity Fund projects provide sustainable development which satisfies fundamental human needs.
8. Invest in entities promoting local arts & culture, such as performance spaces, and digital arts and music production.

~~That the City Council refer to the City Manager to enter into a limited partnership with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund. The City of Berkeley will have an advisory role on the Opportunity Fund. The Advisory Board will consist of:¶~~

~~1) Councilmembers from each district with an Opportunity Zone (districts 2, 3, 4, and 7) and the Mayor. ¶~~
~~2) Community members from districts with Opportunity Zones.¶~~

~~¶~~

~~Berkeley's Opportunity Fund shall advance the goals of inclusive economic development, affordable housing, and sustainability. The vendor should prioritize projects that foster an equitable community through job creation, financial inclusion, and sustainable innovation. Vendor will work with the Advisory Board to align technical expertise with municipal support. That the City Council create a municipal qualified Opportunity Fund to invest in qualified Opportunity Zones to stimulate economic growth and createdevelop more affordable housing in Berkeley. The Opportunity Fund and related development of Opportunity Zones will serve the goals of shared economic development, more affordable housing, and economic inclusion by incentivizing investors to direct capital gains toward economically vulnerable neighborhoods in Berkeley while allowing the city to stipulate conditions of on the structures built and jobs created. Creating a municipal Opportunity Fund will~~

~~convene key stakeholders to drive alignment among the private, public, and academic sectors. An Opportunity Fund will set these interests to work for the neighborhoods harboring Opportunity Zones.~~

~~The City of Berkeley, the Advisory Board, and the vendor will:~~

1) ~~Leverage tax incentives to ensure jobs created in Qualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families.~~
2) ~~Ensure historically disadvantaged businesses have access to contracting opportunities in Qualified Opportunity Zones.~~
3) ~~Require 50% of housing built in Qualified Opportunity Zones to be affordable to those making 60% of less than Median Area Income and less to support local inhabitants already living in Qualified Opportunity Zones.~~
4) ~~Ensure that populations in Qualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services.~~
5) ~~Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.~~
6) ~~Ensure Opportunity Fund projects provide sustainable development which satisfies fundamental human needs.~~

~~Qualified Opportunity Funds give investors the opportunity to defer delay capital gains taxes by investing in property sited in Qualified Opportunity Zones. After holding the investment for five years investors, can exclude 10% of the deferred gain, After seven years investors can exclude 15% of the deferred gain, and after ten years 100% of the post-acquisition gain. and after ten years investors can exclude from income the post-acquisition gain.[1].~~

~~Creating a Municipal Qualified Opportunity Fund will give the City of Berkeley a means of enhancing the existing Opportunity Zone Legislation. A Berkeley Opportunity Fund enables the City to compete with market-driven investment by offering alternative models of community-centric, equitable investment in neighborhoods. A Berkeley QOF would feature:~~

1) ~~Enhanced affordability requirements~~
2) ~~Growth in good jobs and business opportunities for historically disadvantaged groups~~
3) ~~Next-generation sustainabilitySustainable development to satisfy fundamental human needs~~

CURRENT SITUATION

Specific areas of Berkeley have been selected by the State of California and certified by the U.S. Treasury Department as Qualified Opportunity Zones. The State of California selected these zones in economically-distressed areas. Provided investors meet certain requirements, they can defer capital gains taxes and eventually exclude value appreciation on investments from taxes by investing in Opportunity Zones. Municipalities can establish their own Opportunity Funds to compete with private Opportunity Funds. A municipal Opportunity Fund can be mutually beneficial to both investors and municipalities by combining the knowledge and vision of the public sector with impact investing capital. ~~the tax on value appreciation when investing in these zones.~~

BACKGROUND

The Tax Cuts and Jobs Act of 2017 created a vehicle for individuals to invest in their communities while realizing tax savings. When an individual sells an investment which generates capital gains, that person can

~~[1] https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions~~

invest any portion of those gains into a Qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Qualified Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Qualified Opportunity Funds must invest in property ~~, either directly or indirectly,~~ in distressed communities designated as q~~Q~~ualified Opportunity Zones by the IRS[2]. Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until 52nd Street (often referred to as the "Adeline Corridor"), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way[3].

Qualified Opportunity Funds can invest in ~~be invested into~~ specific q~~Q~~ualified Opportunity Zones which have been selected by the Internal Revenue Service and state governments across the United States. q~~Q~~ualified Opportunity Zones are eligible investments for q~~Q~~ualified Opportunity Funds anywhere within the state they exist, and from other parts of the U.S. By establishing a municipal q~~Q~~ualified Opportunity Fund, the city of Berkeley will take a proactive approach to its development and be able to tailor that development to meet the specific needs of current Berkeley residents.

Investors can defer capital gains which are invested into q~~Q~~ualified Opportunity Funds. I~~Moreover,~~ ~~i~~nvestments in q~~Q~~ualified Opportunity Funds held longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds.

These new q~~Q~~ualified Opportunity Funds are not without critiques, however. As structures in the q~~Q~~ualified Opportunity Zones become replaced or refurbished and the neighborhood itself becomes more appealing, there is a risk that housing prices will rise, driving out the existing low-income residents, disproportionately ~~and~~ people of color, in Berkeley. Furthermore, locally-owned small businesses could face increased competition from large franchises and may also be unable to meet rising rental costs from the developing q~~Q~~ualified Opportunity Zones. New locations of existing franchised businesses may bring new jobs, but those jobs may not pay a living wage or benefits that allow Berkeley workers to support themselves. In short, the city of Berkeley must also leverage the creation of the q~~Q~~ualified Opportunity Fund to ensure that current Berkeley residents living in q~~Q~~ualified Opportunity Zones are able to benefit from the revitalized and new buildings.

~~The City of Berkeley should consider the following policies in the creation of a Qualified Opportunity Fund to protect current Berkeley residents from adverse effects of the expected development:~~

7) ~~Leverage tax incentives to ensure jobs created in qQualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families~~
8) ~~Ensure historically disadvantaged businesses have access to contracting opportunities in qQualified Opportunity Zones~~
9) ~~Require 50% of housing built in qQualified Opportunity Zones to be affordable to those making 60% of less than Mmedian Aarea Iincome and less to support local inhabitants already living in Qualified Opportunity Zones~~
10) ~~Ensure that populations in qQualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services~~
11) ~~Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.~~

---

[2] https://www.congress.gov/bill/115th-congress/house-bill/1
[3] https://opzones.ca.gov/oz-map/

~~12) Ensure Opportunity Funds provide sustainable development satisfies fundamental human needs ¶~~

~~¶~~

~~In short, a municipal Qualified Opportunity Fund should ensure integration-forward housing~~

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

Qualified Opportunity Funds and Zones were created as part of the Tax Cuts and Jobs Act of 2017. The City of Birmingham has already established a municipal Opportunity Fund. Birmingham's Opportunity Fund is a public-private partnership, with an Investment Board made up of investment and community development experts assessing projects and fundraising for Birmingham's Fund. A Community Investment Board, made up of members from each Council district, complements the private Investment Board, and designs and executes a community engagement strategy. The Birmingham Fund was used as a template for this proposal, and this proposal builds off of the Birmingham framework.

ACTIONS/ALTERNATIVES CONSIDERED

Opportunity Funds and Zones exist outside of any actions taken by the city of Berkeley. If no action is taken, Berkeley's Opportunity Zones can be invested in regardless. Establishing a Berkeley Opportunity Funds merely provides the city with a resource to direct investment to protect and actually benefit current Berkeley residents.~~Because qQualified Opportunity Funds and Zones are new, there are no other jurisdictions to draw from as an example.~~

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

External stakeholders include residents and businesses in the q~~Q~~ualified Opportunity Zones, their neighbors, potential investors, and contractors. Internal stakeholders include the Berkeley City Office of Economic Development, City Manager, City Planner, and Zoning Advisory Board.

RATIONALE FOR RECOMMENDATION

Qualified Opportunity Funds can exist independently of a municipal Fund set up by the city of Berkeley. It is legal, however, for the city to set up its own q~~Q~~ualified Opportunity Fund to compete with other Funds to invest in q~~Q~~ualified Opportunity Zones. If the city sets up its own Fund it can direct investments in a deliberate manner, using its municipal q~~Q~~ualified Opportunity Fund to set de facto housing and planning policy through which properties it invests in and how it chooses to renovate those properties. Creating a municipal q~~Q~~ualified Opportunity Fund will give the city of Berkeley greater influence over how investments into its neighborhoods are directed, and how those neighborhoods develop. This is an avenue through which the goals of economic inclusion, affordable housing, and continued neighborhood authenticity and character can be achieved.

Investors can and will create q~~Q~~ualified Opportunity Funds to invest in Berkeley's q~~Q~~ualified Opportunity Zones independent of a municipal q~~Q~~ualified Opportunity Fund. The purpose of creating a municipal q~~Q~~ualified Opportunity Fund is to allow the city of Berkeley to centralize and focus investments into the city, leveraging those investments to ensure current Berkeley residents realize the benefits of q~~Q~~ualified Opportunity Zones. The San Francisco Bay Area has a large community of impact investors, those desiring their investments to benefit communities, and a municipal q~~Q~~ualified Opportunity Fund will serve as a vehicle to centralize and direct these investments. The City has the broadest purview of its own neighborhoods, what community members needs, and which investments will yield the greatest return for both investors and Berkeley residents. The City is uniquely equipped with vehicles such as zoning permitting, and other incentives, to direct investment in a way that will actually benefit its neighborhoods without displacement or gentrification.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The City of Berkeley would create a q~~Q~~ualified Opportunity Fund to serve as a "bucket" for funds to invest in q~~Q~~ualified Opportunity Zones designated by the State of California and certified by the U.S. Treasury Department.

