

Housing Advisory Commission

HOUSING ADVISORY COMMISSION

Regular Meeting
Thursday, February 4, 2016

Time: 7:00 p.m.

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

AGENDA – Revised 2/1/2016

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 January 7, 2016 Draft Meeting Minutes (*Attachment 1*)

UPDATES / ACTION ITEMS

5. **Housing Advisory Commission Officer Elections – All**
6. **Draft Annual Action Plan – Jennifer Vasquez, HHCS** (*Draft plan is available online at <https://www.cityofberkeley.info/ContentDisplay.aspx?id=12160>*)
7. **Support for the Berkeley Housing Authority – Marian Wolfe** (*Attachments 2 and 3*)
8. **Housing Advisory Commission 2016 Workplan – All** (*Attachment 4*)
9. **Relocation Ordinance – All** (*Attachment 5*)
10. **Update from Subcommittees**
 - a. CDBG
 - b. Housing Trust Fund
11. **Update on Council Items – All/Staff**
 - a. February 16 Council special meeting on housing
 - b. Housing Trust Fund Guidelines revisions related to labor requirements – will go to Labor Commission March 16
 - c. Housing Trust Fund and predevelopment loans
 - d. 1/26 Council priority setting process – small sites acquisition fund letter
 - e. Grayson Street
12. **Future Items – all items and dates are tentative**

- a. CDBG subcommittee public facility funding recommendations – March
- b. Draft Annual Action Plan for action - March
- c. Smokefree housing ordinance evaluation – July

13. Announcements

14. Adjourn

ATTACHMENTS

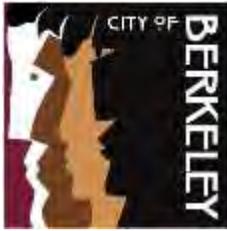
1. Draft January 7, 2016 Meeting Minutes
2. Collaboration with Berkeley Housing Authority
3. HA report to City Council, Support for the Berkeley Housing Authority
4. Housing Advisory Commission Work Plan
5. Amending the Relocation Ordinance

Written material may be viewed in advance of the meeting at the Housing Department, 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, January 7, 2016

Housing Advisory Commission

Time: 7:02 p.m.

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

DRAFT MINUTES – Revised 2/1/16

PRELIMINARY MATTERS

1. Roll Call

Present: Heidi Abramson, Tor Berg, Kathleen Crandall, Brendan Darrow, Zach Franklin (substitute for Diego Aguilar-Canabal), Jill Martinucci, Alejandro Soto-Vigil, Igor Tregub, and Marian Wolfe (7:06). Absent: Diego Aguilar-Canabal (excused).

Commissioners in attendance: 9 of 9

Staff Present: Davidson, Scott, Wyant

Members of the public in attendance: 10

Public Speakers: 9

2. Agenda Approval

Action: M/S/C (Martinucci/Crandall) to approve agenda as amended (move item 10 ahead of 5, remove item 6).

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

3. Public Comment

1 speaker

4. Approval of December 3, 2015 Minutes

Action: M/S/C (Wolfe/Tregub) to approve minutes.

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

UPDATES / ACTION ITEMS

5. Support the Berkeley Housing Authority

Public speakers: 2. Tia Ingram (Executive Director of the BHA) and Carole Norris (Chair of the BHA Board of Commissioners) presented. Soto-Vigil moved that the HAC send the proposed Support for BHA memo. Darrow seconded conditional on friendly amendment to strike the fourth from last paragraph that references the Berkeley Property Owner's Association. Martinucci offered friendly amendments to explicitly state the four goals laid out in the Rationale for Recommendation section.

Action: M/S/C (Soto-Vigil/Darrow) to send the memo to City Council with the following changes:

1. Add the following goals of the recommendation:
 - a. Encourage greater utilization of Section 8 Vouchers
 - b. Maintain the diversity of the community
 - c. Address the urgent situation of the rental market affordability crisis
 - d. Recommend that Council consider these possibilities in all due haste.
2. Strike the fourth from last paragraph.

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

6. Grayson Street Apartments: Housing Trust Fund Reservation and Affordable Housing and Sustainable Communities Co-applicant

Commissioner Wolfe disclosed her membership on Resources for Community Development's board, a conflict of interest, recused herself from participation, and left the room.

Public speakers: 1. Jenny Wyant introduced the recommendation.

Action: M/S/C (Tregub/Soto-Vigil) to recommend that Council adopt a resolution approving a \$1.4M funding reservation for Grayson, and authorizing a joint application with Satellite Affordable Housing Associates for Affordable Housing and Sustainable Communities funds.

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

7. Recommendation to the Berkeley City Council to Require Decision Between In-Lieu and Inclusionary Housing and Payment of Fee at Issuance of First Construction Document.

Public speakers: 1.

Action: M/S/C (Tregub/Martinucci) to support the recommendation to Council.

The Housing Advisory Commission (HAC) recommends to the Berkeley City Council to consider as part of its package of possible changes to the inclusionary housing and mitigation fee requirement, the following: That applicants for residential projects who are statutorily required to pay an Affordable Housing Mitigation Fee into the Housing Trust Fund or, alternatively, provide a certain percentage of units as Below Market Rate (inclusionary), make the decision at issuance of the first construction document. Should the applicant decide to pay the fee, the City Council should require payment to be at the issuance of the first construction document, as well.

This recommendation is predicated on a requirement that the percentage of inclusionary Below Market Rate units in qualifying market-rate projects is at least 20%, as recommended by the 2015 Affordable Housing Nexus Study and November 5, 2015 vote of the HAC.

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

8. Modify Housing Trust Fund Guidelines Regarding Predevelopment Loans and Labor

8.a. Predevelopment Loans

Action: M/S/C (Soto-Vigil/Tregub) to support the recommendation to Council to prioritize Housing Trust Fund allocations for predevelopment applications and temporarily suspend the \$100,000 or 10% limitation on predevelopment allocations to June 30, 2017.

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

8.b. Labor

Public Speakers: 2.

Action: M/S/C (Tregub/Abramson) to recommend to Council the following changes to the Housing Trust Fund Guidelines:

VI. D. Threshold Criteria and Other Conditions (pp. 18 - 19), add:

6. Prevailing Wages

For any Development Project involving eight (8) or more dwelling units, the Applicant shall ensure that the Project construction contract requires payment of the General Prevailing Rate of Per Diem Wages, as defined in Title 8 of the California Code of Regulations, (Division 1, Chapter 8, Subchapter 3, “Payment of Prevailing Wages Upon Public Works”) section 16000, to all workers who perform work that is covered by a State-published prevailing wage determination. The Applicant shall ensure that contract documents and any call for proposals or bids shall specify that all contractors and subcontractors are subject to the provisions of 1771.1 and 1771.4 of the Labor Code with respect to the project. The construction contract shall require the contractor to maintain labor records as required by law, and to make these records available to any enforcement agency in the format prescribed by the California Labor Commissioner or other enforcement agency. Prior to the close of the Program loan, the Sponsor shall provide to the Department a certification that project contractors and subcontractors were currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5, that prevailing wages have been paid or will be paid, and that payroll records are available, consistent with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

VI. C. 1.e. Project Consideration / Funding Criteria: Community Objectives: Impact on the Community (p. 17), add:

- x. Contribute to employment that sustains construction worker households at or above area median income levels through utilization of registered apprentices from training programs that regularly enroll and graduate residents of Berkeley and the East Bay Green Corridor.

VI. C. 3. Project Consideration / Funding Criteria: Applicant Qualifications and Experience, including... (p. 17), changes as follow:

e. ~~construction management track record~~ track record of successful construction management, including:

- (i) The Applicant's past projects are not encumbered by unlapsed mechanics liens that were filed by or on behalf of workers with claims of unpaid wages or fringe benefits;
- (ii) The Applicant's past projects are not related to unsatisfied final judgments from the California Labor Commissioner.

j. Evidence that the Development Team's construction contractor(s) - with respect to projects completed within the past two years that required the payment of state prevailing wages - have utilized construction trades apprentices who are registered with the state of California at ratios of journeymen to apprentices that are consistent with California Labor Code section 1777.5.

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

9. Support for Referral to City Manager on the Establishment of an Affordable Housing Small Sites Fund

Public Speakers: 2.

Action: M/S/C (Soto-Vigil/Berg) to submit a letter to Council supporting the referral, and recommending that it be ranked highly on Council's housing priority list.

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

10. Update on Council Items

- a. January 12 special Council meeting
- b. February 16 Council worksession on housing

11. Future Items

12. Announcements

13. Adjourn

Action: M/S/C (Abramson/Tregub) to adjourn the meeting at 9:39 p.m.

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

Approved on DATE, 2016

_____, Amy Davidson, Secretary

February 4, 2016

TO: Housing Advisory Commissioners
FROM: Marian Wolfe, Housing Advisory Commissioner
RE: Collaboration with Berkeley Housing Authority

Background

At the last HAC meeting, we had a presentation and discussion with the Executive Director and Board Chair of the Berkeley Housing Authority (BHA). One of the main concerns at present is how to increase the use of Berkeley's Tenant-Based Housing Vouchers in the City itself.

At present, approximately 15% of the tenant-based vouchers are used for rentals in the City of Berkeley, and the remaining vouchers are used in other cities. Also, there are unused vouchers. This means that some tenant-households that could receive financial assistance are not receiving help. Furthermore, the administrative funds provided by HUD to the BHA are provided according to a formula that is based on the number of vouchers that are being used. So, lower utilization rates result in lowered funds to operate the Authority. While I do not know the details of financing for the BHA, it is possible that if there are not sufficient funds, our City will face the situation of either downsizing staff at the BHA or spending more General Fund revenues to support the Authority.

BHA Proposal

The Authority provided several suggestions of ways to increase participation by landlords in the Voucher Program. These included: outreach to property owners, establishing a Damage Claims Program, and possible exemption of Voucher units from payment of the business license fee. There may be additional ideas to consider that the HAC can suggest.

In addition to encouraging more participation of market rate property owners in the Voucher Program, BHA is also reaching out to owners of inclusionary units. This strategy encourages landlords to rent to very low- and extremely low-income tenants. With this strategy, voucher holders can remain in Berkeley and landlords can receive higher rents.

