



Housing Advisory Commission

HOUSING ADVISORY COMMISSION

AGENDA

Regular Meeting

Thursday, March 7, 2019
7:00 pm

South Berkeley Senior Center

2939 Ellis Street
Secretary Amy Davidson
HAC@cityofberkeley.info

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.

1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the February 7, 2019 Regular Meeting Minutes (*Attachment 1*)
5. **Discussion and Possible Recommendation on the Rental Housing Safety Program Proposed Fee Increase** – *Jenny McNulty, Planning (Attachment 2)*
6. **Discussion and Possible Action to Adopt CDBG Subcommittee Recommendations for FY 2020 Community Agency Request for Proposals Funding** – *Rhianna Babka, HHCS*
7. **Discussion and Possible Recommendation on the Draft FY 2020 Annual Action Plan** – *Rhianna Babka, HHCS (Attachment 3)*
8. **Presentation from Theo Ferguson, 1642 Milvia Street Condominium Association** – *Theo Ferguson*
9. **Discussion and Possible Action to Appoint a Subcommittee** – *All (Attachment 4 & 5)*
 - a. **City-Owned Property at 1281 University Avenue**
 - b. **Housing Trust Fund**
10. **Discussion and Possible Action to Adopt and Maintain an Annual Commission Calendar** – *Thomas Lord (Attachment 6)*
11. **Discussion and Possible Recommendation to Revise Code Enforcement Standards to Support Homeowners and Tenants** – *Igor Tregub (Attachment 7)*

12. **Receive Update on the Bi-Annual Housing Policy Report Subcommittee – Subcommittee Chair**
13. **Discussion and Possible Recommendation to Examine Urban Development Strategies Relative to IPCC Special Report on Global Warming – Thomas Lord (Attachment 8)**
14. **Discussion and Possible Recommendation to Coordinate Publically Supported Teacher Housing and Housing Discrimination Laws – Thomas Lord (Attachment 9)**
15. **Update on Council Items (Future Dates Subject to Change) – All/Staff**
 - a. Referral to Planning Commission and Housing Advisory Commission on Inclusionary Housing and Affordable Housing Mitigation Fee Ordinances (Attachment 10)
 - b. Missing Middle Report (2/26)
https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_21_Missing_Middle_Report.aspx
 - c. Code Enforcement Review Update (3/12)
 - d. Communicating and Meeting with Community Stakeholders on Housing Innovations (3/12)
 - e. Measure O Oversight Committee and Measure P Homeless Services Panel of Experts (3/12)
 - f. Resources for Community Development's 2001 Ashby Avenue Predevelopment Loan Application (4/23)
 - g. Endorse Senate Constitutional Amendment 1 and Assembly Bill 10 (4/23)
16. **Announcements/Information Items**
 - a. Smoke Free Housing Survey: <https://www.cityofberkeley.info/considers/>
 - b. Commissioner Comments on the 2019 Local Hazard Mitigation Plan (Attachment 11)
 - c. Lord, A Plan for the 19.44.020(B)(10) Reports (Attachment 12)
 - d. Lord, Social Housing Model Legislation (Attachment 13)
17. **Future Items**
 - a. Presentation on Rental Housing Safety Program by the Resilient Buildings Program Manager (April 2019)
 - b. Presentation on the Metropolitan Transportation Commission (MTC) Committee to House the Bay Area (CASA) Planning Initiative by Denise Pinkston, CASA Technical Committee (April 2019)
 - c. Presentation on Local Teacher Housing by BeHome Berkeley (May 2019)
 - d. Update on Revisions to Relocation Ordinance
 - e. Community Housing Development Organization (CHDO) Funding
18. **Adjourn**

Attachments

1. Draft February 7, 2019 Regular Meeting Minutes
2. Jenny McNulty, Planning, Rental Housing Safety Program Proposed Fee Increase
3. Rhianna Babka, HHCS, Draft FY 2020 Annual Action Plan Recommendations
4. Amy Davidson, HHCS, 1281 University Avenue Subcommittee
5. Current Subcommittee Roster
6. Lord, Recommendation to Maintain a HAC Calendar
7. Tregub, Recommendation to the City Council to Change Certain Policies that Provide Housing Stability for Homeowners and Tenants
8. Lord, Consider Climate and the Housing Crisis
9. Lord, Consider a Contradiction Between “Fair Housing” and “Teacher Housing”
10. Referral to Planning Commission and Housing Advisory Commission on Inclusionary Housing and Affordable Housing Mitigation Fee Ordinances – Annotated City Council Agenda Excerpt, February 19, 2019
11. Commissioner Comments on the 2019 Local Hazard Mitigation Plan
12. Lord, A Plan for the 19.44.020(B)(10) Reports
13. Lord, Social Housing Model Legislation

Correspondence

14. Christine Schwartz, City of Berkeley Wildfire Safety Planning 2/5/19 & LHMP Local Hazard Mitigation Plan at Peace & Justice Commission on 2/4/19
15. David Mayer, Upcoming March 7 Meeting of HAC

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Health, Housing & Community Services Department located at 2180 Milvia Street, 2nd Floor during regular business hours. Agenda packets and minutes are posted online at:

https://www.cityofberkeley.info/Housing_Advisory_Commission/

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person to the Secretary of the commission. 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 for further information.



HOUSING ADVISORY COMMISSION
Regular Meeting
Thursday, February 7, 2019

Housing Advisory Commission

Time: 7:01 pm

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

DRAFT MINUTES

1. Roll Call

Present: Xavier Johnson, Thomas Lord, Leah Simon-Weisberg (arrived at 7:11 pm), Alex Sharenko, Maryann Sargent, Igor Tregub, Marian Wolfe and Amir Wright.

Absent: Darrell Owens (excused).

Commissioners in attendance: 8 of 8

Staff Present: Amy Davidson, Mike Uberti and Kelly Wallace

Members of the public in attendance: 7

Public Speakers: 4

2. Agenda Approval

Action: M/S/C (Sharenko/Johnson) to approve the agenda.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused) and Simon-Weisberg (unexcused).