ENVIRONMENTAL SUSTAINABILITY

Creating a municipal q~~Q~~ualified Opportunity Fund will allow the city of Berkeley more influence in how q~~Q~~ualified Opportunity Zones are developed. Though new construction and renovation can offer environmental risks and hazards, the City can use q~~Q~~ualified Opportunity Funds to set specific terms for development, such as requiring buildings be carbon neutral. Thus, establishing a q~~Q~~ualified Opportunity Fund could yield a positive environmental effect relative to allowing purely independent q~~Q~~ualified Opportunity Funds to develop the same areas of Berkeley.

FISCAL IMPACTS

The potential revenue capture for the city of Berkeley is difficult to calculate, but increased property taxes, sales tax revenue, and other forms of revenue for the city are extremely likely outcomes. As q~~Q~~ualified Opportunity Zones are refurbished or developed and new housing and shopping is created, the city of Berkeley will benefit from the economic stimulation created by development.

OUTCOMES AND EVALUATION

To be determined by an impact study.

¶
¶
¶
¶

CONTACT PERSON

Councilmember Ben Bartlett: 510-981-7130
Matthew Napoli 510-981-7131 ~~napoli.matthew@gmail.com~~

ATTACHMENTS/SUPPORTING MATERIALS

03

Issue Brief

California Budget & Policy Center
Independent Analysis. Shared Prosperity.

APRIL 2019 | BY KAYLA KITSON

The Federal Opportunity Zones Program and Its Implications for California Communities

The 2017 federal Tax Cuts and Jobs Act (TCJA) included a provision creating a new program designed to encourage private investments in economically distressed communities. The Opportunity Zones program provides federal tax incentives for investments in areas that meet certain criteria and have been designated as Opportunity Zones (OZs). Additionally, Governor Gavin Newsom's 2019-20 budget proposal would provide state-level tax incentives for investments in OZs. There are 879 designated OZs in California, located in nearly all of the state's counties. More than 4 million Californians live in these areas and will be potentially impacted by new investments eligible for Opportunity Zones tax incentives. The Opportunity Zones program has the potential to encourage new investments in eligible communities that improve the lives of residents with low incomes. However, the vast majority of the tax benefits will be realized by wealthy investors, and the program may accelerate gentrification in some areas or subsidize investments that offer little or no benefit to community residents.

This *Issue Brief*, the first in a series of Budget Center publications exploring the Opportunity Zones program, explains the structure of the program, its tax incentives, and how California's communities may be affected.

The Basics: Opportunity Zones, Qualified Opportunity Funds, and Qualified Opportunity Zone Businesses

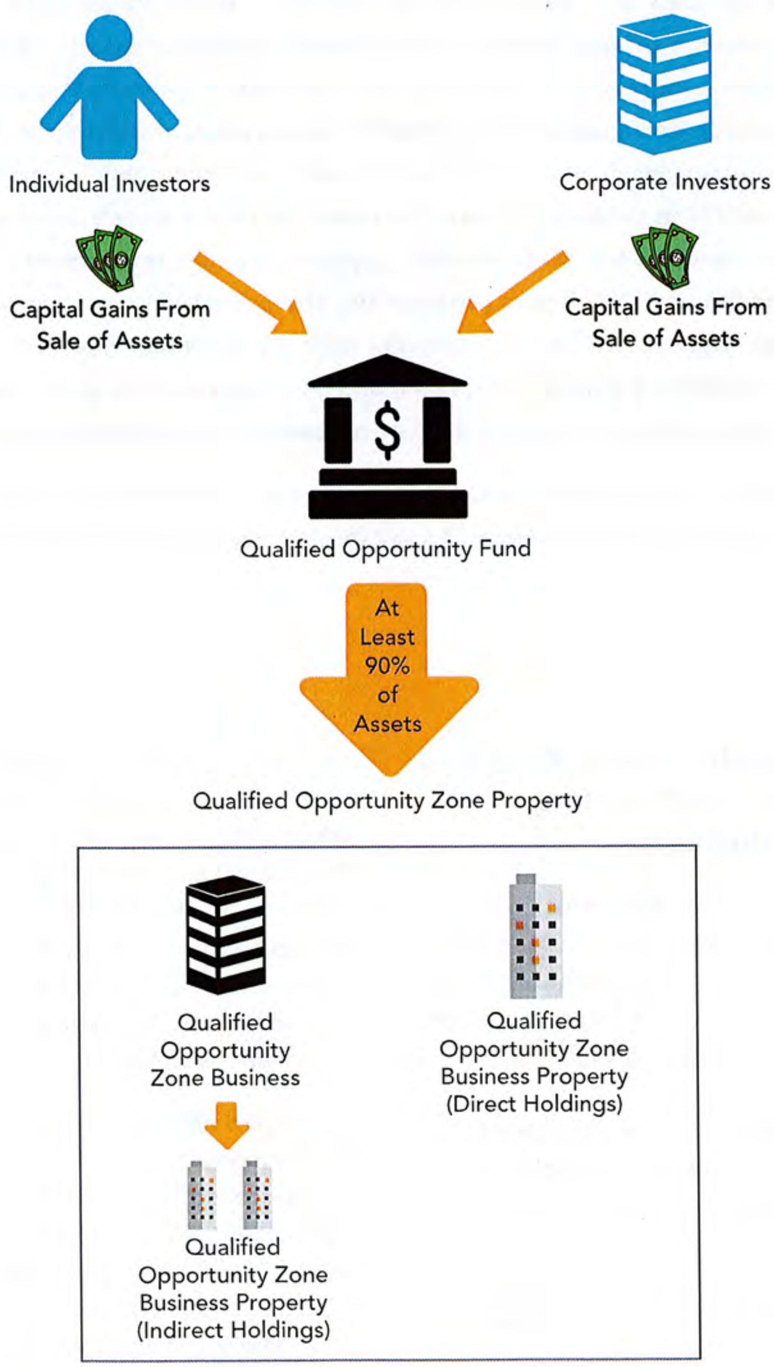
The TCJA allowed governors to nominate census tracts for OZ designation following certain federal criteria.[1] To qualify, census tracts must generally be low-income communities, defined as having a poverty rate of at least 20% or a median family income of 80% or less of the metropolitan area or state median family income.[2] States were also permitted to select a limited number of "contiguous tracts" that are not low-income communities but border a qualified low-income community and have a median family income that does not exceed 125% of that of the adjacent qualified low-income tract. Contiguous tracts may not comprise more than 5% of a state's total selected OZs. Each state was permitted to nominate a total number of OZs not exceeding one-quarter of all eligible low-income tracts. In California, Governor Jerry Brown's administration nominated 879 census tracts to become OZs, and the US Treasury Department certified all of them. One-tenth of California's population (10.7%), nearly 4.2 million residents, live in OZ census tracts.[3] These designations will remain in effect for 10 years.

Individuals and corporations that invest in a Qualified Opportunity Fund (QOF) – an entity that in turn makes investments in OZs – are eligible for several tax benefits, discussed below. To be a QOF, at least 90% of the fund's assets must be invested in "Qualified Opportunity Zone Property," which may include either a stock or partnership interest in a

"Qualified Opportunity Zone Business" that holds tangible property – such as buildings and equipment – in an OZ (known as "Qualified Opportunity Zone Business Property") or direct holdings of such business property (Figure 1). A QOF, which may be a corporation or partnership, does not need to apply for QOF designation and may self-certify with the Internal Revenue Service (IRS).

FIGURE 1

How Opportunity Zone Investments Work



The TCJA statute is vague about how much of a QOF's or Qualified Opportunity Zone Business' property must be located in an OZ, but the IRS has issued proposed regulations that seek to clarify this issue. If these proposed regulations go into effect, a QOF could have less than half of its assets in use within an OZ and its investors would still be eligible for the full tax benefit.[4]

The law also specifies that, if the original use of the Qualified Opportunity Zone Business Property does not start with the QOF investment, the property must be "substantially improved" – requiring the QOF to spend at least as much to improve the property as it spent to acquire it. Ostensibly, this requirement aims to prevent investors from getting tax benefits by simply buying property in an OZ without adding any value for the community. The IRS' proposed regulations would make this requirement more flexible, which could increase the likelihood that tax subsidies will go to investments that provide few community benefits.[5]

The broad definitions in the law and the flexibility offered in the proposed regulations mean there will likely be few limitations on the types of investments that will qualify for preferred tax treatment. For example, investments in startup businesses, expansions of existing businesses, construction or substantial rehabilitation of residential or commercial properties, and infrastructure improvements are all likely to qualify. The only businesses explicitly prohibited from receiving Opportunity Zone tax benefits are so-called "sin businesses" including liquor stores, gambling facilities, golf courses, country clubs, tanning facilities, and massage parlors.

The regulations for the Opportunity Zones program have not been finalized at the time of this publication, and the IRS will issue further proposed regulations to clarify other aspects of the law in the coming months. The final regulations will impact the degree to which tax-privileged investments substantively benefit OZ residents and the generosity of the tax benefits for investors.