A final strategy proposed by BHA is to establish a program to help previously homeless individuals to move into market rate housing by using these Vouchers.

Potential Role for the HAC

What is the role for the HAC?

Should we establish a subcommittee to work with BHA staff?

What are other ways we could support the BHA in these efforts?



[Commission Name]

ACTION CALENDAR
DATE

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Brendan Darrow, Chairperson, Housing Advisory Commission
Subject: Support for the Berkeley Housing Authority

RECOMMENDATION

The Housing Advisory Commission recommends that the Berkeley City Council consider taking the following actions to support BHA:

1. Support Project Move-Up.
2. Assist with Owner Retention in the Section 8 Voucher program.
3. Modify inclusionary zoning regulations and Housing Trust Fund Guidelines to require a percentage of Below Market Rate units be made available to voucher holders.
4. Offset the BHA's prorated administrative fees from HUD by providing a \$10 per voucher administrative fee to BHA.

The Housing Advisory Commission approved this report at its January 7, 2016 meeting. M/S/C (Soto-Vigil/Darrow). Vote: Ayes: Abramson, Berg, Crandall, Darrow, Franklin, Martinucci, Soto-Vigil, and Tregub. Noes: Wolfe. Abstain: None. Absent: None.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts are broken down as follows to reflect the four individual recommendations: (1) Forgives \$300,000 that come due in 2022; (2) issue a one-time \$50,000 grant, foregoes a portion of business license fees collected from landlords; (3) none; (4) expend \$233,000 per year to offset HUD proration of administrative fees.

CURRENT SITUATION AND ITS EFFECTS

At the December 1, 2015 Council work session, representatives from the Berkeley Housing Authority presented its current situation, including the devastating effects the current rental housing crisis is having on the most vulnerable Berkeley residents. Staff also presented solutions of how the City of Berkeley and BHA can partner to achieve the mutual goals of housing the homeless, and providing housing affordable options for extremely low-income seniors, disabled individuals, and families.

The presentation indicated that the City must actively participate in creating local policy that encourages Berkeley landlords to rent to Section 8 voucher holders. Rents have skyrocketed to never before seen levels.

Unless the City provides a variety of interventions, the Berkeley Housing Authority can no longer provide low income Berkeley residents with housing in Berkeley. Currently BHA is only utilizing 1,676 of the possible 1,935 Vouchers, and only 15 of every 100 families that receive a Section 8 Voucher are successful in finding a unit they can rent in Berkeley.

In a subsequent presentation to the HAC on December 3rd, staff provided a more detailed report on how the BMR units supported by the City could help create housing opportunities for extremely-low income households and increase program income for BHA.

If the City Council enacted some or all of the following recommendations, Berkeley's Section 8 tenants will have better chances to find stable affordable housing in Berkeley. Moreover, swift and immediate policy changes by the City Council will help prevent the Berkeley Housing Authority from losing federal funding from HUD.

BACKGROUND

1. Support Project Move-Up. "Project Move-Up" is a program BHA wants to implement to help previously homeless individuals living in Single Room Occupancy Units, and families in the City's Shelter Plus Care Program move from supportive housing into private market housing, with a Section 8 Voucher, creating an opportunity for another homeless individual/family to move from homelessness to the vacated SRO or Shelter Plus Care unit. BHA does not have funds for the program, but proposes the following:

- a. Security Deposit Loan Fund. BHA can use the balance of \$134,464 in this fund if Council (a) forgives the initial \$225,000 loan; and (b) revises the restriction on use of funds from "security deposits" and allow for use in "Project Move Up."
- b. Housing Trust Fund. BHA successfully completed the Public Housing Disposition project in 2014, relocating all the sitting tenants. BHA can use the \$300,000 funds currently reserved for repayment to the City in 2022, if the loan issued in 2012 for disposition consultants and relocation of public housing residents is forgiven.

These proposals for funding the program do not require any new allocation of funds from the City, and ensure a minimum of 10 previously homeless families are able to transition to private market housing, with §8 rental assistance.

2. Assist with owner retention in the §8 Voucher Program. The increase in market rents (above the Payment Standard) has eliminated a major incentive to landlord participation in the Section 8 Program. BHA's Section 8 program is the surest way to maintain housing for extremely low-income households. The City should support this activity by helping fund incentives:

- a. A \$50,000 grant to BHA for implementation of a Damage Claims Program. BHA reports losing 10-15 owners per month by attrition. Owners have identified the financial loss at the end of a §8 tenancy (damage to the unit, non-payment of rent, cost of eviction) as a reasons not to participate in the §8 program. BHA is proposing a "damage claim" provision (still in design) that would compensate the owner for a portion of the loss (above the security deposit), in exchange for the owner renting the unit immediately upon turnover to another family with a Section 8 Voucher. A one-time \$50,000 grant would provide an opportunity to test this incentive.
- b. Exempt owners that rent to families with Section 8 vouchers from the business license fee for rental property, or exempt the owner from any increase in the license fee.

3. Increase the supply of units for extremely low-income households. It takes years to complete a new development, but there are actions the City can take to immediately increase access to existing units:

- a. Modify Berkeley's Inclusionary Zoning regulations to require 50% of the inclusionary units in a project be made available to households at or below 30% Area Median Income; this would make the units "affordable" to families with Section 8.
- b. Modify the Housing Trust Fund (HTF) guidelines to require at least 50% of the Below Market Rate units in newly constructed developments be rented to families at or below 30% Area Median Income; this would make the units "affordable" to families with Section 8 Vouchers.

Note: Both options meet the spirit of the City's requirement to include "affordability" in the luxury developments, increase the supply of units available to extremely low-income households, and help BHA increase the utilization of Vouchers and increase program income (as a result of serving more families).

4. Support BHA with a per voucher administrative fee. The City does not provide BHA any funds for operations. After years of dysfunction, we finally have a Housing Authority that is meeting HUD requirements, and working hard to serve its clients. BHA is also the City's best and most cost effective means of income and racial diversity.

BHA has a deficit caused by HUD's reduced funding ("proration" of less than 100% of Administrative Fees earned monthly for every unit under §8 contract), and the inability of families to find an affordable unit. BHA is working to address both issues, but needs financial support in the short-term.

It is a very cost effective proposal for the City to support BHA by providing \$10 per authorized voucher (1,935), per month (\$233,000 per year) for a maximum of three years. This will partly cover the deficit created from proration of Admin Fee and under-utilization, while BHA continues its efforts to reverse these critical trends.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The purpose of this recommendation is to achieve the following four goals:

- a. Encourage greater utilization of Section 8 Vouchers
- b. Maintain the diversity of the community
- c. Address the current rental market crisis
- d. Recognize the situation's urgency, and consider the recommendations with all due haste.

ALTERNATIVE ACTIONS CONSIDERED

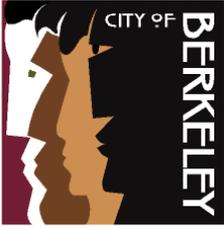
No alternative actions were considered.

CITY MANAGER

TBD

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406



Health Housing and
Community Services Department
Housing & Community Services Division

2/4/2016 HAC
Attachment 4

MEMORANDUM

To: Housing Advisory Commission

From: Amy Davidson, Senior Community Development Project Coordinator/ Secretary to the HAC

Date: February 4, 2016

Subject: **Work Plan**

Recently the Housing Advisory Commission has had a high volume of referrals to and from Council. In order to manage the work load more effectively, the Chair and Vice Chair put discussion of the development of a work plan on the agenda. This memo provides additional background information to inform discussion. If the Commission agrees to establish a work plan, I recommend spreading the discussion over this meeting and the next, since developing and finalizing a work plan in a single meeting is probably not feasible.

COMMISSION WORK PLANS IN GENERAL

The Commissioners Manual encourages the development of a work plan:

1) Development of a Work Program

Many commissions find it effective to establish a yearly work program or statement of goals. A work program is a planning document that specifies how and when the objectives (outcomes) which the commission expects to accomplish during the fiscal year will be achieved. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal. The nature of the duties of specific commissions may determine which method is most suitable.

Designing yearly work programs or goal statements may be done in conjunction with the development of the relevant departmental work plan so that the department and commission's work will complement each other throughout the year.

When developing a workplan Commissions should take special care to ensure that they remain within their subject area purview and the constraints of their enabling legislation.

Related Attachments:

1. Housing Advisory Commission 2014 Work Plan Priorities
2. Planning Commission Work Plan

A Vibrant and Healthy Berkeley for All

3. Labor Commission Work Plan
4. Sample Board Work Plan – while designed for nonprofit boards, this format addresses the use of subcommittees and charts out the meetings for the year

CURRENT ISSUES FOR COMMISSION WORK

Current Responsibilities of the Housing Advisory Commission:

1. Advise the City Council on the use of the Housing Trust Fund
2. Advise the City Council on use of CDBG funds for public facilities
3. Hear appeals of decisions of the Building Official
4. Review Berkeley Way development proposal

Other issues identified by Commissioners for future discussion:

1. Student housing
2. Implementation of the smokefree housing ordinance

Current Council Referrals to the HAC:

37. City Density Bonus

Supplemental Materials

From: Mayor Bates and Councilmember Capitelli

Recommendation: Request that the City Manager draft an ordinance to implement a City density bonus that would serve as an option to the State density bonus. The City density bonus would mirror the State bonus by allowing housing projects (rental units and condominiums) of five or more units to receive a bonus of up to 35% increased density if the project contributes to the supply of affordable housing. For rental projects, the City bonus fee would be \$10,000 per unit, in addition to the City's affordable housing mitigation fee, which is currently \$20,000 per unit for rental projects. For condominium projects, the City bonus fee would be \$10,000 per unit in addition to any affordable housing mitigation fee that the City Council adopts for condominium projects. Rental and condominium projects opting for the City density bonus would pay the \$10,000 new fee and the affordable housing mitigation fee on the project's base units, not the density bonus units. The City density bonus fee of \$10,000 could be changed by subsequent Council resolution. Projects that already have building permits and are fully entitled for bonus density at the time this ordinance takes effect would be allowed to opt for the City density bonus by paying the fee when the Certificate of Occupancy is issued. After the ordinance is adopted, other future projects would pay the fee when the project's building permit is issued. Request also that the City Manager review the City's Affordable Housing Mitigation Fee ordinance to insure compatibility with the City density bonus and amend if necessary. Request also that the proposed ordinance and any amendment to the Affordable Housing Mitigation Fee ordinance be reviewed by the Housing Advisory and Planning commissions prior to presentation to the City Council for adoption.