3. Public Comment

There were two speakers during public comment.

4. Approval of the January 3, 2019 Regular Meeting Minutes

Action: M/S/C (Johnson/Lord) to approve the minutes with an amendment to Item 9 to state "Discussion and Possible Action to Make Recommendations to Council to Create the Measure O Oversight Committee and Measure P Homeless Services Panel of Experts"

Vote: Ayes: Johnson, Lord, Sargent, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Sharenko and Wright. Absent: Owens (excused).

5. Officer Elections

Action: M/S/C (Simon-Weisberg/Wright) to elect Commissioner Johnson as Chair.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

Action: M/S/C (Sharenko/Tregub) to elect Commissioner Wolfe as Vice-Chair.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

6. Discussion on First Draft Annual Action Plan (AAP) PY 2019

7. Discussion and Possible Recommendation to the City Council for the Resources for Community Development 2001 Ashby Predevelopment Loan Application

Commissioner Wolfe recused herself from this item as she is on the board of Resources for Community Development.

Action: M/S/C (Tregub/Sargent) to recommend to City Council to support Resources for Community Development's predevelopment loan application for \$368,000 for its proposed development at 2001 Ashby.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, and Wright. Noes: None. Abstain: None. Absent: Owens (excused) and Wolfe (recused).

8. Discussion and Possible Action to Recommend the City Council Endorses AB 10, SB 18, and SCA 1

Action: M/S/C (Tregub/Sargent) to recommend to City Council to endorse Senate Constitutional Amendment (SCA) 1.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

Action: M/S/C (Tregub/Sargent) to recommend to City Council to endorse Assembly Bill (AB) 10.

Vote: Ayes: Johnson, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: Lord. Abstain: None. Absent: Owens (excused).

9. Report and Discussion on Community Development Block Grant (CDBG) Subcommittee

Action: M/S/C (Tregub/Lord) to appoint Commissioners Simon-Weisberg and Sargent to the Community Development Block Grant subcommittee.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

10. Discussion and Possible Action to Streamline Subcommittee Formation

Action: M/S/C (Tregub/Sargent) to adopt the following rules for establishing short term ad hoc subcommittees:

- At any meeting, the Commission may take action to form one or more subcommittees to further consider any action item or information item on the agenda. Subcommittees formed under this rule shall be called "streamlined subcommittees".
- The intent of a streamlined subcommittee is for a subset of members to consider

the agenda item outside of the full commission meeting, and report back to the full commission at the next meeting or the meeting after that.

- Streamlined subcommittees shall be automatically dissolved no later than the second full commission meeting after their formation, or upon their making a final report at the first full commission meeting after their formation.
- As an exception to this rule, the deadline may be extended if a request for extension has been agendized and voted affirmatively by the whole commission.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

11. Discussion and Possible Action on Smoking Ban in Multifamily Housing

Action: M/S/C (Wolfe/Sharenko) to appoint a subcommittee of commissioners Lord and Tregub to study multifamily smoking regulations. This commission will bring its findings back to the commission and terminate no later than April 2019.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

12. Discussion and Possible Action to Establish Protocol for the Bi-Annual Housing Policy Report

Action: M/S/C (Tregub/Wolfe) to extend the meeting twenty minutes to 9:30.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

Action: M/S/C (Tregub/Wright) to establish a Bi-Annual Housing Policy Report Subcommittee to review “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This commission will bring its findings back to the commission and terminate no later than April 2019.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

Action: M/S/C (Sharenko/Tregub) to appoint commissioners Johnson, Lord, Sargent and Wolfe to the Bi-Annual Housing Policy Report Subcommittee.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

Action: M/S/C (Sharenko/Tregub) to extend the meeting twenty minutes to 9:50.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

13. Discussion and Possible Action to Recommend to the Joint Subcommittee for the Implementation of State Housing Law (JSISHL) Regarding a Student District

Density Bonus

14. Update on Council Items

15. Announcements/Information Items

16. Future Items

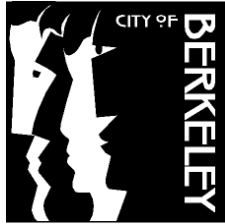
17. Adjourn

Action: M/S/C (Tregub/Sharenko) to adjourn the meeting at 9:51 pm.

Vote: Ayes: Johnson, Lord, Sargent, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

Approved on March 7, 2019

_____, Amy Davidson, Secretary



Planning and Development Department
Building and Safety Division

February 28, 2019

To: Honorable Members of the Housing Advisory Commission

From: Jenny McNulty, Resilient Buildings Program Manager, Building and Safety Division, Planning and Development Department

Subject: **Rental Housing Safety Program Proposed Fee Increases**

SUMMARY

The Planning and Development Department will propose fee increases to the Rental Housing Safety Program (RHSP) at the May 28th City Council meeting to fund a mandatory cyclical proactive inspection program of all residential rental units in Berkeley to increase tenant safety. Staff requests that the HAC review the increases, provide input and recommend approval to City Council.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Table 1 displays the current RHSP fees and those proposed for fiscal years 2020 and 2021.

| Table 1: Current and Proposed Fees | | | | |
|---|----------------------|--------------------|-----------------------------------|-----------------------------------|
| Fee Type | Last Increase | Current Fee | Proposed Fee Increase FY20 | Proposed Fee Increase FY21 |
| <i>Annual Flat Fees</i> | 2009 | | | |
| Per Unit | | \$26 | \$40 | \$52 |
| Per Room | | \$13 | \$20 | \$26 |
| <i>Reinspection Fees</i> | 2003 | | | |
| Initial Investigation | | None | None | |
| 1st Reinspection Violations Corrected | | None | None | \$200 |

| | | | | |
|--|------|-------|-----------|--|
| 1st Reinspection Violations not Corrected | | \$300 | \$400 | |
| 2nd Reinspection | | \$400 | \$600 | |
| 3rd and Subsequent Reinspection | | \$400 | \$800 | |
| Penalty Fees | | | | |
| Late Payment Fee 1-30 days delinquent | 2005 | 10% | No change | |
| Late Payment Fee 31+ days delinquent | 2005 | 20% | 40% | |
| Administrative Lien Fee | 2007 | \$125 | \$250 | |