Tax Incentives for Investors Can Be Lucrative

The Opportunity Zones program attempts to promote investments in OZ census tracts by providing several tax breaks on capital gains that are reinvested into a QOF. A capital gain results when a taxpayer sells or exchanges an asset – such as corporate stock shares or real estate – at a price higher than its purchase price.[6] For federal tax purposes, the short-term capital gains tax rate, which applies to gains on assets held for one year or less, is equal to the taxpayer's ordinary income tax rate, with a maximum rate of 37%. Lower federal rates apply to long-term capital gains on assets held for more than one year. The maximum rate for long-term capital gains is 20% plus a 3.8% surtax related to the Affordable Care Act.[7] Under the Opportunity Zones program, taxpayers reinvesting capital gains into a QOF within 180 days of the sale or exchange of the original investment are eligible for three federal tax benefits:

- Deferral of tax on the capital gain on the *original investment* until 2026 (or the time the QOF investment is disposed of, if earlier) – allowing the reinvestment of the entire capital gain into a QOF with the potential benefit of a higher return.
- Reduction of tax on the capital gain on the *original investment* if the QOF investment is held long enough (the taxable value of the capital gain – and thus the tax liability – is reduced by 10% if the QOF investment is held for five years and by 15% if the QOF investment is held for seven years).
- Elimination of tax on the capital gain on the *QOF investment* if it is held for 10 years.

There is no upper limit on the tax benefits any QOF investor can receive, nor on the overall cost to the federal government in foregone tax revenues. (See text box for an example of the potential tax benefits from investing in a QOF.)

Wealthiest Investors Will Reap Greatest Share of Tax Savings While Community Benefits Are Uncertain

Taxpayers with holdings of appreciated assets will be the direct beneficiaries of Opportunity Zones tax incentives. Most of these benefits will accrue to very well-off investors, who hold a disproportionate share of such assets. Only 9.2% of all taxpayers report realizing any long-term capital gains, according to estimates from the Urban-Brookings Tax Policy Center.[8] In addition, capital gains are highly concentrated at the top of the income distribution. The top 20% receive 90.2% of all reported long-term capital gains, with the top 1% collecting 68.7% of these gains (Figure 2). Thus, very few low- or middle-income families will receive any *tax* benefits from the Opportunity Zones incentives.

While the benefits to wealthy investors are clear, there is no guarantee that the subsidized investments will positively impact current residents of designated OZs. The Opportunity Zones program is not the first attempt to bring investment and employment into areas that lack financial resources and jobs. A variety of federal and state programs have provided tax incentives and other benefits to attract business and capital investment and to increase employment in such areas, including Empowerment Zones, Enterprise Communities, Renewal Communities, New Market Tax Credits, and state-level enterprise zones. Research on the community impacts of these programs has reached mixed conclusions. Some studies have found increases in employment and wages and reductions in poverty in designated zones relative to similar communities where these incentives were unavailable, while others have found little evidence that the incentives led to statistically significant community improvements.[9] The inconclusiveness of the research exploring the connection between economic development tax incentives and community outcomes suggests that the costs of such incentives may outweigh the benefits.

A primary concern is investors may be drawn to projects or businesses in areas already in the process of gentrification, as these investments will likely yield the highest returns.[10] If investors do prioritize projects in gentrifying areas, a large portion of the

Example of Potential Tax Reductions from Investing in a Qualified Opportunity Fund (QOF)

A taxpayer sells stock shares for $200,000 that were purchased for $100,000, generating a capital gain of $100,000. Assuming the taxpayer is subject to the top federal long-term capital gains rate of 23.8%, she would normally owe $23,800 in tax on the $100,000 gain. However, if the taxpayer reinvested the $100,000 into a QOF in 2019 and held that investment for 10 years, she reduces her tax liability twice. First, she would owe only $20,230 in tax on the original gain in 2026 instead of $23,800, reducing her tax liability by $3,570. This is because she is able to defer paying tax on the original $100,000 gain until 2026, at which point she would have held the QOF investment for seven years, allowing her to receive a 15% tax reduction on the original gain. Second, she would eliminate the entire tax on any capital gain on the QOF investment after holding it for 10 years. If she sells the QOF investment in 2029 for $215,000 (assuming an annual return rate of about 8%), she would owe *zero* tax on the $115,000 increase in the value of the QOF investment, a $27,370 reduction in tax liability relative to what she would have owed on a regular investment. Her overall capital gains tax reduction would be $30,940, and the effective tax rate on the aggregate capital gains from the two investments would decline from 23.8% to 9.4%. Since the majority of the tax reduction comes from the exclusion of gains on the QOF investment, the effective tax rate would be lower for QOF investments that have higher rates of return, and higher for investments with lower returns.

Original Investment: Capital Gains Tax Reduction

Purchase Value	$100,000
Sale Value	$200,000
Capital Gain	$100,000
Regular Tax Liability (at 23.8% Top Rate)	$23,800
Actual Tax Liability in 2026	$20,230*
Reduction in Tax Liability	**-$3,570**
Effective Tax Rate	20.2%

*This tax is based on the top capital gains tax rate of 23.8% and a reduced capital gain of $85,000. The original capital gain that was realized in 2019 ($100,000) is eligible for a 15% discount because the QOF investment will have been held for seven years in 2026.

Capital gain proceeds reinvested into QOF

+

QOF Investment: Capital Gains Tax Elimination

Purchase Value	$100,000
Sale Value (Assuming 8% rate of return over 10 years)	$215,000
Capital Gain	$115,000
Regular Tax Liability (at 23.8% Top Rate)	$27,370
Actual Tax Liability When Investment Is Sold After 10 Years	$0
Reduction in Tax Liability	**-$27,370**
Effective Tax Rate	0%

=

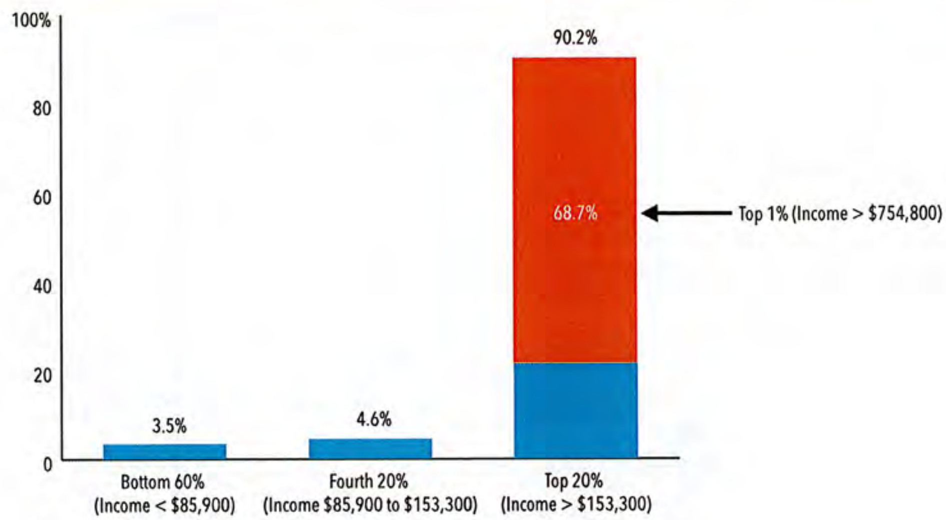
Overall Capital Gains Tax Reduction

Total Capital Gains	$215,000
Regular Tax Liability (at 23.8% Top Rate)	$51,170
Total Tax Liability	$20,230
Reduction in Tax Liability	**-$30,940**
Effective Tax Rate	9.4%

FIGURE 2

Capital Gains Are Concentrated Among the Highest-Income Taxpayers

Share of Nationwide Long-Term Capital Gains by Income Percentile, 2018



Notes: Capital gains are considered long-term if the asset was held for more than one year. Percentages do not sum to 100 due to rounding.
Source: Urban-Brookings Tax Policy Center

tax-preferred investments could flow into communities that have fewer challenges attracting capital, meaning US taxpayers would be unnecessarily subsidizing investments that likely would have occurred without the incentives. The extent to which this occurs will partially depend on which census tracts states designated as OZs. (The next publication in this series will examine California's selection of OZs, including the share of selected areas showing signs of gentrification.)

Since the professed goal of the Opportunity Zones program is to improve economically distressed communities, and not to give tax breaks to wealthy investors, the primary question should be whether the inflow of funds meaningfully improves the circumstances of residents in those communities. For instance, if the incentive results in more affordable housing or local businesses that create job opportunities for low-income residents, this would be considered a successful outcome – even if wealthy investors become wealthier in the process. However, given the few restrictions placed on the investments that can be made, and the laxness of some of the regulations proposed by the IRS, there is a real possibility that some of these new investments will contribute to the gentrification of communities. For example, QOFs may invest in luxury condominiums or companies that mostly employ high-skilled workers from outside the community. In fact, these types of investments may be more attractive than "social impact" investments due to potentially higher returns. This could put low-income residents at risk of facing increased costs of living or being displaced, harming the very people the incentive is intended to help. And since OZ census tracts have higher concentrations of black and Latinx residents than other communities, this could exacerbate existing racial and ethnic inequities.[11]

Some of the most disadvantaged communities may not see any new investment at all. These communities have a scarcity of assets to attract investors, present higher risks, and offer potentially lower returns. Therefore, investors are more likely to choose projects in areas that are already more advantaged or showing signs of revitalization over neighborhoods that have the greatest need for new resources.

