

Housing Advisory Commission

HOUSING ADVISORY COMMISSION

Regular Meeting
Thursday, January 7, 2016

Time: 7:00 p.m.

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

AGENDA

All agenda items are for Discussion and Possible Action.

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

PRELIMINARY MATTERS

1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the December 3, 2015 Draft Meeting Minutes (*Attachment 1*)

UPDATES / ACTION ITEMS

5. **Grayson Street Apartments: Housing Trust Fund Reservation and Affordable Housing and Sustainable Communities Co-Applicant** – *Jenny Wyant (Attachment 2)*
6. **Create an Ad-Hoc Subcommittee on Relocation Ordinance Revisions**– *Commissioner Tregub (Attachment 3)*
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** – *Commissioner Tregub (Attachment 4)*
8. **Modify Housing Trust Fund Guidelines Regarding Predevelopment Loans and Labor** – *Commissioners Tregub and Soto-Vigil (Attachment 5)*
9. **Support for Referral to City Manager on the Establishment of a Affordable Housing Small Sites Fund** – *Commissioner Tregub (Attachment 6)*
10. **Support the Berkeley Housing Authority** - *Commissioners Darrow, Soto-Vigil and Tregub (Attachment 7)*
11. **Update on Council Items** – *All/Staff*
 - a. January 12 special meeting
 - b. February 16 Council special meeting on housing
12. **Future Items** – **all items and dates are tentative**

- a. February – elect Chair and Vice Chair
- b. Student housing affordability and City policy
- c. Local housing density bonus ordinance

13. Announcements

14. Adjourn

ATTACHMENTS

1. Draft December 3, 2015 Meeting Minutes
2. Grayson Street Apartments: Housing Trust Fund Reservation and Affordable Housing and Sustainable Communities Co-Applicant
3. Create an Ad-Hoc Subcommittee on Relocation Ordinance Revisions
4. 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
5. Modify Housing Trust Fund Guidelines Regarding Predevelopment Loans and Labor
6. Support for Referral to City Manager on the Establishment of an Affordable Housing Small Sites Fund
7. Support the Berkeley Housing Authority

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, December 3, 2015

Housing Advisory Commission

Time: 7:05 p.m.

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

DRAFT MINUTES

PRELIMINARY MATTERS

1. Roll Call

Present: Heidi Abramson, Diego Aguilar-Canabal, Tor Berg, Kathleen Crandall, Brendan Darrow (7:10 p.m.), Jill Martinucci, Alejandro Soto-Vigil, Igor Tregub, and Marian Wolfe. Absent: None.

Commissioners in attendance: 9 of 9

Staff Present: Babka, Davidson, Lee, Tran, and Vasquez.

Members of the public in attendance: 25

Public Speakers: 10

2. Agenda Approval

Action: M/S/C (Soto-Vigil/Wolfe) to approve agenda as amended (move item 8 ahead of 7).

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

3. Public Comment

2 speakers

4. Approval of November 5, 2015 Minutes

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

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

CONSENT ITEM

5. Approve 2016 Calendar

Action: M/S/C (Wolfe/Tregub) to approve the 2016 meeting calendar.

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

UPDATES / ACTION ITEMS

6. Update on Berkeley Housing Authority (BHA) Programs and Requested Strategies for City Support

Public speakers: 3. Tia Ingram (Executive Director of the BHA) and Carole Norris (Chair of the BHA Board of Commissioners) presented.

7. Public Hearing on Community Needs

Public speakers: 9.

Action: M/S/C (Tregub/Martinucci) to close the public hearing.

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

8. Update from BRIDGE Housing and Berkeley Food and Housing Project on the Berkeley Way Parking Lot Project

BRIDGE Housing and Berkeley Food and Housing Project presented.

9. Update on Public Facilities Projects and Appointment of CDBG Subcommittee

Action: M/S/C (Soto-Vigil/Abramson) to form a CDBG subcommittee with the following members: Berg, Crandall, Martinucci, and Tregub.

