

Housing Advisory Commission

HOUSING ADVISORY COMMISSION

Regular Meeting
Thursday, September 1, 2016

Time: 7:00 p.m.

South Berkeley Senior Center
2939 Ellis Street – Berkeley
Secretary Amy Davidson, (510) 981-5406

AGENDA

All agenda items are for Discussion and Possible Action.

Public Comment Policy: Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comments to 3 minutes or less.

PRELIMINARY MATTERS

1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the July 7, 2016 Draft Meeting Minutes (*Attachment 1*)

UPDATES / ACTION ITEMS

5. **Density Bonus Calculation** – *Carol Johnson, Director, Planning (Attachment 2)*
6. **Training on Conflicts of Interest for Commissioners**– *City Attorney's Office*
7. **Potential Changes to Request for Proposals Process for Community Development Block Grant-Funded Community Facility Improvements** – *Kristen Lee, HHCS (Attachment 3)*
8. **Appoint 2-3 Commissioners to participate in a public hearing on community needs** – (*meeting will be 10/19 at 6:00 pm, SBSC*)
9. **Review Substantial Amendment to the City of Berkeley's PY2015 (FY2016) Annual Action Plan to Add \$500,000 in Community Development Block Grant (CDBG) Funding for Public Facility Improvements to the South Berkeley Senior Center** – *Kristen Lee and Leah Talley, HHCS (Attachment 4)*
10. **Appoint 3 Commissioners to a capital improvements subcommittee**
11. **Accessory Buildings as Short Term Rentals** – *Referral from Planning Commission (Attachment 5)*
12. **Consolidated Annual Performance Report (CAPER) for HUD** – (*Attachment 6*)
13. **Community Health Commission's Recommendation on African American Holistic Resource Center in South Berkeley** (*Attachment 7*)
14. **Subcommittee Reports**
 - a. **Moderate Income Housing Strategies** – *Marian Wolfe*

b. Low Income Housing Strategies – Tor Berg

15. Update on Council Items – All/Staff

- a. Acton Courtyard – September 13
- b. Housing Trust Fund, Berkeley Way, CDHO operating – September 27

16. Future Items – all items and dates are tentative

- a. Smoke-free housing ordinance evaluation – October
- b. Moderate income housing subcommittee report - October
- c. Single point of entry for below market rate units and City enforcement

17. Announcements / Information Items

- a. New edition of League of Cities' guide to the Brown Act, Open & Public:
<http://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>
- b. Articles from Commissioner Aguilar-Canabal:
https://www.washingtonpost.com/news/in-theory/wp/2016/03/03/how-parking-requirements-hurt-the-poor/?utm_term=.8d4fa5dd8eab
<https://www.washingtonpost.com/news/wonk/wp/2016/01/15/the-problem-with-parking/>
- c. Proposed allocation plan for the National Housing Trust Fund in California
(Attachment 8)

18. Adjourn

ATTACHMENTS

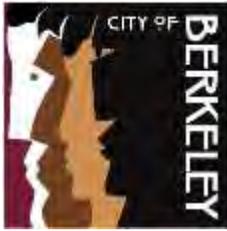
- 1. Draft July 7, 2016 Meeting Minutes
- 2. Density Bonus: Carol Johnson 4/14/2016 memo & 9/15/2014 Procedures
- 3. Proposed Changes to the CDBG Community Facility Improvement RFP Process
- 4. Substantial Amendment to the City of Berkeley's PY2016 (FY2017) Annual Action Plan to Add \$500,000 in Community Development Block Grant (CDBG) Funding for Public Facility Improvements to the South Berkeley Senior Center
- 5. Planning Commission Staff Report, Accessory Buildings as Short Term Rentals
- 6. City of Berkeley's Draft Consolidated Annual Performance and Evaluation Report for Federal Program Year 2015 (July 2015 through June 2016)
- 7. African American Holistic Resource Center in South Berkeley
- 8. California Housing & Community Development, Proposed Housing Trust Fund Allocation Plan

Written material may be viewed in advance of the meeting at HHCS, 2180 Milvia Street, 2nd Floor, during working hours.

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 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.





HOUSING ADVISORY COMMISSION
Regular Meeting
Thursday, July 7, 2016

Housing Advisory Commission

Time: 7:18 p.m.

South Berkeley Senior Center
2939 Ellis Street – Berkeley
Secretary – Amy Davidson, (510) 981-5406

DRAFT MINUTES

PRELIMINARY MATTERS

1. Roll Call

Present: Heidi Abramson, Diego Aguilar-Canabal, Brendan Darrow (7:49), Jill Martinucci, Alejandro Soto-Vigil (7:36pm), Igor Tregub, and Marian Wolfe (left at 9:06).

Absent: Tor Berg, Kathleen Crandall (excused)

Commissioners in attendance: 7 of 9

Staff Present: Amy Davidson, Anjanette Scott, and Paul Buddenhagen

Members of the public in attendance: 6

Public Speakers: 2

2. Agenda Approval

Action: M/S/C (Abramson/Martinucci) to approve agenda

Vote: Ayes: Abramson, Aguilar-Canabal, Martinucci, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Soto-Vigil (came at 7:36, after vote), Darrow (came at 7:49 after vote), Crandall (excused), Berg.

3. Public Comment

Public speakers: 1

4. Approval of June 2, 2016 Minutes

Action: M/S/C (Wolfe/Aguilar-Canabal) to approve minutes.

Vote: Ayes: Abramson, Aguilar-Canabal, Martinucci, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Berg, Crandall (excused), Darrow (came at 7:49, after vote), and Soto-Vigil (came at 7:36, after vote).

UPDATES / ACTION ITEMS

5. Berkeley Way Project Proposal

Public Speakers: 1

Commissioner Wolfe disclosed her membership on the Resources for Community Development Board and recused herself.

Action: M/S/C (Tregub/Aguilar-Canabal) to support the project in concept, as presented. The HAC would like this project to be a high priority for the City. The HAC believes one level of public parking is sufficient replacement parking.

Vote: Ayes: Abramson, Aguilar-Canabal, Darrow, Martinucci, Soto-Vigil, and Tregub. Noes: None. Abstain: None. Absent: Crandall (excused), Berg. Recused: Wolfe.

6. Community Housing Development Organization (CHDO) Operating Support for Resources for Community Development (RCD) and Satellite Affordable Housing Associates (SAHA)

Commissioner Wolfe disclosed her membership on the Resources for Community Development Board and recused herself.

Action: M/S/C (Darrow/Abramson) Approve staff's recommendation to provide \$28,115 of CHDO operating support to RCD and SAHA.

Vote: Ayes: Abramson, Aguilar-Canabal, Darrow, Martinucci, Soto-Vigil, and Tregub. Noes: None. Abstain: None. Absent: Crandall (excused), Berg. Recused: Wolfe.

7. Housing Trust Fund Predevelopment Loan Recommendations

Commissioner Wolfe disclosed her membership on the Resources for Community Development Board and recused herself.

Action: M/S/C (Abramson/Martinucci) Approve staff's recommendation to provide \$25,000 of predevelopment funding for SAHA's Oxford Street Apartments.

Vote: Ayes: Abramson, Aguilar-Canabal, Darrow, Martinucci, Soto-Vigil, and Tregub. Noes: None. Abstain: None. Absent: Crandall (excused), Berg. Recused: Wolfe.

Action: M/S/C (Soto-Vigil/Martinucci) Approve staff's recommendation to provide \$835,897 of predevelopment funding for BRIDGE's Berkeley Way project.

Vote: Ayes: Abramson, Aguilar-Canabal, Darrow, Martinucci, Soto-Vigil, and Tregub. Noes: None. Abstain: None. Absent: Crandall (excused), Berg. Recused: Wolfe.

8. Results of City Council Referral Prioritization Process

9. Change in Berkeley Policy Interpretation: Use Permits, Density Bonus, and Affordable Housing Requirements

Tregub recommended that staff from the Planning Department or City Attorney's office attend a HAC meeting and explain the Density Bonus requirements and give a status update on the Local Implementation Ordinance.

10. Housing Approval Process

Action: M/SC (Martinucci/Aguilar-Canabal) Send correspondence to Council requesting an assessment of the process to approve Planning permits for remodeling accessory dwelling units. Next year, a formal recommendation will be sent to Council when it reanalyzes its priorities. The last sentence in the attachment will be struck prior to being sent to Council.

Vote: Ayes: Abramson, Aguilar-Canabal, Martinucci, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Soto-Vigil (came at 7:36, after vote), Darrow (came at 7:49 after vote), Crandall (excused), Berg.

11. Subcommittee Reports

- a. **Moderate Income Housing Strategies**
- b. **Low Income Housing Strategies**

12. California Housing and Community Development Department Director Ben Metcalf's Comments to Nonprofit Housing Association Members

13. Update on Council Items

14. Future Items – all items and dates are tentative

- a. **Added**: Waiving permit fees for BRIDGE Berkeley Way project.