Another consideration is the overall cost of the Opportunity Zones incentives in the form of foregone federal revenues from capital gains taxes. These lost revenues – mostly benefiting high-income investors – could instead help pay for other services that may have a greater impact on vulnerable communities in California and across the nation. The official cost estimate for the tax incentives is small relative to total cost of the TCJA – $1.6 billion over 10 years in a package of nearly $2 *trillion* in tax cuts.[12] However, the long-run costs could be much greater given that this estimate does not include revenue losses from the complete exclusion of gains on QOF investments held for 10 years, which fall outside the 10-year period for which budget estimates were made.

The high levels of flexibility for investors and uncertainty regarding the potential benefits and harms to OZ residents elevate the need for strong reporting and data collection requirements. The law does not include such requirements, but the US Treasury Department has the discretion to issue them in forthcoming regulations. Thus, until the final regulations are released, it is unknown whether there will be sufficient and transparent information available to determine how the tax incentives are being used and how subsidized investments are affecting the communities in which they are made.

What's Next for California's Opportunity Zones?

Now that the selection of OZ census tracts in California has been finalized, state and local leaders are contemplating how to encourage meaningful investments that will improve the lives of people in struggling communities. Policymakers are considering whether to provide state-level tax incentives to make QOF investments even more attractive, how to align existing state and local resources with those investments, and how to ensure transparency and accountability. Given that the federal tax benefits are heavily skewed toward wealthy investors (as would be state-level capital gains tax breaks) and that residents of affected communities may face affordability pressures and displacement risks, any state-level Opportunity Zones incentives should be structured to 1) provide greater opportunities for lower-income community members, 2) safeguard residents against displacement, and 3) avoid providing a windfall for the wealthy at the expense of the state's finances. Finally, if state and local governments provide additional incentives to encourage investments in OZs, such incentives should be more narrowly targeted to investments likely to benefit current residents, and data collection and evaluation requirements should be established to enable an assessment of whether the incentives are achieving their intended purpose.

Kayla Kitson prepared this *Issue Brief*. The Budget Center was established in 1995 to provide Californians with a source of timely, objective, and accessible expertise on state fiscal and economic policy issues. The Budget Center engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians. General operating support for the Budget Center is provided by foundation grants, subscriptions, and individual contributions. Please visit the Budget Center's website at calbudgetcenter.org.

ENDNOTES

1 The statute governing Opportunity Zones is found in the new Section 1400Z of the US Internal Revenue Code (26 US Code Section 1400Z).

2 The definition of "low-income community" for the Opportunity Zones program comes from the statute governing the New Markets Tax Credit (26 US Code Section 45D(e)). For a census tract located in a metropolitan area to qualify, it must have a poverty rate of at least 20% *or* a median family income not exceeding 80% of the *greater of* the statewide median family income or the metropolitan area median family income. For a census tract not located in a metropolitan area to qualify, it must have a poverty rate of at least 20% *or* a median family income not exceeding 80% of the statewide median family income.

3 Rebecca Lester, Cody Evans, and Hanna Tian, "Opportunity Zones: An Analysis of the Policy's Implications," *State Tax Notes* (October 15, 2018), Table 1.

4 The TCJA requires that "substantially all" of a business' tangible property be Qualified Opportunity Zone Business Property, "substantially all" of which is in use in an OZ. The law does not define "substantially all," but the IRS' proposed regulations would define it as 70% in both cases. This means a business would only need to have 49% of its tangible property in an OZ (70% times 70%). Since the law requires only 90% of a QOF's assets to be Qualified Opportunity Zone Property, a QOF holding property through an operating business could have as little as 44.1% of its assets being used in an OZ. US Department of the Treasury, Internal Revenue Service, *REG-120186-18: Investing in Qualified Opportunity Funds* (April 17, 2019), pp. 77-78.

5 The proposed regulations released in October 2018 specify that only the value of buildings, excluding the value of the underlying land, would be considered in the calculation to determine whether a property has been substantially improved, which would allow more real estate investments to meet this test. Brett Theodos, Steven M. Rosenthal, and Brady Meixell, *The IRS Proposes Generous Rules for Opportunity Zone Investors but What Will They Mean for Communities?* (Urban-Brookings Tax Policy Center: October 23, 2018). Additionally, proposed regulations released in April 2019 clarify that unimproved land does not need to be substantially improved, but that such land must be used in a trade or business and would not be considered Qualified Opportunity Zone Business Property if it were being held for investment. The IRS is seeking comments on whether additional rules are needed to prevent QOFs from acquiring land in an OZ without adding any value or economic activity. US Department of the Treasury, Internal Revenue Service, *REG-120186-18: Investing in Qualified Opportunity Funds* (April 17, 2019), pp. 12-14.

6 Technically, a capital gain is the difference between an asset's sale price and its "basis," which equals the asset's purchase price with some adjustments, such as the cost of commissions for stocks or the cost of improvements minus depreciation for real property.

7 Thus, the maximum federal tax rate on long-term capital gains is 23.8%. This includes the top long-term capital gains rate of 20%, which for the 2019 tax year applies to taxpayers with incomes above $434,550 ($488,850 for married taxpayers filing jointly). An additional 3.8% surtax on net investment income, including capital gains, helps fund Affordable Care Act benefits. This surtax applies to single taxpayers with incomes over $200,000 ($250,000 for married taxpayers filing jointly). In contrast to federal law, California taxes all capital gains as ordinary income, at a maximum rate of 13.3%.

8 Urban-Brookings Tax Policy Center, *Table T18-0231: Distribution of Long-Term Capital Gains and Qualified Dividends by Expanded Cash Income Percentile, 2018* (November 16, 2018).

9 See reviews of the literature in Congressional Research Service, *Empowerment Zones, Enterprise Communities, and Renewal Communities: Comparative Overview and Analysis* (February 14, 2011), pp. 17-18; David Neumark and Helen Simpson, *Do Place-Based Policies Matter?* (Federal Reserve Bank of San Francisco Economic Letter: March 2, 2015), pp. 2-3; and Rebecca Lester, Cody Evans, and Hanna Tian, "Opportunity Zones: An Analysis of the Policy's Implications," *State Tax Notes* (October 15, 2018), p. 226.

10 As described by the Urban Displacement Project, gentrification is "a process of neighborhood change that includes economic change in a historically disinvested neighborhood – by means of real estate investment and new higher-income residents moving in – as well as demographic change – not only in terms of income level, but also in terms of changes in the education level or racial make-up of residents." Gentrification can lead to displacement, meaning long-term community residents are no longer able to live in gentrified communities. See Miriam Zuk and Karen Chapple, "Gentrification Explained" (Urban Displacement Project: 2015).

11 Brett Theodos, Brady Meixell, and Carl Hedman, *Did States Maximize Their Opportunity Zone Selections? Analysis of the Opportunity Zone Designations* (Urban Institute: May 2018, revised July 2018), Table 3.

12 US Joint Committee on Taxation, *Estimated Budget Effects of the Conference Agreement for H.R.1, the "Tax Cuts and Jobs Act"* (December 18, 2017); Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028* (April 2018), p. 106.