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

10. Update on Housing Trust Fund 2015 Applications and Appointment of Housing Trust Fund (HTF) Subcommittee

Action: M/S/C (Tregub/Darrow) to form an HTF subcommittee with the following members: Abramson, Aguilar-Canabal, Darrow, and Soto-Vigil.

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

11. Short Term Rental Regulations

Action A: M/S/C (Tregub/Darrow) to add the following language to the ordinance where appropriate: A property containing a unit with a “no-fault eviction” cannot become a short term rental for five years.

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

Action B: M/S/C (Martinucci/Tregub) to recommend the Planning Commission include the following guidelines from Council’s June 9, 2015 referral (with one change in third bullet point):

- Either the host or rental-platform company must pay the transient occupancy tax (TOT) and an additional enforcement fee, to be established as a percentage of rents, not exceed the cost of the program
- The host must have a valid business license and be covered by liability insurance of at least \$500,000

- The City will require (Council used “request”) hosting platforms list the business license number in online listings

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

Action: M/S/F (Soto-Vigil/Darrow) to restate HAC’s support that the Ordinance should explicitly state that units subject to the provisions of the Rent Stabilization and Good Cause for Eviction Ordinance may not be removed from the long-term rental market for conversion into short-term rentals.

Vote: Ayes: Aguilar-Canabal, Darrow, Soto-Vigil, Tregub. Noes: None. Abstain: Crandall, Martinucci, and Wolfe. Absent: Abramson (left at 10:29 p.m.) and Berg (left at 10:30 p.m.).

12. Update on Council Items

- a. 12/1 housing worksession
- b. February 16 Council worksession on housing

13. Future Items

14. Announcements

15. Adjourn

Action: M/S/C (Darrow/Soto-Vigil) to adjourn the meeting at 10:32 p.m.

Votes: Ayes: Aguilar-Canabal, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Abramson (left at 10:29 p.m.) and Berg (left at 10:30 p.m.).

Approved on DATE, 2015

_____, Amy Davidson, Secretary



Office of the City Manager

HAC 1/7/2016
Attachment 2

To: Housing Advisory Commission Members

Submitted by: Amy Davidson, Senior Community Development Coordinator
Jenny Wyant, Community Development Project Coordinator

Subject: Grayson Street Apartments: Housing Trust Fund Reservation and
Affordable Housing and Sustainable Communities Application

Date: January 7, 2016

RECOMMENDATION

Recommend that City Council:

- 1) Approve a funding reservation of \$1.4 million from the Housing Trust Fund for Grayson Street Apartments, contingent upon Satellite Affordable Housing Associates (SAHA) securing its remaining financing commitments by December 31, 2016.
- 2) Authorize a joint application with SAHA for Affordable Housing and Sustainable Communities (AHSC) funds for Grayson Street Apartments and related infrastructure improvements.

The HTF Subcommittee will meet prior to the HAC meeting and its recommendation will be presented at the meeting.

CURRENT SITUATION AND ITS EFFECTS

Grayson is a 23-unit mixed-use development that will serve lower income and special needs residents. SAHA applied for a \$1 million HTF loan earlier this year in response to the City's Request for Proposals. The proposal was rated highly for the developer capacity and local needs and priorities, but its rating was reduced under the areas of feasibility and readiness since the proposed financing included project-based Section 8. At that time, it was uncertain whether the Berkeley Housing Authority would be able to project-based vouchers, particularly in time for the City's HOME commitment deadline in August 2015. In addition, not enough funding was available in the Housing Trust Fund for all the applications received.

When funding recommendations were made at the June 23, 2015 Council meeting, the recommendations referenced staff reporting back on the status of Grayson Street Apartments. Subsequently, BHA issued an RFP on November 2nd for up to 25 vouchers,

but rescinded it on November 9th because new information from HUD has impacted BHA's ability to issue new vouchers. SAHA has since revised its funding strategy for Grayson, and is no longer proposing project based vouchers. Instead, SAHA revised its HTF request to \$1.4 million, which will be leveraged in its application for an estimated \$2.7 million in AHSC funds in February. At this level, the City's funding would constitute 17% of the total budget.