Table 2 compares the proposed percentage increase to fees with increases in median rent for rent-controlled units and the cost of living since the time the fee amounts were last raised. Average rent for all units, including those not subject to rent control, has increased by 63% from 2011 to 2018 from \$1,870 to \$3,051, according to Rent Jungle, whose posted data only goes back to 2011.

| Table 2: Comparison of Fee Increases to Rent and Cost of Living Increases | | | | |
|--|--------------------|-----------------------------------|---|--|
| Fee Type | Last Change | % Increase of Proposed Fee | Median Rent Increase to June 2018* | Cost of Living Increase to 2018** |
| Annual Flat Fee | 2009 | 54% | 52% | 17% |
| Reinspection Fee: 1 st with Violations | 2003 | 33% | 94% | 36% |
| Reinspection Fee: 2 nd Reinspection | 2003 | 50% | 94% | 36% |
| Reinspection Fee: 3 rd and Subsequent | 2003 | 100% | 94% | 36% |
| Administrative Lien Fee | 2007 | 100% | 68% | 21% |

*For rent-controlled units only. Source: Rent Board Market Median Report "Market Medians: January 1999 through June 2018", dated Feb 21, 2019

** Source: <https://www.aier.org/cost-living-calculator>

Fully funding the expanded Rental Housing Safety Program through these proposed fee increases would, for the first time in Berkeley, enable safety inspections of every rental housing unit. The increases would cover cost increases the City has borne since the last time fees were raised in 2009, and would fund additional inspectors and administrative staff as well as 50% of the new Resilient Buildings Program manager position, which is responsible for overseeing a wide range of safety improvements for Berkeley’s building stock. The increases also include the additional workload of the housing inspection unit with the creation of the Exterior Elevated Elements (E3) Inspection Program in 2015, a program adopted and implemented without additional funding, and the transfer of revenue collection responsibilities from Finance to Housing Code Enforcement in 2017.

The operating budget for the Rental Housing Safety Program in FY 2019 is \$1,144,021. Funds are collected and costs expensed in the Rental Housing Safety Program Enterprise Fund 375, which is an enterprise fund established to be self-supporting. Table 3 projects costs and revenues with all the fee increases. Costs include additional personnel and non-personnel costs to increase the number of inspections. Because the RHSP proposes adding new positions in the second half of FY21, the costs and revenue for FY22 are also shown, incorporating the full annual costs of the new positions and the additional reinspection fee revenue that would be generated through increased reinspections.

| Table 3: Projected Costs and Revenues 2019 - 2022 | | | |
|--|--------------|--|-----------------------------------|
| Fiscal Year | Costs | Total Revenue (Including all Fee Increases) | Annual Surplus/Deficit |
| FY19 (Current Budget) | 1,144,021 | 1,175,216 | 31,195 |
| FY20 Proposed | 1,833,164 | 1,853,657 | 20,493 |
| FY21 Proposed | 2,392,482 | 2,421,261 | 28,779 |
| FY22 Proposed | 2,715,106 | 2,719,439 | 4,333 |

Projected revenue is broken out by fee category for the next two years in Table 4.

| Table 4: Projected Revenue per Fee Type with Fee Increases | | | |
|---|------------------|------------------|------------------|
| Fee Type | FY19 Fees | FY20 Fees | FY21 Fees |
| Annual Fees | 724,533 | 1,144,649 | 1,508,844 |
| Reinspection Fees | 395,520 | 658,744 | 816,864 |
| Penalty Fees | 49,440 | 113,863 | 117,041 |

CURRENT SITUATION AND ITS EFFECTS

The Planning Department's Building and Safety Division is expanding the Rental Housing Safety Program with the goal of conducting proactive inspections of all rental units in the City of Berkeley on a cyclical five year basis. This expansion will ramp up over a three-year period. The expansion of the Rental Housing Safety Program is one of the City's Strategic Plan Priority Projects, advancing our goal to create affordable housing and housing support services for our most vulnerable community members.

Current RHSP reinspection fees were established in Resolution No. 62,230-N.S., adopted on September 16, 2003, and are charged when cited violations are not corrected within 30 days. Current late payment fees were established in Resolution No. 62,990-N.S. adopted July 12, 2005. The RHSP administrative lien fee, charged when a lien is placed on the property at the end of the fiscal year for unpaid fees, was established in Resolution No. 63,773-N.S. adopted on July 10, 2007. The current annual per room and per unit flat fees were established in Resolution No. 64, 455-N.S. adopted on May 19, 2009.

Fees support the enforcement of the Berkeley Housing Code (BMC 19.40) and the Rental Housing Safety Program (BMC 12.48). Fees fund housing inspections in response to tenant complaints, and randomly selected proactive inspections. Program staff are responsible for noticing, scheduling, and conducting investigations and reinspections, documenting and noticing code violations, conducting follow up inspections to confirm violations have been corrected, answering questions from landlords and tenants about code enforcement activities, and maintaining and updating a database of property owner information.

Fees also support administration of the self-certification program, known as the RHSP safety certification checklist, or Schedule A. The program sends property owners information regarding the requirements of Schedule A annually and issues citations to owners who fail to provide a copy of the completed Schedule A at the time of an inspection. Penalty fees and administrative lien fees pay for the cost of revenue collection on delinquent accounts.

Attachment 1 compares Berkeley's proposed new fees with fees charged by other California jurisdictions with rental housing safety programs. Annual fees range from \$22 - 131/unit; cities with lower fees typically do not proactively inspect all units in the jurisdiction. The cities of Richmond and San Pablo charge the higher fees of \$83 and \$78/unit, Santa Cruz, Los Angeles and El Cerrito charge \$50, \$43.42 and \$41/unit, and Oakland and Hayward charge \$30 and \$22/unit. San Francisco's fee schedule varies based on the number of rental units, and San Jose has a tiered system charging between \$30 and \$131 depending on the number of violations found. The tier dictates the frequency of inspections and the percentage of units in the building subject to proactive inspections. Higher fees are necessary to fund sufficient staffing to conduct proactive inspections on all units.