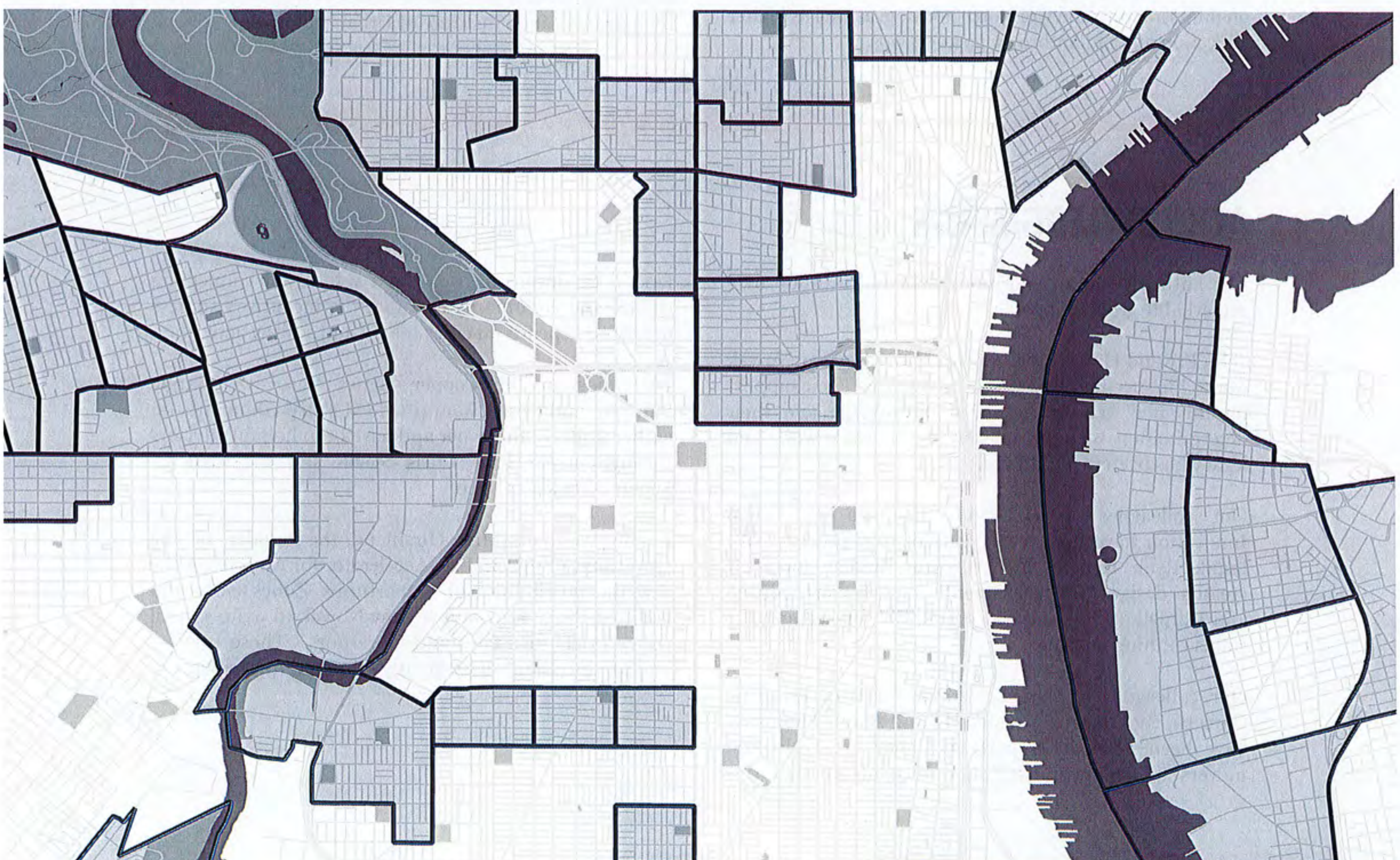
03

EXECUTIVE SUMMARY

From Transactions to Transformation:

How Cities Can Maximize Opportunity Zones

Co-Authors: Bruce Katz and Evan Weiss



DREXEL UNIVERSITY
Nowak Metro Finance Lab
Lindy Institute for Urban Innovation

In Partnership With:

ACCELERATOR FOR AMERICA

ABOUT THE AUTHORS

Bruce Katz is the founding director of the Nowak Metro Finance Lab at Drexel University and the co-author (with Jeremy Nowak) of The New Localism: How Cities Can Thrive in the Age of Populism. Previously he served as the inaugural Centennial Scholar at the Brookings Institution, as chief of staff to the secretary of Housing and Urban Development, and as staff director of the Senate Subcommittee on Housing and Urban Affairs. Katz co-led the Obama administration's housing and urban transition team.

Evan Weiss is Director of PEL Analytics, a 501(c)(3) research and advisory firm that develops and fully implements financial recovery and economic development strategies for government and non-profits across the United States. He previously served as Budget and Operations Advisor in the Office of Newark Mayor Cory Booker and has worked closely on all aspects of the Opportunity Zone program since its inception, helping states and cities implement the program and design several place-based and sector specific Qualified Opportunity Funds, focused on infrastructure and workforce housing, as well as higher education and philanthropic partnerships.

ABOUT ACCELERATOR FOR AMERICA

Accelerator for America is a non-profit organization created by Los Angeles Mayor Eric Garcetti in November 2017. It seeks to provide strategic support to the best local initiatives to strengthen people's economic security, specifically those initiatives that connect people with existing jobs, create new opportunities and foster infrastructure development.

ABOUT DREXEL UNIVERSITY NOWAK METRO FINANCE LAB

The Nowak Metro Finance Lab was formed by Drexel University in July 2018. It is focused on helping cities find new ways to "finance the inclusive city" by making sustained investments in innovation, infrastructure, affordable housing, quality places, and the schooling and skilling of children and young adults. It is situated within the Drexel's Lindy Institute of Urban Innovation.

ACKNOWLEDGMENTS

The authors owe an enormous debt of gratitude to a remarkable group of people.

John Fry and Harris Steinberg are the reason the Nowak Metro Finance Lab exists in the first place. Their support for this new venture has been unwavering and their determination to build on Jeremy Nowak's work and legacy has been inspirational.

Our colleagues at the Lindy Institute for Urban Innovation have been a key part of the process. We thank Ryan Debold and Sarajane Bradley for their creative design, Michael Greenle for his sharp editing and Danielle Swan and Mary Tredway for keeping the trains running on time.

Our colleagues at the Accelerator for America—Eric Garcetti, Rick Jacobs, Yoomee Ha and Aaron Thomas—have been exceptional partners. They are truly first movers on Opportunity Zones, recognizing that this federal tax incentive could be a vehicle for connecting capital and community and that the incentive's success or failure depends on cities taking and scaling action.

Ira Goldstein, Tai Cooper, Agnes Dasewicz, Margie Sullivan, and Kesha Ram provided sharp comments on earlier drafts of the paper and have been helpful advisors throughout—as have Chris Slevin and the team at Senator Booker's Office.

Finally, we thank Mike Hirshland, the founder of The Governance Project. Like Accelerator for America, Mike saw the possibilities of Opportunity Zones early and engaged Bruce Katz and Jeremy Nowak to write several policy briefs for States and Governors. Those briefs—and Mike's vision—have greatly informed this paper.

EXECUTIVE SUMMARY

The Tax Cuts and Jobs Act of 2017 provides a new tax incentive—centered around the deferral, reduction, and elimination of capital gains taxes—to spur private investments in low-income areas designated by states as Opportunity Zones. This provision is based on the bipartisan Investing in Opportunity Act (S. 1639) introduced by Senator Cory Booker (D-NJ) and Senator Tim Scott (R-SC). Given the significant interest among investors, it is possible that this new incentive could attract hundreds of billions of dollars in private capital, making it one of the largest economic development initiatives in U.S. history.

The broad objective of this incentive—expanding economic opportunities for places and people left behind—cannot be achieved by the market and outside investors alone. Cities in the broadest sense—local governments, urban institutions, networks, and civic leaders—will need to act decisively if Opportunity Zones are to engender not only a large volume of individual transactions but broader growth that is inclusive, sustainable and truly transformative for each city's economy. The promise of Opportunity Zones is not just to match private capital to investable projects but to inspire cities to reexamine and rediscover the fundamentals of economic development for all by channeling the resources of their own communities. Cities who are able to coordinate and focus investment will drive not just growth in the near term but institutional and financial reforms that will reposition cities for success over the long haul.

The new incentive differs from other federal tax incentives in several ways. First, it is more market driven; it does not use a federal or state agency to distribute the incentives but rather relies on the decisions of individual investors and fund managers, meaning local governments will likely not be even aware of most Opportunity Zone investments in their communities. Secondly, it can be used for a wide variety of projects—residential, commercial, industrial, infrastructure—rather than being restricted to a relatively narrow purpose like low-income housing or historic preservation. Third, there are no requirements for investors to ensure a certain outcome, such as job creation or local financial matches. Finally, there is no cap on the amount of the benefit if regulations are followed.

The federal law governing the Opportunity Zone incentive does not provide any guidance on the role of cities, yet city governments and other local entities can shape markets and maximize economic and social outcomes by smartly deploying their complex set of powers, resources, assets and relationships. Cities, unlike the federal government and state governments, are networks of institutions and individuals that can "think like a system and act like an entrepreneur." In this way, cities are primed to aggregate and align public, private and civic capital for strategic investments in economic development, schools and skills, infrastructure and affordable housing, the critical ingredients for long-term inclusive growth.

Since the Opportunity Zones incentive was introduced, two dominant, overly simplistic narratives have taken hold. On one hand, there is the view that all cities should merely compile and bundle a list of investable projects and reveal the true strength of the market for some distant investor on Wall Street or in Silicon Valley. This perspective treats the market failure that Opportunity Zones was intended to resolve as one primarily involving information and marketing rather than underlying business demand and economic realities. On the other hand, there is fear that Opportunity Zones will put gentrification on steroids, spiking housing prices and displacing residents. This perspective assumes that the principal challenge facing all cities is excessive value appreciation rather than poverty, high vacancy and low demand.

This policy brief advocates for a more balanced approach that reflects the market variance and complexity within and across cities, organized around Seven Principles to guide city analysis and strategy for leveraging newly established Opportunity Zones. The principles are designed both to enable cities to further capital investment in traditionally disadvantaged places in order to spur job creation and broader opportunities—the core objectives of this new tax incentive—as well as sharpen local strategies and modernize the institutions that design and deliver those strategies. To actualize these principles, we offer 10 Steps to leverage local advantages, knowledge and experience to fully realize the economic and social potential of this unique tax incentive.

Section 1400Z of Internal Revenue Code, amended by The Tax Cuts and Jobs Act of 2017, allows a taxpayer to defer paying federal capital gains tax on the sale of property if that gain is invested in a Qualified Opportunity Fund ("QOF"). A QOF must invest at least 90% of its assets in businesses or property in designated low-income communities known as "Opportunity Zones." In addition, taxpayers who hold investments in those funds for at least five years receive a 10 percent reduction in their original capital gains tax obligation; holding investments at least seven years adds an additional 5 percent reduction for a total of 15 percent; finally, holding an investment a full ten years allows taxpayers to avoid any capital gains tax on the appreciation of the new investment.

OVERARCHING PRINCIPLES

Principle One: See the big picture

Investors naturally focus on the merits associated with individual transactions or financial products. Cities, by contrast, can think about impacts beyond the tradeoffs involved in a particular transaction to advance systemic goals, like enhancing the public sector's fiscal capacity or strengthening the regional economic ecosystem. Cities should create the conditions for long-term growth rather than chase capital for short-term outcomes.