15. Announcements

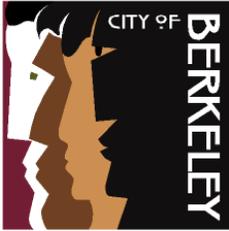
16. Adjourn

Action: M/S/C (Tregub/Aguilar-Canabal) to adjourn the meeting at 9:25 p.m.

Vote: Ayes: Abramson, Aguilar-Canabal, Darrow, Martinucci, Soto-Vigil, and Tregub. Noes: None. Abstain: None. Absent: Crandall, Berg, Wolfe (left at 9:06pm).

Approved on September 1, 2016

_____, Amy Davidson, Secretary



Planning and Development Department
Land Use Planning Division

MEMORANDUM

DATE: April 14, 2016
TO: Zoning Adjustments Board
FROM: Carol Johnson, AICP
Acting Planning Director
SUBJECT: Use Permits for Additional Height/Floor Area in Density Bonus Projects

ISSUE

The standard practice by staff in the Land Use Planning Division has been to advise applicants that if they elect to use the State Density Bonus on a project, they may not also apply for a Use Permit to add extra height to the project. Some applicants have argued that this is inconsistent with the Density Bonus law (Government Code section 65915).

DISCUSSION

Government Code section 65915(f) defines the term “density bonus” as:

...a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county....

Some applicants have argued that the term “the otherwise maximum allowable density” necessarily includes any and all density that is permissible with a Use Permit. Thus, they conclude that under the City’s density bonus process, the “base project” must include any additional height for which a Use Permit could be issued. While the language of Section 65915(f) appears to support this argument, it would equally support the argument that “the otherwise maximum allowable density” *also* includes any additional height or coverage that might be “allowable” with a variance – an unknowable and potentially very significant increase. This is not a reasonable interpretation of the language, and we believe it was not likely Legislature’s intent in adopting Section 65915(f).

A local density bonus ordinance (as required by state law) would give the City the opportunity to clarify some of this and other ambiguities in the law. However the City of Berkeley has not yet adopted a local ordinance for implementing the State Density Bonus law in its modern form.¹

The Density Bonus law is referenced in only two sections of the Zoning Ordinance: Section 23B.34.050.B (Requirements Applicable to All Green Pathway Projects), which requires that all rights under the State Density Bonus law be waived in order to participate in the Green Pathway program; and Section 23C.12.050 (State of California Density Bonus Requirements), which was first adopted in 1986 and has not been amended to conform to state law. Staff believes that a reasonable interpretation of Section 65915(f) is to allow applicants to apply for discretionary approvals otherwise provided for in the Zoning Ordinance in addition to a density bonus, but not to count such discretionary approvals as part of the base project for purposes of calculating the size of the density bonus. This interpretation gives effect to the language of Section 65915(f) by not trading off density bonuses against “other allowable density”, while at the same time at least partially satisfying the goals of the Zoning Ordinance. Use Permits for such discretionary height would still be evaluated on their own merits independent of the changes to the project that may result from the density bonus.

In order to demonstrate how projects should be evaluated when the application includes both the State Density Bonus and a Use Permit for extra height, the attached procedure was developed showing the potential outcomes in terms of number of units and height of the project. The example project is simplified and conceptual in nature; however, it helps to underscore the requirement that the Use Permit for extra height be evaluated independently from any changes to development standards that come out of the State Density Bonus process.

CONCLUSION

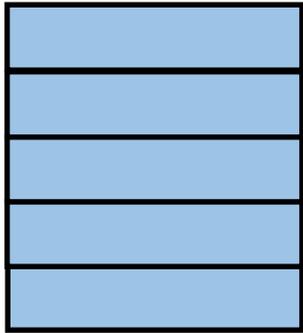
The City has no authority to arbitrarily refuse a Use Permit application for extra height in conjunction with a State Density Bonus project. Such Use Permits must be reviewed in accordance with the required findings as set forth in the subject zoning district. If the Use Permit for extra height is approved, the resulting floor area is added to the State Density Bonus project; however, it does not increase the base project for purpose of calculating the number of bonus units.

¹ Section 65915 has been amended numerous times in the last 15 years. Many of these amendments were quite significant. BMC Section 23C.12.050 bears little resemblance to the law in its current state, and is flatly inconsistent with it in some significant respects.

DENSITY BONUS PROJECTS AND PROCEDURE FOR EVALUATING USE PERMIT FOR EXTRA HEIGHT PROJECTS

START HERE

Base Project
w/no
discretionary
approvals



100 units – base (20/floor)

NEXT STEP

Use Permit* for
extra height –

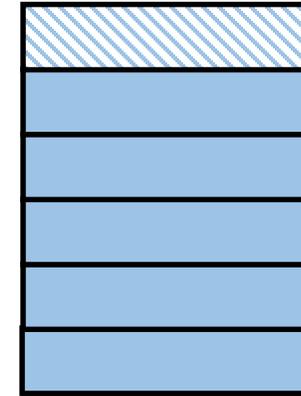
*City has
discretion to
approve or deny
per findings in the
subject district.



FINAL RESULT

OPTION A – Denied Use Permit

100 units – base (20/floor)
11% VLI = 11 units
89% mkt rate = 89 units
35% DB = 35 units
135 units total – base + DB



← **Density Bonus Additional Floor**
(City is preempted from denying
Density Bonus)



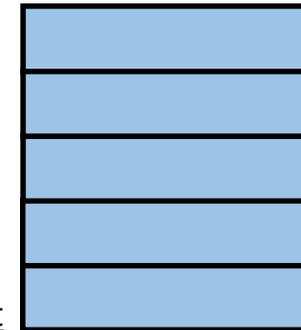
← **Density Bonus Additional Floor**
(City is preempted from denying
Density Bonus)

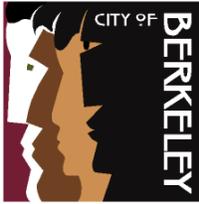


← **Use Permit
Extra Height**

OPTION B – Approved Use Permit

100 units – base (20/floor)
11% VLI = 11 units
89% mkt rate = 89 units
35% DB = 35 units
Use Permit floor = 20 units
155 units total – base + DB + extra height





Planning & Development Department
Land Use Planning Division

City of Berkeley Procedures for Implementation of State Density Bonus Law

September 15, 2014

Overview:

The state density bonus law (Government Code Section 65915) requires local governments to grant “density bonuses” to projects that provide specified percentage of below-market rate units.

The law defines a “density bonus” as “a density increase over the *otherwise maximum allowable residential density* as of the date of application...” (§ 65915(f)). “Maximum allowable residential density” in turn, means “the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project” (§ 65915(o)(2)).

Thus, in order to calculate the density bonus in any given case, it is necessary to start with the “maximum allowable residential density”.

In Berkeley, most new multi-family housing projects are located in zoning districts that do not have density standards that are applied on a parcel by parcel basis.¹ Therefore, over the years, staff has developed and refined procedures for deriving the “maximum allowable density” for any density bonus projects.² The basic approach is as follows:

- Step 1: Calculate the “base project,” i.e., the largest project allowed on the project site that is fully consistent³ with the lot development, parking and open space standards in the Zoning Ordinance, using the average unit size and other basic characteristics of the proposed project.
- Step 2: Calculate the density bonus based on the number of below market rate (BMR) units in the proposed project and the size of the base project (i.e., the percentage of below market rate units in the base project).
- Step 3: If concessions/incentives are requested, determine whether these are necessary to provide for the project’s affordable housing costs.

¹ Although the City’s *General Plan* includes land use classifications with density ranges, the Plan states that these classifications “are not intended to be used as standards to determine the maximum allowable density on a specific parcel.” (2002 *General Plan*, page LU-23)

² These procedures have been challenged multiple times in court, and upheld each time.

³ Many such standards can be modified with an AUP or Use Permit. The “base project” assumes no such modifications.

- Step 4: Waive or reduce development standards as needed to accommodate the project, with the density bonus and concessions.

These steps are described in greater detail below.

Step 1: Determine Base Project (65915(f))

1.1 Calculate residential floor area:

Procedures: The base project:

- a. Must comply with all applicable development standards, without any discretionary permits to waive or modify a standard (e.g., additional height, reduced parking, etc.).
- b. Must comply with applicable building and fire codes.
- c. Must be substantially consistent with the footprint, setbacks, and ceiling heights of the proposed project (not including waivers/reductions to allow the density bonus and any concessions).⁴
- d. Must include any non-residential uses, including non-dwelling residential amenities (such as common laundry rooms, lounges, etc.) in proposed project, unless these uses are requested as a concession.⁵

1.2 Calculate Average Unit Size

Procedures:

- a. Using the proposed project's plans, calculate the total floor area dedicated to residential uses (living areas, corridors, residential amenities) on each floor.
- b. Identify the total number of proposed residential units.⁶
- c. Divide total floor area by number of units. [Note: this size will be larger than that typically placed on project plans, since it includes circulation space and other residential amenities.]
- d. This average unit size must be maintained in the final approved project, unless a concession is granted to increase the size.

