



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING**

**Thursday, February 20, 2020
10:30 AM**

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Councilmembers Ben Bartlett, Kate Harrison, and Lori Droste
Alternate: Mayor Jesse Arreguin

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - November 21, 2019 and February 6, 2020

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.

Committee Action Items

2. **Inclusionary Units in Qualified Opportunity Zones** *(Item contains revised material)*
From: Councilmembers Harrison, Bartlett, Davila, and Hahn
Referred: October 15, 2019
Due: March 24, 2020
Recommendation:
1. Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in owner-occupied developments in Qualified Opportunity Zones (QOZs). 2. Adopt a resolution establishing a similar practice for rental housing projects. 3. Refer to the Adeline Corridor Subcommittee of the Planning Commission to incorporate such a requirement into the Adeline Corridor Plan.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
3. **Discussion regarding scheduling future Small Business Listening Sessions on April 16, 2020, June 4, 2020, October 1, 2020, and December 3, 2020**

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.

- None

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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*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. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 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 (510) 981-6418 (V) or (510) 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.

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I hereby certify that the agenda for this meeting of the Standing Committee 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 February 13, 2020.



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.

**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE
REGULAR MEETING MINUTES**

**Thursday, November 21, 2019
10:30 AM**

2180 Milvia Street, 1st Floor – Cypress Room

Committee Members:

Councilmembers Lori Droste, Sophie Hahn, and Ben Bartlett

Roll Call: 10:34 a.m. All Present

Public Comment on Non-Agenda Matters – 2 speakers

Election of Chair: Councilmember Bartlett nominated to serve as Chair.

Action: M/S/C (Hahn/Droste) to elect Councilmember Bartlett as Chair of the Land Use, Housing, & Economic Development Committee.

Vote: All Ayes.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - November 7, 2019

Action: M/S/C (Droste/Hahn) to approve the minutes of November 7, 2019.

Vote: Ayes – Droste, Hahn; Noes – None; Abstain – Bartlett; Absent – 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.

Committee Action Items

2. **Spring 2019 Bi-Annual Report on Funding for Housing Programs** (*Item contains supplemental material*)

From: Housing Advisory Commission

Referred: September 10, 2019

Due: February 18, 2020

Recommendation: Accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

Financial Implications: See report

Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Action: 3 speakers. Discussion held. The committee requested the following information from staff:

1. What are the outreach efforts of funded agencies working on anti-displacement activities?
2. Add language to contracts that requests agencies quantify and report their anti-displacement efforts and outcomes.

M/S/C (Hahn/Droste) to move the item with a positive recommendation to accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues in the format that staff presented in the Measure U1 Budget draft projections table including the following amendments: 1. Allocation of \$1M for small sites; 2. Addition of \$100K in FY 2022 and FY 2023 in organizational capacity building (BACLT); 3. Add \$150K in 2021-2023 for new programs under the category of development of new housing programs; 4. Allocate \$2.5M in 2023 for the Housing Trust Fund.

Vote: All Ayes.

Committee Action Items

3. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street

From: City Manager

Referred: October 1, 2019

Due: March 10, 2020

Recommendation:

1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF).
2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.

Financial Implications: See report

Note: *At the June 11, 2019 meeting, Council approved a recommendation directing the City Manager to issue a Request for Proposals to select a qualified organization to purchase the single family home at 1654 Fifth Street to operate as housing for the homeless.*

Contact: Kelly Wallace, Housing and Community Services, 981-5400

Action: 3 speakers. Discussion held.

M/S/C (Hahn/Droste) to move the item with a positive recommendation authorizing the sale of 1631 Fifth Street.

Vote: All Ayes.

4. Inclusionary Units in Qualified Opportunity Zones *(Item contains revised material)*

From: Councilmembers Harrison, Bartlett, Davila, and Hahn

Referred: October 15, 2019

Due: March 24, 2020

Recommendation:

1. Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in owner-occupied developments in Qualified Opportunity Zones (QOZs).
2. Adopt a resolution establishing a similar practice for rental housing projects.
3. Refer to the Adeline Corridor Subcommittee of the Planning Commission to incorporate such a requirement into the Adeline Corridor Plan.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Item continued to next meeting on December 5, 2019.

Committee Action Items

5. **Proposed Formula Retail (Chain Store) Regulations** *(Item contains revised materials)*

From: Councilmembers Hahn and Harrison

Referred: October 29, 2019

Due: April 7, 2020

Recommendation:

1. Refer to the City Manager and Planning Commission to finalize and return to the City Council for adoption an Ordinance and related amendments to the Berkeley Municipal Code, if any, based on the Draft Formula Retail Ordinance attached hereto, to establish Formula Retail regulations for Commercial and Manufacturing Districts in the City of Berkeley.

2. Refer to the City Manager and Planning Commission to: (a) Recommend establishment of Business District boundaries and names, as provided for in Section 23E.18.030(B) of the proposed Formula Retail Ordinance, and (b) Through a process that includes public notice and input, as described in the proposed Formula Retail Ordinance, recommend for each Business District whether to allow unlimited Formula Retail, limited Formula Retail (some or all use categories allowed with a Use Permit, Neighborhood Notice, Design Review and findings) or to prohibit Formula Retail.

Financial Implications: See report

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

Item continued to a future meeting. Councilmember Hahn asked that the item be moved to Unscheduled until she can meet with retailers.

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.

- **None**

Items for Future Agendas

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

Adjournment

Action: M/S/C (Bartlett/Droste) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 12:31 p.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on November 21, 2019.

April Richardson, Assistant 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.

**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING MINUTES**

**Thursday, February 6, 2020
10:30 AM**

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:
Councilmembers Ben Bartlett, Kate Harrison, and Lori Droste
Alternate: Mayor Jesse Arreguin

Roll Call: 10:31 a.m. Councilmembers Bartlett and Harrison present. Mayor Arreguin absent.

Mayor Arreguin present at 10:37 a.m.

Public Comment on Non-Agenda Matters – 1 speaker.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - November 21, 2019

Action: M/S/C (Bartlett/Harrison) to continue approval of the minutes to the next meeting.

Vote: Ayes – Bartlett, Harrison; Noes – None; Abstain – None; Absent – Arreguin.

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.

2. Election of Chairperson

Action: M/S/C (Harrison/Bartlett) to elect Councilmember Bartlett as Chair of the Land Use, Housing, & Economic Development Committee.

Vote: Ayes – Bartlett, Harrison; Noes – None; Abstain – None; Absent – Arreguin.

Committee Action Items

3. Inclusionary Units in Qualified Opportunity Zones *(Item contains revised material)*

From: Councilmembers Harrison, Bartlett, Davila, and Hahn

Referred: October 15, 2019

Due: March 24, 2020

Recommendation:

1. Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in owner-occupied developments in Qualified Opportunity Zones (QOZs).

2. Adopt a resolution establishing a similar practice for rental housing projects.

3. Refer to the Adeline Corridor Subcommittee of the Planning Commission to incorporate such a requirement into the Adeline Corridor Plan.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Councilmember Bartlett exited the meeting for the consideration of Item 3 due to Brown Act participation rules.