Principle Two: Act as networks, not as governments

Cities are more than governments and elected officials. They're networks of institutions and leaders who co-produce the economy and co-govern many aspects of urban life. Maximizing the potential of Opportunity Zones requires the full engagement of different sectors and stakeholders who can leverage their collective assets and align their decisions.

Principle Three: Identify the distinctive competitive assets and advantages of Opportunity Zones

To reduce friction in the market, cities should be an engaged, reliable source of intelligence about their overall economies and each of their Opportunity Zones. Each city should be able to state definitively what gives disparate Opportunity Zones their market traction and potential.

Principle Four: Balance rewards and controls, incentives and protections

Opportunity Zones are a market driven incentive; most cities won't know how much or where Opportunity Fund investments have been made. Cities can use public resources to steer market investment, particularly towards historically disadvantaged areas. Cities should ensure that every Opportunity Zone is included in a citywide inclusive zoning, procurement, and development policy that focuses on residents and require data transparency for deals that receive public subsidy.

Principle Five: Structure strong, inclusive partnerships

Opportunity Zones could catalyze the aggregation of smart public, private and civic capital for a positive, compounding effect. Smart public and civic investments in community infrastructure and human capital can provide a platform for private sector investment. In low-demand Opportunity Zones, smart public, private and civic financial instruments can attract and de-risk tax advantaged capital.

Principle Six: Link market investments to investments in human capital and other strategies that maximize impact for lower income residents

Cities have a unique potential, given the localization of many schools and skills institutions and initiatives, to focus on human capital by giving students and residents who live in or near Opportunity Zones the ability to access existing and future employment opportunities. Cities can go further and drive inclusive growth through supporting minority owned businesses, homeownership, affordable housing and neighborhood amenities.

Principle Seven: Use Opportunity Zones as a catalyst for modernizing local institutions

In many communities, fragmented local governments simply do not have the capacity or professional expertise to design, finance and deliver sophisticated market and social initiatives. On the private and civic side, most communities collaborate through loosely organized informal networks that do not have sufficient capital or capacity, or with a scope too limited to drive sustainable broad impact. Cities should use Opportunity Zones as a vehicle for modernizing and redefining their institutions to act with purpose and discipline to maximize economic, social and environmental impact.

TEN STEPS

Step One: Design and market an Investment Prospectus to showcase the distinctive assets and investable projects in a city's Opportunity Zones

Set the context of the regional market, offer detail on local organizations and projects, and the advantages of individual opportunity zones through a marketing tool with a strong, cohesive narrative.

Step Two: Maximize the economic impact of anchor institutions, particularly institutions of higher learning

Spread the word to community anchors about Opportunity Zones and seek to understand their needs that the incentive might meet; encourage their own formation of Opportunity Funds or to serve as a clearinghouse for potential investors and projects.

Step Three: Maximize the economic impact of publicly owned assets

Ensure each public entity's assets are widely known and easily identifiable; agencies should use their own property holdings to shape and incentivize markets to serve the broader public as part of a city-wide strategy.

Step Four: Accelerate employment density, business demand and smart place-making

With careful rezoning and planning, cities can spur the co-location of corporations, university assets, start-ups and scale-ups, driving the enhancement of commercialization and tech transfer efforts in ways that support the regeneration and animation of public and private spaces.

Step Five: Ensure that Opportunity Zone related infrastructure is high quality and meets performance and sustainability standards

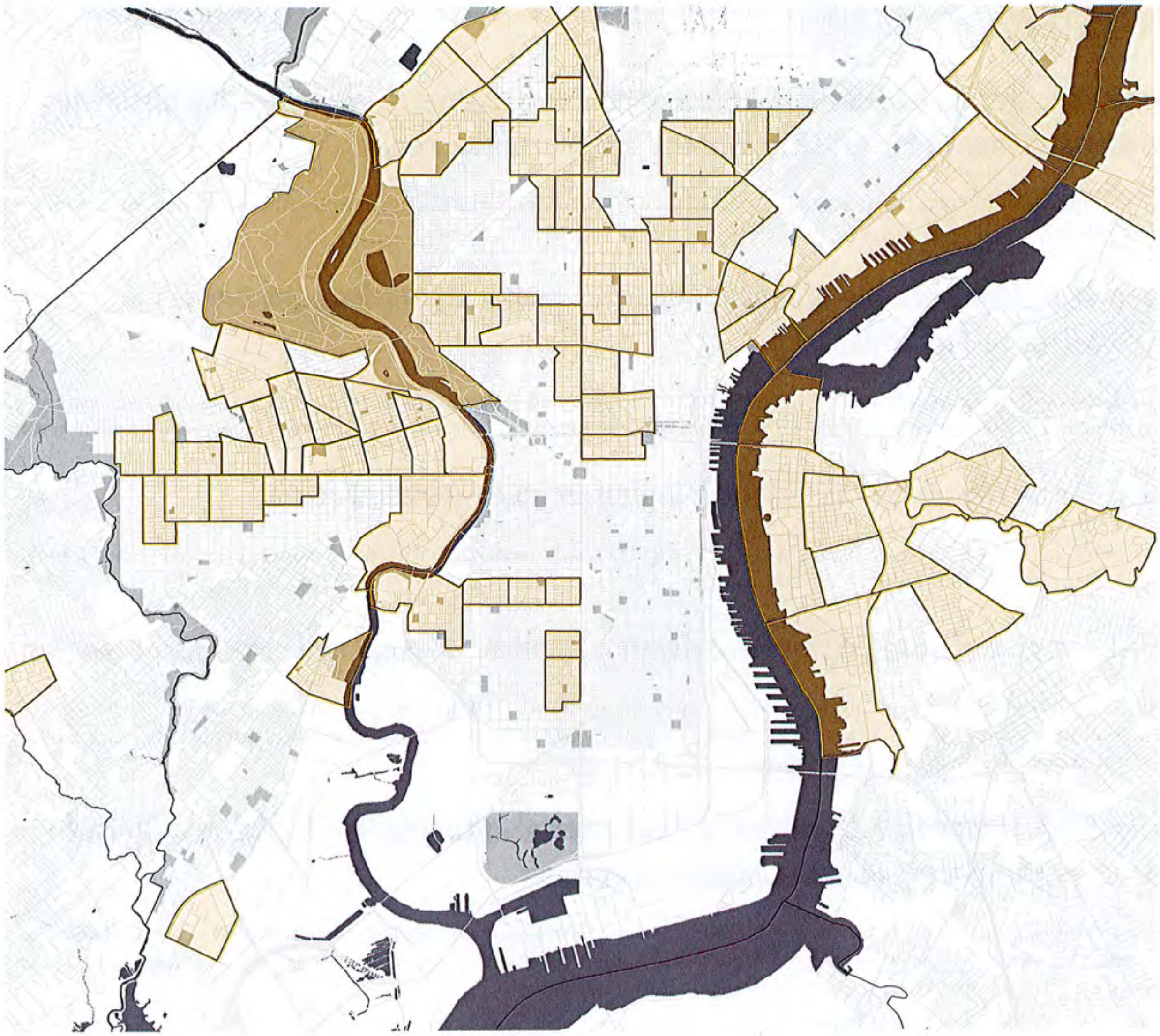
Cities should market their infrastructure, including freight rail, wastewater, and storm water investments, and align tax increment financing opportunities from Opportunity Zone investment to ensure project and community infrastructure is high quality and meets performance and sustainability standards.

Step Six: Align city investments, procurement, tax preferences, zoning, and other decisions with the distinctive competitive assets of each Opportunity Zone

Available local incentives should be well-publicized and easily accessible to potential investors to determine eligibility; cities can also use incentives as regulators to monitor Opportunity Zone investments. Fast tracking entitlements, given the time limitations of the Opportunity Zone incentive, offers a significant competitive edge.

Step Seven: Support local entrepreneurs and developers (particularly female- and minority-owned businesses) gain access to capital, technical assistance, mentoring, legal services and other resources

Spur inclusive growth through a legal and financial entrepreneurship clinic to help community members gain access to capital and technical assistance, including mentoring, legal services and other resources, to support citywide inclusionary development and purchasing policies.



Step Eight: Help local residents obtain the skills or competencies necessary to meet existing or future labor demand

Work closely with local school districts to create "cradle-to-career initiatives" and better link anchor employers to workers; cooperation should be incentivized.

Step Nine: Support the production and preservation of affordable/workforce housing

Maximize impact of existing housing institutions and intermediaries and leverage other tax incentives that support housing, such as Low Income Housing Tax Credits and New Markets Tax Credits.

Step Ten: Repurpose existing institutions and build new institutions to carry out core missions

Understand existing institutions and explore new governance structures to create a suite of adequately-resourced modern institutions. Move quickly and get started by offering a front door to investors, a clear lead, and an engaged community.

Original Investment: Capital Gains Tax Reduction

Purchase Value	$100,000
Sale Value	$200,000
Capital Gain	$100,000
Regular Tax Liability (at 23.8% Top Rate)	$23,800
Actual Tax Liability in 2026	$20,230*
Reduction in Tax Liability	**-$3,570**
Effective Tax Rate	20.2%

*This tax is based on the top capital gains tax rate of 23.8% and a reduced capital gain of $85,000. The original capital gain that was realized in 2019 ($100,000) is eligible for a 15% discount because the QOF investment will have been held for seven years in 2026.