⁴ This requirement is intended to prevent applicants from creating a base project that would be far denser and/or poorer in design quality than the applicant actually desires to build, for the purpose of obtaining a larger density bonus.

⁵ This requirement is intended to prevent an applicant from counting non-residential space in the base project that is not actually intended for residential use, which would lead to a calculation of a larger bonus.

⁶ The average unit size of the proposed project is used in order to prevent applicants from obtaining a larger bonus by assuming smaller units than those they actually intend to build.

1.3 Calculate number of base project units

Procedures:

- a. Divide residential floor area (Step 1.1) by average unit size (Step 1.2).
- b. Deduct any fractional unit.⁷

Step 2: Calculate Density Bonus (65915(f))

- 2.1 Determine proposed number and income level of below market rate (BMR) units.**
- 2.2 Calculate density increase (%) based on 65915(f) and information from step 2.1.**
- 2.3 Calculate number of bonus units by applying percentage from step 2.2 to Base Project. Round any fraction up to next whole number.**

Step 3: Review Concessions/Incentives (65915(d)(1))

- 3.1 Applicant provides written statement describing requested concessions/incentives.**
- 3.2 Staff verifies that project qualifies for requested number of concessions.**
- 3.3 Applicant submits “pencil out pro forma” statement, using the following scenarios:**
 - A. Base Project, as 100% market rate, paying City’s affordable housing impact fee⁸ (Scenario I)
 - B. Base Project, with proposed BMR units (Scenario II)
 - C. Density Bonus Project, with BMR units with density bonus (market rate) units (Scenario III)
 - D. Proposed Project, incorporating requested concessions/incentives (Scenario IV)

⁷ Because the fraction represents a portion of a whole unit that could not be created in compliance with applicable zoning standards, the fraction is not included in the base project. This is consistent with 65915(f)(5), which applies to the calculation of the density bonus, not the “otherwise maximum allowable residential density”.

⁸ See BMC Section 22.20.065.

Notes:

- Cost and income assumptions used in the pro forma must be consistent across all scenarios, unless a compelling reason is given for a particular variation (e.g., higher rental income in Scenarios III and IV due to improved views on upper floor(s), larger units, etc.).
- At the ZAB's discretion, the requirement for a pro forma may be waived in certain cases, for example when the requested concession/incentive is very minor in nature, or when the applicant has chosen to forego some of the density bonus that the project is otherwise entitled to.

3.4 Staff submits pro forma to qualified consultant for peer review and verification of cost and income figures.

3.5 Staff determines whether the concession is “required to provide for affordable housing costs” (Section 65915(d)(1)(A)).

Note: This determination is based on whether the pro forma shows a substantially higher rate of return for Scenario IV than Scenario I. If it does, the finding in 65915(d)(1)(A) can (but not must) be made.⁹ If the ZAB decides not to grant a concession, it may give the applicant the opportunity to modify the concession request so that the rate of return in Scenario IV does not substantially exceed that of Scenario I.

Step 4: Review Waivers/Reductions of Development Standards (65915(e)(1))

4.1 Applicant Requests Waivers/Reductions

The applicant provides a written statement identifying the development standards to be waived or reduced, and explaining why these are the least detrimental (or only) option for accommodating the density bonus and any requested concessions. For example, if a waiver of the height limit is requested, but the bonus and concessions could also be accommodated through reduced setbacks and lot coverage, the statement should explain

⁹ Per Section 65915(d)(1), a requested concession shall be granted unless the City makes one of the following findings, based upon substantial evidence: (A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c). (B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. (C) The concession or incentive would be contrary to state or federal law.

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why the increased height would be less detrimental (e.g., reduced shadow, bulk and privacy impacts on adjacent neighbors).

4.2 ZAB Evaluates Waivers/Reductions

The ZAB evaluates the requested waivers/reductions and either approves them or, if it believes that other waivers/reductions could accommodate the density bonus and concessions in a manner that would be more compatible with the surrounding area/neighborhood, requests that the applicant revise the project using these other waivers/reductions.¹⁰ In some cases, alternate designs may be presented simultaneously to the ZAB (and/or DRC) to determine the preferred design approach. If the ZAB has determined pursuant to Section 65915(d)(1)(A) that a concession is not required, it may deny the waivers/reductions requested to accommodate the concession, and approve the other waivers/reductions.

4.3 ZAB Makes Findings for Approval or Denial of Waivers/Reductions

Procedures:

- a. For all waivers/reductions being granted, the ZAB makes a finding that the waiver or reduction is being granted pursuant to State density bonus law and is necessary to accommodate the project's density bonus or concessions.
- b. Where a requested waiver or modification may also be granted under the Zoning Ordinance by Use Permit or Administrative Use Permit (but not by Variance), the ZAB includes language in the findings in paragraph (a) above indicating how the Zoning Ordinance findings can be made.
- c. For any waivers/reductions being denied, the ZAB makes the required findings under Section 65915(d)(1), (d)(3), or (e)(1).

¹⁰ Per Section 65915(e)(1), a requested waiver or reduction may be denied if it would have "a specific, adverse impact, as defined in Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the impact." Section 65589.5(j)(1) defines "specific adverse impact" as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." The waivers and reductions typically requested for infill housing projects, such as additional height or reduced setbacks, parking or open space, would not generally cause impacts that meet this definition.



Health Housing and
Community Services Department
Housing & Community Services Division

HAC 9/1/2016
Attachment 3

MEMORANDUM

To: Housing Advisory Commission

From: Kristen S. Lee, Manager

Date: August 25, 2016

Subject: **Proposed Changes to the CDBG Community Facility Improvement RFP Process**

Housing and Community Services (HCS) is recommending shifting the Community Development Block Grant (CDBG) Community Facility Improvement Program request for proposal (RFP) process from an annual RFP to a rolling application process with a minimum threshold of \$100,000 per project.

Existing RFP Process

The existing RFP process is lengthy and is not responsive to emergent agency needs. It starts with the RFP release in early December. The applications are due the following January. HCS staff and the HAC review the applications in February and March, make recommendations to Council for approval in April and contracts begin the following fiscal year in July.

The existing application-to-contract process creates duplicate work for agencies in obtaining bid proposals. Agencies are currently required to obtain three bids as an attachment to their application for an accurate estimate of costs. These bids have a limited shelf-life, and if an agency is awarded funding, it must obtain fresh bids (no older than 90 days) a second time to maintain compliant with HUD regulations.

Proposed changes

HCS is recommending shifting the CDBG facility application process to a rolling application. Applications will be accepted on an over-the-counter basis until all annual funds have been allocated. The typical annual allocation for Community Facility Improvements ranges from \$250,000 - \$300,000. HCS will use the existing application and the HAC subcommittee will continue to review applications and conduct site visits, if interested.

A Vibrant and Healthy Berkeley for All

Additional key changes include adding a minimum threshold of \$100,000. Most funded projects over the past many years have been under \$100,000. These smaller projects tend to last more than one year and require much more staff time to manage. HUD is paying closer attention to how quickly jurisdictions spend CDBG funding. It is expected that funding larger projects, and continuing to require that agencies hire a project manager will result in more robust scopes of work, that will be completed in a more timely fashion. The program will continue to focus on CDBG priorities for substantial rehabilitation for health and safety, ADA, and/or energy efficiency improvements.

Rationale for Proposal

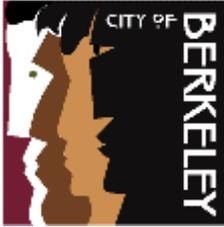
There are several benefits to the community agencies, which include:

- Submitting proposals on an agency-defined timeline.
- Submitting proposals based on emergent need(s).
- Quicker turnaround for applicants between time of application and time of award, reducing duplicative work.
- Increased attention to funded projects from COB staff due to less COB staff time spent on the RFP process and under-resourced projects.

One possible limitation is that smaller projects will not qualify based on the minimum threshold. However, the requirements of the CDBG are that projects must be substantial rehabilitation and pay federal prevailing wage. All projects requiring a permit must also have a minimum of 20% of the projects valuation allocated towards ADA improvements. These requirements, paired with cost of professional services and project management lend themselves to larger and more costly projects. Agencies can continue to have multiple smaller projects as elements in a larger scope, obviating concerns that small projects will not qualify.

Alternatives:

1. Leave the RFP process as is.
2. Continue the RFP process on the existing six month schedule but add a \$100,000 minimum threshold that includes a provision for project management costs.
3. Shift the application to a rolling application but with no dollar minimum.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission

From: Kristen Lee, Manager

Date: September 1, 2016

Subject: **Substantial Amendment to the City of Berkeley's PY2016 (FY2017) Annual Action Plan to Add \$500,000 in Community Development Block Grant (CDBG) Funding for Public Facility Improvements to the South Berkeley Senior Center**

Recommendation

Staff is requesting that the Housing Advisory Commission support the staff recommendation that Council approve an amendment to the PY2016 Annual Action Plan to allow for a one-time allocation of \$500,000 in CDBG funds for one public facility improvement project at the South Berkeley Senior Center. This recommendation of one-time funding is being made outside of the City's normal funding allocation process in order for the City to remain compliant with regulations governing the timely spending of CDBG funds on hand.