Financial Implications: See report

Contact: Tom Bates, Mayor, 981-7100

Action: M/S/C (Bates/Maio) to accept revised/supplemental material from Mayor Bates on Item 37.

Vote: All Ayes.

Action: 9 speakers. M/S/C (Capitelli/Maio) to adopt the recommendation as submitted plus the supplemental item submitted by the Mayor with the following amendments:

1. The referral to staff will include a request to review adding language related to Project Labor Agreements.
2. Consideration of local concessions and incentives for projects will be considered as part of the referral.

Vote: All Ayes.

36. Prioritize Predevelopment Funds from Housing Trust Fund to Facilitate More Viable Applications to Upcoming State and Federal Funding Cycles

Supplemental

From: Councilmember Worthington

Recommendation: Place a high priority on increased predevelopment funds to facilitate more viable applications to upcoming regional, state and federal funding cycles, and encourage serious consideration of prioritizing predevelopment in 2016 to increase chances to access outside funding sources.

Financial Implications: See report

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: Moved to Consent Calendar. Approved recommendation revised to include that the item be referred to the Housing Advisory Commission to develop the prioritization criteria.

WORK FLOW AND CAPACITY

Generally the Council agenda process takes two months from when a report is submitted by HHCS staff to when the item appears on the agenda.

The HAC has four ad hoc subcommittees at this time: Short term Rental Regulations (which will expire the HAC meeting after that issue is decided by Council), Density Bonus (which is currently on hold), CDBG (for the current funding round) and Housing Trust Fund (through the next funding round).

In the past, the timing of HAC referral follow up has not been hindered by staffing availability. HHCS' Housing Services unit has two staff positions that work on housing policy, and the administration of housing funding and other programs, with a limited amount of time available for policy work. Planning for the course of the year and making more use of subcommittees to develop and refine ideas would focus staff and Commission efforts.

2016 Meetings	Known Agenda Items
March	CDBG funding recommendations Annual Action Plan possible HTF loan amendment
April	
May	
June	
July	
September	
October	
November	CAPER Public hearing on community needs for RFP process
December	

DATE: October 23, 2013 (Updated November 12, 2013)
TO: Housing Advisory Commissioners
FROM: Marian Wolfe, Chair
RE: **Work Plan Priorities**

Below are the summaries of our Work Plan priority rankings – covering advocacy areas as well as information that the HAC believes would be useful to have as background to our work in Berkeley.

At this point, I suggest that we focus on the top three advocacy areas and the top three information topics. These include the following:

Advocacy

1. Work to maintain or expand the amount of affordable housing in the City.
2. Investigate options to identify taxes to provide support for affordable housing.
(While we did not specify jurisdictional level for these taxes, may we assume, at this time, that we will examine potential taxes that the City of Berkeley could adopt – preferably through legislative action?)
3. Reach out to the public and the City Council regarding affordable housing issues, including the use of HAC meetings to provide outreach to the public.

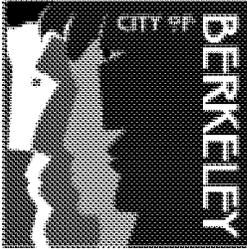
Background Information

1. Berkeley's Housing Funds and Role of the HAC in Advising How Funds Should Be Allocated
2. Other Sources of Affordable Housing Funds
3. Best Practices

HAC WORK PLAN PRIORITIES
Ranking as Submitted by HAC at the
10/03/13 Meeting

Advocacy Action	Casalaina	Droste	Feller	Lam	Sawicki	Skjerping	Soto-Vigil	Tregub	Wolfe	Totals
1) Provide letters of support for state policies.	2					1		2		5
2) Work to maintain existing affordable housing and also expand the amount of affordable housing in the City.	5	5	5	5	3	2	4	5	5	39
3) Become better acquainted with the Rent Board. Reach out to tenants, possibly through Rent Board mailings.					2				2	4
4) Investigate options to identify taxes to provide support for affordable housing.	4	1	3	4	1	3	5	1	3	25
5) Encourage more co-operative housing development, land-banking, and other creative options.		4		3			3		4	14
6) Consider whether Berkeley should study the use of eminent domain to acquire foreclosed housing.	1		2	2			1			6
7) Reach out to the public and the City Council regarding affordable housing issues, including the use of HAC meetings to provide outreach to the public.	3	3	4		4	4		4	1	23
8) Invite more people/groups to give presentations to the HAC. Examples include Berkeley's nonprofits (SAHA and		2	1	1	5	5	2	3		19

RESEARCH AND INFORMATION GATHERING										
	Casalaina	Droste	Feller	Lam	Sawicki	Skjerping	Soto-Vigil	Tregub	Wolfe	Totals
1) Learn more about Specific Plans so that we understand the role that housing plays in these plans.		1	1		1	3			1	7
2) Learn more about the components of housing funding.	2	3	3	2	2	1	1	2		16
3) Best practices from other cities that are consistent with our local laws.	3	2		1			2	3		11
4) Who benefits from affordable housing?	1								2	3
5) Economics of affordable housing.			2	3	3	2	3	1	3	17



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: January 21, 2015
TO: Members of the Planning Commission
FROM: Alex Amoroso, Principal Planner
SUBJECT: Planning Commission Work Plan

Background

The Commission received a Staff Report and list of outstanding Council Referrals on November 5, 2014, (see Attachment 1, Staff Report). At that meeting, the Commission decided to appoint an ad hoc committee to evaluate Work Plan options, prioritize the list of Council Referrals and report back to the Commission on January 21, 2015. The Work Plan Ad Hoc Committee, consisting of Commissioners Ben Bartlett, Tracy Davis, Harry Pollack and Gene Poschman, met on November 19, 2014, and December 7, 2014, (see Attachment 2, Staff Report). This report discusses the Ad Hoc Committee's input and recommendations for a draft Work Plan for the Commission.

Discussion

At the meeting on January 17, 2015, Michael Caplan and Jordan Klein, from the Office of Economic Development, made a presentation about their work and priorities for the coming year; this presentation informed the Ad Hoc Committee's recommendations.

The Ad Hoc Committee asked that staff consider prioritizing economic development amendments and worked based on its return on investment. In other words, the proposed amendment should have a substantial benefit while not requiring excessive staff time to accomplish the task.

The committee expressed interest in economic development issues as a priority, because they see a link between strong economic development and housing development.

Focus Areas –

The Ad Hoc Committee discussed the range of focus areas identified in the Staff Report and decided that a focus on economic development would be appropriate for the coming couple of years. This recommendation comes in light of the extensive focus on housing over the past two years (Housing Element, Accessory Dwelling Units, Homeless Shelter State Compliance, mini-dorms and others).

Within the broad issue of economic development, the Ad Hoc Committee suggested the following specific areas of focus:

- Review quotas Citywide, with possible recommendations for a comprehensive and simplified single system for those districts with quotas;
- Review of West Berkeley zoning issues to promote small manufacturing businesses, and address incidental retail;
- Address “change of use” issues that arise when existing buildings are occupied by a new use (parking, space allotments, level of discretion);
- Consider updating definitions and regulations to meet current standards, where business types may no longer exist, or function in the same manner (such as video stores).

Council Referrals Priorities –

The current/outstanding Council referrals are listed at the end of the January 7, 2015, Ad Hoc Committee Staff Report. They are separated into two sections: housing-specific and others. A synopsis of the referral name and priority is provided below, with further detail and staff reasoning provided in the body of the January 7, 2015, report.

Housing Referrals Cluster

Priority: Medium (group of 7 referrals)

Other Council Referrals

Priority: High:

- Elmwood Quotas
- Check Cashing Stores
- Promote Economic Development Downtown and Citywide

Priority: Medium:

- Manufacturing Districts Toxic Remediation
- Reconcile West Berkeley Zoning and Medical Uses
- Install Water Fountains and Filling Stations in Commercial Developments

Priority: Low:

- Electric Car Incentives
- Extend Commercial Zoning along Gilman Street
- Tobacco Free School Zones
- Expand Medical Cannabis Cultivation
- Telegraph Avenue Zoning Changes

Other Areas of Focus –

The Ad Hoc Committee also identified work they would like to undertake intermittently throughout the year:

- Work with staff to identify Zoning Ordinance amendments to streamline processes, address outdated terminology, and reduce levels of discretion where appropriate;
- Set ad hoc committees to meet a couple of times each year to assess progress and identify any new priority focus areas;
- Hear presentations from the Office of Economic Development, or other parties, to help focus Commission work.

Recommendation and Next Steps

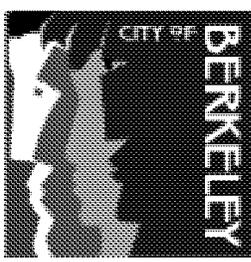
Staff recommends:

1. Forward a prioritized list of Council referrals, with any changes to staff's proposed priorities;
2. Suggest a Work Plan focused on economic development priorities and Zoning Ordinance clean-up/streamlining, with some specific areas of interested identified.

Staff will prepare and submit the proposed PC Work Plan for Council review in April, 2015.

Attachments:

1. PC Report dated November 5, 2014
2. Ad Hoc Committee Staff Report dated January 7, 2015



Planning and Development Department
Land Use Planning Division

Item 10
November 5, 2014

STAFF REPORT

DATE: November 5, 2014
TO: Members of the Planning Commission
FROM: Alex Amoroso, Principal Planner
SUBJECT: Work Plan

BACKGROUND

The Commission received a Staff Report and list of outstanding Council Referrals (Attachments 1 and 2) on September 17, 2014. This report and discussion is prompted by both staff and Commission desires to have a more directed Work Plan and include subjects of interest to the Commission. Much of this process starts with the Referrals list. That list may hold opportunities for broadening and enhancing topics. Staff asks that the Commission consider the discussion section of the report and offer input to guide staff in the development of a Work Plan.