Capital gain proceeds reinvested into QOF

+

QOF Investment: Capital Gains Tax Elimination

Purchase Value	$100,000
Sale Value (Assuming 8% rate of return over 10 years)	$215,000
Capital Gain	$115,000
Regular Tax Liability (at 23.8% Top Rate)	$27,370
Actual Tax Liability When Investment Is Sold After 10 Years	$0
Reduction in Tax Liability	**-$27,370**
Effective Tax Rate	0%

=

Overall Capital Gains Tax Reduction

Total Capital Gains	$215,000
Regular Tax Liability (at 23.8% Top Rate)	$51,170
Total Tax Liability	$20,230
Reduction in Tax Liability	**-$30,940**
Effective Tax Rate	9.4%

Office of Economic Development

Opportunity Zones in Berkeley, California

There are five census tracts in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones. They are Alameda County tract numbers 4232, 4235, 4239.01, 4240.01, and 4525, as indicated in the above map.

For more information about Opportunity Zones, take advantage of these resources:

- California Department of Finance: http://www.dof.ca.gov/Forecasting/Demographics/opportunity_zones/index.html
- California's dedicated website for OZs: https://opzones.ca.gov/
- Council of Development Finance Agencies resources and newsletter: https://www.cdfa.net/cdfa/cdfaweb.nsf/ord.html?open&tag=Opportunity%20Zones

To discuss your Opportunity Zone project in Berkeley, contact the Office of Economic Development at ecodev@cityofberkeley.info or (510) 981-7530.

Councilmember Ben Bartlett

City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Berkeley Qualified Opportunity Fund

TITLE/ Subject
Creation of a Municipal Qualified Opportunity Fund to invest in Berkeley's Qualified Opportunity Zones

RECOMMENDATION
Short Term Referral to Planning Commission
City Manager
City Economic Development Officer
Housing Advisory Commission
Office of Economic Development

That the City Council create a municipal Qualified Opportunity Fund to invest in Qualified Opportunity Zones to stimulate economic growth and develop more affordable housing in Berkeley. The Opportunity Fund and related development of Opportunity Zones will serve the goals of shared economic development, more affordable housing, and economic inclusion by incentivizing investors to direct capital gains toward economically vulnerable neighborhoods in Berkeley while allowing the city to stipulate conditions on the structures built and jobs created.

Qualified Opportunity Funds give investors the opportunity to delay capital gains taxes by investing in property sited in Qualified Opportunity Zones. After holding the investment for five years investors, can exclude 10% of the deferred gain, After seven years investors can exclude 15% of the deferred gain, and after ten years 100% of the post-acquisition gain. and after ten years investors can exclude from income the post-acquisition gain.[1].

Creating a Municipal Qualified Opportunity Fund will give the City of Berkeley a means of enhancing the existing Opportunity Zone Legislation. A Berkeley Opportunity Fund enables the City to compete with market driven investment by offering alternative models of community-centric, equitable investment in neighborhoods. A Berkeley QOF would feature:

1) Enhanced affordability requirements
2) Growth in good jobs and business opportunities for historically disadvantaged groups

CURRENT SITUATION
Specific areas of Berkeley have been selected by the State of California and certified by the U.S. Treasury Department as Qualified Opportunity Zones. The State of California selected these zones

[1] https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions

in economically-distressed areas. Provided investors meet certain requirements, they can defer capital gains taxes and eventually the tax on value appreciation when investing in these zones.

BACKGROUND

The Tax Cuts and Jobs Act created a vehicle for individuals to invest in their communities while realizing tax savings. When an individual sells an investment which generates capital gains, that person can invest any portion of those gains into a Qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Qualified Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Qualified Opportunity Funds must invest, either directly or indirectly, in distressed communities designated as Qualified Opportunity Zones by the IRS[2]. Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until 52nd Street (often referred to as the “Adeline Corridor”), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way[3].

Qualified Opportunity Funds can be invested into specific Qualified Opportunity Zones which have been selected by the Internal Revenue Service and state governments across the United States. Qualified Opportunity Zones are eligible investments for Qualified Opportunity Funds anywhere within the state they exist, and from other parts of the U.S. By establishing a municipal Qualified Opportunity Fund, the city of Berkeley will take a proactive approach to its development and be able to tailor that development to meet the specific needs of current Berkeley residents.

Investors can defer capital gains which are invested into Qualified Opportunity Funds. Moreover, investments in Qualified Opportunity Funds held longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds.

These new Qualified Opportunity Funds are not without critiques, however. As structures in the Qualified Opportunity Zones become replaced or refurbished and the neighborhood itself becomes more appealing, there is a risk that housing prices will rise, driving out the existing low-income residents and people of color in Berkeley. Furthermore, locally-owned small businesses could face increased competition from large franchises and may also be unable to meet rising rental costs from the developing Qualified Opportunity Zones. New locations of existing franchised businesses may bring new jobs, but those jobs may not pay a living wage or benefits that allow Berkeley workers to support themselves. In short, the city of Berkeley must also leverage the creation of the Qualified Opportunity Fund to ensure that current Berkeley residents living in Qualified Opportunity Zones are able to benefit from the revitalized and new buildings.

The City of Berkeley should consider the following policies in the creation of a Qualified Opportunity Fund to protect current Berkeley residents from adverse effects of the expected development:

1) Leverage tax incentives to ensure jobs created in Qualified Opportunity Zones go to local residents, pay a liveable wage, and offer worker protections and benefits that protect families

---

[2] https://www.congress.gov/bill/115th-congress/house-bill/1
[3] https://opzones.ca.gov/oz-map/

2) Ensure historically disadvantaged businesses have access to contracting opportunities in Qualified Opportunity Zones
3) Require 50% of housing built in Qualified Opportunity Zones to be affordable to those making less than median area income to support local inhabitants already living in Qualified Opportunity Zones
4) Ensure that populations in Qualified Opportunity Zones have access to critical services such as healthcare, transportation, healthy food, and quality education services
5) Take steps to include historically underrepresented groups in every aspect of the QOZ process including investment, construction, operation, and purchase.

<u>REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS</u>
Qualified Opportunity Funds and Zones were created as part of the Tax Cuts and Jobs Act of 2017.

<u>ACTIONS/ALTERNATIVES CONSIDERED</u>
Because Qualified Opportunity Funds and Zones are new, there are other jurisdictions to draw from as an example.

<u>CONSULTATION/OUTREACH OVERVIEW AND RESULTS</u>
External stakeholders include residents and businesses in the Qualified Opportunity Zones, their neighbors, potential investors, and contractors. Internal stakeholders include the Berkeley City Office of Economic Development, City Manager, City Planner, and Zoning Advisory Board.

<u>RATIONALE FOR RECOMMENDATION</u>
Qualified Opportunity Funds can exist independently of a municipal Fund set up by the city of Berkeley. It is legal, however, for the city to set up its own Qualified Opportunity Fund to compete with other Funds to invest in Qualified Opportunity Zones. If the city sets up its own Fund it can direct investments in a deliberate manner, using its municipal Qualified Opportunity Fund to set de facto housing and planning policy through which properties it invests in and how it chooses to renovate those properties. Creating a municipal Qualified Opportunity Fund will give the city of Berkeley greater influence over how investments into its neighborhoods are directed, and how those neighborhoods develop. This is an avenue through which the goals of economic inclusion, affordable housing, and continued neighborhood authenticity and character can be achieved.

Investors can and will create Qualified Opportunity Funds to invest in Berkeley's Qualified Opportunity Zones independent of a municipal Qualified Opportunity Fund. The purpose of creating a municipal Qualified Opportunity Fund is to allow the city of Berkeley to centralize and focus investments into the city, leveraging those investments to ensure current Berkeley residents realize the benefits of Qualified Opportunity Zones. The San Francisco Bay Area has a large community of impact investors, those desiring their investments to benefit communities, and a municipal Qualified Opportunity Fund will serve as a vehicle to centralize and direct these investments.

<u>IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT</u>
The City of Berkeley would create a Qualified Opportunity Fund to serve as a "bucket" for funds to invest in Qualified Opportunity Zones designated by the State of California and certified by the U.S. Treasury Department.

ENVIRONMENTAL SUSTAINABILITY
Creating a municipal Qualified Opportunity Fund will allow the city of Berkeley more influence in how Qualified Opportunity Zones are developed. Though new construction and renovation can offer environmental risks and hazards, the City can use Qualified Opportunity Funds to set specific terms for development, such as requiring buildings be carbon neutral. Thus, establishing a Qualified Opportunity Fund could yield a positive environmental effect relative to allowing purely independent Qualified Opportunity Funds to develop the same areas of Berkeley.

FISCAL IMPACTS
The potential revenue capture for the city of Berkeley is difficult to calculate, but increased property taxes, sales tax revenue, and other forms of revenue for the city are extremely likely outcomes. As Qualified Opportunity Zones are refurbished or developed and new housing and shopping is created, the city of Berkeley will benefit from the economic stimulation created by development.

OUTCOMES AND EVALUATION

To be determined by an impact study.

CONTACT PERSON

Councilmember Ben Bartlett: 510-981-7130
Matthew Napoli napoli.matthew@gmail.com

ATTACHMENTS/SUPPORTING MATERIALS

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Wengraf, Harrison, Hahn, and Mayor Arreguin

Subject: Referral to City Manager to Return to Council with an Amnesty Program for Legalizing Unpermitted Dwelling Units

RECOMMENDATION

That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.