Timeliness Test

CDBG regulations include a "timeliness test". Each year in April HUD compares the funds available to be drawn (undisbursed funds from the City's CDBG line of credit) to the amount of its current allocation and program income that has been receipted. If the balance exceeds 1.5 times the annual entitlement amount HUD can remove any funding in the Line of Credit that exceeds the maximum allowable limit.

Each year HHCS staff include an estimate of the amount of "program income" it will receive that must be used for CDBG eligible purposes. Program income is the gross income received by the grantee and its subrecipients directly generated from the use of CDBG funds, such as the proceeds from the sale of property improved with CDBG funds. In the last round, staff conservatively estimated program income receipts to be approximately \$60,000.

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In the second half of FY2016, the City received an unprecedented amount of program income (approximately \$640,000) that exceeded that staff estimate by over \$500,000. Much of the program income was due to repayments of CDBG single family rehabilitation loans, which are due when the property changes hands. It is in large part due to the influx of program income that the City is now at risk of losing CDBG funds if funds are not allocated to a one-time project and spent by April 2017.

Public Facility Improvement Project

Staff recommend awarding \$500,000 in CDBG funding to a single project that can be underway quickly and can be fully expended by the April 2017 deadline. CDBG funds allocated to community services projects and program administration are capped and cannot be increased during the year. Funding for public facility improvements and housing related projects are not capped and funding may be added for one-time projects. There are no eligible one-time housing related projects that could spend CDBG funds by the deadline. Staff therefore recommend funding an existing CDBG-funded public facility project to ensure timely spending.

In the last CDBG allocation process, Council approved an allocation of FY2016 CDBG funds in the amount of \$109,350 for ADA upgrades and interior improvements to the North and South Berkeley Senior Centers. Both of these centers have rehabilitation needs that far exceed the CDBG funding currently awarded. In addition, public infrastructure and public facility improvements have been recently identified as a critical need, and on May 31, 2016 City Council approved placing a General Obligation bond on the November ballot to raise funds for improvements to City facilities, including Senior Centers.

Staff propose adding \$500,000 in CDBG funding to the existing project. The scope of the project will contribute to the improvement of a safer, healthier and greener environment at the South Berkeley Senior Center. Improvements will include the following and potentially additional mechanical facility features that can be accomplished within the expenditure timeframe.

- Removing the carpeting throughout the facility and installing hardwood flooring and natural linoleum, such as Marmoleum of Forbo. This will provide the facility with cleanable flooring and eliminates the worn carpeting. Carpeting is not recommended for persons with respiratory health problems, a condition not uncommon to the population using senior centers. Worn carpet, exposed subfloor and broken room transitions in some areas of the building create tripping hazards. Additionally, the current carpeting is dark, and in some areas such as the lounge, creates a darker room environment which can be unsafe to maneuver for seniors with low vision. Removing carpeting also mitigates bedbugs and other pest issues.
- Expand previous lighting project to additional rooms to meet current energy standards and reduce the lighting demand of spaces when they are unoccupied as well as providing lower electrical demands. Upgraded lighting also improves the safety for the users who have difficulty maneuvering through areas that are poorly lit.

- Major improvements to the customer service counter. Adding an ADA-compliant counter and increasing counter space will allow for better service to seniors seeking assistance in the Center. The counter will be made from recycled materials.
- Replacing a counter with an ADA-accessible desk for seniors to use the community phone and complete housing applications and creating two ADA-accessible areas for display of information and resources (using recycled materials).
- Add acoustical panels in key areas to mitigate sound where activity demands can be disruptive to users. The addition of acoustical panels will significantly absorb noise to make it easier for seniors to understand noises and voices. This will also help reduce sounds from “noisy” activities to those who are in more quiet activities in the facility.
- Items identified in the conditions assessment report requiring replacement identified the boiler. Replacing the existing boiler with a new energy efficient system would provide the building a dependable, more energy efficient boiler and address a building component requiring replacement.
- Complete painting in the facility using low-VOC paints and lightening the surfaces to increase visibility throughout the building and to support a more buoyant environment.

Funds will be used only at the South Berkeley Senior Center. It is expected that one large improvement project will be easier to manage and can be accomplished more quickly by limiting the scope to one of the Senior Centers.

BACKGROUND

The City of Berkeley receives an annual allocation of federal funding through the federal Department of Housing and Urban Development (HUD). Council allocates this federal funding to specific projects each year in April and authorizes the submission of an Annual Action Plan to HUD which outlines how funds will be spent.

HUD regulations require that the City of Berkeley follow a Citizen Participation Process in allocating federal funding, which requires that the city enlist input from the general public when developing the spending plan and when any major changes to the spending plan are proposed. Major changes to the spending require the submission of a “Substantial Amendment” to the Annual Action Plan. These changes must be accompanied by a public hearing.

Davidson, Amy

From: Cha, Kelly
Sent: Wednesday, August 24, 2016 9:40 AM
To: Bursell, Lief; Davidson, Amy
Cc: Amoroso, Alexander
Subject: Modifications to Accessory Buildings

Hi Lief and Amy –

Just letting you know that the Planning Commission is scheduled to discuss modifications to accessory buildings on September 7, 2016. The modifications will allow a full bathroom and, potentially, a partial kitchen, and permit STRs in accessory buildings. As part of these modifications, a new definition of kitchen is also proposed (because ZO never had one). Please see the published public hearing notice (online only; will be published on a newspaper this Friday) linked below:

http://www.ci.berkeley.ca.us/Planning_and_Development/Public_Hearing_Notices/Zoning_Permit_Public_Hearings.asp
[X](#)

Please let me know if you have any questions.

Thanks,

KELLY CHA

Assistant Planner

City of Berkeley, Department of Planning & Development, Land Use Planning Division
2120 Milvia Street, 2nd Floor, Berkeley, CA 94704

D: (510) 981-7416 | O: (510) 981-7410 | F: (510) 981-7420 | kcha@cityofberkeley.info

Please note: As a cost saving measure, the City of Berkeley is closed the 2nd Friday of every month. Additional closures may occur. For the latest City Closures and Holidays, please check the City of Berkeley Homepage at www.cityofberkeley.info.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 20, 2016
TO: Members of the Planning Commission
FROM: Kelly Cha, Assistant Planner
Alex Amoroso, Principal Planner
SUBJECT: Accessory Buildings as STRs

INTRODUCTION

On July 7, 2016, the City Council continued consideration of the Short-Term Rental regulations. They referred to the Planning Commission a request to consider and make recommendations regarding:

1. A new definition of kitchen, and
2. Regulation changes for Accessory Buildings that would allow them to be rented as Short-Term Rentals (STRs).

The majority of the Council expressed interest in allowing Accessory Buildings to be rented as STRs, but not Accessory Dwelling Units (ADUs). The Council expressed concern that allowing STRs in ADUs would remove housing units from the market. An alternative was suggested: allowing Accessory Buildings, which are not defined as Dwelling Units, to be rented as STRs. This requires amendments to the Zoning Ordinance (ZO), which were not previously considered by the Planning Commission.

This staff report summarizes the proposed modifications necessary to meet the intent of the Council referral. Staff will notice and schedule a Public Hearing for proposed Zoning Ordinance amendments on September 7, 2016.

BACKGROUND

On May 31, 2016, the City Council considered two versions of draft STR Ordinance (Planning Commission and Staff versions). They adopted the first reading of the Planning Commission version of the Ordinance with modifications as described in the annotated agenda of May 31 (Attachment 1).

The City Council continued the STR Ordinance item at both the June 14, and June 28, 2016 meetings. They discussed the item at a Special session on July 7, 2016 and

requested that the Planning Commission consider certain items described in the annotated agenda for that date (Attachment 2).

DISCUSSION

The Discussion section describes possible amendments to the Zoning Ordinance to address the Council referral of July 7, 2016. These include a new definition of kitchen, modifications to regulations for Accessory Buildings, and cross references in appropriate districts.

The purpose behind the changes is to allow Accessory Buildings (habitable space) to be used as STRs, but not as long-term rental dwelling units. The goal of the ordinance changes is to allow for Accessory Buildings to have a full bathroom and a limited cooking facility. This is intended to stop the Accessory Building from meeting the definition of and/or becoming a Dwelling Unit.

Relevant Zoning Ordinance Definitions and Regulations

Section 23F, Definitions:

- **Accessory Building:** A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.
- **Habitable Space:** A space in a building which is used or designed to be used for living, sleeping, eating or cooking, but not including garages, bathrooms, utility, storage and laundry rooms, halls or closets.

Note: The City does not have a Zoning Ordinance definition for Kitchen.

Section 23D.08.005 Permitted Uses in Accessory Buildings and Structures

A. An accessory building constructed or altered so as to contain an accessory dwelling unit which satisfies the requirements of Chapter [23D.10](#) and other applicable requirements of this code is permitted by right. Other than an accessory dwelling unit as described above, no accessory building shall be constructed or altered so as to contain habitable space except as authorized by an AUP. No such accessory building may be rented, contain cooking facilities or be used as a dwelling unit or accessory dwelling unit, except as authorized by a Use Permit and all other requirements applicable to a dwelling unit in the District in which it is located are satisfied.