The City's commitment of an additional \$1.4 million to Grayson would be contingent upon SAHA securing all other project funding by December 31, 2016. If the AHSC application for Grayson is successful, SAHA will pursue 4% (non-competitive) tax credits to round out its financing package for the project. Parallel to the AHSC application process, SAHA will also pursue 9% tax credits to fill the funding gap if AHSC funds are not awarded.

The Strategic Growth Council (SGC), a newly developed state agency, administers the AHSC program, and is planning to issue a Notice of Funding Availability early in 2016. Although the final guidelines have not been released as of this report, the NOFA is anticipated in January, with concept proposals likely due in February. AHSC has a two-phased application process. SGC will review the concept proposals for eligibility, and will invite qualifying applicants to submit a full application later in the spring.

SAHA requested that the City act as a joint applicant for the AHSC funds, which will increase the project's score and help make it more competitive for funding. The draft regulations award 9 out of 100 points for a "joint application between a housing developer and a public agency that has authority over public transit or transportation infrastructure" and provides funding for infrastructure improvements in the project's area. As a joint applicant, the City may be required to assume joint and several liability for the project, depending on the final regulations which had not been released as of this writing. However, in the program's first year (2015), AHSC permitted side agreements between developers and jurisdictions, in which the jurisdiction can indemnify itself and mitigate some of the risk.

The City's role as joint applicant does not necessitate a new Public Works project. SAHA's proposal will include one or more transportation infrastructure projects intended to encourage residents to walk, bike, or take transit rather than drive. SAHA and HHCS have met with and had preliminary communications with AC Transit and the City's Public Works Department to identify the appropriate infrastructure improvement project. In preliminary discussion with AC Transit, it appears that some improvements, such as signal changes, could be made by a contractor working for SAHA under permits issued by the City. HHCS staff and SAHA will continue to work with AC Transit and Public Works once the regulations and application are released to identify the appropriate infrastructure project that can be completed within the required timeframe, any risks to the City, and ways to mitigate that risk.

BACKGROUND

SAHA first applied for funding for Grayson in response to the City's 2010 Notice of Funding Availability. In 2012, the City reserved \$1,095,000 for Grayson for acquisition and development costs. SAHA acquired the site in 2013, and since then has been working on the project's design and securing additional funding. SAHA requested an additional \$1 million for Grayson in response to the City's 2015 RFP. Staff evaluated SAHA's application, but opted not to fund Grayson because the developer was not able to commit all project funding prior to HUD's HOME commitment deadline in August. At the time, SAHA was awaiting funding results for MHP through the State, and was expecting to secure project based Section 8 vouchers from Berkeley Housing Authority (BHA), and 9% tax credits. SAHA received the MHP funds as anticipated, but was not able to obtain Section 8 vouchers, which made their tax credit application less competitive.

Funding for AHSC comes from cap and trade proceeds and the Greenhouse Gas Reduction Fund. The program focuses on development that reduces greenhouse gas emissions. SGC indicated that there is \$400 million available for the 2016 application cycle, and estimate that a similar amount will be available in subsequent years. Projects are scored based on their estimated greenhouse gas reduction, and their efforts at incentivizing alternative (non-car-based) forms of travel.

There is currently \$3,067,578 in the Housing Trust Fund (HTF), almost entirely comprised of Housing Mitigation Fees, Condo Conversion Fees, and Inclusionary In-Lieu Fees. Staff are currently working with Northern California Land Trust (NCLT), to develop a refined scope of work and budget of up to \$500,000 for their scattered site rehabilitation project, as outlined in the June 23, 2015 Housing Trust Fund Council report, leaving approximately \$2.5 million in the Housing Trust Fund. Committing \$1.4 million to Grayson would leave approximately \$1.1 million for future projects.

There is no direct fiscal impact for becoming a joint applicant with Satellite Affordable Housing Associates for the Affordable Housing and Sustainable Communities (AHSC) program. However, as a joint applicant, the City may share responsibility for completing the affordable housing development, as is required in the draft 2016 regulations. The 2015 regulations required applicants to be jointly and severally liable for completion of the project, and allowed applicants to enter into a side agreement to limit their liability. Commenters on the draft regulations have suggested removing the requirement for joint responsibility.