Action: 2 speakers. Discussion held. Amended materials submitted by Councilmember Harrison. The Committee requested current information from the Planning Department regarding projects in QOZs, a copy of the report prepared by Street Level Advisors, and the number of project applications in QOZs up to December 31, 2019, and requested information on why Census Tract 4239.01 was included in a QOZ. Item continued to the next committee meeting.

Councilmember Bartlett rejoined the meeting.

Committee Action Items

4. **Proposed Formula Retail (Chain Store) Regulations** *(Item contains revised materials)*
From: Councilmembers Hahn and Harrison
Referred: October 29, 2019
Due: April 7, 2020
Recommendation:
1. Refer to the City Manager and Planning Commission to finalize and return to the City Council for adoption an Ordinance and related amendments to the Berkeley Municipal Code, if any, based on the Draft Formula Retail Ordinance attached hereto, to establish Formula Retail regulations for Commercial and Manufacturing Districts in the City of Berkeley.
2. Refer to the City Manager and Planning Commission to: (a) Recommend establishment of Business District boundaries and names, as provided for in Section 23E.18.030(B) of the proposed Formula Retail Ordinance, and (b) Through a process that includes public notice and input, as described in the proposed Formula Retail Ordinance, recommend for each Business District whether to allow unlimited Formula Retail, limited Formula Retail (some or all use categories allowed with a Use Permit, Neighborhood Notice, Design Review and findings) or to prohibit Formula Retail.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- Action:** 1 speaker. Discussion held. Item withdrawn from consideration by author Councilmember Hahn noting the intention to revise the item and resubmit it for future consideration.
5. **Discussion regarding scheduling future Small Business Listening Sessions**
- Action:** 2 speakers. Discussion held. The Committee requested that staff provide proposed listening session dates in 2020.
M/S/C (Bartlett/Harrison) to hold Small Business Listening Sessions with experts and panels four times per year on various topics in locations around the City; and to include the Office of Economic Development and the Berkeley Business District Network in the discussions.
Vote: All Ayes.
6. **Amending B.M.C. Chapter 13.78 to Prohibit Additional Fees for Roommate Replacements and Lease Renewals and Terminations**
From: Mayor Arreguin and Councilmembers Harrison, Hahn, and Robinson
Referred: January 27, 2020
Due: June 15, 2020
Recommendation: Adopt first reading of an Ordinance to amend Berkeley Municipal Code (B.M.C.) Chapter 13.78 (Tenant Screening Fees Ordinance) to prohibit property owners from assessing additional fees on roommate replacements, lease renewals and terminations.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Committee Action Items

Councilmember Harrison exited the meeting for the consideration of Item 6 due to Brown Act participation rules.

Action: 2 speakers. Discussion held.

M/S/C (Arreguin/Bartlett) to move the item with a positive recommendation as written.

Vote: Ayes – Bartlett, Arreguin; Noes – None; Abstain – None; Absent – None.

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.

- **None**

Items for Future Agendas

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

Adjournment

Action: M/S/C (Bartlett/Arreguin) to adjourn the meeting.

Vote: Ayes – Bartlett, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Adjourned at 12:49 p.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on February 6, 2020.

Sarah K. Bunting, Assistant 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.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 29, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison, Bartlett, Davila, and Hahn
Subject: Inclusionary Units in Qualified Opportunity Zones

RECOMMENDATION

1. Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in owner-occupied developments in Qualified Opportunity Zones (QOZs)
2. Adopt a resolution establishing a similar practice for rental housing projects.
3. Refer to the Adeline Corridor Subcommittee of the Planning Commission to incorporate such a requirement into the Adeline Corridor Plan.

BACKGROUND

Qualified Opportunity Zones are urban areas associated with the 2017 Trump tax cuts.¹ The stated goal of QOZs is to incentivize investment in under-resourced urban areas by delaying capital gains taxes and circumventing altogether federal taxes on profits made in QOZs.² Ten years after an initial investment into a QOZ, the investor can sell the real estate and not owe any taxes on the profits.

Investments in Qualified Opportunity Zones can increase an investor's returns by 70%, according to the Congressional Research Service.³ Though touted as a way to invest in under-resourced communities, ~~many most of the~~ QOZs are in rapidly growing areas, with 75% of the tracts experiencing significant economic growth between 2001 and 2015⁴ and 64% of tracts seeing a significant increase in new businesses during the same period.⁵ Also, in the Bay Area, QOZs are often in gentrifying areas, reflecting a national pattern:

¹ <https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>

² Ibid.

³ https://www.novoco.com/sites/default/files/atoms/files/crs_tax_incentives_for_ozs_112018.pdf

⁴ <https://www.opportunityzonelaw.com/single-post/2018/07/03/Five-Keys-from-the-Novogradac-2018-Opportunity-Zones-Workshop>

⁵ Ibid.

almost 70% of all neighborhoods in America that gentrified between 2000 and 2017 either are in a Qualified Opportunity Zone or are adjacent to one.⁶

Five census tracts in Berkeley have been designated as Qualified Opportunity Zones, including Downtown, the Adeline Corridor⁷ and South Shattuck, South Berkeley between Sacramento and Shattuck, and part of West Berkeley between University and Dwight, San Pablo and 5th Street.⁸ The five census tracts⁹ in Berkeley are almost all low-income and predominantly Black communities and other communities of color. They are as follows:

Berkeley Opportunity Zone Demographics

Tract Number	Bordering Streets	Poverty Rate	Average Income
4232	West Berkeley between University and Dwight; San Pablo and 5 th St	19.2%	\$81,453
4229	Downtown Berkeley between University and Dwight; Oxford and MLK	47.3%	\$52,250
4235	South Berkeley between Dwight and Ashby; Fulton and MLK	20.9%	\$62,386
4239.01	Southern end of Adeline Corridor	13.9% ¹⁰	\$90,882
4240.01	Southern Berkeley between Ashby and City Limits; Sacramento and Adeline	18.1%	\$60,809

[Qualified Opportunity Zones can provide tax cuts to all entities that take advantage of them. The City of Berkeley may establish a Qualified Opportunity Fund and use these cuts to further the goals in the West Berkeley Plan and the draft Adeline Corridor Plan, including the construction and preservation of affordable housing.](#)¹¹ In fact, the draft

⁶ <https://ncrc.org/oz/>

⁷ See Attachment 4.

⁸ <https://opzones.ca.gov/oz-map/>

⁹ <https://www.arcgis.com/home/item.html?id=92e085b0953348a2857d3d3dac930337#visualize>

¹⁰ Please note that this poverty rate is too low to be considered a "low income census tract," as the standard for that is XX%.

¹¹ "Referral Response: Opportunity Zone Priorities." January 23, 2020.

Adeline Corridor Plan calls for 50% of new housing in the zone to be affordable; the 4235, 4239.01, and 4240.01 census tracts lie entirely within the Corridor (see Attachment 4). However, without sufficient regulation there is no guarantee that the private entities taking advantage of QOZs will further these goals as well. Requiring inclusionary units establishes clear affordable housing goals for all projects in QOZs.

Inclusionary Housing in Berkeley

The Berkeley Housing Trust Fund (HFT) was established in 1990 to pool money from a variety of sources (including developer in-lieu fees) into a single pot for the purpose of constructing affordable housing.¹² From 2009¹³ to 2017, localities were required by state law to offer project applicants the option of either building affordable units onsite or paying the in-lieu fee. Thus, pursuant to BMC 23C.12, all owner-occupied new projects in Berkeley with five or more units are currently required to *either* set aside 20% of their units as affordable, pay an in-lieu fee to the HFT, or some combination of both. BMC 22.20 has similar provisions for rental housing, and the chapter permits the City Council to adopt resolutions that vary requirements for in-lieu fees.