DISCUSSION

The outstanding Referrals vary by type; some are location specific, while others identify district or City-wide issues to be addressed. Many are refined to the Council's particular interest and direction at the time they were drafted. Staff's duty is to provide information on each Referral, in accordance with its direction. The Commission can respond to the Referral and staff's work in a number of ways:

- Initially, ask staff to re-prioritize the Referral, and focus to other priorities;
- Direct staff to develop ordinance language or other appropriate response to the Referral;
- Send response to the Council asking for modification of the Referral, or recommending that no action be taken.

The Commission has taken each these actions previously in response to various Referrals.

Work Flow and Capacity

Several components of the work flow and process remain consistent:

- Generally, the Commission meets approximately twenty times each year;
- Policy staffing is limited to approximately 2.5 full time positions, spread over several staff people;

- Any Referral response has a process cycle which takes about three to five meetings; some may take longer depending on the breadth of the subject area and outside input from the affected community.

In addition, more urgent or critical Referrals can redirect work flow and take priority over work in progress. These consistent pieces have shown that staff is able to work on and bring forward approximately six to eight Referral responses in any calendar year. The Commission works through about the same number to conclusion and recommendation to the Council.

Given these parameters, staff plans to draft a Work Plan that brings forward a couple of items at a time, allowing both staff and Commissioners to adequately focus attention on the subjects at hand. Spreading too thin over several subjects tends to diffuse the ability of available staff, and adds time to completing the Referral.

Opportunity to Affect Referrals and Work Plan Scope

As noted above, the Commission has the option to respond to any Referral, as well as the overall list. The following are some paths the Commission may choose:

- Recommend to staff, a priority order of the existing Referrals;
- Respond to the Referral with zoning language or other necessary work as directed, and request an expanded Referral on the subject area. One example of this is the Commission's request to reconsider the mini-dorms issue, which the Council has referred back.
- Suggest subjects which could "match-up" with existing Referrals, to expand the capacity and affect the outcome. For example, the Referral to rezone for more commercial along Gilman Avenue could prompt a discussion of criteria or methods to allow, but also limit retail to specific areas.

These approaches may help the Commission in expanding the Referrals to better suit the known needs and outcomes. For example, the residential outdoor glare Referral could be a two part response where the Commission acts on the Council Referral and requests that the coverage of the Referral be expanded to include all outdoor lighting sources in residential contexts (landscaping lights, etc.).

Other Areas of Focus

Staff plans to bring forward changes to the Zoning Ordinance (ZO) that address roadblocks, are outdated text, or address subjects no longer of concern (for example, the City still regulates video stores). These sorts of ZO changes can help facilitate application processing and allow staff to focus more time and attention on complex projects.

Staff will be bringing updates on the Adeline Avenue Corridor study as it progresses; there will be opportunities for input and policy suggestions.

CONCLUSION

Staff asks that the Commission do the following:

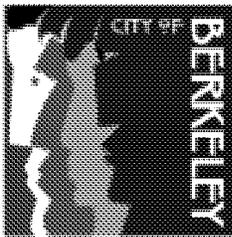
- Identify top priorities in the existing set of Referrals;

- Suggest any additional work, either Referral related or independent, that the Commission deems important for consideration by the Council;
- Name broad subject areas, or particular areas of interest and community need, which might prompt a Referral request to Council.

These inputs and suggestions can help staff in drafting a Work Plan for Council consideration.

Attachments:

1. PC Report 9/17/14
2. Referrals Attachment, 9/17/14



Planning and Development Department
Land Use Planning Division

Work Plan Sub-Committee
January 7, 2015

STAFF REPORT

DATE: January 7, 2015
TO: Work Plan Sub-Committee Members
FROM: Alex Amoroso, Principal Planner
SUBJECT: Consider Work Plan Subjects and Prioritize Council Referrals

Introduction

The Work Plan sub-committee met on November 19 and discussed work plan options for 2015. The sub-committee requested that staff return with input from the Economic Development staff, a set of subjects to consider as work plan projects and a prioritized list of the current Council referrals.

In response, staff provides the following:

- Jordan Klein from the City Office of Economic Development will be available to speak with the sub-committee at this meeting to discuss economic development issues.
- A set of specific zoning issues and programmatic ideas are identified for the consideration
- The Council referrals are provided with a “high, medium, low” ranking and reasoning for each.

Discussion

PC Work Plan 2015 Ideas for Discussion:

Staff has identified several areas of potential interest for the sub-committee to consider as parts of the work plan. Each section includes proposed process and short list of ideas for consideration. Commission can pick one or two areas of interest for recommendation and staff's focus. These would be mixed with referrals (higher priority) and twice yearly clean-up amendments.

While several of the proposals are in more vague terms, the Planning Commission as a whole could consider and refine direction if the area of interest is recommended by the sub-committee. The “Zoning Ordinance Refinements and Clean-ups” is an important ongoing project, so staff recommends that at least twice yearly meetings of a sub-committee be focused on identifying useful zoning amendments.

Focus on Economic Development

Strategy: Report from Economic Development staff to identify priority zoning ordinance changes supporting business improvement and development in Berkeley

Some examples of changes in the Zoning Ordinance based on staff experience:

- Parking waiver for new businesses with higher parking requirement than existing use (such as restaurants) by putting in bike parking instead of requiring an AUP fee and process.
- Allow Neighborhood Commercial (C-N) uses within legal non-conforming commercial buildings located in R districts (i.e. re-introduce the corner market in the dozen or so former corner-market buildings scattered around town); for example, the strawberry creek design center.
- Modify definition of *incidental* use to allow occasional activities that use the entire floor area, such as for performances, limited-duration and frequency sales, etc. Get rid of the 30% gross receipts concept for incidental uses; require food service at all times when beer/wine is incidental. (this one is more complex..)
- Allow by-right minimal controlled sale of food produced on-site for OFF-SITE consumption only. Limited hours.
- Changes of use – no longer require a discretionary permit just because of the size of the tenant space.
- Evaluate and recommend quota reductions or suspensions?
- Address parking requirements at change of use issue?

Focus on Housing

- Review R-4 and R-5 Development standards; setbacks and other development standards affect site development.
- Assess and revise Node development areas in UASP and San Pablo Avenue.
- Revise Density Bonus ordinance to reflect current implementation of projects.
- Address new Council referrals regarding Housing.
- Finish Mini-dorm referral regarding regulations placement in the Zoning Ordinance.

Focus on West Berkeley

- Address unanticipated consequences of 2012 zoning changes, including: Retail component of demised buildings; R&D definition review and revise if necessary
- Increase live /work densities?
- Review MUP parameters and make recommendations for change
- Allow by-right light manufacturing or food production in MUR up to a certain size. Maybe light manufacturing by-right up to 5k in all M districts. Example – cold brew coffee business at 800 Bancroft.

Focus on Zoning Ordinance Refinements and Clean-ups

Strategy: PC sub-committee meets with staff twice yearly to identify a set of priorities. Staff addresses zoning issues and brings back package of draft modifications for consideration.

Specifics:

- Refine Group Living Accommodation (GLA) definitions and regulations – replace mini-dorms

Priority Development Areas (PDAs) updates:

- Review PDAs and recommend changes to CC (expansions, changes to intensity of development)
- Suggest projects in PDAs: modify SPA node designations;

Council Referrals: The referrals list with priorities follows the end of this report.

Conclusion and Next Steps

Staff requests direction from the sub-committee about which zoning subject areas to pursue and priorities for the referrals list presented below. Staff will compile input and produce a staff report for Planning Commission consideration on January 21, 2015..

Attachments

1. Referrals List attached below

Housing Related Referrals4. Affordable Housing Mitigation Fee**From: City Manager**

Recommendation: Maintain the Affordable Housing Mitigation Fee as adopted in Ordinance 7,192-N.S. and Resolution 65,920-N.S. and amended by Resolution 66,015-N.S., with no additional exemptions.

Financial Implications: None

Contact: Jane Micallef, Health, Housing and Community Services, 981-5400

Action: Approved recommendation.

Referral to City Manager: Changes to the Municipal Code Regarding Affordable Housing Requirement Implementation (Continued from October 15, 2013)**From: Councilmembers Arreguin and Capitelli**

Recommendation: Refer to the City Manager and Housing Advisory Commission: 1. The proposed changes to Berkeley Municipal Code (B.M.C.) Section 22.20.065, relating to affordability requirements and implementation of the Affordable Housing Mitigation Fee. Request that the City Manager and HAC review these concepts and provide a recommendation to the City Council on possible changes to the ordinance. 2. Requesting a report from the City Manager about how staff implement the provision allowing for reductions or waiver of fees, B.M.C. Section 22.20.080, including: a. What information is requested of the applicant to provide "satisfactory factual proof" that the waiver/reduction is a "hardship"? b. What process does city staff go through to determine how fee requirements make a project "infeasible"? What standard does the city use to determine "infeasibility"? The report should also explore requiring that the applicant pay for a third party to evaluate financial information to determine how the fees affect financial feasibility. The City of San Carlos requires the applicant to pay for a third party to evaluate their pro forma to determine whether the fee would make the project infeasible.

Financial Implications: Unknown

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

Action: Recommendation #2 from Item 19 moved to the Consent Calendar.

Zoning Amendments to BMC Chapter 23C.08 - Demolition and Dwelling Unit Controls (Continued from June 4, 2013)

From: City Manager

Recommendation: Adopt first reading of an Ordinance repealing and reenacting Berkeley Municipal Code Sections 23C.08.020 and 23C.08.030, and adding Section 23C.08.035 to modify and clarify the conditions under which dwelling units may be demolished.

Financial Implications: See report

Contact: Eric Angstadt, Planning and Development, 981-7400

Action: 7 speakers. M/S/C (Bates/Wengraf) to direct staff to return with alternative language for 23C.08.020A.4. and 23C.08.020A.5. to provide two options:

1) Pay an in-lieu fee for each demolished unit vacant at the time of demolition equal to the Affordable Housing Mitigation Fee, currently set at \$20,000 per unit, or

2) Provide a deed restricted replacement unit whose initial rent shall be the last known rent of the unit prior to demolition, or if the rent is unknown, or if the unit was vacant for more than five years prior to demolition, the initial rent shall be set at a level affordable to a tenant at 50% AMI and will be rented to a tenant who meets such income qualifications. After the initial tenancy, vacancy decontrol shall apply pursuant to the Costa --Hawkins Rental Housing Act.