HOUSING ADVISORY COMMISSION
1/7/16

To: Housing Advisory Commission
From: Igor Tregub, Vice Chair
Subject: Ad-Hoc Subcommittee on Relocation Ordinance Revisions

Recommendation

Adopt an ad-hoc subcommittee to serve for a time period of no more than 6 months for the express purpose of studying the current Relocation Ordinance (last revised in 2011) and, if necessary, making recommendations to the Housing Advisory Commission to suggest revisions to the Berkeley City Council. Appoint no more than four members to the subcommittee to comply with Brown Act requirements.

Background

At the December 1, 2015 Housing Advisory Commission (HAC) meeting, a former resident of the Chandler Building (2449 Dwight Way) read into the record a letter detailing her and fellow former tenants' struggles in the wake of their involuntary displacement following a structure fire on November 22, 2015. Based on her letter, many of these difficulties stemmed from the alleged limitations of the Relocation Ordinance (last revised in 2011) to protect tenants in situations where the tenants are involuntarily required to vacate the building on a temporary basis following a disaster. These challenges were also summarized in a December 10, 2015 Berkeleyside article (<http://www.berkeleyside.com/2015/12/10/tenants-scramble-to-relocate-after-dwight-way-fire/>). The complexity of the potential policy deliberation around the Relocation Ordinance best serves an initial review by an ad-hoc subcommittee of the HAC. It is recommended that such a subcommittee is formed to study the issue and that members be appointed to it.

HOUSING ADVISORY COMMISSION
1/7/16

To: Housing Advisory Commission
From: Igor Tregub, Vice Chair
Subject: 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

Recommendation

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.

Background

Currently, applicants in the City of Berkeley are required to choose between payment of the Affordable Housing Mitigation Fee or inclusionary housing – and, when choosing the first option, paying the fee into the Housing Trust Fund – at issuance of the certificate of occupancy, which tends to be several years after the issuance of the first construction document. This delay leads to a reduction of available funds in the Housing Trust Fund in cases where the applicant elects to pay the fee.

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, as noted below.

8. Affordable Housing Mitigation Fee Nexus Study – Discussion of policy issues and next steps for HAC Action: M/S/C (Soto-Vigil/Tregub) with a friendly amendment by Wolfe to send [a] memo as a communication to City Council, with [certain] edits: Vote: Ayes: Abramson, Crandall, Darrow, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: Aguilar-Canabal. Absent: Martinucci (excused).

With a requirement of a robust percentage of inclusionary housing (at least 20%), this recommendation would further encourage the production of an adequate number of on-site Below Market Rate units if the applicant would prefer to build inclusionary housing to paying the fee.

San Francisco assesses the affordable housing impact fee on first construction document (e.g. building permit, first architectural amendment) being issued. All of the predevelopment work and demolition have been done at this point, so the project has a very strong likelihood of moving forward and of the developer having amassed needed project funds.

For a brief period during the recession, San Francisco deferred fees until Certificate of Occupancy. This led to a three-year delay in availability of funds for affordable housing construction (see attached diagram) and was an administrative burden on City staff who had to track whether funds were paid. According to discussions with City of San Francisco staff, there here have been no objections by developers to paying the fee on first construction document.

To: Housing Advisory Commission
From: Commissioner Soto-Vigil
Commissioner Tregub
Date: January 7, 2016
Re: Modify Affordable Housing Trust Fund Guidelines

RECOMMENDATION:

That the Housing Advisory Commission recommends the following changes to Affordable Housing Trust Fund the Berkeley City Council:

1. VI. B1. Pre-development Applications

Applications for pre-development assistance may be accepted at any time. There shall be no more than \$100,000 or ten percent, whichever is less, of available Fund resources committed to pre-development activities in any single fiscal year. The HAC will review all applications for predevelopment loans. For loans up to \$250,000, the HAC will make funding recommendations to the City Manager for review and approval. For loans of more than \$250,000, the HAC will make funding recommendations to the City Council for review and approval, however, the amount of the loan shall not exceed the total predevelopment cost of the project. Receipt of a pre-development loan in no way commits the City to any future funding; and

2. New Section

Addition to the Housing Trust Fund Definitions

Prevailing Wage: "The prevailing wage rate, set by the State of California Department of Industrial Relations, is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing."; and

3. New Section

III. B Eligible Housing Projects paragraph 3

Development projects receiving HTF funding, for the creation or preservation of affordable housing, must pay prevailing wages for the life of the project. The prevailing wage hourly rate will be set by the State of California. Pre-development allocations are exempt from this provision.