Jurisdictions vary in the way they charge reinspection fees, by individual reinspection, by hour and by parcel. Oakland, El Cerrito and San Jose charge between \$206 and \$242 per

inspection, while Santa Cruz, San Francisco and San Pablo charge between \$123 and \$158/hour. The City of Hayward is notable in the way it increases its reinspection fees to motivate compliance, from \$350/parcel to \$750 to \$1,150 to \$1,950/parcel. Higher reinspection fees for subsequent reinspections deter owners from postponing remediation work, reducing the likelihood that tenants will be exposed to potentially substandard conditions for prolonged periods of time.

Los Angeles has the largest program and has been successful at conducting proactive inspections of all units. Their reinspection fee is \$201.50 for the first reinspection. Thereafter, Los Angeles takes a different form of enforcement action, which results in different kinds of owner expenses. If violations are not corrected within 30 days of the first reinspection, the owner is summoned to a General Manager's hearing to determine the reason for non-compliance. The Hearing Officer may grant a continuance, refer the property for inclusion into the Rent Escrow Account Program (REAP), and/or refer the case to the City Attorney's Office for criminal prosecution. The Rent Escrow Account Program (REAP) encourages owners to make repairs in a timely manner. Tenants of affected units receive a 10-50% rent reduction and the option to pay rent into the escrow account managed by the City. Owners have the option of appealing the decision to place the property in REAP. Properties accepted into REAP remain in REAP until all violations cited have been cleared, and an administrative fee of \$50.00 per unit is assessed for each month the property remains in REAP.

New Staffing

Revenue from proposed fee increases will fund additional inspectors and administrative staff to increase the number of units inspected each year. RHSP staffing would increase from 6.75 to 10 full-time employees by the end of FY20, and to 14 FTEs by the end of FY21. Proposed new staff positions are:

| | |
|------|--|
| FY20 | 1 Office Specialist II (July 2019) 2 Housing Inspectors (Dec 2019) |
| FY21 | 1 Accounting Office Specialist III (Sep 2020) 3 Housing Inspectors, including at least 1 Assistant Housing Inspector (Jan 2021) |

The current and proposed organization charts as of the end of FY21 are included as Attachment 2.

BACKGROUND

City Council adopted Ordinance No. 6,651-N.S., on August 23, 2001, establishing the RHSP. Initially, the RHSP was financed by inspection fees charged to rental property owners, with the balance subsidized by General Fund and CDBG grant funding. The purpose of the RHSP is to encourage a collaborative effort among property owners, tenants, and the City to improve the quality and safety of rental housing in Berkeley. The RHSP incorporates state-mandated housing code inspections conducted in response to tenant complaints and proactive inspections to identify existing or potential housing code

violations before they compromise the safety and well-being of tenants. The RHSP further requires rental property owners to annually inspect their units and certify that specific housing safety standards are being met using the City's annual self-certification safety checklist, Schedule A, as adopted in the BMC Section 12.48. Property owners must supply a copy of the completed checklist to the tenant annually.

In 2003, the City established a goal of making the program financially self-sufficient, eliminating the need for General Fund or CDBG grant funding to subsidize the program with Resolution No. 62,062-N.S. Currently the program is completely supported by RHSP Enterprise Fund 375.

The three components of the Rental Housing Safety Program are: Reactive Inspections, Proactive Inspections, and the Exterior Elevated Elements (E3) Program.

Reactive/Complaint Inspections: Housing Code Enforcement

The reactive/complaint inspection program, also known as Housing Code Enforcement, refers to the state-mandated housing code inspections conducted in response to tenant complaints or requests made by other City Departments. Rules governing local applications and enforcement of the building standards pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels, or dwellings are mandated in Title 24 of the California Code of Regulations (known as the California Building Standards Code), Title 25 Chapter 1 of the California Code of Regulations (known as State Housing Law), and the City of Berkeley's Housing Code, BMC Section 19.40.

Upon receiving a complaint, an inspector will schedule and complete an investigation of the unit. If any code violations are identified, staff will issue a notice of required corrections and schedule a re-inspection within 30 days. Currently, if the violations have been corrected at the inspector's return visit, no inspection fees are charged. For violations that have not been corrected, the property owner is assessed a \$300 re-inspection fee. Re-inspections are repeated until the correction has been completed, with another \$300 fee for the second follow-up reinspection and \$400 for each subsequent re-inspection. Each of those fees is proposed to be increased in FY20 and FY21, as detailed in Table 1 above.

Property owners may request extensions from RHSP, during which time they are not charged reinspection fees. Common grounds for extensions include unit vacancy, unit access denied by the tenant, if the owner has applied for a permit and corrected any violations not requiring a permit, or if the owner has a signed contract with a contractor, who is not able to start work immediately. Office reviews are scheduled to monitor owner progress on correcting violations, including when permits have been issued or time extensions have been granted to ensure the owner or property manager is progressing in a timely manner to correct the violation, and if work stops, enforcement resumes.

Proactive Inspections

The Proactive Inspection Program refers to inspections of randomly selected rental units, with the intent of identifying existing housing code violations before they become serious health and safety risks to tenants. This component was incorporated into the RHSP program (BMC Section 12.48), and adopted by City Council on July 24, 2002.

The Building and Safety Division's goal going forward is to conduct proactive inspections of all of Berkeley's approximately 29,000 rental units and 3,581 associated common areas on a 5-year cycle. For each proactive case, based on prior experience, inspectors do an average of 2.5 inspections, including the initial investigation and 1.5 subsequent reinspections.