This ordinance will apply only to developments with 10 or more units, which would have two or more affordable units. Managing a single affordable unit in a project is an administrative burden to building owners and City administration, and thus small projects will not be required to build the onsite unit. Small projects will still have the option to either include onsite affordable housing or pay the in-lieu fee.

AB 2502 (known as the “Palmer Fix”) passed in 2017; it and gives jurisdictions the authority to require onsite units instead of giving developers the option to pay an in-lieu fee. The decision to charge in-lieu fees, require inclusionary units, or leave the decision to developers is now set according to prevailing market forces and the desires of local policymakers.¹⁴ The California Supreme Court has upheld requiring affordable units as an extension of a municipality’s police powers¹⁵ Berkeley traditionally incentivized paying in-lieu fees, because the HTF was under-resourced and other funding sources were not available. This approach allowed construction of entirely affordable buildings by non-profits but had several drawbacks:

- Constructing affordable housing projects using in-lieu fees requires land to be acquired¹⁶ and capital to be accrued over many years and results in delays in production that market-rate developers may not face.
- Building affordable units in primarily market-rate developments promotes integration of housing throughout the City. Attachment XX demonstrates that 100%

¹² <https://www.cityofberkeley.info/ContentDisplay.aspx?id=6532>

¹³ http://www.reubenlaw.com/palmer_case_shakes_up_inclusionary_housing_rules_for_rental_projects/

¹⁴ <http://inclusionaryhousing.org/designing-a-policy/off-site-development/in-lieu-fees/>

¹⁵ <https://harvardlawreview.org/2016/03/california-building-industry-assn-v-city-of-san-jose/>

¹⁶ Or scarce public land to be utilized.

[affordable projects are more concentrated in particular neighborhoods than where below market rate units are either already built or planned.](#)

- [The state density bonus requires projects to set aside 10% of units for very low income households \(at 30-50% the area median income\), but there are not comparable state incentives for units affordable to low income households \(earning from 50%-80% of area median income\). Thus, the majority of project applicants who invoke the state density bonus build 10% of their units to be affordable to very low income households and then pay the in-lieu fee for the remaining local obligation, which would otherwise be required to be built for low-income households. According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline:](#)
 - [, 24 elected to utilize the density bonus and pay fees in lieu of the other 10% of affordable units.](#)
 - [and a](#) ~~an~~ [additional 21 did not take advantage of the state density bonus and but](#) paid in-lieu fees for all or substantial proportion of the [remaining local](#) requirement. ~~In contrast, and~~
 - [Only](#) 11 projects provided all 20% affordable units onsite.

Thus, 80% (24 plus 21 out of 56) paid fees in lieu of some of the required units. Of the 23 projects listed that are now in a Qualified Opportunity Zone, 11 had no onsite affordable units, and seven took advantage of the state density bonus (see attachment [23](#)) [but provided the rest as in lieu fees.](#)

- As a result of these mismatched incentives, Berkeley has achieved only 15% of its low-income housing target¹⁷ and 65% of the target set for very low-income housing.¹⁸
- Since the passage of Measure O, much more funding for non-profit built affordable housing is available. It is critical, given the displacement occurring in Berkeley, to consider requiring some on-site units instead of providing the option of in-lieu fees.

Qualified Opportunity Zones are an ideal place to begin to require inclusionary on-site units. QOZs are intended to revitalize low-income communities, and requiring units affordable to lower-income households in these zones will prevent low-income individuals from being priced out of their own communities. Developers are given significant financial benefits under Opportunity Zones, and thus can include on-site units and still realize a profit.

[The draft Adeline Corridor Plan already “calls for an ambitious combination of on-site affordable units included in otherwise market rate projects and new 100% affordable](#)

¹⁷ <https://abag.ca.gov/our-work/housing/rhna-regional-housing-need-allocation>

¹⁸ We see in the 2019 Housing Pipeline Report that Berkeley has achieved 65% of its Very Low Income housing goals, 15% of its Low Income housing goals, and 0% of both Extremely Low and Moderate Income goals.

housing projects built on public land.”¹⁹ The Adeline Corridor falls entirely within Qualified Opportunity Zones²⁰, and thus this legislation takes an idea already contained within the draft plan – affordability through on-site affordable units – and expands it to other areas of the City already designated by the federal government as low-income areas requiring investment.

FINANCIAL IMPLICATIONS

Will reduce contributions to the Affordable Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

The Qualified Opportunity Zones in Berkeley are along major transit corridors (Shattuck, Adeline, and San Pablo). Last year, Berkeley researchers concluded that infill housing along transit corridors is one of the most impactful policies municipalities can adopt to combat climate change.²¹

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

1: Berkeley Municipal Code 23C.12.035

2: Resolution

3: 2019 Housing Pipeline Report, highlighted with projects that are in Qualified Opportunity Zones as currently defined.

4: [Comparative map of Qualified Opportunity Zones and the Adeline Corridor](#)

5: [Heat map of affordable units in Berkeley](#)

¹⁹ [Draft Adeline Corridor Specific Plan, Chapter 4.4: "Affordability Levels and Tenant Types in New Housing."](#)

²⁰ [See Attachment 4](#)

²¹ <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

AMENDING CHAPTER 23C.12.035 OF THE BERKELEY MUNICIPAL CODE TO
REQUIRE ON-SITE INCLUSIONARY HOUSING UNITS IN QUALIFIED
OPPORTUNITY ZONES

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

Section 1. That Berkeley Municipal Code Section 23C.12.035 is hereby amended to read as follows:

23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

A.

1. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.

2. [The contents of Section 23C.12.035 are not applicable to residential housing projects of greater than 10 units in Qualified Opportunity Zones.](#)

B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

C. Amount of Fee.

1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.

3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.

4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.

D. Calculation of Inclusionary Sales Price.

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.

2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23C.12.090.

E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.

F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold. (Ord. 6946-NS § 1, 2006)

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 the Maudelle Shirek Building, 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.

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

RESOLUTION REQUIRING INCLUSIONARY AFFORDABLE UNITS IN QUALIFIED OPPORTUNITY ZONES

WHEREAS, the 2017 Tax Cuts and Jobs Act created Qualified Opportunity Zones, a tax break that is projected to increase return on investment by 70%; and

WHEREAS, five census tracts in Berkeley: 4232, 4229, 4235, 4239.01, and 4240.01, hereafter referred to as Qualified Tracts, are designated as Qualified Opportunity Zones; and

WHEREAS, these Qualified Tracts are in rapidly gentrifying areas suffering from insufficient affordable housing; and

WHEREAS, Berkeley is far below its Regional Housing Needs Allocation goals for affordable housing, having built 0% of our Extremely Low Income housing, 65% of our Very Low Income housing, 15% of our Low Income Housing, and 0% of our Moderate Income housing needs at roughly 50% through the timeframe examined; and

WHEREAS, AB 2502 grants cities and municipalities the authority to require onsite affordable units; and

WHEREAS, projects in Qualified Opportunity Zones have the financial wherewithal to build onsite affordable units and they are located in lower-income areas with the greatest need for affordable housing; and

WHEREAS, Berkeley Municipal Code 22.20.065.E gives City Council the authority to vary the in-lieu unit options for rental housing by area of the City;

NOW, THEREFORE BE IT RESOLVED that rental housing projects of 10 units or more in Qualified Tracts shall designate 20% of their units as onsite affordable units pursuant to Berkeley Municipal Code 22.20.065.C.2.