Sitting tenants will be protected as described in Section 23C.08.020 C.

All replacement units, whether vacant or occupied at the time of demolition, will be deed restricted such that rents for those units may only increase by the same amount as the annual general adjustment published by the Berkeley Rent Stabilization Board each year.

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

Zoning Amendments to BMC Chapter 23C.08 - Demolition and Dwelling Unit Controls (Continued from June 11, 2013)

From: City Manager

Recommendation: Adopt first reading of an Ordinance repealing and reenacting Berkeley Municipal Code Sections 23C.08.020 and 23C.08.030, and adding Section 23C.08.035 to modify and clarify the conditions under which dwelling units may be demolished.

Financial Implications: See report

Contact: Eric Angstadt, Planning and Development, 981-7400

Action: Referred the original ordinance and the revised ordinance to the Housing Advisory Commission and the Planning Commission for consideration.

Referral to City Manager: Exemption of Fire-Damaged Buildings from Affordable Housing Mitigation Fee (Continued from January 21, 2014)

From: Councilmembers Arreguin, Anderson, and Worthington

Recommendation: Refer to the City Manager and Housing Advisory Commission (HAC) issues relating to the applicability of the Affordable Housing Mitigation fee to buildings destroyed by fire.

Financial Implications: Staff time

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

Action: 1 speakers. M/S/C (Arreguin/Worthington) to refer to the City Manager and Housing Advisory Commission (HAC) issues relating to the assessment of an "Impact Fee" to buildings destroyed by fire under certain circumstances (listed below) and remove reference to Affordable Housing Impact fee. Also, to refer the proposal of raising the fines assessed for housing code violations.

1. Buildings that are destroyed by fire and are entirely demolished and rebuilt are not subject to rent control, and displaced tenants are not eligible for assistance under the Relocation Ordinance. The Planning Commission is considering amendments to the Demolition Ordinance to remove barriers to the demolition of housing units if the loss of affordability is mitigated and tenants are protected. Unfortunately under BMC Section 23C.08.020.A.1 most fire-damaged buildings that are red-tagged can receive an emergency demolition permit by the Building Official, under the proposed amendments to the Demolition Ordinance those buildings would not be covered by the affordable unit replacement requirements and tenant protections in BMC Sections 23C.08.020.A4, and B & C.

Staff as part of the Demolition Ordinance amendments being considered by the Planning Commission should require that buildings that are destroyed due to the "fault" of the owner including gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction, should be required to comply with the replacement unit provisions, tenant protections and relocation requirements under Sections 23C.08.020.A.4 and 23C.08.020.B and C.

2. To Amend Resolution No. 65,920 to include the following in the definition of "fault" for the Impact Fee: *"For purposes of this ordinance, the term "fault" should include not only intentional acts of the property owner, but also gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction"*
3. In determining gross negligence, staff should base its decision on documented code violations including housing code (RHSP), building code or fire code violations, which were determined based on a city inspection and to which the owner was cited and did not correct.
4. As part of any nexus study to be commissioned for the affordable housing requirements in the revised Demolition Ordinance, staff should also request that the consultant study establishing an affordable housing fee for older housing destroyed by fire, and look at the difference in affordability between the cost of older housing and newly constructed units.

Vote: All Ayes.

Imposing Fees When Multifamily Properties are Destroyed Due to Fault of Property Owner

From: City Manager

Recommendation: Take no action on the recommendations contained in the Housing Advisory Commission's Report until a Nexus Study provides a fee analysis for demolition/replacement housing situations.

Financial Implications: None

Contact: Jane Micallef, Health, Housing and Community Services, 981-5400

Action: 0 speakers. M/S/Failed (Worthington/Arreguin) to adopt item 56.a. as written.

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

Action: M/S/C (Bates/Maio) to refer the Housing Advisory Commission recommendations to the City Manager for analysis.

Vote: All Ayes.

City Manager Referral: Develop Policy to Prioritize Permit Review and Approval for Property Owners Rebuilding After Fire Damage

From: Councilmember Worthington

Recommendation: Refer to the City Manager to develop a policy to prioritize permit review and approval for property owners who rebuild after fire damage to their property in order to prevent fire-damaged properties from becoming blighted due to lengthy permitting procedures.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: Approved revised recommendation to request the City Manager to review the referral and provide a recommendation to the City Council.

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

Staff Comment:

There are seven (7) Council referrals focused on housing affordability, unit retention and replacement. The Council is expected to consider a Housing Nexus study and fee in March 2015. The fee will affect the discussion of this set of referrals, some of which are competing on the same subject. Staff suggests that the Commission ask the Council for a revised set of referrals, based on all the subject areas, but more integrated and with a clear sense of direction. Without a clearer path, these referrals cannot be appropriately prioritized as part of the Work Plan.

As a whole, housing unit retention and preservation is an important issue, so can be a higher priority in the referral list, once the direction is better understood. The current list of referrals do not address Zoning Ordinance issues directly, so should not be considered a priority for Commission action.

Other Council to PC Referrals

The following list includes the remainder of Council referrals to the Commission. Each referral has been identified as “high, medium or low” priority, along with reason for its ranking.

29. Referral: Elmwood Commercial District Quota Revisions (PDF)

From: Councilmember Wozniak and Worthington

Recommendation: Refer to the Planning Commission (PC) a request to review the Elmwood Commercial District quota system and make recommendations to simplify the quota system to facilitate the opening of new businesses. In particular, the PC should consider

1. Eliminating all retail quota categories,
2. Combining the three food service quotas (carry-out, quick service & full service) into a single food service quota and maintain the requirement of needing to receive a Use Permit in order to exceed the numerical limitation for a food service establishment, and
3. Other solutions which would make it easier to fill vacant storefronts while maintaining a vibrant business district.

Financial Implications: See report

Contact: Gordon Wozniak, Councilmember, District 8, 981-7180

Action: Approved recommendation. Added a request for evaluation of a percentage adjustment for the quotas based on the increased number of stores in the Elmwood district. Councilmember Worthington added as a co-sponsor.

High: This referral, already considered extensively by the Commission, offers an opportunity to reduce quotas in the Elmwood District. Quotas have proven to be less effective than anticipated and difficult to track over time. This referral focuses to a process which could address quotas throughout the City, where the primary focus seems to be on retaining commercial retail spaces, while allowing sufficient spaces for restaurants. Discussion of this referral may lead to a broader recommendation to the

Council on quotas from the Commission. This referral could be revisited as early as March/April 2015.

20. Amend the Zoning Code to Facilitate Toxic Remediation in Manufacturing Districts (PDF)

From: Councilmembers Moore and Wozniak

Recommendation: Refer to the Planning Commission recommendations for amending the zoning code in order to facilitate toxic remediation in manufacturing districts and to develop a streamlined process that would allow for one application process, rather than separate application processes for the City's Planning Department and the Toxics Division.

Financial Implications: Unknown

Contact: Darryl Moore, Councilmember, District 2, 981-7120

Action: Approved recommendation.

Medium: This referral was intended to address remediation of a particular site, which was resolved through another method. However, West Berkeley is changing and a more streamline approach to remediation may be value added in light of the need to remediate sites prior to reuse. Staff will follow-up with Toxics to determine the best course of action and bring the issue to the Commission for consideration Fall 2015.

32. Referral to City Manager: Restrictions on Check Cashing Stores

From: Councilmembers Arreguin, Anderson, and Moore

Recommendation: Refer to the City Manager and Planning Commission the issue of amending the Zoning Ordinance to restrict new check cashing stores in Berkeley, and request that the City Manager bring back to Council regulations on new check cashing stores.

Financial Implications: Staff time

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

Action: Approved recommendation.

High: Staff anticipates providing draft Zoning Ordinance language to the Commission in March 2015.

28. Berkeley Electric Car Incentives

From: Councilmember Moore

Recommendation: Refer to the City Manager to explore parking policies that would provide incentives for electric car ownership.

Financial Implications: Unknown

Contact: Darryl Moore, Councilmember, District 2, 981-7120

Action: Approved recommendation.

Low: Thus far, the electric car incentives have come from other sources than the Zoning Ordinance. Should staff identify needed zoning changes, the Commission will be engaged.

Zoning Amendments to Encourage New Businesses and Promote Economic Development Downtown and Citywide

From: Councilmembers Arreguin, Capitelli, and Wengraf

Recommendation: Refer to the City Manager and Planning Commission to consider the following zoning amendments and make a recommendation back to City Council: 1. Amend BMC Section 23E.68.030 (Commercial Downtown Mixed Use District, C-DMU) as follows: Full Service Restaurants with ZC 2,000 sq. ft. > 4,000 sq. ft. Increase the threshold for approving Full Service Restaurant uses in the Commercial Downtown Mixed Use District (C-DMU) with a Zoning Certificate from 2,000 square feet to 4,000 square feet. Department Stores with ZC up to 10,000 sq. ft. Increase the threshold for approving Department Store uses in the Commercial Downtown Mixed Use District (C-DMU) from 7,500 sq. ft. with a Zoning Certificate to 10,000 sq. ft. with a Zoning Certificate. 2. Develop a new use category and definition for museums and allow museums in the C-DMU either with an AUP or ZC. 3. Request that the City Manager report on the status of Phase 2 zoning amendments to promote economic development. On December 7, 2010 the Berkeley City Council adopted "Encouraging Economic Development and Increasing City

Revenue from Business Activity" which referred to staff and the Planning Commission zoning amendments regarding changing use limitations, parking requirements and reducing levels of discretion to encourage new businesses to open up.

Financial Implications: Staff time

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

Action: Approved recommendation

High: Staff recommends that the Commission hear a presentation from Economic Development staff, and recommend zoning changes which would focus on the areas of greatest benefit. Staff would present a list of suggested changes from which to choose. The referral could come to the Commission May/June 2015.

3. Extend Commercial Zoning on Fourth Street and Gilman Street (Continued from May 7, 2013)

Revised Material

From: Mayor Bates

Recommendation: Request the Planning Commission consider expanding Commercial West Berkeley (CW) zoning along: 1) Fourth Street to Virginia Street, 2) Gilman Street from Sixth Street to San Pablo Avenue (precise area indicated on map attached to Council report).