FINANCIAL IMPLICATIONS

Staff time in Planning, Building and Safety, and Legal Departments

BACKGROUND

Berkeley currently has an inventory of thousands of unpermitted dwelling units that are either being rented illegally or are being kept off the market. Building inspectors are required, under current regulations, to tell owners that these illegally constructed units must be demolished when it is discovered that they were built without permits.

While legal construction should always be the goal, many of the existing unpermitted structures in Berkeley are being put to beneficial use and have existed in the community for years. As long as safety and habitability can be ensured, the continued use of these units is in the public interest, especially given the crisis of available housing and very high housing costs.

Realizing that the state-wide housing crisis has created extraordinary circumstances, and that it is critical to preserve the current housing stock, many California cities have already enacted amnesty programs to address this issue. For example, San Francisco, City of Alameda, Daly City, County of San Mateo, County of Santa Cruz, Los Angeles, West Hollywood all have programs in place that incentivize the legalization of illegally constructed units.

ENVIRONMENTAL SUSTAINABILITY

Preserving dwelling units, rather than demolishing them is consistent with our Climate Action Goals

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7160 ● TDD: (510) 981-6903 ● Fax: (510) 981-7166
E-Mail: swengraf@cityofberkeley.info

CONTACT PERSON
Councilmember Wengraf Council District 6 510-981-7160

03

Office of the Mayor

CONSENT CALENDAR
April 30, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín

Subject: Prioritizing Affordable Housing for Homeless

RECOMMENDATION
Refer to the Housing Advisory Commission to develop an ordinance to set aside 20% of affordable housing units for individuals experiencing homelessness, with preference given to BUSD students.

BACKGROUND
An estimated 1,000 individuals experience homelessness in Berkeley in any given day, not including people who couch surf or live in vehicles. Over the course of a year, it is estimated up to 2,000 people will experience homelessness in Berkeley. The homeless population has been growing by approximately 10% every two years. In a meeting of the 2x2 Committee (Council + School Board) in October 2017, it was reported that 291 students experience some form of homelessness, ranging from temporary housing with other families (231 students) to completely unsheltered (8).

In April 2017, the City Council voted to have staff develop the 1,000 Person Plan to create a plan to house 1,000 homeless residents by 2028. In the referral response to the 1,000 Person Plan, staff conclude that “the single largest “missing piece” in Berkeley’s efforts to end homelessness is permanently subsidized, affordable housing.” One of the four strategic goals proposed in the response is the need to accelerate the creation of affordable housing, with a focus on alleviating homelessness.

All homeless services providers in Alameda County must adhere to the Housing First policy. Major programs in Berkeley, such as the Hub and STAIR Center, prioritize Housing First by working to achieve permanent housing for the highest-needs clients. While following a Housing First model is essential in the task of ending homelessness, it is meaningless if there is no means of providing the housing. The high cost of housing, even with an extreme level of subsidies, means being able to maintain rent payments is unattainable for many. The average rent of a 2 bedroom unit in Berkeley is three times as much as in Salt Lake City, which is often cited as an ideal example for Housing First policies. The reality is as long as there is a lack of affordable housing in Berkeley and the Bay Area, the challenges of homelessness will continue.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7100 ● TDD: (510) 981-6903 ● Fax: (510) 981-7199
E-Mail: mayor@cityofberkeley.info

RATIONALE FOR RECOMMENDATION
Prioritizing housing for the homeless is an important step in addressing the homeless crisis. Reducing and ultimately eliminating homelessness of BUSD students is crucial in creating an environment that is conductive for learning.

FINANCIAL IMPLICATIONS
Staff Time

ENVIRONMENTAL SUSTAINABILITY
Not applicable.

CONTACT PERSON
Mayor Jesse Arreguín 510-981-7100

ACTION CALENDAR
June 25th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, Hahn, and Davila

Subject: Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender

RECOMMENDATION
Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.

FISCAL IMPACTS OF RECOMMENDATION
None.

ENVIRONMENTAL SUSTAINABILITY
Consistent with sustainability goals.

BACKGROUND
For many Berkeley residents, particularly those who are denied access to credit or are unable to obtain bank accounts, the ability to purchase goods and services is depends on the ability to pay in cash. According to the 2017 Unbanked and Underbanked Households Survey,[1] 17% of all African American households and 14% of all Latino households in the United States had no bank account. Cash is an accessible medium of exchange in America, and stores not accepting cash payment systematically excludes segments of the population that are largely low-income people of color. Cashless business models may also have significant detrimental impacts on young people who do not meet age requirements for credit cards, for the elderly (many of whom have not transitioned to credit and digital payment modes or have restricted their access to them to avoid credit scams), and for other vulnerable groups such as homeless and immigrant populations.

Recently, San Francisco[2] joined Philadelphia[3] and New Jersey[4] in requiring that all brick-and-mortar businesses in the jurisdiction accept cash. As of today, there are few stores

[1] https://www.fdic.gov/householdsurvey/
[2] https://www.courthousenews.com/%EF%BB%BFsan-francisco-will-require-stores-to-accept-cash/
[3] https://6abc.com/politics/bill-looks-to-require-philly-businesses-to-accept-cash/5121309/
[4] https://www.wbgo.org/post/bill-would-require-nj-retailers-accept-cash-payments#stream/0

in Berkeley that do not accept cash, and so now is a good opportunity to guarantee that these discriminatory practices are not permitted in our City.

CONTACT PERSON
Kate Harrison, District 4 510-981-7140

ATTACHMENT:
1: Proposed Ordinance Adding BMC Chapter 9.50

ORDINANCE NO. –N.S.

ADDING A NEW CHAPTER 9.50 TO THE BERKELEY MUNICIPAL CODE
REQUIRING BRICK-AND-MORTAR BUSINESSES TO ACCEPT CASH

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

Section 1. That Chapter 9.50 of the Berkeley Municipal Code is added to read as follows:

Chapter 9.50

LEGAL RIGHTS FOR LEGAL TENDER

Sections:
9.50.010 Findings and Purpose
9.50.020 Definitions
9.50.030 Brick-and-Mortar Businesses Required to Accept Cash
9.50.040 Exceptions
9.50.050 Enforcement
9.50.060 Severability

9.50.010 Findings and Purpose.
The Council finds and declares as follows:

A. The City of Berkeley is duty-bound to provide its community with transactional access to the goods and services provided by Berkeley's businesses. For many City residents, such as those unable to obtain bank accounts, the ability to engage in consumer transactions, including goods and services vital to health and safety, depends on the ability to pay with legal cash tender established by the federal government of United States.
B. Cashless business models present significant detrimental impacts to vulnerable groups, especially low-income people, as they require financial institution-sponsored payment in credit or debit cards, or other non-cash forms of payment.
C. Cash payment, in the form of the United States Dollar, has been the official legal tender since the country's founding in 1792 and shall be recognized by brick-and-mortar businesses alongside other forms of legal tender.
D. It is the intent of the Council to ensure Berkeley's economy is inclusionary and accessible to everyone, including those who lack access to non-cash forms of payment.

9.50.020 Definitions.

A. "Brick-and-Mortar Business" means any place of business operating at a fixed, permanent, physical premises. Brick and mortar business does not include any business operating from a vehicle or other mobile space (for example a food truck).
B. "Cash" means United States currency, in the form of both paper Federal Reserve Notes and metal coins.

9.50.030 Brick-and-Mortar Businesses Required to Accept Cash.

A. Except as set forth in 9.50.040, every Brick-and-Mortar Business within the City must accept payment in Cash, if offered, for any transaction involving the purchase of any tangible good and/or service.
B. Except as set forward in 9.50.040, a Brick-and-Mortar Business may not charge a fee or place any other condition on its acceptance of Cash as required by subsection A.

9.50.040 Exceptions.
The provisions set forward in this Act shall not apply in cases of:

A. Suspected counterfeit currency. A Brick-and-Mortar Business may refuse to accept Cash that the business reasonably suspects to be counterfeit.
B. Large denominations. A Brick-and-Mortar Business may refuse to accept Cash in any denomination larger than a twenty dollar note, but shall otherwise accept any combination of Federal Reserve Notes and metal coins in connection with any transaction.

C. Single transactions above $5,000. Where a single transaction involves the purchase of one or more goods and/or services, the total price of which (including tax) exceeds $5,000, a Brick-and-Mortar Business must accept Cash that is offered as payment for any amount up to $5,000, but may refuse to accept Cash that is offered as payment for the remainder of the amount due.

9.50.050 Enforcement.

A. The obligation to ensure that a Brick-and-Mortar Business complies with this Chapter 9.50 shall fall only on the business or, in the case that the owners of the business are responsible for a policy or practice causing a violation of this Chapter, on the owner or owners of the business. No employee or independent contractor working at a Brick-and-Mortar Business shall be held liable for any violation of this Chapter.
B. Each transaction or attempted transaction in which a Brick-and-Mortar Business fails to accept Cash shall constitute a separate violation of this Chapter.
C. Any violation of this Chapter shall be an infraction or misdemeanor punishable as hereinafter specified:
    a. For a first violation, an infraction punishable by a fine not exceeding $100 and not less than $50.
    b. For a second violation within a twelve month period, an infraction punishable by a fine not exceeding $200 and not less than $100.
    c. For a third violation within a twelve month period, an infraction punishable by a fine not exceeding $1,000 and not less than $500.
D. In addition to the penalties set forward in subsection (C), the court may order that a violator reimburse the City for all its costs, including attorney’s fees incurred in investigating and prosecuting the enforcement action against that violator.

9.50.060 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 2. 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.