Table 2 - Approved projects with more than 5 units: No Active Building Permit.															
#	Street Name	Zoning	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Applied For?	Subtotals		
2009	Addison	C-DMU					0	44	44	2018/2019	ZAB	No	Units in Approved projects, no BP yet applied for: 1,289		
2902	Adeline	C-SA & R-4		4	4	1	9	41	50	2017	Council				
3051	Adeline	C-SA		0	0	0	0	11	11	2016	ZAB				
2028	Bancroft	C-DMU		2			2	35	37	2019	ZAB				
2012	Berkeley Way	C-DMU	53	54	17		124	1	125	2018	SB35				
2211	Harold	C-DMU		0	0	0	0	302	302	2015	Council				
1601	Oxford	R-3		13	21	0	34	3	37	2018	SB35				
1200	San Pablo	C-W		5			5	52	57	2018	ZAB				
1201	San Pablo	C-W		0	0	5	5	22	27	2006	Council				
1740	San Pablo	C-W		4			4	48	52	2018	ZAB				
2100	San Pablo	C-W		0	0	0	0	96	96	2017/2019	ZAB				
2198	San Pablo	C-W		5			5	52	57	2019	ZAB				
2720	San Pablo	C-W		0	3	0	3	15	18	2007	ZAB				
2190	Shattuck	C-DMU		0	0	0	0	274	274	2019	Council				
2701	Shattuck	C-SA		0	0	4	4	20	24	2007	Council				
3000	Shattuck	C-SA		2	2	0	4	19	23	2018	Council				
1040	University	C-W & R-3		27	0	0	27	0	27	2012	ZAB				
1717	University	C-1		3	0	0	3	25	28	2017	ZAB				
2072	Addison	C-DMU					0	55	55	2018/2019	ZAB			10/26/18	Units in Approved projects, BP applied for: 284
2542	Durant	C-T		0	0	0	0	32	32	2018	ZAB			4/4/19	
2527	San Pablo	C-W		6	5	0	11	57	68	2018	Council	8/17/18			
3020	San Pablo	C-W		2	2	0	4	25	29	2007	ZAB	2/11/15			
2628	Shattuck	C-SA					0	78	78	2019	ZAB	5/9/19			
2556	Telegraph	C-T					0	22	22	2018	ZAB	12/19/18			
Totals:			53	127	54	10	244	1,329	1,573						



Table 3 – Approved projects with more than 5 units: Building permit issued.

#	Street Name	Zoning	VL 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Est. Completion Date
1950	Addison	C-DMU	5	0	0	5	106	111	2016	ZAB	11/17/17	2019
2126	Bancroft	C-DMU	5	0	0	5	45	50	2016	ZAB	11/6/17	2019
2580	Bancroft	C-T	11			11	111	122	2018	ZAB	5/21/19	2020
2035	Blake	C-SA	4	0	0	4	78	82	2016	Council	8/10/17	2020
739	Channing	MU-R				0	10	10	2018	ZAB	6/12/18	Unknown
2510	Channing	C-T	3			3	37	40	2018	ZAB	4/5/18	2020
2631	Durant	R-SMU	0	0	0	0	56	56	2016	Council	12/1/17	2020
1500	San Pablo	C-W & R-1A	16	0	0	16	154	170	2016	Council	12/21/17	2020
2747	San Pablo	C-W	3	3	0	6	33	39	2007	ZAB	8/18/17	2020
2748	San Pablo	C-W	23	0	0	23	0	23	2014	ZAB	5/17/18	2019
2539	Telegraph	C-T	6	0	0	6	64	70	2016	ZAB	10/20/17	2019
2597	Telegraph	C-T & R-2	1	0	0	1	9	10	2017	Council	8/9/18	2020
1698	University	C-1	3	0	0	3	33	36	2014	ZAB	10/19/18	2020
2067	University	C-DMU	4	0	0	4	46	50	2016	ZAB	10/10/18	2020
2111	University	C-DMU	6	0	0	6	62	68	2013	ZAB	6/27/18	2020
2131	University	C-DMU	2	0	0	2	19	21	2013	ZAB	6/27/18	2020
2145	University	C-DMU	3	0	0	3	33	36	2013	ZAB	6/27/18	2020
1900	Walnut	C-DMU	7	0	0	7	73	80	2013	ZAB	6/27/18	2020
Totals:			102	3	0	105	969	1,074				




Table 4 – Approved projects with more than 5 units: Building Permit Issued after 2014 and now occupied.												
#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Complete Date
1935	Addison	C-DMU	0	0	0	0	69	69	2013	Council	10/17/14	5/26/17
2002	Addison	C-DMU	0	0	0	0	6	6	2016	ZAB	2/1/18	8/28/18
2024	Durant	C-DMU	0	0	0	0	78	78	2013	Council	7/8/14	12/7/15
2526	Durant	C-T	0	0	0	0	44	44	2014	ZAB	2/18/14	6/30/17
2532	Durant	C-T	0	0	0	0	7	7	2016	ZAB	6/23/17	1/30/19
2107	Dwight	C-DMU	9	0	0	9	90	99	2012	ZAB	12/1/17	3/24/17
2201	Dwight	R-S	7	0	0	7	70	77	2013	ZAB	6/3/15	11/17/16
2227	Dwight	R-3	0	0	0	0	6	6	2013	Council	9/7/15	5/25/18
2001	Fourth	C-W	12	0	0	12	140	152	2014	ZAB	4/1/16	7/31/18
2441	Haste	C-T	0	0	0	0	42	42	2013	ZAB	5/7/14	6/27/16
3132	MLK	C-SA	0	41	0	41	1	42	2007	ZAB	11/20/15	12/7/17
3015	San Pablo	C-W	8	7	0	15	83	98	2007	Council	3/19/14	2/16/16
2598	Shattuck	C-SA & R-2A	4	3	0	7	25	32	2014	Council	5/1/15	5/31/17
2600	Shattuck	C-SA & R-2A	12	12	0	24	99	123	2014	Council	1/1/14	3/17/17
2711	Shattuck	C-SA	0	0	0	0	18	18	2016	ZAB	9/6/17	9/1/18
800	University	C-W	4	0	0	4	54	58	2013	ZAB	7/15/14	12/2/15
824	University	C-W	4	0	0	4	44	48	2015	ZAB	8/20/15	2/6/18
1812	University	C-1	4	0	0	4	40	44	2014	ZAB	6/25/15	3/7/17
1974	University	C-DMU	8	0	0	8	90	98	2014	ZAB	9/29/15	10/3/17
Totals:			72	63	0	135	1,006	1,141				