Inspections Numbers

Over the last three years Housing Code Enforcement has conducted an average of 290 reactive investigations annually, as well as 1,178 re-inspections, and 345 office reviews, and closed an average of 168 cases per year. Staff have conducted an average of 189 proactive investigations annually, 366 re-inspections, and 95 office reviews, and closed an average of 123 cases annually. Based on the current caseload, including both proactive and reactive inspections, the RHSP is inspecting 1.7% of units in Berkeley annually. The anticipated increase from 1.7% to 20% of the total rental units inspected each year will require a combination of productivity improvements and new staffing.

If the RHSP achieves efficiency improvements and reaches a productivity level where each housing inspector could conduct 8-9 inspections per day, including both investigations and reinspections, a team of 10 inspectors would be required to conduct proactive inspections of each rental unit on a five year cycle. In addition, two inspectors would be needed to continue responding to tenant complaints and conducting housing code enforcement for a total of 12 inspectors. A total of 9 inspectors would be required to conduct cyclical inspections on a 7-year cycle and 8 inspectors for an 8-year cycle, while maintaining housing code enforcement activities.

As inspection volume increases and owners and property managers come to anticipate housing inspections, they may improve their property maintenance. The RHSP will develop materials to assist owners with preparing for inspections. Owners may also be motivated by the higher fees to correct violations more quickly. Then, a lower number of reinspections could be required and fewer than 12 inspectors to achieve a 5-year inspection cycle.

Exterior Elevated Elements (E3) Inspection Program

As adopted in the BMC, Section 601.4 on July 14, 2015 and amended on February 23, 2016, the E3 program requires inspection and certification of weather-exposed elevated elements. The requirement applies to Group R-1 and R-2 occupancies as defined in the California Building Code, which primarily consist of buildings with three or more residential units. Properties were required to be inspected by January 14, 2016

and must be inspected every five years thereafter. The RHSP administers the program and handles code enforcement for non-compliant properties.

On December 1, 2015, the City Council voted to refer to the City Manager a package of proposals to improve and expand the Rental Housing Safety Program¹. This included increasing fees, prioritizing proactive inspections, enhanced enforcement of Schedule A requirements, creating a mandatory cyclical inspection program, and allowing for confidential housing code complaints.

As the first step in the response, on May 5, 2016, the Planning Department submitted a report to the 4x4 Committee recommending creation of a new manager classification in the Building and Safety Division to lead the improvement and expansion of the program. In addition to supervising staff, the position would be charged with conducting a thorough assessment and ongoing evaluation of the housing inspection policies and procedures to determine how systems could be streamlined to increase productivity, performing financial planning, and researching best practices in other jurisdictions with the goal of expanding the RHSP toward a more proactive approach. Following additional presentations to the 4x4 Committee and multiple discussions and meetings with HR, this position was finally established by HR earlier in 2018 and approved by Council on September 13, 2018. On December 17, 2018, Jenny McNulty was hired as the Resilient Buildings Program Manager and immediately embarked on the task of improving and expanding the Rental Housing Safety Program.

This report represents the second step in the response, identifying changes to the fee structure to fund the establishment of a mandatory cyclical inspection program. In the fall of 2019, the Planning & Development Department will provide the third report to Council to fully address all items raised in the December 1, 2015 Council referral “Revising the Rental Housing Safety Program”, submitted by then Councilmember Arreguin. In the meantime, the team is working on a number of efforts to address improvements to the program.

To improve and expand the program, the following efforts are planned or in process:

- a. Increasing fees to fund an increased number of proactive inspections;
- b. Revising the single position Housing Inspector classification and replacing it with a housing inspector series consisting of Assistant Housing Inspector, Housing Inspector I, Housing Inspector II, and Senior Housing Inspector;
- c. Studying best practices in other jurisdictions;
- d. Replacing software used for program management and improving use of technology;
- e. Evaluating workflow and making efficiency improvements;
- f. Updating policies and procedures;

¹ https://www.cityofberkeley.info/Clerk/City_Council/2015/12_Dec/Documents/2015-12-01_Item_28_Revising_the_Rental.aspx

- g. Developing an Inspector Manual with instructions for how to conduct inspections and resolve common issues, to increase consistency among inspectors and allow for faster onboarding;
- h. Rewriting the Housing Code;
- i. Evaluating how to prioritize proactive inspections;
- j. Developing materials for property owners to assist them with improving maintenance prior to a housing inspection to avoid reinspection fees.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Fee increases have been proposed to provide revenue to create a mandatory cyclical inspection program, to support increases in operating costs due to an increase in the cost of living, the addition of management of the Exterior Elevated Elements Inspection Program and revenue collection responsibilities to the Rental Housing Safety Program and to avert the need for a General Fund subsidy. Expansion of the Rental Housing Safety Program is dependent on the fee increases proposed. The increase in reinspection fees, particularly for 2nd, 3rd and subsequent reinspections are intended to increase compliance and allow inspectors to close cases sooner due to the disincentive to owners of facing higher fees. Currently, reactive inspections have an average of 4 reinspections and proactive inspections have an average of 1.5 reinspections. If owners were to comply sooner, inspectors could close cases more quickly and free up time to take on new cases.

Increases in penalty and administrative lien fees are intended to incentivize owners to pay their bills on time, to save the City the cost of collecting unpaid revenue, which is labor intensive, and to ensure cost recovery. If owners pay in a timely manner, this will free up administrative support staff to provide additional assistance with processing inspections. The proposed increase on the second late fee from 20% to 40% on accounts which are 31+ days delinquent will also provide consistency across City Departments, as the Finance Department charges 40% for business licenses which are 31+ days past due, whereas the RHSP currently only charges 20% for accounts which are 31+ days past due.