BACKGROUND:

Pre-development Funds

The last time the Housing Trust Fund Guidelines were revised was in April 2009, six year ago. Funding cycles competitions for affordable housing have changes and our housing crisis has multiplied.

At the HAC's November 7, 2015 meeting, we voted to recommend that the City Council waive the HTF guidelines temporarily in order for our non-profit housing providers the ability to receive HTF pre-development loans of up to \$250,000 without City Council's direct approval. Our vote, if council approved, would have given the Housing Advisory Commission the ability to recommendation expenditures from the HTF for predevelopment loans with City Manager approval. Without this HTF waiver, our local non-profit housing may have not had the necessary pre-development funds to compete for the 2016 cap and trade funding cycle.

It is important that the HAC recommend that our vote to waive the HTF guidelines be codified as a permanent modification.

Prevailing Wages

"Prevailing wages" have been a longstanding tool used to improve the efficiency, productivity, and safety of skilled labor. In 1931, Congress passed the Davis-Bacon Act, which created a Federal prevailing wage policy. California also adopted a prevailing wage policy. In California, the Director of the Department of Industrial Relations determines the prevailing wage twice a year based on wage rates throughout certain areas.

Prevailing wages not only stabilizes regional and local construction markets, it also takes wages out of the bidding process for government contracts. Further, supporting prevailing wages supports economic justice by providing living wages to workers building affordable housing in Berkeley.

To: Housing Advisory Commission
From: Vice Chair Tregub
Date: January 7, 2016
Re: Modify Affordable Housing Trust Fund Guidelines – REVISED WITH
ADDITIONAL INPUT FROM CARPENTERS LOCAL 713 AND CITY
OF BERKELEY STAFF

RECOMMENDATION AND RATIONALE:

That the Housing Advisory Commission recommends that the Berkeley City Council adopt the following changes to the Affordable Housing Trust Fund Guidelines, dated April 21, 2009 (additions are in ***bold and italicized***; deletions are in ~~strike through~~):

V. A.2 Predevelopment Loans (Short-Term or Bridge Loans) (p. 10)

Generally, predevelopment loans shall not exceed the lesser of \$250,000 or \$25,000 per assisted unit for each project. In each HTF Request for Proposals, the HAC may recommend higher limits for projects that are consistent with projects that meet the priorities identified by the HAC, as described in section VI.B.1, however, the amount of the loan shall not exceed the total predevelopment cost of the project.

VI. A.1 Pre-development Applications (p. 12)

Applications for pre-development assistance may be accepted at any time. There shall be no more than ~~\$~~500,000 or ten percent, whichever is less, of available Fund resources committed to pre-development activities in any single fiscal year. The HAC will review all applications for predevelopment loans. For loans up to \$50,000, the HAC will make funding recommendations to the City Manager for review and approval. For loans of more than \$50,000, the HAC will make funding recommendations to the City Council for review and approval, however, the amount of the loan shall not exceed the total predevelopment cost of the project. Receipt of a pre-development loan in no way commits the City to any future funding; and

Rationale: At the November 5, 2015 Housing Advisory Commission meeting, the following action was taken:

7. Waive the Housing Trust Fund Guidelines on Predevelopment Loans to Facilitate Funding Applications by Berkeley’s Affordable Housing Developers

M/S/C (Soto-Vigil/Tregub) to approve the recommendation. Vote: Ayes: Aguilar-Canabal, Crandall, Darrow, Soto-Vigil, and Tregub. Noes: None. Abstain: Abramson. Absent: Martinucci (excused). Recused: Wolfe.