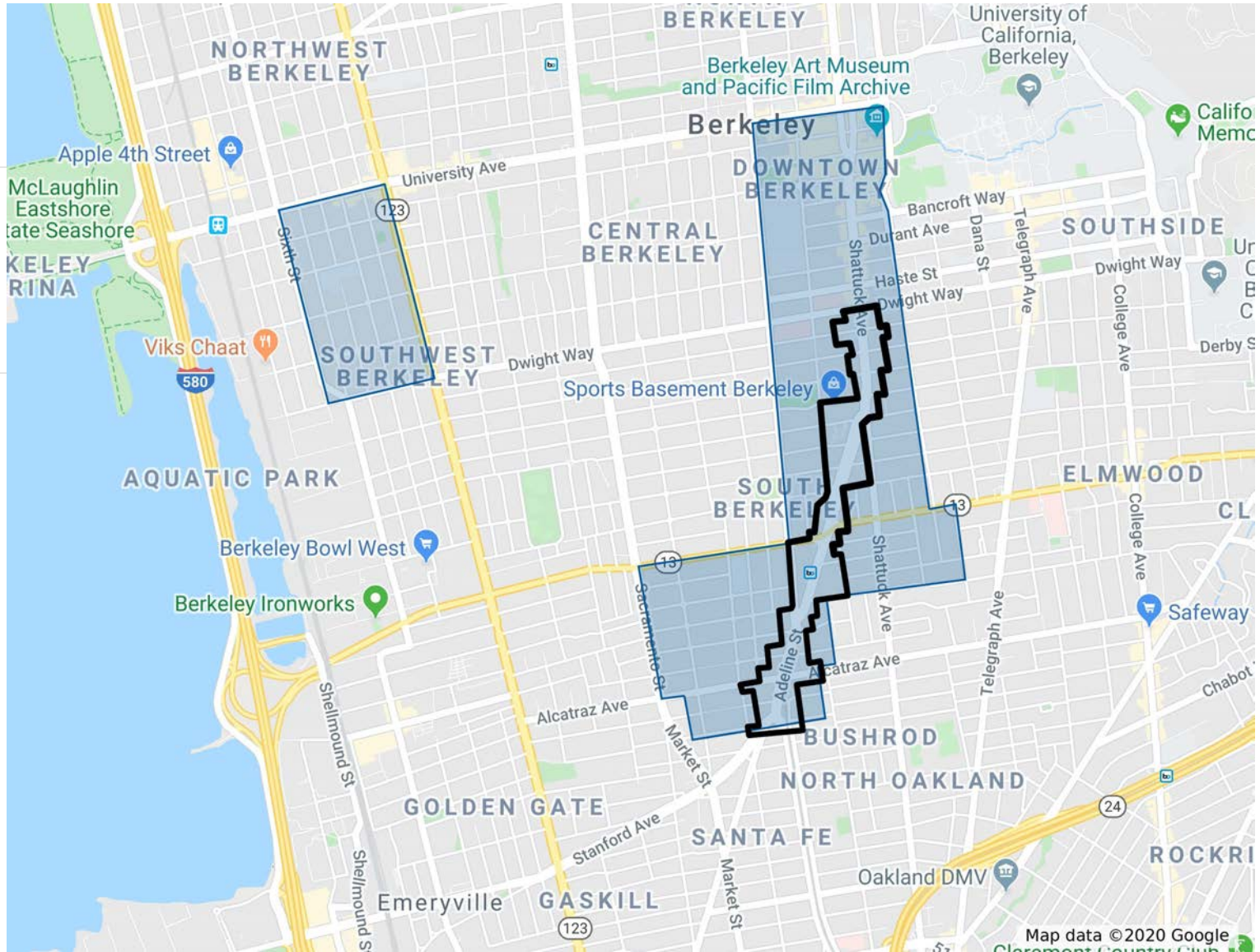
Adeline Corridor vs QOZ

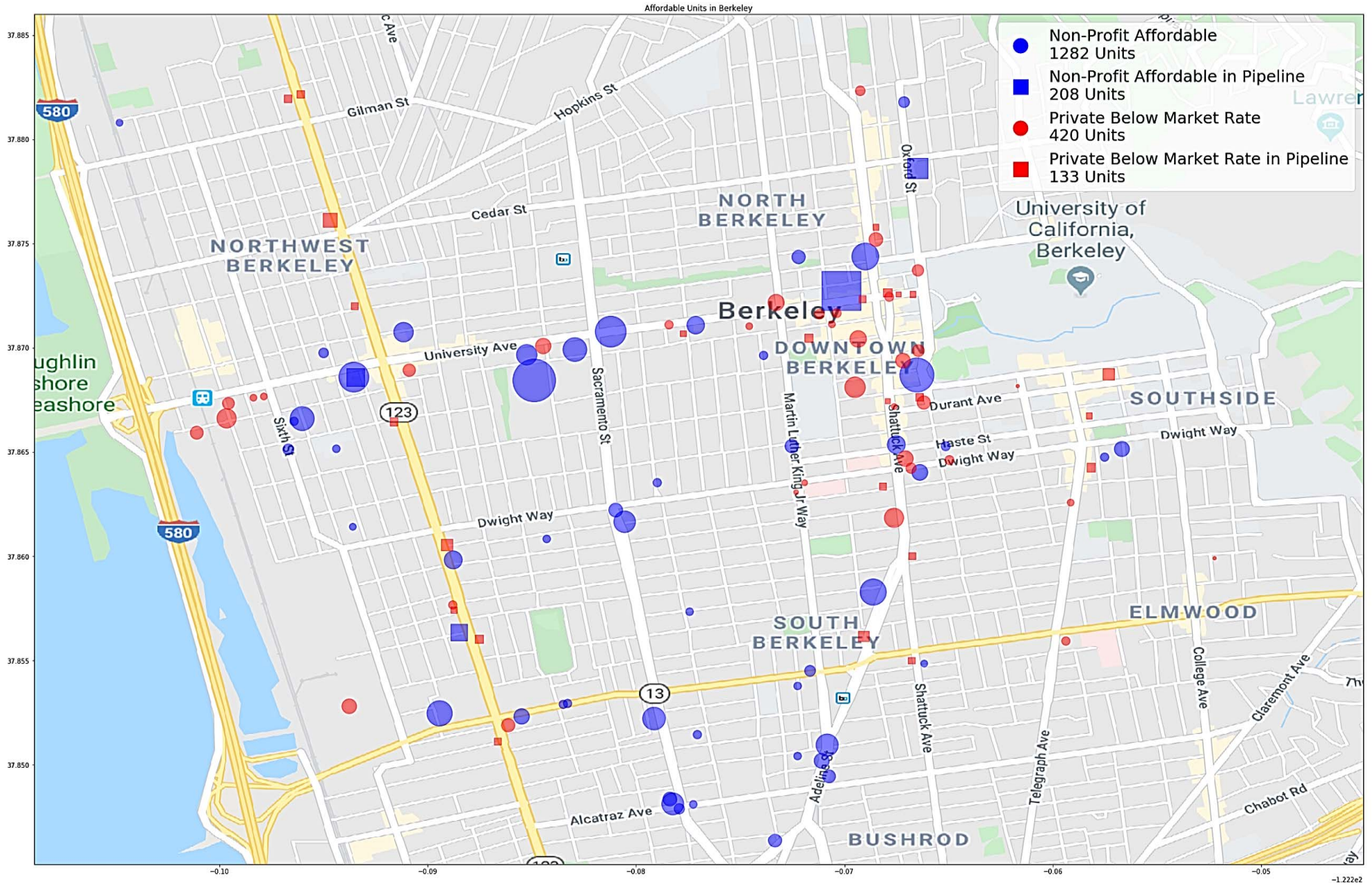
QOZs

-  Polygon 1
-  Polygon 2

Adeline Corridor

-  Line 2
-  Line 3
-  Line 4







Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 29, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Kate Harrison, Bartlett, Davila, and Hahn
Subject: Inclusionary Units in Qualified Opportunity Zones

RECOMMENDATION

1. Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in owner-occupied developments in Qualified Opportunity Zones (QOZs)
2. Adopt a resolution establishing a similar practice for rental housing projects.
- ~~4-3.~~ Refer to the Adeline Corridor Subcommittee of the Planning Commission to consider how incorporate such a requirement ~~would affect into~~ the Adeline Corridor Plan.