Financial Implications: Increased tax revenue and employment opportunities.

Contact: Tom Bates, Mayor, 981-7100

Action: M/S/C (Maio/Moore) to accept revised material from Mayor Bates.

Vote: All Ayes.

Action: 11 speakers. M/S/C (Maio/Moore) to approve the Mayor's recommendation as revised to:

1. Request the Planning Commission consider expanding Commercial West Berkeley (CW) zoning along the area indicated on the revised map attached to Council report.
2. Revise the boundary line to include Fitness Evolved and Phoenix Gym within the area for consideration.
3. Refer to the Planning Commission to:
 - a. Study the area south of Gilman Street between Sixth Street and Seventh Street, consult with Berkeley Unified School District as appropriate, and return to Council with a recommendation for possible future action.
 - b. Evaluate alternatives to drawing zoning boundaries through buildings.
 - c. Consider the possibility of overlay zoning to remove the residential component.

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

Low: The Commission took action on parcels related to the Whole Foods and Office Depot moves. The other areas identified for rezone in the referral (end of 4th Street and Gilman from 6th to 9th) were not identified as high priority by the Council. Any further action on this referral would require additional study and community participation.

63. Referral to Planning Commission: Tobacco Free School Zones

From: Councilmembers Arreguin and Moore

Recommendation:

1. Refer either proposed zoning ordinance (A) or (B) to the Planning Commission to create Tobacco Free School Zones, conforming two previous referrals prohibiting the sale of tobacco products near schools; and
2. Refer to the City Manager to coincide with any Tobacco Free School Zones ordinance the issue a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors and/or third violation of the ordinance.

Financial Implications: Unknown

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

Action: 2 speakers. M/S/C (Arreguin/Wozniak) to:

1. Refer proposed zoning ordinance (B) to the Planning Commission to create Tobacco Free School

Zones, conforming two previous referrals prohibiting the sale of tobacco products near schools; and
 2. Refer to the City Manager to coincide with any Tobacco Free School Zones ordinance the issue a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors and/or third violation of the ordinance.
 3. Refer to staff the development of regulatory methods through the business license tax and the tobacco retail licensing ordinance.

Vote: All Ayes.

Low: City staff is determining a path to create the noted regulations. It is not yet clear that Zoning Ordinance changes would be a priority, or whether the regulations are best made part of the Municipal Code instead.

Expansion of Medical Cannabis Cultivation Beyond the Manufacturing (M) District Presentation

From: Medical Cannabis Commission

Recommendation: Request the Planning Commission consider amending the Zoning Ordinance to allow for medical cannabis cultivation in zoning districts beyond the Manufacturing (M) District.

Financial Implications: See report

Contact: Elizabeth Greene, Commission Secretary, 981-7400

Action: Moved to Action Calendar. 1 speaker. M/S/C (Worthington/Moore) to request the Planning Commission consider amending the Zoning Ordinance to allow for medical cannabis cultivation in zoning districts beyond the Manufacturing (M) District and give consideration to the MUR district and impacts on residential areas.

Vote: All Ayes.

Low: Cultivation of marijuana has not been a sought after tenancy in the M District. The Medical Cannabis Commission is interested in expanding the potential sites for cultivation in Berkeley to include more industrial lands. This use may conflict with the West Berkeley Plan priorities to support manufacturing.

Reconcile the West Berkeley Plan and the Zoning Code as it Pertains to Medical Uses

From: Councilmember Moore

Recommendation: Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley.

Financial Implications: Staff time

Contact: Darryl Moore, Councilmember, District 2, 981-7120

Action: Approved recommendation.

Medium: This referral could align with other West Berkeley work, or could be handled separately. It appears that the West Berkeley Plan supports medical uses in the MU-LI District.

Referral to Planning Commission and City Manager Regarding the Feasibility of Requiring the Installation of Water Fountains/Filling Stations for New Commercial Development Projects

From: Councilmember Capitelli

Recommendation: Refer to the Planning Commission and the City Manager the development of an ordinance requiring all new commercial development projects and remodels above a specified amount to incorporate a publicly available drinking fountain and/or water bottle filling station or locations on the premises where one may be installed without additional cost to the city for piping water to the location. Report back to council within 6 months.

Financial Implications: Staff time

Contact: Laurie Capitelli, Councilmember, District 5, 981-7150

Action: Approved recommendation.

Medium: This item could be addressed through a condition of approval for each project. However, an ordinance requiring such water access would provide better force of law and clarify parameters.

Telegraph Avenue Zoning Changes Referral to Planning Commission (Continued from June 3, 2014)

From: Councilmember Worthington

Recommendation: Refer to the Planning Commission potential zoning changes to Telegraph Avenue for Entertainment Establishments, Amusement Arcades, Theatres, and standardizing alcohol beverage services with Downtown standards.

Financial Implications: Unknown

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: 1 speaker. M/S/C (Worthington/Maio) to refer to the Planning Commission potential zoning changes to Telegraph Avenue for Entertainment Establishments and Theatres, standardizing alcohol beverage services with Downtown standards, and ask the Planning Commission to create a distinction between video arcades which encompass games that feature electronic war games and violence, from tactile game arcades such as foosball, table soccer, etc. so that the Zoning Adjustments Board is better able to make a distinction in an application, and include the tactile type of arcade in the Telegraph zoning referral.

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

Low: Staff has not seen a proliferation of these type of businesses in Berkeley. However, “activity bars” are becoming more prevalent throughout the Bay Area. These typically include a range of activities from bowling to video arcades under one roof. Creating such a distinction among use types will be complex, and may not have the desired effect of limiting certain types of uses within a particular venue.

BACKGROUND

The Commission on Labor commits to the following work plan in order to establish policy in the area of labor and equal rights. This work plan is in alignment with Berkeley Municipal Code, Section 3.62.080 which describes the Commission of Labor's mission to establish policy in the area of labor by preparing reports, developing information and referral services, observing and reviewing labor disputes, and promoting equal rights. The criteria desirable for appointment to the Commission on Labor is membership in labor organizations, or to reflect affirmative action guidelines.

Research, Developing Information and Referrals Services

- a. Review and discuss the conditions and demographics of labor and employment in Berkeley and how it compares with regional, state, and national trends from internal and outside sources
- b. Invite at least one speaker per year to present relevant and current information regarding labor issues
- c. Develop policies for recommendation to Council in formal coordination with other City of Berkeley commissions to maximize the availability of subject matter experts and identify connections between labor and other relevant issues (including but not limited to economic development and human rights)

Promoting Equal Rights

- a. Review and update the Labor Bill of Rights and submit recommended revisions to City Council
- b. Review and discuss Sweatshop Free procurement ordinance for implementation and compliance progress

Local Labor Disputes

- a. Monitor on-going and new labor disputes
- b. Hold public hearings on labor disputes as requested/required
- c. Submit recommendations to Council based on information gathered from both sides of disputing parties

New initiatives and special projects

- a. Initiate and monitor new initiatives and special projects as they arise and/or are referred by City Council

POSSIBLE FUTURE ACTION

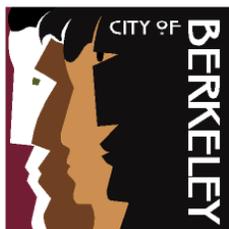
Based on Commission research and public hearings, recommendations to council may be submitted to council at such time as is deemed necessary.

SAMPLE BOARD WORK PLAN

Item	Committee Responsible	September	October	November	December	January	February	March	April	May	June	July	August	As Required
1.0 Quality and Patient Safety														
1.1 Review draft Quality Improvement Plan	Qua						X							
1.2 Review and and Approve Final Quality Improvement Plan	Qua							X						
1.3 Review Quality Indicators	Qua	X	X	X	X	X	X	X	X	X	X			
1.4 Critical Incidents Review [quarterly]	Qua	X	X			X			X					
1.5 Appoint Professional Staff on recommendation of MAC	MAC							X						
1.6 Appoint Department Chiefs and Heads of Divisions [as required]	MAC													X
2.0 Finance and Audit														
2.1 Annual Operating Plan Assumptions	Fin													TBD
2.2 Review annual Audit Plan and Internal Audit Plan	Fin							X						
2.3 Determine compensation for the auditor	Fin							X						
2.4 Approve HAPS	B	X												
2.5 Operating Plan and Capital Plan	Fin													TBD
2.6 Approve H-SAA and M-SAA	B							X						
2.7 BPSAA, M-SAA, H-SAA Compliance Review and Attestations	B		X						X					
2.8 Year End Audit--Approve Audited Financial Statements	Fin									X				
2.9 Senior Officer Expense Reports	Fin									X				
2.10 Report on Use of Consultants	Fin									X				
2.11 Evaluate Auditors and recommendation to Members on Appointment of Auditors	Fin									X				
2.12 Review monthly financial reports/statements [may be part of a Balanced Scorecard]	Fin	X	X	X	X	X	X	X	X	X	X			
2.13 Review investment policy	Fin									X				
2.14 Review Capital Plan spending	Fin						X							
3.0 Governance														
3.1 Approve Committee Terms of Reference, and Committee Work Plans	B	X												
3.2 Appoint committee members and community members to community advisory and or board committees: appoint committee chairs	Gov										X			
3.3 Review and Approve Governance Policies	Gov													X
3.4 Approve By-laws Changes	B													X
3.5 Director Recruitment and Nomination	Gov									X				
3.6 Appoint Board Officers [at board meeting immediately following AGM]	Gov										X			
3.7 Set date for AGM	B							X						
3.8 Admit members in accordance with by-laws	Gov								X					
3.9 Review Board evaluation survey results	B	X												
3.10 Approve annual board work plan	B	X												
3.11 Board Education sessions [schedule and topics should be in annual work plan]	B	X	X	X	X	X	X	X	X	X				
3.12 Meetings without Management [schedule would show meetings where such sessions are to be held]	B	X	X	X	X	X	X	X	X	X				
3.13 Plan for Accreditation [as required]	B													X
4.0 CEO and Chief of Staff														
4.1 Approve assessment process for CEO and Chief of Staff	B								X					
4.2 Establish Performance goals for CEO and Chief of Staff	B									X				
4.3 Receive report on completion of performance reviews	B									X				
4.4 Approve performance based compensation	B									X				
4.5 Review succession planning	B									X				
5.0 Strategic Plan and Strategic Directions														
5.1 Review strategic plan and refresh	B	X												
5.2 Review progress on specific strategic directions	B		X			X			X					
6.0 Stakeholder Relations and Engagement														
6.1 Appoint members of community advisory committees	Gov	X												
6.2 Town hall community meeting	B													TBD
6.3 Review relationship with LHIN, other health system providers and key stakeholders	B		X						X					