Possible Changes to the Zoning Ordinance

Pursuant to BMC 23D.08.005, Permitted Uses in Accessory Buildings and Structures (Attachment 3), Accessory Buildings cannot be rented, nor can it contain “cooking facilities.” A 1996 Zoning Adjustment Board (ZAB) policy states that accessory buildings may not include a full bathroom (Attachment 4). The intent of these rules is to avoid creating Dwelling Units that do not meet the ZO standards.

As a result of STR popularity, there is great interest in the community to rent Accessory Buildings, while avoiding removing Dwelling Units from the housing stock. Modifying the identified ZO sections is intended to provide clearer direction on what is and is not a

Dwelling Unit. Any modifications to the ZO to address this issue would supersede existing policy direction.

Adding a Definition of a Kitchen and relating it to Accessory Buildings:

The intent of defining kitchen, as it relates to Accessory Buildings, will be to not allow full kitchens. This way, new Dwelling Units are not created without appropriate review and permitting.

The ZO does not include a definition of Kitchen. At the July 7 meeting, Council reviewed and commented on definitions of “kitchen” from the City of Pasadena and the County of Sonoma; they preferred the Pasadena definition because of its simplicity. Attachment 5 provides the two definitions of kitchen that the Council reviewed. A simple definition of kitchen would provide staff guidance in evaluating proposed Accessory Buildings and be clearer to applicants and for purposes of Code Enforcement.

Section 23D.08.005, Permitted Uses in Accessory Buildings and Structures, would be amended to allow for some level of cooking facility, but it would be more limited than the definition of Kitchen. It might include limitations to fridge size, only allow a cooktop but no oven, or other limitations.

Allowing a Full Bathroom in Accessory Buildings:

A long standing ZAB policy limited Accessory Buildings to only a partial bathroom: sink and/or toilet, and/or bathing facility, but not all three at once. To remedy this, an amendment would be made to Section 23D.08.005, allowing full bathrooms (sink, toilet, and bathing facility).

Accessory Buildings as STRs: In Which Districts?

STRs are allowed in both residential and non-residential districts. Accessory Buildings are allowed in both residential and non-residential districts. Any Accessory Buildings would need to comply with regulations set forth for its Zoning District. Both STRs and Accessory Buildings are allowed in the districts listed below.

- Residential districts include: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU.
- Non-residential districts include: C-DMU, C-1, C-NS, C-SA, C-T, and C-W.

The MU-R does not list Accessory Buildings as an allowed use, so the proposed ZO amendments would not apply in this district.

Issues for Commission Consideration and Comment:

- Provide direction on the definition of Kitchen: more or less specific.
- Should there be any allowance for limited cooking facilities in Accessory Buildings?
- Should a full bathroom (sink, toilet and bathing facility) be allowed in Accessory Buildings?
- Should STRs be allowed In Accessory Buildings?

- If STRs are allowed in Accessory Buildings, should there be a limitation on which districts?
- Should Accessory Buildings be allowed with a Zoning Certificate rather than the current Administrative Use Permit?

RECOMMENDATIONS AND NEXT STEPS

Staff recommends the Commission discuss the questions and provide feedback to staff. Commission input will be considered in drafting ordinance language for a Planning Commission Public Hearing on September 7, 2016.

Attachments

1. Annotated Agenda from City Council meeting on May 31, 2016
2. Annotated Agenda from City Council meeting on July 7, 2016
3. BMC Section 23D.08.005, Permitted Uses in Accessory Buildings and Structures
4. Adopted ZAB Policy (1996): Definition and Regulation of Accessory Buildings/Dwelling Units
5. Definitions of kitchen from the City of Pasadena and Sonoma County

Additional Information

1. Staff report from City Council meeting on May 31, 2016 (Item 30):
<http://records.cityofberkeley.info/Agenda/Meetings/ViewMeeting?id=186&doctype=1>
2. Staff report from City Council meeting on June 14, 2016 (Item 3):
<http://records.cityofberkeley.info/Agenda/Meetings/ViewMeeting?id=188&doctype=1>
3. Staff report from City Council meeting on June 28, 2016 (Item 55):
<http://records.cityofberkeley.info/Agenda/Meetings/ViewMeeting?id=190&doctype=1>
4. Supplemental document from City Council meeting on July 7, 2016:
http://www.cityofberkeley.info/Clerk/City_Council/2016/07_Jul/Documents/2016-07-07_Item_1_Short-Term_Rental_Regulations_Ordinance_-_Pres.aspx

30. Short-Term Rental Regulations Ordinance, Adding BMC Chapter 23C.22 and Amending Titles 23D and 23E (Continued from May 10, 2016)

From: City Manager

Recommendation:

1. Review and consider the Planning Commission and staff recommended versions of the Short-Term Rental Draft Ordinance.
2. Provide direction on outstanding issues, including enforcement related standards and whether to allow Short-Term Rentals in Accessory Dwelling Units (ADUs).
3. A) Adopt first reading of an Ordinance as recommended by staff regarding Short-Term Rental Regulations, adding BMC Chapter 23C.22 and amending Titles 23D and 23E to make related changes.

-OR-

B) Adopt first reading of an Ordinance as recommended by the Planning Commission regarding Short-Term Rental Regulations, adding BMC Chapter 23C.22 and amending Titles 23D and 23E to make related changes.

Financial Implications: See report

Contact: Carol Johnson, Planning and Development, 981-7400

Action: M/S/C (Maio/Arreguin) to suspend the rules and extend the meeting to 11:30 p.m.

Vote: Ayes – Maio, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Bates; Noes – None; Abstain – None; Absent – Moore, Droste.

Councilmember Moore absent 10:55 p.m. – 11:02 p.m.

Councilmember Droste absent 10:54 p.m. – 11:02 p.m.

Action: 9 speakers. M/S/C (Maio/Arreguin) to state that ADUs should not be allowed for short term rentals in the proposed ordinance.

Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Droste; Noes – Bates.

Action: M/S/C (Bates/Maio) to suspend the rules and extend the meeting to 11:45 p.m.

Vote: All Ayes.

Action: M/S/C (Worthington/Anderson) to adopt first reading of Ordinance No. 7,478–N.S. as recommended by the Planning Commission including the amendments below regarding Short-Term Rental Regulations, adding BMC Chapter 23C.22 and amending Titles 23D and 23E to make related changes. Second reading scheduled for June 14, 2016.

1. In Section 23C.22.050.A.1 insert the term “including, but not limited to” when listing the types of proof for host residency as shown below.

A property owner Host of a Short-Term Rental must provide documentation, including, but not limited to, motor vehicle registration, driver's license, voter registration or other

Action Calendar – Old Business

such evidence, to the City as evidence of property ownership of the proposed Short-Term Rental.

2. Amend Section 23C.22.020.D by inserting the word “NOT” to state that ADUs would not be allowed to be used for short term rentals.

D. Short-Term Rentals shall not be allowed in lawful Accessory Dwelling Units.

3. Add the language from the staff proposal regarding paying all fees and taxes in a timely manner to Section 23C.22.050.L.

L. Payment of Taxes. Host shall pay all City taxes and fees owed in a timely manner.

4. Add the language from the staff proposal regarding the 90-day minimum for host occupancy to Section 23C.22.050.B.2.

2. When the Host is not present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

5. Amend 23C.22.050.C. to read, “The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter 19.40)”

6. Add language to Section 23C.22.050.K that all short term rental units must conform to the City of Berkeley Housing Code requirements.

K. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter 19.40).

Vote: All Ayes.

31. Tenant Protection Ordinance *(Continued from May 10, 2016; Item contains revised material.)*

From: Councilmember Arreguin

Recommendation: Refer to the City Manager and City Attorney to develop a Tenant Protection Ordinance, incorporating the elements described in the Background section of the report.

Financial Implications: Staff time

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: Moved to Consent Calendar. Approved item as written in the revised material.

Action Calendar

1. **Short-Term Rental Regulations Ordinance, Adding BMC Chapter 23C.22 and Amending Titles 23D and 23E** (*Continued from June 28, 2016. Item contains Supplemental Materials.*)

From: City Manager

Recommendation: Adopt first reading of an Ordinance regulating Short-Term Rentals, adding BMC Chapter 23C.22 and amending Titles 23D and 23E to make related changes.

Financial Implications: See report

Contact: Carol Johnson, Planning and Development, 981-7400

Action: 31 speakers. M/S/C (Worthington/Bates) to request that the City Manager initiate a process of enforcement for when three or more verified complaints are received against the same individual, company, or owner, of multiple units being used as short-term rentals. The City is initiating a process of enforcement due to the fact that short-term rental of multiple units by the same individual, company, or owner, is illegal under existing laws and will continue to be illegal under the short-term rental regulations being considered for adoption by the Council, and that short-term rental of multiple units in the larger buildings more significantly impact the housing stock of the City.