The annual fees for the RHSP have always been modest. Established in 2003 at \$17/unit, they have only been increased one time in 2009 to \$26/unit. As a percentage of average annual rent², the \$26 fee represents 0.07% of the annual rent collected. Increasing annual fees from \$26 to \$40 to \$52/unit will result in this percentage going up to 0.11% then 0.14%, an increase of 0.07%. In comparison, the enhanced business license tax (Measure U1) passed in 2016, increased the annual gross receipts tax on owners of five or more residential units from 1.081% to 2.88% of gross receipts, an increase of 1.8%, which equates to a \$658 increase for the average rental unit, to fund creation of affordable housing. As a percentage of average rent, that increase was 25 times larger than the two

² Per Rent Jungle, the average monthly rent in Berkeley for 2018 was \$3,051, which equates to an average annual rent of \$36,610.

increases proposed for the annual RHSP fees. The Rent Board registration fee is also considerably higher at \$250/unit and increased \$40/unit between 2005 and 2010 and \$56/unit from 2010 to 2018.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered raising the annual fees higher in lieu of adding a \$200 fee for the first reinspection, when all violations have been corrected. Staff considered adding a higher administrative lien fee of \$500, while studying the higher fee structure for the City of Hayward, a jurisdiction of similar size, which charges \$1,811/parcel as its administrative lien fee. Staff also considered limiting the subsequent reinspection fee to \$600, the proposed fee for the 2nd reinspection, in lieu of adding a higher 3rd and subsequent reinspection fee of \$800. Another option for funding the expansion of the RHSP would be a General Fund subsidy.

POSSIBLE FUTURE ACTION

Fee increases will be proposed at the May 28th City Council meeting. The Planning and Development Department staff anticipate meeting with the Berkeley Property Owners Association, the Rent Board and the 4x4 Committee.

Attachments:

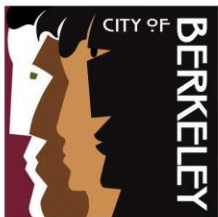
- 1: Comparison to Fees in Other Jurisdictions
- 2: Organizational Chart: Proposed and Current

Attachment 1
Comparison to Fees in Other Jurisdictions
With Proactive Inspections of a Portion of Units or All Units

| City | Reinspection Fee |
|---|--|
| Berkeley Current Fee | 1 st with violations not corrected: \$300 /inspection 2 nd : \$300 Subsequent: \$400 |
| Berkeley Proposed Fee 2019 Proposed New Fee 2020 | 1 st with violations not corrected: \$400 /inspection 2 nd : \$600 3 rd and subsequent: \$800 1 st with violations corrected: \$200 |
| El Cerrito | \$241 for Single Family \$211 for 1 st unit Multi-Family / \$120 for additional units |
| Hayward | Investigation with violations found: \$350 /parcel 1 st with uncorrected violations: \$350 2 nd : \$750 3 rd : \$1,150 4 th +: \$1,950 |
| Los Angeles | 1st: \$201.50 Subsequent: Property placed in Rent Escrow Account Program; fee of \$50/unit monthly and a 10-50% rent reduction for tenants |
| Oakland | \$206 /inspection |
| Richmond | Initial Inspection Fee: \$157 /unit Reinspection fee: \$66 /unit |
| Santa Cruz | Reinspection Fee: \$123 /hour |
| San Francisco | \$158.10 /hour |
| San Jose | \$242 /inspection |
| San Pablo | \$126 /hour |

| City | Annual Fee |
|--|---|
| Berkeley Current Fee | \$26 /unit and \$13 /room |
| Berkeley Proposed 2019 Berkeley Proposed 2020 | \$40 /unit and \$20 /room \$52 /unit and \$26 /room |
| El Cerrito | \$41 /unit |
| Hayward | 1-4 units: \$88 /building 5+ units: \$22 /unit |
| Los Angeles | \$43.32 /unit |
| Oakland | \$30 /unit |
| Richmond | \$83 /unit |
| San Francisco | Single/multifamily: \$52 /unit Apartments 3-12 units: \$326/year Apartments 13-30 units: \$488 /year Apartments additional units: \$55 /10 units |
| Santa Cruz | \$50/unit annual registration fee + \$22 /unit annual inspection fee. Annual Self-Certification Fee: \$22 /unit per 20% of units |
| San Jose | Tier 1 = \$30 /unit Tier 2 = \$65 /unit Tier 3 = \$131 /unit |
| San Pablo | \$391 /building \$78 /unit |

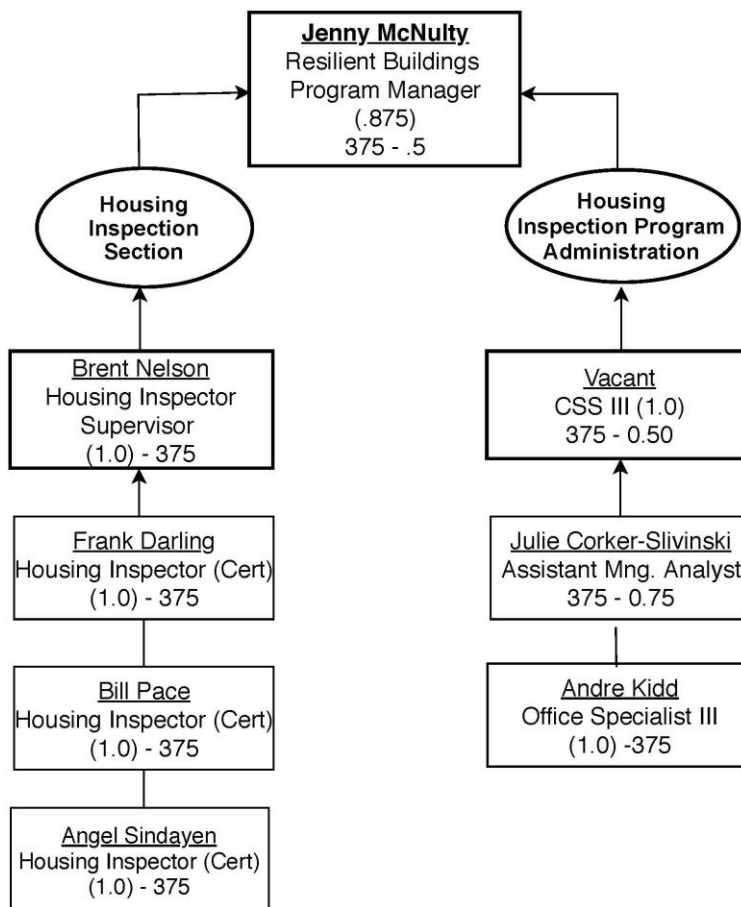
| City | Late Payment Fee | Administrative Lien Fee |
|------------------------|---|---|
| Berkeley Current Fee | 1-30 Days Delinquent: 10% 31+ Days Delinquent: 20% | \$125 /account |
| Berkeley Proposed 2019 | 1-30 Days Delinquent: 10% 31+ Days Delinquent: 40% | \$250 /account |
| El Cerrito | 1.5% | |
| Hayward | Total amount past due on invoice + \$630 assessment fee + 1.7% Alameda County fee | \$1,811 /parcel |
| Los Angeles | Annual Fee: 100% Reinspection Fee: 150% (Increases from \$201.50 to \$503.75) | |
| Oakland | 31-60 Days Delinquent: \$30 + 25% /unit 60+ Days Delinquent: \$30 + 50% /unit | \$125 /lien |
| Richmond | 1-30 Days Delinquent: 10% 31-60 Days Delinquent: 25% 60+ Days Delinquent: 50% | |
| San Francisco | Monitoring fee (on final bill): \$52 /each month with violations unpaid or uncorrected | \$173.91 or 10% of unpaid balance including interest (whichever is greater) |
| Santa Cruz | 30% | |
| San Jose | 31 – 60 Days Delinquent: 25% 61 – 90 Days Delinquent 25% plus interest at a rate of 1.5% per month | |
| San Pablo | Delinquent charges invoiced + \$25 OR 10% amount owed (whichever is greater) | |