Committee Legend:	
Board	B
Board Chair	BC
Finance Committee	Fin
Governance Committee	Gov
Quality Committee	Qua
Medical Advisory Committee	MAC

Colour Legend	
Completed by target	
In progress, but not completed by target	
Not in progress, and not completed by target	



Office of the City Manager

CONSENT CALENDAR
February 9, 2016

To: Honorable Mayor and Members of the City Council
From: *DWR* Dee Williams-Ridley, Interim City Manager
Submitted by: Kelly Wallace, Acting Director, Health Housing & Community Services Department
Subject: Amending the Relocation Ordinance, Chapter 13.84 of the Berkeley Municipal Code

RECOMMENDATION

Adopt first reading of an Ordinance amending the Relocation Ordinance, Berkeley Municipal Code Chapter 13.84, to add clarifying language to Section 13.84.020.C to define "Natural Disaster"; Section 13.84.070.A to include households specified in Section 13.84.040.B; and Section 13.84.070.O to address tenants with renter's insurance.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments do not result in a fiscal impact for the City. It is the obligation of the property owner and not the City to provide relocation payments to tenants. If a property owner fails to provide the payments, the City may opt to, but is not required to, make the relocation payments to the tenants and reclaim the amount from the property owner.

CURRENT SITUATION AND ITS EFFECTS

The Relocation Ordinance requires property owners to provide certain protections and compensation for tenants who are temporarily displaced due to repairs needed to bring their unit into code compliance. However, a recent large fire that displaced 24 tenant households revealed a need to clarify language in the ordinance for situations in which the relocation is an unplanned emergency. Changes are proposed for the following sections of the ordinance:

1. Section 13.84.020.C is simplified and revised to omit confusing language from the definition of a Natural Disaster to ensure that not all fires would be construed as natural disasters and that some would be covered under the Ordinance;
2. Section 13.84.070.A is revised to ensure that households relocated due to an emergency such as a fire are also eligible for relocation and other payments; and

3. Section 13.84.070.O added to clarify that tenants who have insurance that covers the cost of relocation would deduct the insurance coverage from the amount owed by the landlord.

BACKGROUND

Chapter 13.84 of the Berkeley Municipal Code, the Relocation Ordinance, was originally adopted in April of 1986 to provide protections and relocation benefits for tenant households who are temporarily displaced due to code enforcement action. Since its adoption, the Relocation Ordinance has been amended several times to clarify or expand the provisions of the ordinance. The most recent amendment to the ordinance occurred in October of 2011 to include a provision in Section 13.894.070 that the specific amounts for the various components of the relocation payments are to be updated and authorized by Council Resolution.

On November 22, 2015, a fire occurred at 2449 Dwight Way displacing 24 tenant households. The tenants' immediate housing needs were met by the Red Cross, however, their future housing remained uncertain. The landlord and tenants were counseled by City and Rent Board staff that the Relocation Ordinance applied, but many were unclear about how the Relocation Ordinance would be applied to their unique and varied relocation needs.

On December 7, 2015, a meeting was held with the landlord and tenants of 2449 Dwight Way, along with Rent Board and City staff. The Relocation Ordinance was thoroughly reviewed by all present and the meeting ended with a mutual understanding on how the Relocation Ordinance would be applied. However, it was apparent that clarifying language in the ordinance should be added in order to make it easier to implement in the future.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed amendment clarifies definitions and provisions that will ameliorate the implementation of the Relocation Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Raquel Molina, Associate Management Analyst, HHCS Dept., 981-5400

Attachments:

- 1: Ordinance With proposed changes – track changes
- 2: Ordinance - Clean copy

AMENDING THE RELOCATION ORDINANCE, BERKELEY MUNICIPAL CODE CHAPTER 13.84, TO ADD CLARIFYING LANGUAGE TO SECTION 13.84.020.C TO DEFINE "NATURAL DISASTER"; SECTION 13.84.070.A TO INCLUDE HOUSEHOLDS SPECIFIED IN SECTION 13.84.040.B; AND SECTION 13.84.070.O TO ADDRESS TENANTS WITH RENTER'S INSURANCE.

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

Section 1. That Berkeley Municipal Code Section 13.84.020 is amended to read as follows:

Section 13.84.020 Definitions.

A. "Code enforcement" or "code enforcement activity" means an activity or activities initiated by the City to require an owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshal after a fire ordering relocation.

B. "Household" or "tenant household" for purposes of this chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

C. "Natural disaster" means any natural event ~~or force of nature that is not caused by human action or inaction~~ which results in ~~death, injuries and/or~~ damage to property, such as, but not limited to, an earthquake, flood, or forest fire.

D. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or his or her agent or assignee.

E. "Relocate" or "relocation" means the required vacating of a residential unit or room by a tenant household and the moving temporarily into another unit or room as a result of repairs required to bring the building or a portion thereof which contains a residential unit or room occupied by the tenant household into code compliance whether such repairs are undertaken because of code enforcement or through voluntary code compliance as defined below.

F. "Residential unit" or "unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a household.

G. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a tenant household for at least thirty (30) consecutive days.

H. "Voluntary code compliance" means actions voluntarily initiated by an owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the inventory of potentially hazardous soft story buildings established under Chapter 19.39 so as to remove it from such inventory under Section 19.39.080.B if such retrofit is required by the City.

Section 2. That Berkeley Municipal Code Section 13.84.070 is amended to read as follows:

Section 13.84.070 Relocation and other payments.

A. Households to be relocated for twenty-nine (29) consecutive days or less, [including households covered under section 13.84.040.B.](#) —shall be entitled to the following relocation payments:

1. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council resolution and be based upon tenant household size.

2. Reimbursement for daily boarding costs for pets lawfully occupying the unit or room from which the tenant household was relocated at the date of relocation if the tenant household's temporary accommodation does not accept pets. The tenant household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council resolution. The tenant household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the owner. For purposes of this section, "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a unit or room shall be the number specifically permitted by written agreement.

3. The initial relocation payment shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment. If the period of relocation is less than ten (10) days, the initial relocation payment shall include the per diem payment for the full period. If the period of relocation exceeds ten (10) days, the initial relocation payment shall include either:

a. A lump sum per diem payment for the full period of relocation; or

b. The per diem payment for a minimum of ten (10) days, with subsequent payment contingent upon verification of hotel costs incurred by the tenant household. Such payments are due to the tenant household immediately upon owner's receipt of documentation verifying the household's expenses. If the tenant household does not incur hotel costs, it is only entitled to receive a meal allowance for each member of the household during the remaining period of relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to relocation payments that include all of the following:

1. A one-time dislocation allowance to help defray incidental relocation expenses. The amount of the dislocation allowance shall be established by City Council resolution.

2. The household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:

a. If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council resolution.

b. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the fixed residential moving cost schedule approved by the Federal Highway Administration and published in the federal register on a periodic basis.

3. If the rental costs incurred by the tenant household during the period of relocation exceed the amount of rent being paid on the unit or room to be vacated, the household

shall be eligible for a rent differential payment. The rent differential payment shall be equal to the difference between the rent paid on the unit or room to be vacated and the rent paid for a unit or room temporarily leased during the period of relocation, with the following restrictions:

a. The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the rent stabilization program for the prior calendar year.

b. The ceiling for the rent differential payment shall be based on the bedroom size of the unit or room to be vacated, with the exception of payments for relocation from rooms which shall be calculated on the same basis as payment for relocation from a studio apartment.

c. The rent differential payment for a tenant household receiving a rental subsidy shall be based on the amount of rent paid by the tenant household for the unit or room leased by the tenant household during the period of relocation. The owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of relocation.

4. Reimbursement for the documented utility cost(s) that the tenant household incurs in their replacement housing, if the owner had been paying that particular utility cost for the vacated unit or room.

C. The initial relocation payment pursuant to subsection B of this section shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment, and shall include:

1. The dislocation allowance;

2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month or, if the relocation is anticipated to exceed ninety (90) days, then the initial payment shall include the rent differential payment for the first three-month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subsections B.2.b through B.4 of this section, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least seven days in advance of when the tenant household's monthly rental payment is due. Instead of monthly payments the owner may make one lump sum payment for the full amount due for the rent differential payments to the tenant household. If the tenant household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the owner of documentation that verifies the household's expenses.

E. Payments pursuant to subsections B.2.b through B.4 of this section, when applicable, shall continue until such time that the unit from which the tenant household was relocated is available for occupancy or the tenant household has notified the owner of their intent to permanently vacate the unit.

F. If the tenant household has not been offered the opportunity to reoccupy the unit from which it relocated within six months from the date of their relocation, the tenant household shall be entitled to receive an additional dislocation allowance payment. The tenant household must provide written request for the additional dislocation payment to the owner which includes confirmation of their intent to reoccupy the unit. Such payment is due within ten (10) days after receipt of the tenant household's request. Acceptance

of such payment does not constitute a tenant household's relinquishment of any tenancy rights.

G. 1. In lieu of the per diem payments in subsection A of this section, or rent differential and utility payments in subsections B.3 and B.4 of this section, the owner may offer an alternate rental unit or room to the tenant household that is comparable to the unit or room being vacated and is owned by the owner. The amount of rent paid by the household for such unit or room shall not exceed the rent being paid on the unit or room from which the tenant household relocated. If the tenant household accepts the owner's offer, the tenant household does not relinquish its right to reoccupy the unit or room from which it is being relocated unless the tenant household provides written notice surrendering possession of the unit or room. A tenant household that accepts an alternate unit or room is entitled to receive the dislocation allowance in subsection B.1 of this section and compensation for moving and storage costs if applicable as provided in subsection B.2 of this section.