BACKGROUND

Qualified Opportunity Zones are urban areas associated with the 2017 Trump tax cuts.¹ The stated goal of QOZs is to incentivize investment in under-resourced urban areas by delaying capital gains taxes and circumventing altogether federal taxes on profits made in QOZs.² Ten years after an initial investment into a QOZ, the investor can sell the real estate and not owe any taxes on the profits. Investments in Qualified Opportunity Zones can increase an investor's returns by 70%, according to the Congressional Research Service.³ Though touted as a way to invest in under-resourced communities, many of the QOZs are in rapidly growing areas, with 75% of the tracts experiencing significant economic growth between 2001 and 2015⁴ and 64% of tracts seeing a significant increase in new businesses during the same period.⁵ Also, in the Bay Area, QOZs are often in gentrifying areas, reflecting a national pattern: almost 70% of all neighborhoods

¹ <https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>

² *Ibid.*

³ https://www.novoco.com/sites/default/files/atoms/files/crs_tax_incentives_for_ozs_112018.pdf

⁴ <https://www.opportunityzonelaw.com/single-post/2018/07/03/Five-Keys-from-the-Novogradac-2018-Opportunity-Zones-Workshop>

⁵ *Ibid.*

in America that gentrified between 2000 and 2017 either are in a Qualified Opportunity Zone or are adjacent to one.⁶

Five census tracts in Berkeley have been designated as Qualified Opportunity Zones, including Downtown, the Adeline Corridor and South Shattuck, South Berkeley between Sacramento and Shattuck, and part of West Berkeley between University and Dwight, San Pablo and 5th Street.⁷ The five census tracts⁸ in Berkeley are almost all low-income and predominantly Black communities and communities of color. They are as follows:

Berkeley Opportunity Zone Demographics

Tract Number	Bordering Streets	Poverty Rate	Average Income
4232	West Berkeley between University and Dwight; San Pablo and 5 th St	19.2%	\$81,453
4229	Downtown Berkeley between University and Dwight; Oxford and MLK	47.3%	\$52,250
4235	South Berkeley between Dwight and Ashby; Fulton and MLK	20.9%	\$62,386
4239.01	Southern end of Adeline Corridor	13.9% ⁹	\$90,882
4240.01	Southern Berkeley between Ashby and City Limits; Sacramento and Adeline	18.1%	\$60,809

Inclusionary Housing in Berkeley

The Berkeley Housing Trust Fund (HFT) was established in 1990 to pool money from a variety of sources (including developer in-lieu fees) into a single pot for the purpose of constructing affordable housing.¹⁰ From 2009¹¹ to 2017, localities were required by state law to offer project applicants the option of either building affordable units onsite or paying

⁶ <https://ncrc.org/oz/>

⁷ <https://opzones.ca.gov/oz-map/>

⁸ <https://www.arcgis.com/home/item.html?id=92e085b0953348a2857d3d3dac930337#visualize>

⁹ Please note that this poverty rate is too low to be considered a “low income census tract.”

¹⁰ <https://www.cityofberkeley.info/ContentDisplay.aspx?id=6532>

¹¹ http://www.reubenlaw.com/palmer_case_shakes_up_inclusionary_housing_rules_for_rental_projects/

the in-lieu fee. Thus, pursuant to BMC 23C.12, all owner-occupied new projects in Berkeley with five or more units are currently required to *either* set aside 20% of their units as affordable, pay an in-lieu fee to the HFT, or some combination of both. [BMC 22.20 has similar provisions for rental housing.](#)

[This ordinance will apply only to developments with 10 or more units, which would have two or more affordable units. Managing a single affordable unit in a project is an administrative burden to City administration, and thus small projects will not be required to build the onsite unit. Small projects will still have the option to either include onsite affordable housing or pay the in-lieu fee.](#)

AB 2502 (known as the “Palmer Fix”) passed in 2017 and gives jurisdictions the authority to require onsite units instead of giving developers the option to pay an in-lieu fee. The decision to charge in-lieu fees, require inclusionary units, or leave the decision to developers is now set according to prevailing market forces and the desires of local policymakers.¹² [The California Supreme Court has upheld requiring affordable units as an extension of a municipality’s police powers](#)¹³ Berkeley traditionally incentivized paying in-lieu fees, because the HTF was under-resourced and other funding sources were not available. This approach allowed construction of entirely affordable buildings by non-profits but had several drawbacks:

- Constructing affordable housing projects using in-lieu fees requires capital to be accrued over many years and results in delays in production that market-rate developers may not face.
- Building affordable units in primarily market-rate developments promotes integration of housing throughout the City.
- The state density bonus requires projects to set aside 10% of units for very low income households (at 30-50% the area median income), but there are not comparable state incentives for units affordable to low income households (earning from 50%-80% of area median income). Thus, the majority of project applicants who invoke the state density bonus build 10% of their units to be affordable to very low income households and then pay the in-lieu fee for the remaining local obligation, which would otherwise be required to be built for low-income households. According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline, 24 elected to utilize the density bonus and pay fees in lieu of the other 10% of affordable units and an additional 21 did not take advantage of the state density bonus and paid in-lieu fees for all or substantial proportion of the requirement. In contrast, 11 projects provided all 20% affordable units onsite. Thus, 80% (24 plus 21 out of 56) paid fees in lieu of some of the required units. Of the 23 projects listed that are now in a Qualified Opportunity Zone, 11 had no onsite affordable units, and seven took advantage of the state density bonus (see attachment 2).

¹² <http://inclusionaryhousing.org/designing-a-policy/off-site-development/in-lieu-fees/>

¹³ <https://harvardlawreview.org/2016/03/california-building-industry-assn-v-city-of-san-jose/>

- As a result of these mismatched incentives, Berkeley has achieved only 15% of its low income housing target¹⁴ and 65% of the target set for very low income housing.¹⁵
- Since the passage of Measure O, much more funding for non-profit built affordable housing is available. It is critical, given the displacement occurring in Berkeley, to consider requiring some on-site units instead of providing the option of in-lieu fees.

Qualified Opportunity Zones are an ideal place to begin to require inclusionary on-site units. QOZs are intended to revitalize low-income communities, and requiring units affordable to lower-income households in these zones will prevent low-income individuals from being priced out of their own communities. Developers are given significant financial benefits under Opportunity Zones, and thus can include on-site units and still realize a profit.