Vote: Ayes – Maio, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Bates; Noes – None; Abstain – None; Absent – Moore, Droste.

Action: M/S/C (Arreguin/Bates) to:

1. Direct staff to include options in the ordinance for displaying identifying information about the short-term rental. Options may include: A) the Zoning Certificate to be posted on the ad either by the host or the hosting platform; B) the host to provide identifying information, including the Zoning Certificate number, to the City or the City's third-party vendor; or C) an alternative recommended by staff in working with the City's third-party vendor.
2. Refer to the Planning Commission an amendment of the accessory building regulations that would allow accessory buildings to be used for short-term rental purposes, including allowing them to have a full bath, and revising the process to require a Zoning Certificate rather than an Administrative Use Permit.
3. Refer to the Planning Commission the development of a definition for kitchen and/or cooking facilities.
4. Request that staff attempt to estimate the loss of long-term units if amnesty was granted to existing accessory dwelling units that are currently being used for short-term rental purposes.
5. Request that staff return to Council six to twelve months after ordinance adoption to review the impact of short-term rentals on long-term rentals.
6. Refer to staff to add clarification to Berkeley Municipal Code Section 23C.22.050 stating that the host must reside in the unit.

Vote: Ayes – Maio, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Bates; Noes – None; Abstain – None; Absent – Moore, Droste.

Recess 7:59 p.m. – 8:10 p.m.

Section 23D.08.005 Permitted Uses in Accessory Buildings and Structures

- A. An accessory building constructed or altered so as to contain an accessory dwelling unit which satisfies the requirements of Chapter 23D.10 and other applicable requirements of this code is permitted by right. Other than an accessory dwelling unit as described above, no accessory building shall be constructed or altered so as to contain habitable space except as authorized by an AUP. No such accessory building may be rented, contain cooking facilities or be used as a dwelling unit or accessory dwelling unit, except as authorized by a Use Permit and all other requirements applicable to a dwelling unit in the District in which it is located are satisfied.
- B. An Accessory Structure shall include those detached structures, other than an Accessory Building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential Accessory Structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential Accessory Structures may include, but are not limited to, storage buildings, garages, sheds and other outbuildings. (Ord. 7426-NS § 1, 2015; Ord. 6763-NS § 2 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

CITY OF BERKELEY
CURRENT PLANNING DIVISION
MEMORANDUM

July 22, 1996

TO: Current Planning Staff

FROM: Dan Marks, Current Planning Manager

SUBJECT: **Definition and Regulation of Accessory Buildings/Dwelling Units**

The Zoning Ordinance definition of a dwelling unit is as follows:

A building or portion of a building *designed* for or occupied exclusively by one family.
(italics added)

The Zoning Officer has relied on the "designed for" statement to find that buildings that look like separate dwelling units and can easily be converted to separate dwelling units -- even if they lack one of the elements of a separate dwelling unit -- are dwelling units. Kitchens have traditionally been considered the defining characteristic of a dwelling unit, but these can be easily established with little modification to an accessory structure. Therefore, the Zoning Officer found that bathing facilities were also a defining element of a dwelling unit. However, this policy was not previously codified or adopted by the Board.

On May 30, 1996, the Zoning Adjustments Board adopted the following policy regarding Accessory Buildings and the definition of residential units to be applied until such time as the Planning Commission revises the Zoning Ordinance.

ZONING ADJUSTMENTS BOARD POLICY

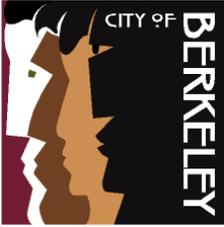
1. All separate buildings on a residential lot (or a floor in a single family structure without an internal connection) with a kitchen shall be considered a dwelling unit.
2. All separate buildings on a residential lot (or a floor in a single family structure without an internal connection) with a toilet and bathing facilities* shall be considered a dwelling unit.
3. An accessory building may have either a toilet or bathing facilities, but not both.
4. A deed restriction shall be required for any accessory building (or floor within a single family structure without an internal connection) with a toilet or bathing facilities indicating that the building may not be used as a separate dwelling unit unless and until a Use Permit is obtained.

* bathing facilities = shower or bath

Definitions of Kitchen

- City of Pasadena
Kitchen. A room used for preparation of food. A complete kitchen contains a sink, refrigerator, stove or range top, and oven or microwave. A partial kitchen is missing one of the above components.

- Sonoma County
Kitchen. A kitchen means an area within a structure that is used or designed to be used for the preparation or cooking of food and that contains one or both of the following:
 1. Cooking appliances or rough in facilities including, but not limited to: ovens, convection ovens, stoves, stove tops, built-in grills or microwave ovens or similar appliances, 240 volt electrical outlets or any gas lines. OR
 2. A sink less than 18 inches in depth with a waste line drain 1-½ inches or greater in diameter AND a refrigerator exceeding five (5) cubic feet in capacity or space opening with an electrical outlet that may reasonably be used for a refrigerator exceeding five (5) cubic feet in capacity.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission

From: Jennifer Vasquez, Housing and Community Services, CSS III

Date: August 22, 2016

Subject: **City of Berkeley's Draft Consolidated Annual Performance and Evaluation Report for Federal Program Year 2015 (July 2015 through June 2016)**

On Friday, August 19, 2016, the City issued a public notice regarding its Draft PY15 Consolidated Annual Performance and Evaluation Report (CAPER) for Program Year 2015 (July 1, 2015 to June 30, 2016), which is now available for public review on the City's website at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=15574> .

As many of you know, the CAPER is a report required by the U.S. Department of Housing and Urban Development (HUD) which tells HUD and the public how the City spent its federal funds in the prior year. The HAC's review of the Draft CAPER is part of the City's Citizen Participation Process. Public comments on the CAPER need to be submitted to me by Friday, September 16, 2016 at 5:00 p.m. The City must complete and submit the report to HUD, including City responses to all written public comments, by no later than September 30, 2016.

A Vibrant and Healthy Berkeley for All



Community Health Commission

ACTION CALENDAR
July 19, 2016

To: Honorable Mayor and Members of the City Council
From: Community Health Commission
Submitted by: Neal Nathan, Chairperson, Community Health Commission
Subject: African American Holistic Resource Center in South Berkeley

RECOMMENDATION

The Community Health Commission (CHC) strongly recommends that the City of Berkeley take immediate action steps towards the development and support of an African American Holistic Resource Center in South Berkeley.

The primary objective of the African American/Black Holistic Resource Center is to serve as a prevention and intervention model to consistently reduce the racial health disparities in Berkeley. It is to progressively increase positive health and wellness outcomes among the populations most affected. The Center will responsibly address the alarming health status rates among African American citizens in the City of Berkeley by providing culturally responsive and community defined-practices that will increase positive health outcomes. Furthermore, the CHC urges the City Manager and the City Council to both endorse and direct The Department of Health, Housing, and Community Services in general, the Public Health and Mental Health Divisions in particular, to set the development of such a Center as an urgent priority (with guidance and oversight of the project from the AABPCN, BNAACP, PCAD, BLM and HBF).

The Health Equity Subcommittee of the CHC has developed the following recommended action steps:

1. The City of Berkeley to either fund the Public Health Division or send out an RFP to conduct a thorough feasibility study within the next fiscal year (2016-2017) to determine the potential cost of creating and operating the African American Holistic Resource Center.
 - a. This study will include collaboration with community stakeholders: African American/Black Professionals & Community Network (AABPCN), Berkeley NAACP, Black Lives Matter, Bay Area/Berkeley group, Parents of Children of African Descent (PCAD), Healthy Black Families, and Friends of the CHC.

2. Provide funding that will allow for a culturally responsive driven community needs assessment:
 - a. Collaborative effort to hold African American/Black community focus groups to gather community input into the design, layout of the resource center and services.
 - b. Include focus groups with front-line staff service providers within the HHCS Department.
3. Immediate action: The City Council and City Manager are to direct the Adeline Corridor planning project team to use cultural responsiveness to appropriately consider and address health equity concerns in every phase of planning and development. The Adeline Corridor plan is to include the social determinants of health into each phase of the plan and development.
4. The City Manager and the City Council is to immediately direct the Adeline Corridor Planning committee to partner with the Public Health and Mental Health Divisions and African American/Black community stakeholders. In addition to directing the Planning Department to incorporate the African American/Black Holistic Resource Center into the Adeline Corridor project plan, the plan should consider generous square footage space to build and incorporate a green facility to house the Center, which would include a community garden and a spacious community meeting space that will allow for the gathering of at least 200 people.
5. The City of Berkeley to provide, in part, a generously protected funding stream to contribute to the staffing, business startup, and maintenance of the African American/Black Holistic Resource Center. The City of Berkeley will take the lead in developing collaborative funding from Alameda County, Alta Bates/Summit Medical Center, Children's Hospital/UCSF Benioff Oakland, Kaiser Hospital, University of California at Berkeley, Adeline Corridor Planning, and other public and private organizations in order to support the Center financially.
6. Direct the Department of Health, Housing, and Community Services to incorporate into the department's program plans for the 2017-2018 fiscal year a number of dedicated persons to assist in staffing and/or provide technical assistance to the resource center.
7. Creation of a City of Berkeley African American/Black Community Advisory Council that evaluates health equity status and suggests interventions to improve the health equity status of African American/Black people in Berkeley led by and comprised of 80% African American/Black members.