The suggested increase to the predevelopment loan amount for a project directly follows the above recommendation from the HAC. The maximum commitment of Fund resources and assisted unit predevelopment funding thresholds were also increased five-fold to be consistent with the five-fold increase to the predevelopment loan amount for a project. Upon further discussion with staff, the threshold of \$50,000 for City Manager review and approval was left unchanged because this threshold exists in the City's Procurement Requirements. Should the City Council elect to modify these requirements, this section of the HTF Guidelines could be changed accordingly.

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

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 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.

Rationale: Affordable housing projects depend on financing from multiple sources. Often one or more source triggers federal and/or state prevailing wage provisions. Not all do, however, so establishing a HTF prevailing wage requirement for applicant projects will provide a backstop to state & federal policies.

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

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.

Rationale: A 2012 federally sponsored study by a respected public policy research firm found that registered apprentices who complete their programs earn on average \$240,037 more over a career than similar workers who don't participate in apprenticeship programs. While joint (labor-management) apprenticeship programs have trained well over a thousand East Bay Green Corridor residents in recent years, some registered apprenticeship programs fail to enroll even a couple of handfuls of local area residents.

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

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-related members have experience utilizing registered construction trades apprentices whose sponsor programs can certify that they have graduated at least five (5) residents of the East Bay Green Corridor each consecutive year for the five (5) years immediately preceding submission of the HTF application.

Rationale: It is an unfortunate fact that it is not rare for construction contractors to fail to pay workers all that they are legally owed, and to shirk responsibility for developing a trained, skilled long-term industry workforce. The above measures would incentivize Applicant developers to work with contractors who make sure workers are paid in full or made whole swiftly upon discovery of underpayments. By assessing an Applicant's track record of working regularly with contractors who contribute to registered apprenticeship programs, the City sends a message that the housing affordability crisis is not simply an issue of under-supply, it is a problem created in part by over-demand created by low-skill, low-wage workforce strategies.

To: Honorable Members of the Berkeley City Council
Cc: City Manager, City Clerk, and Acting Director, Health & Community Services
From: Scott Littlehale, Senior Policy Research-Analyst, Carpenters Local Union 713
Date: December 1, 2015

Subject: Housing Trust Fund (HTF) Program Guidelines are silent on construction labor standards for funded projects: a potential problem and a suggested fix

On behalf of Carpenters Local Union 713, I urge you to consider directing Staff to investigate and – if found to be feasible – implement revisions to the Housing Trust Fund Program Guidelines that are suggested below. The proposed revisions will not substantially alter the *status quo* when it comes to HTF Developer-Applicant behavior, but will help to ensure that positive practices are not undermined in the future.

Background: Purpose of the Housing Trust Fund & the construction workforce

Berkeley established its Housing Trust Fund (HTF) to maintain and enhance the City’s diversity and to assure that people who work in Berkeley in all types of jobs have local housing options that meet the needs of households at all income levels.

Maintaining a place for construction workers is one element of maintaining Berkeley’s economic and ethnic diversity. Construction today is a “minority majority” industry, and some 40 percent of construction workers have annual incomes low enough to need below-market-rate Berkeley housing. Rising rents and falling median construction wages over recent decades have meant that these workers have been priced out of the local housing market.

While the overall trend is distressing, there is a bright spot. Construction workers given a chance to work their way all they way through a state approved apprenticeship program will earn on average an extra \$240,000 over the course of their careers. That is enough to make a stable home for that construction worker’s family a real possibility.

What Berkeley gets right

All significant public works infrastructure projects paid for by the city make extensive use of apprentices and are covered by a comprehensive master community workforce agreement. This covers fire stations, road repair, upgrades to municipal buildings, etc. Berkeley’s labor policies for such expenditures are exemplary. Workers who commit themselves to a construction craft earn wages that make a middle class standard of living possible, and residents of the East Bay Green Corridor have greater opportunities to participate in best-in-class training programs.