2. If the tenant household does not timely notify the owner of its intent to reoccupy the unit or room under Section 13.84.090 and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the unit or room from which it has relocated and terminates its tenancy of that unit or room, and the rent for the alternate unit or room shall not be limited by this chapter and may be increased to an amount otherwise permissible by Chapter 13.76. Nothing in this section limits the owner's right to evict a tenant household pursuant to Section 13.76.130.A.11

H. A tenant household that is relocated for thirty (30) days or more shall not be responsible for any rent due on the unit or room from which it was relocated during the period of relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

I. The owner and tenant household may mutually agree upon temporary housing and relocation payments other than that provided by this chapter. Such agreement shall be in writing and signed by both the owner and tenant household with a copy provided to the City's Housing and Community Services Department.

J. If a tenant household's actual relocation period is shorter than the period for which the owner has paid, the tenant household must repay the overpaid amount to the owner within thirty (30) days of receiving written notice from the owner of the overpayment. If the tenant household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their relocation, these costs may be deducted from the amount to be repaid to the owner, subject to the provisions of subsection B of this section.

K. All payments to tenant households under this chapter shall be made to those persons in the tenant household from whom the owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the tenant household. Nothing in this section shall be construed to affect the determination of the actual number of tenants in the tenant household for purposes of Chapter 13.76.

L. The size of a tenant household shall be determined based on the number of individuals entitled to occupy the unit or room at the time a determination of the Building Official is served under Section 13.84.050 or a notice of temporary relocation is served under Section 13.84.060.C.

M. Upon receipt of the full relocation payment under this chapter and a notice of

temporary relocation, the tenant household shall relocate within thirty (30) calendar days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.a.7.a.

N. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this chapter and any additional limitations set forth in the resolution:

1. Per diem rates for hotel accommodations and meal allowance pursuant to subsections A.1 and A.3 of this section;
2. Maximum boarding costs for pets pursuant to subsection A.2 of this section;
3. Dislocation allowance pursuant to subsections B.1 and F of this section;
4. Fixed payments for moving and storage pursuant to subsection B.2 of this section.

[O. Tenants are entitled to relocation payments under this chapter to the extent that relocation payments are not covered by the tenant's insurance.](#)

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING THE RELOCATION ORDINANCE, BERKELEY MUNICIPAL CODE CHAPTER 13.84, TO ADD CLARIFYING LANGUAGE TO SECTION 13.84.020.C TO DEFINE "NATURAL DISASTER"; SECTION 13.84.070.A TO INCLUDE HOUSEHOLDS SPECIFIED IN SECTION 13.84.040.B; AND SECTION 13.84.070.O TO ADDRESS TENANTS WITH RENTER'S INSURANCE.

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

Section 1. That Berkeley Municipal Code Section 13.84.020 is amended to read as follows:

Section 13.84.020 Definitions.

A. "Code enforcement" or "code enforcement activity" means an activity or activities initiated by the City to require an owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshal after a fire ordering relocation.

B. "Household" or "tenant household" for purposes of this chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

C. "Natural disaster" means any natural event which results in damage to property, such as, but not limited to, an earthquake, flood, or forest fire.

D. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or his or her agent or assignee.

E. "Relocate" or "relocation" means the required vacating of a residential unit or room by a tenant household and the moving temporarily into another unit or room as a result of repairs required to bring the building or a portion thereof which contains a residential unit or room occupied by the tenant household into code compliance whether such repairs are undertaken because of code enforcement or through voluntary code compliance as defined below.

F. "Residential unit" or "unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a household.

G. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a tenant household for at least thirty (30) consecutive days.

H. "Voluntary code compliance" means actions voluntarily initiated by an owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the inventory of potentially hazardous soft story buildings established under Chapter 19.39 so as to remove it from such inventory under Section 19.39.080.B if such retrofit is required by the City.

Section 2. That Berkeley Municipal Code Section 13.84.070 is amended to read as follows:

Section 13.84.070 Relocation and other payments.

A. Households to be relocated for twenty-nine (29) consecutive days or less,

including households covered under section 13.84.040.B, shall be entitled to the following relocation payments:

4. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council resolution and be based upon tenant household size.

5. Reimbursement for daily boarding costs for pets lawfully occupying the unit or room from which the tenant household was relocated at the date of relocation if the tenant household's temporary accommodation does not accept pets. The tenant household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council resolution. The tenant household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the owner. For purposes of this section, "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a unit or room shall be the number specifically permitted by written agreement.

6. The initial relocation payment shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment. If the period of relocation is less than ten (10) days, the initial relocation payment shall include the per diem payment for the full period. If the period of relocation exceeds ten (10) days, the initial relocation payment shall include either:

a. A lump sum per diem payment for the full period of relocation; or

b. The per diem payment for a minimum of ten (10) days, with subsequent payment contingent upon verification of hotel costs incurred by the tenant household. Such payments are due to the tenant household immediately upon owner's receipt of documentation verifying the household's expenses. If the tenant household does not incur hotel costs, it is only entitled to receive a meal allowance for each member of the household during the remaining period of relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to relocation payments that include all of the following:

3. A one-time dislocation allowance to help defray incidental relocation expenses. The amount of the dislocation allowance shall be established by City Council resolution.

4. The household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:

a. If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council resolution.

b. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the fixed residential moving cost schedule approved by the Federal Highway Administration and published in the federal register on a periodic basis.

3. If the rental costs incurred by the tenant household during the period of relocation exceed the amount of rent being paid on the unit or room to be vacated, the household shall be eligible for a rent differential payment. The rent differential payment shall be

equal to the difference between the rent paid on the unit or room to be vacated and the rent paid for a unit or room temporarily leased during the period of relocation, with the following restrictions:

a. The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the rent stabilization program for the prior calendar year.

b. The ceiling for the rent differential payment shall be based on the bedroom size of the unit or room to be vacated, with the exception of payments for relocation from rooms which shall be calculated on the same basis as payment for relocation from a studio apartment.

c. The rent differential payment for a tenant household receiving a rental subsidy shall be based on the amount of rent paid by the tenant household for the unit or room leased by the tenant household during the period of relocation. The owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of relocation.

4. Reimbursement for the documented utility cost(s) that the tenant household incurs in their replacement housing, if the owner had been paying that particular utility cost for the vacated unit or room.

C. The initial relocation payment pursuant to subsection B of this section shall be due within ten (10) days of the owner's receipt of the tenant household's request for relocation payment, and shall include:

1. The dislocation allowance;

2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month or, if the relocation is anticipated to exceed ninety (90) days, then the initial payment shall include the rent differential payment for the first three-month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subsections B.2.b through B.4 of this section, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least seven days in advance of when the tenant household's monthly rental payment is due. Instead of monthly payments the owner may make one lump sum payment for the full amount due for the rent differential payments to the tenant household. If the tenant household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the owner of documentation that verifies the household's expenses.

E. Payments pursuant to subsections B.2.b through B.4 of this section, when applicable, shall continue until such time that the unit from which the tenant household was relocated is available for occupancy or the tenant household has notified the owner of their intent to permanently vacate the unit.

F. If the tenant household has not been offered the opportunity to reoccupy the unit from which it relocated within six months from the date of their relocation, the tenant household shall be entitled to receive an additional dislocation allowance payment. The tenant household must provide written request for the additional dislocation payment to the owner which includes confirmation of their intent to reoccupy the unit. Such payment is due within ten (10) days after receipt of the tenant household's request. Acceptance of such payment does not constitute a tenant household's relinquishment of any

tenancy rights.

G. 1. In lieu of the per diem payments in subsection A of this section, or rent differential and utility payments in subsections B.3 and B.4 of this section, the owner may offer an alternate rental unit or room to the tenant household that is comparable to the unit or room being vacated and is owned by the owner. The amount of rent paid by the household for such unit or room shall not exceed the rent being paid on the unit or room from which the tenant household relocated. If the tenant household accepts the owner's offer, the tenant household does not relinquish its right to reoccupy the unit or room from which it is being relocated unless the tenant household provides written notice surrendering possession of the unit or room. A tenant household that accepts an alternate unit or room is entitled to receive the dislocation allowance in subsection B.1 of this section and compensation for moving and storage costs if applicable as provided in subsection B.2 of this section.

2. If the tenant household does not timely notify the owner of its intent to reoccupy the unit or room under Section 13.84.090 and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the unit or room from which it has relocated and terminates its tenancy of that unit or room, and the rent for the alternate unit or room shall not be limited by this chapter and may be increased to an amount otherwise permissible by Chapter 13.76. Nothing in this section limits the owner's right to evict a tenant household pursuant to Section 13.76.130.A.11

H. A tenant household that is relocated for thirty (30) days or more shall not be responsible for any rent due on the unit or room from which it was relocated during the period of relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

I. The owner and tenant household may mutually agree upon temporary housing and relocation payments other than that provided by this chapter. Such agreement shall be in writing and signed by both the owner and tenant household with a copy provided to the City's Housing and Community Services Department.

O. If a tenant household's actual relocation period is shorter than the period for which the owner has paid, the tenant household must repay the overpaid amount to the owner within thirty (30) days of receiving written notice from the owner of the overpayment. If the tenant household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their relocation, these costs may be deducted from the amount to be repaid to the owner, subject to the provisions of subsection B of this section.

P. All payments to tenant households under this chapter shall be made to those persons in the tenant household from whom the owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the tenant household. Nothing in this section shall be construed to affect the determination of the actual number of tenants in the tenant household for purposes of Chapter 13.76.

Q. The size of a tenant household shall be determined based on the number of individuals entitled to occupy the unit or room at the time a determination of the Building Official is served under Section 13.84.050 or a notice of temporary relocation is served under Section 13.84.060.C.

R. Upon receipt of the full relocation payment under this chapter and a notice of temporary relocation, the tenant household shall relocate within thirty (30) calendar

days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.a.7.a.

S. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this chapter and any additional limitations set forth in the resolution:

5. Per diem rates for hotel accommodations and meal allowance pursuant to subsections A.1 and A.3 of this section;

6. Maximum boarding costs for pets pursuant to subsection A.2 of this section;

7. Dislocation allowance pursuant to subsections B.1 and F of this section;

8. Fixed payments for moving and storage pursuant to subsection B.2 of this section.

O. Tenants are entitled to relocation payments under this chapter to the extent that relocation payments are not covered by the tenant's insurance.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.