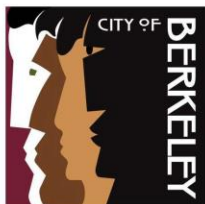
Planning and Development Department
Rental Housing Safety Program (RHSP) &
Housing Code Enforcement (HCE)
 (Existing) FY2019
 (last revised 02/28/19)

Attachment 2

Total FTEs =
6.75

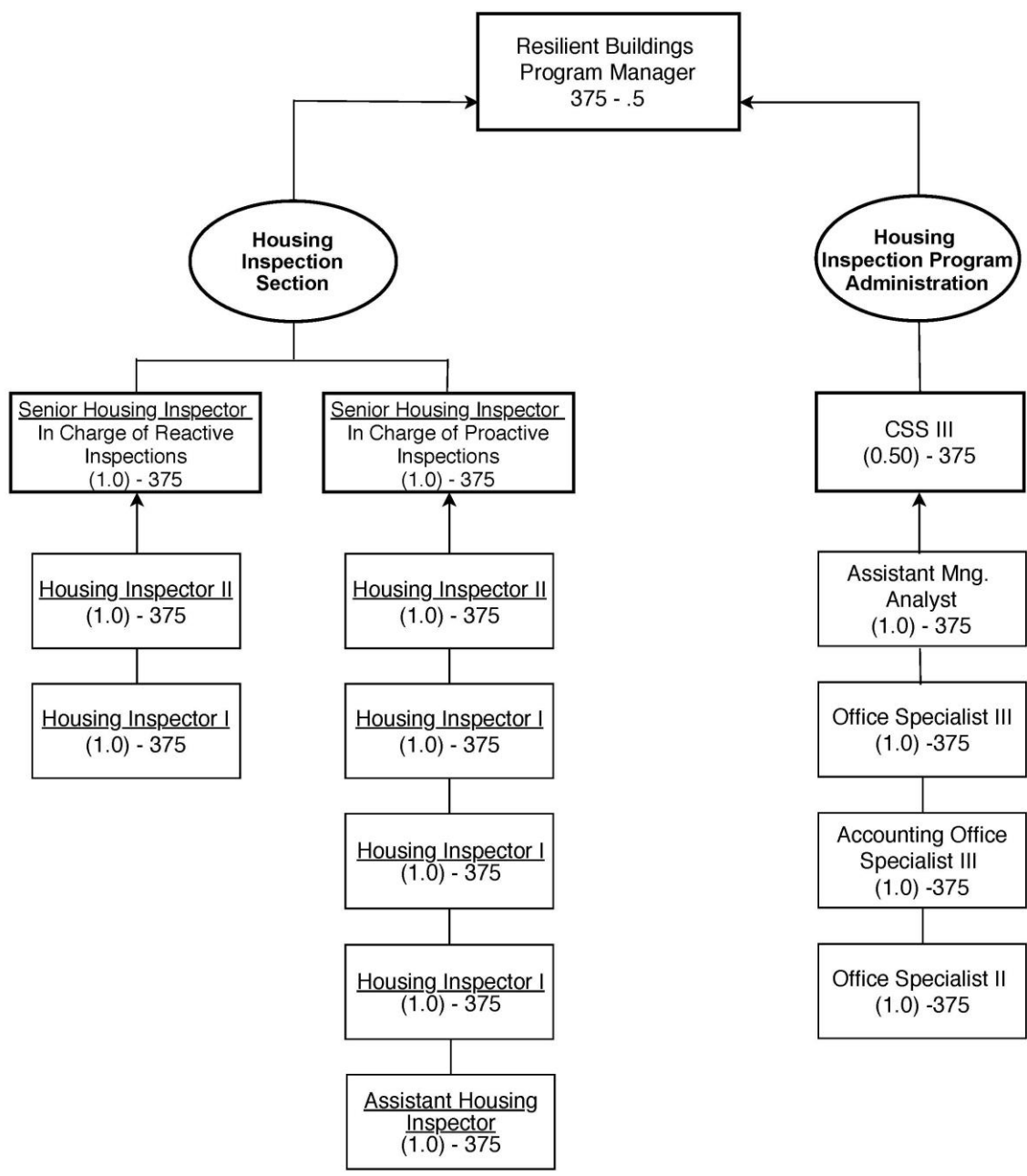


Note: Some positions have split funding with the Permit Service Center Fund 833 and provide additional services to the Planning Department. Only the percent supported by Fund 375 is shown on the organizational chart.