Where City program guidelines come up short

Community leaders I have spoken with recently have been surprised to learn that the HTF Program Guidelines do not necessarily require HTF-funded projects to pay prevailing wages or otherwise help assure that the projects’ construction workers might afford to live in decent housing in Berkeley or the East Bay Green Corridor. Any such requirements originate with regulations associated with outside sources of funds.

For projects that are financed with strictly local funds, there is nothing in the Program Guidelines or Municipal Code to prevent Housing Trust Fund dollars from funding projects that generate *more* low-wage construction employment, further adding to the already long list of people in need of subsidized housing in Alameda County. One BMR project under construction in Alameda County received \$14 million in county funds, *with no prevailing wage requirement*.

It is a fact that the two Berkeley-based, non-profit affordable housing developers that have been awarded most of the HTF funds to date have managed projects with good construction labor records. HTF policy, though, hasn't been structured to give such practices any preference. We have just gotten lucky. As new developers enter Alameda County and competition grows fiercer for shrunken housing subsidy funds, there are no guarantees that projects will pay prevailing wages and provide high quality apprenticeship training opportunities for local area residents.

Incorporate construction labor standards into HTF Program Guidelines & RFPs

Carpenters Local Union 713 urges the City Council to direct staff to amend the HTF program guidelines policies so that they will guarantee that City funds aren't increasing *demand* for affordable housing at the same time they are being expended to increase the *supply* of affordable housing.

To that end, Local 713 respectfully suggests the following revisions:

- **VI. D. Threshold Criteria and Other Conditions** (pages 18 - 19), insert:

6. Prevailing Wages

Except when prohibited by a source of HTF funds, the Applicant shall ensure that the Project construction contract requires compliance with state prevailing wage law (Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720). The Applicant shall ensure that contract documents and any call for proposals or bids shall specify that 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 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.

Background: Affordable housing projects depend on financing from multiple sources. Often one or more source triggers federal and/or state prevailing wage provisions. Not all do, however, so establishing a HTF prevailing wage requirement for applicant projects will provide a backstop to state & federal policies.

- **VI. C. 1. e. Project Consideration - Community Objectives**, "Impact on the Community" (pages 16-17) 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.

Background: A 2012 federally sponsored study by a respected public policy research firm found that registered apprentices who complete their programs earn on average \$240,037 more over a career than similar workers who don't participate in apprenticeship programs. While joint (labor-management) apprenticeship programs

have trained well over a thousand East Bay Green Corridor residents in recent years, some registered apprenticeship programs fail to enroll even a couple of handfuls of local area residents.

- **VI. C. 3. Applicant Qualifications and Experience, including:** (page 17) amend & add:

- e. 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 Labor Commissioner.

- j. Evidence that the Development Team's construction-related members have experience utilizing registered construction trades apprentices whose sponsor programs can certify that they have graduated at least five (5) residents of the East Bay Green Corridor each consecutive year for the five (5) years immediately preceding submission of the HTF application.

Background: It is an unfortunate fact that it is not rare for construction contractors to fail to pay workers all that they are legally owed, and to shirk responsibility for developing a trained, skilled long-term industry workforce. The above measures would incentivize Applicant developers to work with contractors who make sure workers are paid in full or made whole swiftly upon discovery of underpayments. By assessing an Applicant's track record of working regularly with contractors who contribute to registered apprenticeship programs, the City sends a message that the housing affordability crisis is not simply an issue of under-supply, it is a problem created in part by over-demand created by low-skill, low-wage workforce strategies.

54. Referral to City Manager: Establishment of Affordable Housing Small Sites Program

Revised Version

From: Councilmember Arreguin

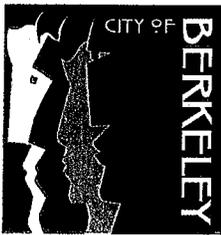
Recommendation: Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.

Financial Implications: Staff time

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

Action: Councilmembers Maio and Moore added as co-sponsors. Moved to Consent Calendar. Referred to the priority setting process.