FINANCIAL IMPLICATIONS

Will reduce contributions to the Affordable Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

The Qualified Opportunity Zones in Berkeley are along major transit corridors (Shattuck, Adeline, and San Pablo). Last year, Berkeley researchers concluded that infill housing along transit corridors is one of the most impactful policies municipalities can adopt to combat climate change.¹⁶

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

1: [Ordinance Berkeley Municipal Code 23C.12.035](#)

2: [Resolution](#)

3: 2019 Housing Pipeline Report, highlighted with projects that are in Qualified Opportunity Zones as currently defined.

¹⁴ <https://abag.ca.gov/our-work/housing/rhna-regional-housing-need-allocation>

¹⁵ We see in the 2019 Housing Pipeline Report that Berkeley has achieved 65% of its Very Low Income housing goals, 15% of its Low Income housing goals, and 0% of both Extremely Low and Moderate Income goals.

¹⁶ <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

AMENDING CHAPTER 23C.12.035 OF THE BERKELEY MUNICIPAL CODE TO
REQUIRE ON-SITE INCLUSIONARY HOUSING UNITS IN QUALIFIED
OPPORTUNITY ZONES

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

Section 1. That Berkeley Municipal Code Section 23C.12.035 is hereby amended to read as follows:

23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

A.

1. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.

2. [The contents of Section 23C.12.035 are not applicable to residential housing projects of greater than 10 units in Qualified Opportunity Zones.](#)

B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

C. Amount of Fee.

1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.

3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.

4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.

D. Calculation of Inclusionary Sales Price.

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.

2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23C.12.090.

E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.

F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold. (Ord. 6946-NS § 1, 2006)

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 the Maudelle Shirek Building, 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.

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

RESOLUTION REQUIRING INCLUSIONARY AFFORDABLE UNITS IN QUALIFIED OPPORTUNITY ZONES

WHEREAS, the 2017 Tax Cuts and Jobs Act created Qualified Opportunity Zones, a tax break that is projected to increase return on investment by 70%; and

WHEREAS, five census tracts in Berkeley: 4243, 4229, 4235, 4289.01, and 4240.01, hereafter referred to as Qualified Tracts, are designated as Qualified Opportunity Zones; and

WHEREAS, these Qualified Tracts are in rapidly gentrifying areas suffering from insufficient affordable housing; and

WHEREAS, Berkeley is far below its Regional Housing Needs Allocation goals for affordable housing, having built 0% of our Extremely Low Income housing, 65% of our Very Low Income housing, 15% of our Low Income Housing, and 0% of our Moderate Income housing needs at roughly 50% through the timeframe examined; and

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From: Councilmembers Kate Harrison, Sophie Hahn, Cheryl Davila,
and Ben Bartlett
Subject: Inclusionary Units in Qualified Opportunity Zones

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in developments in Qualified Opportunity Zones (QOZs). Refer to the Adeline Corridor Subcommittee of the Planning Commission to consider how such a requirement would affect the Adeline Corridor Plan.

BACKGROUND

Qualified Opportunity Zones are urban areas associated with the 2017 Trump tax cuts.¹ The stated goal of QOZs is to incentivize investment in under-resourced urban areas by delaying capital gains taxes and circumventing altogether federal taxes on profits made in QOZs.² Ten years after an initial investment into a QOZ, the investor can sell the real estate and not owe any taxes on the profits. Investments in Qualified Opportunity Zones can increase an investor's returns by 70%, according to the Congressional Research Service.³ Though touted as a way to invest in under-resourced communities, many of the QOZs are in rapidly growing areas, with 75% of the tracts experiencing significant economic growth between 2001 and 2015⁴ and 64% of tracts seeing a significant increase in new businesses during the same period.⁵ Also, in the Bay Area, QOZs are often in gentrifying areas, reflecting a national pattern: almost 70% of all neighborhoods in

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the in-lieu fee. Thus, pursuant to BMC 23C.12, all new projects in Berkeley with five or more units are currently required to *either* set aside 20% of their units as affordable, pay an in-lieu fee to the HFT, or some combination of both.

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- Constructing affordable housing projects using in-lieu fees requires capital to be accrued over many years and results in delays in production that market-rate developers may not face.
- Building affordable units in primarily market-rate developments promotes integration of housing throughout the City.
- The state density bonus requires projects to set aside 10% of units for very low income households (at 30-50% the area median income), but there are not comparable state incentives for units affordable to low income households (earning from 50%-80% of area median income). Thus, the majority of project applicants who invoke the state density bonus build 10% of their units to be affordable to very low income households and then pay the in-lieu fee for the remaining local obligation, which would otherwise be required to be built for low-income households. According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline, 24 elected to utilize the density bonus and pay fees in lieu of the other 10% of affordable units and an additional 21 did not take advantage of the state density bonus and paid in-lieu fees for all or substantial proportion of the requirement. In contrast, 11 projects provided all 20% affordable units onsite. Thus, 80% (24 plus 21 out of 56) paid fees in lieu of some of the required units. Of the 23 projects listed that are now in a Qualified Opportunity Zone, 11 had no onsite affordable units, and seven took advantage of the state density bonus (see attachment 2).
- As a result of these mismatched incentives, Berkeley has achieved only 15% of its low income housing target¹³ and 65% of the target set for very low income housing.¹⁴

¹² <http://inclusionaryhousing.org/designing-a-policy/off-site-development/in-lieu-fees/>

¹³ <https://abag.ca.gov/our-work/housing/rhna-regional-housing-need-allocation>

¹⁴ We see in the 2019 Housing Pipeline Report that Berkeley has achieved 65% of its Very Low Income housing goals, 15% of its Low Income housing goals, and 0% of both Extremely Low and Moderate Income goals.

- Since the passage of Measure O, much more funding for non-profit built affordable housing is available. It is critical, given the displacement occurring in Berkeley, to consider requiring some on-site units instead of providing the option of in-lieu fees.

Qualified Opportunity Zones are an ideal place to begin to require inclusionary on-site units. QOZs are intended to revitalize low-income communities, and requiring units affordable to lower-income households in these zones will prevent low-income individuals from being priced out of their own communities. Developers are given significant financial benefits under Opportunity Zones, and thus can include on-site units and still realize a profit.

FINANCIAL IMPLICATIONS

Will reduce contributions to the Affordable Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

The Qualified Opportunity Zones in Berkeley are along major transit corridors (Shattuck, Adeline, and San Pablo). Last year, Berkeley researchers concluded that infill housing along transit corridors is one of the most impactful policies municipalities can adopt to combat climate change.¹⁵

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

- 1: Ordinance
- 2: 2019 Housing Pipeline Report, highlighted with projects that are in Qualified Opportunity Zones as currently defined.

¹⁵ <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

AMENDING CHAPTER 23C.12.035 OF THE BERKELEY MUNICIPAL CODE TO
REQUIRE ON-SITE INCLUSIONARY HOUSING UNITS IN QUALIFIED
OPPORTUNITY ZONES

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

Section 1. That Berkeley Municipal Code Section 23C.12.035 is hereby amended to read as follows:

23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

A.

1. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.

2. The contents of Section 23C.12.035 are not applicable to residential housing projects in Qualified Opportunity Zones

B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

C. Amount of Fee.

1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.

3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.