SUMMARY

Health inequities have impacted the City of Berkeley over a protracted number of years, with little positive change over the past two decades. The African American/Black Holistic Resource Center will create a much needed paradigm shift in the delivery of health and behavioral health services. Finally, the Center will serve as a free to low cost communal meeting space for Black residents and local groups.

FISCAL IMPACTS OF RECOMMENDATION

A substantial investment into culturally appropriate services will prove to be successful in reducing health disparities and improving positive health outcomes. The African American Community Service Agency in San Jose that deals with the health/mental and emotional development of the community is an example of such efforts. Anticipated costs (with a possible initial cost of \$20,000): feasibility study, focus groups, initial startup needs, City staff time (including data collection costs), administrative expenditures, daily operations and maintenance expenditures, supplies, electronic systems costs, and salaries. Additionally, private-public partnerships may provide funding for the feasibility study and operation costs, and/or the Adeline Corridor planning project may provide funding to absorb the costs of the feasibility study if the center is housed within the Adeline Corridor. Furthermore, research shows that the impact of health and behavioral health outcomes that are delivered in a culturally responsive manner will improve health outcomes and substantially reduce the costs of medical attention, for more serious health and mental health conditions, thereby reducing health and mental health cost to the city over time. Thus, the total costs of such a program and services should both be reasonable and justified, as the African American Community Service Agency in San Jose has been realized and sustained via private-public partnerships, which will form in Berkeley as well.

At the regularly scheduled meeting of the Community Health Commission (CHC) on March 24, 2016, the Commission took the following action:

1. M/S/C (Nathan/Stein) Motion to approve recommendation to City Council for African American Holistic Resource Center as amended, and as further amended by Commissioners Kwanele, Nathan, and Stein.

Ayes: Commissioners Chen, Engelman, Kwanele, Namkung, Nathan, Speich, Stein, and M. Wong

Noes: None

Abstain: None

Absent: Commissioners Franklin, Shaw, and A. Wong

Excused: Commissioners Rosales, Smith, and Wertman

Motion passed.

The CHC made further edits to the Council report, and at the regularly scheduled meeting of the Community Health Commission (CHC) on The April 28, 2016, the Commission took the following action:

2. M/S/C (Kwanele/Nathan) Motion to approve edited and revised recommendation to City Council for African American Holistic Resource Center.

Ayes: Commissioners Engelman, Franklin, Kwanele, Lopez, Nathan, Shaw, Speich, Wertman, and Wong

Noes: None

Abstain: None

Absent: Commissioner Rosales

Excused: Commissioners Chen, Namkung, and Stein

Motion passed.

CURRENT SITUATION AND ITS EFFECTS

The Public Health Division within HHCS Department identifies health inequities as a priority. According to the 2013 Health Status report states that in Berkeley, “The death rate for African American men is over twice that of men overall. The death rate for African American women similarly is nearly double that of women overall. African American men stand out as having the highest death rate of all racial/ethnic and gender groups. These vast differences in death rates are the result of differences in health status as seen throughout this report; these are health inequities” (*The City of Berkeley 2013 Health Status Report, pp. 113*). The report further explains that African Americans die much younger than any other racial or ethnic group in Berkeley. The health outcomes for African Americans in Berkeley continue to be staggering and a cause for alarm.

BACKGROUND

The following table from the 2013 Berkeley Health Status report demonstrates health inequities:

HEALTH INEQUITIES IN BERKELEY

Berkeley's health inequities disproportionately affect African American residents in South and West Berkeley neighborhoods. These health inequities are evident at every stage of life.

Compared to a White resident, an African American living in Berkeley is:

| Demographics | Pregnancy & Birth | Child & Adolescent Health | Adult Health | Mortality |
|--|--|--|---|---|
| 3 times less likely to have a college degree | 20 times more likely to be a teen parent | 7 times more likely to live in poverty | 4 times more likely to have been diagnosed with diabetes and 14 times more likely to be hospitalized for diabetes | 2 times more likely to die in a given year from any condition |
| 2 times more likely to live in poverty | 2.5 times more likely to be born too small | 9 times more likely to be hospitalized for asthma (<5 years old) | 12 times more likely to be hospitalized due to hypertensive heart disease | 2.5 times more likely to die of cardiovascular disease |

The 1998 Health Status Report identifies, among many issues, “Ambulatory Care Sensitive Conditions are defined group of medical illnesses which hospitalization can be prevented through timely and adequate primary care services. It is a measure of access to primary care”. In this 1998 report in the ambulatory Care Services section, it identifies “Blacks accounted for 60% of all asthma hospitalizations in Berkeley among children 0 to 19 years of age, followed by Whites with 2.1% (*City of Berkeley 1998 Health Status Report, pp. 74*).

The 1999 City of Berkeley Health Status Report informs “The Health Status Report shows that overall Berkeley is a healthy community...However, health status is impacted by the significant economic, educational, social and racial disparities that exist within the City”. It further explains that “African Americans have the highest mortality rate unadjusted for age of all race/ethnicities” (*City of Berkeley 1999, Health Status Report Executive Summary, pp. 1*). The 1999 report continues to identify racial health disparities among African Americans in almost every subcategory of the report, some much more significant than others.

The City of Berkeley 2001 Health Status report in its introduction informs, “Our report also revealed a disparity in mortality for Berkeley residents based on race. African Americans in Berkeley have shorter life spans in general than do Whites in Berkeley. Our health data shows that African Americans in Berkeley have significantly higher premature death rates for preventable or manageable diseases such as hypertension, stroke and diabetes” (*City of Berkeley Health Status Report, 2001, pp. 5*). The report continues on to state that the Department of Public Health worked for three years to understand and pinpoint the disparities. The Department at that time introduced new programs to address the problem such as the Community Action Team (CAT) and the Black Infant Health program, among other programs, with a goal to close the health equity gap in Berkeley. After implementation of such programs, the Public Health Department began to notice some, albeit small, but positive changes in birth rate.

The 2002 Health Status Report credits the Black Infant Health Program for changes and states that “For all births (normal and low birth weight) in the period 1990-1992, African American mothers were 4.5 times more likely to receive untimely prenatal care as compared to Whites. During the last three years (1999-2001), this disparity gap has decreased significantly so that African American mothers are now 2.5 times more likely to receive untimely prenatal care as compared to Whites” (*The City of 2002 Berkeley Health Status Report, pp.20*).

In the next couple of years to follow, the Public Health Department began the process of slowly moving the needle in reducing the daunting racial health disparities numbers in Berkeley. By 2007, The City of Berkeley Health Status report identified Race and Racism as a social determinant of health among other categories. As with the reports in prior years, African Americans in Berkeley (and Nationwide) continued to have significantly larger concerns concerning poor health outcomes.

The 2007 reports states, “Our ability to eliminate health inequities requires that we address the upstream determinants of health. If we truly wish to improve the health of our community, the Public Health Division must work closely together with Berkeley’s residents, schools, community based organizations, policymakers, and many other agencies to achieve greater social justice and a healthier environment for all” (*The City of Berkeley Health Status Report, 2007, Section I: Social Determinants Of Health & Health Inequities, pp. 2*).

By 2013, although the health equity gap in the City of Berkeley has narrowed in some areas, the numbers continue to be sobering and cause for alarm. The steps to address this problem must be aggressive, multi-systemic, multi-dimensional, culturally responsive interventions to address the social determinants of health, community involved, African American/Black culturally specific and centered. The AABPCN authored a document, [A Community Approach for African American/Black Culturally Congruent Services](#), April 2011, which was given to members of the City Council and the prior City Manager in 2011. The report cited several areas of concern within the

City, including concerns about the health and mental health status of African Americans in Berkeley.

The report offered pragmatic solutions to each identified problem, and offered the suggestion that the City of Berkeley should build an African American/Black Resource Center. The AABPCN reports states the following: "The vision for the African American/Black Resource Center is that it would be developed to have office space for various organizations to serve the community. Services would include, but not be limited to community support, career development, legal services, housing assistance, mental health treatment, educational support, nutritional support, and a meeting space that can be divided up when necessary to make smaller meeting spaces, or opened up for large community events. The building would be a modern green building that is environmentally friendly and located in South Berkeley" (*A Community Approach for African American/Black Culturally Congruent Services, AABPCN report April 2011, pp. 23*).

Later, in July 2013, the NAACP, Berkeley Chapter co-sponsored a Community Town hall meeting at the South Berkeley Library where over 150 participants partook in the event. Among the serious topic discussions, the health inequities within the City were identified as a crisis which needed immediate attention. Fast-forwarding to 2016, the racial health inequities in the City of Berkeley continue to be alarming, and continue to require immediate attention.