Information Items



Jesse Arreguin
City Councilmember, District 4

HAC 1/7/2016
Attachment 6

RECEIVED AT
COUNCIL MEETING OF:

DEC 15 2015

#54

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

REVISED
ACTION CALENDAR
December 15, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguin
Subject: Referral to City Manager: Establishment of Affordable Housing Small Sites Program Fund

RECOMMENDATION

Refer to the City Manager to:

- 1) Look into the feasibility of establishing a specific RFP process for the allocation of Housing Trust Fund dollars for the acquisition and rehabilitation of smaller multi-family buildings (properties from 1 unit to 35 units). Funding should be prioritized for properties with the high potential for conversion to cooperative homeownership. ~~creating a Small Sites Program to allow non-profits to purchase multi-family buildings (5-25 units) to create and preserve affordable housing.~~
- 2) Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.

FINANCIAL IMPLICATIONS

Staff time to develop a Small Sites Program Fund and an inventory of City-owned land which could be used for low-income housing. Establishing a Small Sites Program Fund would require the expenditure of Housing Trust Fund or General Fund dollars to support land/building acquisition.

BACKGROUND

Speculation of the real estate market has led to record breaking and skyrocketing rents. Since Costa-Hawkins created vacancy decontrol in 1995, rents have risen from around \$525 a month to roughly \$1,400 in 2014. If rents rose only at the rate of inflation, today the average rent would be closer to \$800 a month. Many units in Berkeley have a high turnarround, leading to many rent controlled units having rents close to or at market rate.

During this unprecedented housing crisis, it is critical that the City support the preservation and expansion of affordable housing. Berkeley has a limited number of opportunity sites, thereby increasing land costs and making it unaffordable for non-profit affordable housing developers to acquire sites to build low-income housing. Non-profit developers have stated that land costs are one of the biggest obstacles to creating new

affordable housing. The City has funded the construction of hundreds of new affordable units. However given that land is limited it is also important that we invest in the acquisition of existing multi-unit buildings to preserve affordability.

In August 2014, San Francisco Mayor Ed Lee introduced the Small Sites Program (SSP). This program creates permanently affordable rental units by acquiring and rehabilitating of existing properties that are most vulnerable to real estate speculation and tenant evictions. The goals of this program are to:

- 1) Protect and stabilize housing for current tenants in buildings where at least 75% of tenants have an average AMI of 80% or less.
- 2) Remove SSP properties from the speculative market while increasing the supply of permanently affordable housing by restricting SSP properties to serve households with average incomes of 80% AMI.
- 3) Create financially stable housing that serves multiple generations by ensuring SSP properties operate with sufficient cash flow to adequately care for the property and repay debt obligations.

SSP properties would serve tenants or mixed-income, ranging from 50% AMI to no higher than 120% AMI, with an average of 80% AMI. Priorities would be given to properties that are in immediate risk of Ellis Act evictions, located in areas with high Ellis Act eviction rates, where tenants are a part of a vulnerable population (families with children, the elderly, disabled, etc), and buildings housing tenants with the lowest incomes.

Berkeley should explore creating a similar Small Sites Program Fund, which would earmark Housing Trust Fund dollars to assist non-profit developers in acquiring small multi-unit properties which that are vulnerable to real estate speculation and tenant evictions. This fund would provide specific pre-development dollars for building acquisition. This will expand the affordable housing portfolio and keep people in their homes. A Small Sites Fund could also help expand limited equity cooperative ownership.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments:

1: San Francisco Small Sites Program

To: Housing Advisory Commission

From: Commissioner Soto-Vigil
Commissioner Tregub
Commissioner Darrow

Date: January 7, 2016

Re: Support the Berkeley Housing Authority

RECOMMENDATION:

That the Housing Advisory Commission recommend the Berkeley City Council do the following:

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.

I support these proposals for funding the program because they 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 S8 rental assistance.

2. Assist with Owner Retention in the S8 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 S8 tenancy (damage to the unit, non-payment of rent, cost of eviction) as a reasons not to participate in the S8 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 for BHA. I was surprised to learn that 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 S8 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.

BACKGROUND:

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.

In addition, The Berkeley Property Owners Association has waged a deceitful public relations campaign attacking Section 8 tenants and the Housing Authority. I am pleased to share a copy of the letter, and BHA's response.

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 above 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.