4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.

D. Calculation of Inclusionary Sales Price.

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.

2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23C.12.090.

E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.

F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold. (Ord. 6946-NS § 1, 2006)

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 the Maudelle Shirek Building, 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.

Table 2 - Approved projects with more than 5 units: No Active Building Permit.															
#	Street Name	Zoning	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Applied For?	Subtotals		
2009	Addison	C-DMU					0	44	44	2018/2019	ZAB	No	Units in Approved projects, no BP yet applied for: 1,289		
2902	Adeline	C-SA & R-4		4	4	1	9	41	50	2017	Council				
3051	Adeline	C-SA		0	0	0	0	11	11	2016	ZAB				
2028	Bancroft	C-DMU		2			2	35	37	2019	ZAB				
2012	Berkeley Way	C-DMU	53	54	17		124	1	125	2018	SB35				
2211	Harold	C-DMU		0	0	0	0	302	302	2015	Council				
1601	Oxford	R-3		13	21	0	34	3	37	2018	SB35				
1200	San Pablo	C-W		5			5	52	57	2018	ZAB				
1201	San Pablo	C-W		0	0	5	5	22	27	2006	Council				
1740	San Pablo	C-W		4			4	48	52	2018	ZAB				
2100	San Pablo	C-W		0	0	0	0	96	96	2017/2019	ZAB				
2198	San Pablo	C-W		5			5	52	57	2019	ZAB				
2720	San Pablo	C-W		0	3	0	3	15	18	2007	ZAB				
2190	Shattuck	C-DMU		0	0	0	0	274	274	2019	Council				
2701	Shattuck	C-SA		0	0	4	4	20	24	2007	Council				
3000	Shattuck	C-SA		2	2	0	4	19	23	2018	Council				
1040	University	C-W & R-3		27	0	0	27	0	27	2012	ZAB				
1717	University	C-1		3	0	0	3	25	28	2017	ZAB				
2072	Addison	C-DMU					0	55	55	2018/2019	ZAB			10/26/18	Units in Approved projects, BP applied for: 284
2542	Durant	C-T		0	0	0	0	32	32	2018	ZAB			4/4/19	
2527	San Pablo	C-W		6	5	0	11	57	68	2018	Council	8/17/18			
3020	San Pablo	C-W		2	2	0	4	25	29	2007	ZAB	2/11/15			
2628	Shattuck	C-SA					0	78	78	2019	ZAB	5/9/19			
2556	Telegraph	C-T					0	22	22	2018	ZAB	12/19/18			
Totals:			53	127	54	10	244	1,329	1,573						

Table 3 – Approved projects with more than 5 units: Building permit issued.

#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Est. Completion Date
1950	Addison	C-DMU	5	0	0	5	106	111	2016	ZAB	11/17/17	2019
2126	Bancroft	C-DMU	5	0	0	5	45	50	2016	ZAB	11/6/17	2019
2580	Bancroft	C-T	11			11	111	122	2018	ZAB	5/21/19	2020
2035	Blake	C-SA	4	0	0	4	78	82	2016	Council	8/10/17	2020
739	Channing	MU-R				0	10	10	2018	ZAB	6/12/18	Unknown
2510	Channing	C-T	3			3	37	40	2018	ZAB	4/5/18	2020
2631	Durant	R-SMU	0	0	0	0	56	56	2016	Council	12/1/17	2020
1500	San Pablo	C-W & R-1A	16	0	0	16	154	170	2016	Council	12/21/17	2020
2747	San Pablo	C-W	3	3	0	6	33	39	2007	ZAB	8/18/17	2020
2748	San Pablo	C-W	23	0	0	23	0	23	2014	ZAB	5/17/18	2019
2539	Telegraph	C-T	6	0	0	6	64	70	2016	ZAB	10/20/17	2019
2597	Telegraph	C-T & R-2	1	0	0	1	9	10	2017	Council	8/9/18	2020
1698	University	C-1	3	0	0	3	33	36	2014	ZAB	10/19/18	2020
2067	University	C-DMU	4	0	0	4	46	50	2016	ZAB	10/10/18	2020
2111	University	C-DMU	6	0	0	6	62	68	2013	ZAB	6/27/18	2020
2131	University	C-DMU	2	0	0	2	19	21	2013	ZAB	6/27/18	2020
2145	University	C-DMU	3	0	0	3	33	36	2013	ZAB	6/27/18	2020
1900	Walnut	C-DMU	7	0	0	7	73	80	2013	ZAB	6/27/18	2020
Totals:			102	3	0	105	969	1,074				

Table 4 – Approved projects with more than 5 units: Building Permit Issued after 2014 and now occupied.												
#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Complete Date
1935	Addison	C-DMU	0	0	0	0	69	69	2013	Council	10/17/14	5/26/17
2002	Addison	C-DMU	0	0	0	0	6	6	2016	ZAB	2/1/18	8/28/18
2024	Durant	C-DMU	0	0	0	0	78	78	2013	Council	7/8/14	12/7/15
2526	Durant	C-T	0	0	0	0	44	44	2014	ZAB	2/18/14	6/30/17
2532	Durant	C-T	0	0	0	0	7	7	2016	ZAB	6/23/17	1/30/19
2107	Dwight	C-DMU	9	0	0	9	90	99	2012	ZAB	12/1/17	3/24/17
2201	Dwight	R-S	7	0	0	7	70	77	2013	ZAB	6/3/15	11/17/16
2227	Dwight	R-3	0	0	0	0	6	6	2013	Council	9/7/15	5/25/18
2001	Fourth	C-W	12	0	0	12	140	152	2014	ZAB	4/1/16	7/31/18
2441	Haste	C-T	0	0	0	0	42	42	2013	ZAB	5/7/14	6/27/16
3132	MLK	C-SA	0	41	0	41	1	42	2007	ZAB	11/20/15	12/7/17
3015	San Pablo	C-W	8	7	0	15	83	98	2007	Council	3/19/14	2/16/16
2598	Shattuck	C-SA & R-2A	4	3	0	7	25	32	2014	Council	5/1/15	5/31/17
2600	Shattuck	C-SA & R-2A	12	12	0	24	99	123	2014	Council	1/1/14	3/17/17
2711	Shattuck	C-SA	0	0	0	0	18	18	2016	ZAB	9/6/17	9/1/18
800	University	C-W	4	0	0	4	54	58	2013	ZAB	7/15/14	12/2/15
824	University	C-W	4	0	0	4	44	48	2015	ZAB	8/20/15	2/6/18
1812	University	C-1	4	0	0	4	40	44	2014	ZAB	6/25/15	3/7/17
1974	University	C-DMU	8	0	0	8	90	98	2014	ZAB	9/29/15	10/3/17
Totals:			72	63	0	135	1,006	1,141				

Bunting, Sarah K.

From: Slaughter, Kieron
Sent: Thursday, February 6, 2020 12:38 PM
To: Berkeley City Council Policy Committee
Cc: Hollander, Eleanor
Subject: Small Business Listening Session Dates

We've identified the following dates to participate in the Land Use Policy Committee's Small Business Listening Sessions.

Q2 (late Q1): 4/16

Q2: 6/4

Q4 (late Q3): 10/1

Q4: 12/3

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[Apply for a Berkeley Small Business Loan Here!](#)