ENVIRONMENTAL SUSTAINABILITY

The community garden may contribute positivity to the landscape of South Berkeley and may serve as a small sustainable food supply. Possible impacts observed may be increased auto, foot, and/or bicycle traffic in an around the area of the Center. Visible Recycling and refuse receptacles may minimize possible waste resulting from the increased human traffic flow.

RATIONALE FOR RECOMMENDATION

Over the past 2.5 decades the health status rates of African American residents in the City of Berkeley has been horrendous, especially when it is compared to the White population in Berkeley. Many Cities and Counties have taken strong bold successful steps to understand and address the social determinants of health and mental health and see positive outcomes for their residents. Finding a resolution to the City of Berkeley's racial health equity problem will benefit the entire City, and create healthier citizens with increased positive outcomes. An African American/Black Holistic Resource Center will be a stabilizing force in the African American/Black community in South Berkeley. It would increase Community empowerment, support and involvement. Furthermore, culturally congruent services that are provided to African Americans/Blacks and other marginalized people in a respectful and welcoming manner will net great benefits to all parties.

ALTERNATIVE ACTIONS CONSIDERED

- 1 Add culturally congruent health services to existing Department of Health Services and Public Health Division services along with the creation of a City of Berkeley African American/Black Community Advisory Council that evaluates health equity status and suggests interventions to improve the health equity status of African American/Black people in Berkeley led by and comprised of **80%** African American/Black members.
- 2 Partner with Alameda County Public Health Department to develop and provide culturally congruent, responsive services to the African American Community in the City of Berkeley to be delivered with Cultural Humility.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Tanya Bustamante, Commission Secretary, HHCS, (510) 981-5324

Attachments:

1: 2013 Health Status Summary Report

2: AABPCN Report: A Community Approach for African American/Black Culturally Congruent Services, April 2011



Proposed Housing Trust Fund Allocation Plan and Substantial Amendment to the Annual Plan and Consolidated Plan

This document includes all the excerpts required for a National Housing Trust Fund Substantial Amendment to the Annual Plan and Consolidated Plan (ConPlan), pursuant to HUD's "Housing Trust Fund Allocation Plan Guide" and the Federal Regulations.

It does not include information on other federal programs that HCD sent to HUD in previous Annual Plans or ConPlans.

National Housing Trust Fund Background

The National Housing Trust Fund (HTF) was established by the Housing and Economic Recovery Act of 2008 (HERA) and is administered by HUD. HTF is funded with a set-aside from new mortgage purchases from Government Sponsored Enterprises. Per 24 CFR §93.250, 100% of funds must benefit Extremely Low Income (ELI) households or households with incomes at or below the poverty line (whichever is greater) when the total amount of HTF funds is less than \$1 Billion. On April 4th, 2016, HUD announced that nearly \$174 million will be made available for HTF recipients.

Of this amount, the current HTF allocation to California is \$10,128,143.

HTF Distribution Method and Recipient Requirements

The State will distribute funds by selecting applications submitted by eligible recipients.

To be eligible, a recipient may be an individual, joint venture, partnership, limited partnerships, trust, corporation, limited liability corporation, local public entity, duly constituted governing body of an Indian Reservation or Rancheria, or other legal entity, or any combination thereof which meets the requirements of 24 CFR §91.320(k)(5)(ii) and §93.2 Recipient:

- Demonstrates ability and financial capacity to complete the activities;
- Makes acceptable assurances they will comply with all HTF Requirements during the entire affordability period;
- Demonstrates familiarity with requirements of Federal, State and any other housing programs used in conjunction with HTF funds; and
- Demonstrates experience and capacity to conduct the eligible HTF activity in questions as evidenced by relevant history.

For FY 2016-17, the State may utilize additional criteria that are consistent with those also used by other HCD financing sources with which HTF funds may be paired.

Substantial Amendment for the National Housing Trust Fund



HTF Selection Criteria

The Department welcomes this new source of federal funding for in-need ELI populations. For FY 16, to leverage the National Housing Trust Fund (HTF) with state funds in an administratively efficient manner, HTF will be paired with one or more state programs in a joint NOFA. The paired program(s) may be historically successful state programs such as the Veterans Housing and Homelessness Program (VHHP), the Supportive Housing component of the Multifamily Housing Program (SHMHP), or program funds that are approved through the State's current budget process.

Under a joint NOFA, HTF requirements will be followed, and the application evaluation criteria of the companion program will be utilized, along with HTF evaluation criteria, to rate applications.

In addition to following federal HTF requirements, The State will utilize the specific rating factors set forth by these other programs in adopted guidelines or regulations in the following areas covered on the next page.

Application selection criteria will consist of those specifically mandated under the HTF statute and regulations, applied in a manner consistent with the rules of the companion state program used to leverage HTF funds. One of these required criteria is "The Merits of the Application in Meeting the State's Priority Housing Need". HCD has identified serving individuals and families experiencing homelessness, or other special needs populations, as such a priority need.

Geographic Priorities for the Distribution of Funds

This criterion will be applied in a manner consistent with the companion program, either by setting minimum funding levels for designated regions or by assigning no more than 45% of available points.

For example, if the companion program is SHMHP, this criterion will be applied by following MHP's rules, which require a certain percentage of available funds to be allocated to both Northern and Southern California.

In evaluating geographic priorities, the State may consider the combination of HTF monies and those from the companion State program. To continue the SHMHP example, the allocation to Northern California may be calculated by adding the amount of State funding allocated to projects in this area to the amount of HTF funding allocated to these projects.

Applicant's Ability to Obligate HTF Funds and Applicant's Ability to Complete the Proposed Project in a Timely Manner

Regardless of the paired state program, in order to comply with §91.320(k)(5)(i) and §93.2, applicants will certify they will comply with all requirements of the HTF program during the entire federal affordability period, and demonstrate ability and capacity to complete the activities and conduct the eligible HTF activities as evidenced by relevant history.

The Department will employ two selection criteria to evaluate the applicant's ability to obligate HTF funds and the applicant's ability to complete the proposed project in a timely manner.



Substantial Amendment for the National Housing Trust Fund

1. Applications will be scored on the Sponsor's experience with Rental Housing Developments and may be scored based on their experience serving the preferred beneficiary/subpopulation.
2. The Department will award extra points to eligible recipients who apply for a project that already has federal funds (i.e. HOME funds). These points will not exceed 20% of the maximum points available.

The Availability of Federal, State or Local Project-Based Rental Assistance

Regardless of the paired state program, applications that include project based rental assistance will receive points, based on the proportion of HTF-assisted units covered by the project- specific rental assistance.

The Length of the Affordability Period

Regardless of the paired state program, pursuant to 93.302 (d), the federal affordability period will be thirty years (30), beginning after project completion. In addition, the state will impose a state affordability period. The state affordability period will be fifty-five years (55). These affordability periods will be reflected in the HTF regulatory agreements.

How Well the Application Meets the State's Housing Priority Needs

Preference will be given to projects with units dedicated to homeless and/or other special needs populations. Developing affordable housing for these subpopulations serves the State's priority housing needs, as defined in AP-20 Annual Goals and Objectives in this Annual Plan.

Regardless of the preferred subpopulation, the Department, the Sponsor and all related parties will adhere to the nondiscrimination requirements of HTF, including but not limited to the nondiscrimination requirements within 24 CFR 93.303, and 93.350.

Use of Non-Federal Funding Sources

Regardless of the paired state program, applications will be scored based on the leverage of other, non-federal funds. If the joint NOFA includes SHMHP, HTF will award leverage points to projects in Rural Areas using a modified scale. This scale requires less leveraged funds to achieve the same point total as compared to non-rural areas.



Substantial Amendment for the National Housing Trust Fund

Other Requirements

Maximum Per-unit Development Subsidy

The HTF per-unit development subsidy limit will match that applicable to the companion State program with which HTF funds are paired.

Rehabilitation Standard

The State will not use HTF funds for rehabilitation of housing, as allowed by HUD.

Resale and Recapture Provisions

The State will not use HTF funds to assist first-time homebuyers, as allowed by HUD.

HTF Affordable Homeownership Limits

The State will not use HTF funds for homeownership housing, as allowed by HUD.

State Limited Beneficiaries of Preferences

The State will limit beneficiaries and/or give preference to segments of the extremely low-income population as identified in the action plan and selection criteria.

Refinancing of Existing Debt

The State will not permit the refinancing of existing long-term debt.

Recipient Application Requirements

The State will require applications contain a description of the eligible activities to be conducted with HTF funds, as required in 93.200 and the State will require that each eligible recipient certify that housing assisted with HTF funds will comply with HTF requirements.

Certification

The State certifies the following statement about the HTF Allocation Plan and Substantial Amendment:

Consistency with the Plan – The housing activities to be undertaken with CDBG, HOME, ESG, HTF and HOPWA funds are consistent with the strategic plan. Where the HOPWA funds are to be received by a city that is most populous unit of general local government in an EMSA, it must obtain and keep on file certifications of consistency from the authorized public officials for each other locality in the EMSA in which housing assistance is provided.