Planning and Development Department
Rental Housing Safety Program (RHSP) &
Housing Code Enforcement (HCE)
Proposed Future Expansion FY2021
 (last revised 02/28/19)

Attachment 2
 Total FTEs =
 14



Note: Some positions have split funding with the Permit Service Center Fund 833 and provide additional services to the Planning Department. Only the percent supported by Fund 375 is shown on the organizational chart.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission (HAC)
From: Rhianna Babka, HCS, Community Services Specialist III
Date: February 25, 2019
Subject: **Draft Annual Action Plan (AAP) PY 2019**

Each year, HCS staff prepare an Annual Action Plan (AAP) which is submitted to the federal Department of Housing and Urban Development (HUD) in May. The plan outlines how the City of Berkeley will spend its Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME) and Emergency Solutions Grant (ESG) funds for the federal program year (PY) 2019 which corresponds to the City's fiscal year (FY) 2020. The City of Berkeley has not yet received our final entitlement amount, therefore the budget shown in the AAP is an estimate. We've estimated a 2% reduction in CDBG funding, which is standard practice to allow for a slight reduction in funding caused by more jurisdictions becoming eligible for funding.

The HAC acts as the advisory commission to Council on the allocation of CDBG, HOME and ESG funds.

Both staff and the HAC CDBG subcommittee are currently in the process of reviewing housing services, public services and COB/partner agency-administered community facilities proposals. These recommendations will also include a funding allocation for the public community facilities Notice of Funding Availability that will be released this summer.

At your March 7th HAC meeting, the HAC CDBG subcommittee will provide their recommendation to the full HAC for how to allocate CDBG funding for the housing services, public services and community facility program areas. The available draft AAP does not yet include final funding recommendations for specific activities because our program review and recommendations are still being finalized by both the HAC and staff.

The budget in the AAP sets aside 5% of HOME funds for possible future use as CHDO operating funding. This is the maximum amount available under HOME regulations and

A Vibrant and Healthy Berkeley for All

Subject: Draft Annual Action Plan (AAP) PY 2019
Date: March 25th, 2019
Page 2 of 2

has been budgeted at this level for over a decade. On March 7, staff will begin working with the Housing Trust Fund subcommittee on CHDO funding to determine whether and how to use those funds.

At your March 7, 2019 meeting the HAC shall consider, discuss and make a final recommendation to Council on the PY19 AAP. The final draft AAP will then be submitted for the April 23, 2019 Council meeting, which is also a Public Hearing on the AAP.

Below is the link to the webpage where the draft Annual Action Plans are made available, as well as the final plan upon Council adoption.

Link: <https://www.cityofberkeley.info/ContentDisplay.aspx?id=12160>



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission

From: Mike Uberti, Community Development Project Coordinator

Date: February 28, 2019

Subject: **1281 University Avenue Subcommittee**

At the March meeting, staff will ask the Commission to appoint an ad-hoc subcommittee to work on 1281 University Avenue. This memo provides a history of the project to date.

On March 28, 2017, Council directed staff to develop a Request for Proposals (RFP) to “create small residential units, with appropriate on-site common spaces and services, affordable to very, very low income persons, with incomes below 30% of Area Median Income (AMI)” at the City-owned site at 1281 University Avenue. This site is an approximately 1,000 square foot vacant lot. Staff developed a RFP to meet Council’s direction as well as City and State requirements, including the Surplus Lands Act (AB 2135).

The City received two proposals in response to the RFP:

- *OpenDoor Group’s University Avenue Co-living*
OpenDoor proposed a “co-living” model that provides small, private bedrooms and baths with shared kitchen and living space. Their development model emphasizes shared communal spaces and activities. Their proposal featured 28 units (two studios and 26 co-living bedrooms), with seven units (25%) set aside for 50% AMI.
- *Resources for Community Development’s (RCD) UA Permanent Supportive Housing*
RCD proposed a residential development specifically targeting the homeless, with 16 studios targeting 20-30% AMI and onsite homeless services.

The Housing Advisory Commission (HAC) appointed a subcommittee to work with staff to review responses to the RFP. The subcommittee was comprised of four commissioners: Luis Amezcua, Matthew Lewis, Thomas Lord and Igor Tregub. The

1281 University Avenue Subcommittee
Page 2 of 2

subcommittee held three meetings with staff to review the RFP, Surplus Lands Act, the proposals, and staff's technical analysis before formulating its recommendation. On July 11, 2018, the HAC voted to adopt the subcommittee's recommendation to recommend the City Council select RCD's proposal:

Action: M/S/C (Owens/Amezcuca) to recommend the Resources for Community Development (RCD) proposal with reservations regarding the proposal's financial feasibility (especially in regards to its reliance on project-based Section 8), reliance on tax credits leveraged in combination with other RCD projects, RCD's past performance, the level of homeless provided services on site, detail available about the service plan, and proposed reduction of open-space, and recommend the site provide a temporary use for short term housing while a viable long term project is determined.

Vote: Ayes: Amezcua, Holman, Johnson, Kesarwani, Lewis, and Winters. Noes: Lord. Abstain: Owens. Absent: Tregub (excused), Wolfe (excused), and Wright (excused).

On September 25, 2018, the City Council authorized staff to negotiate and enter in a Memorandum of Understanding (MOU) with RCD to provide a framework for further developing the proposal and addressing the issues raised by the HAC. Staff drafted an MOU and discussed the project with RCD. On December 13, 2018, RCD informed the City they do not believe the financial resources needed for the proposed project would be available in a timely way, and formally withdrew from the negotiation process.

Staff are requesting the HAC form a new subcommittee to review and make a recommendation to Council related to the RFP and the future of the site.

HAC Subcommittee Appointments
March 2019

| Subcommittee | Members | Assignment | End date |
|---|--|---|--------------------------|
| Bi-Annual Housing Policy Report | <ul style="list-style-type: none"> • Xavier Johnson • Thomas Lord • Maryann Sargent • Marian Wolfe | <ul style="list-style-type: none"> • Review “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” | April 30, 2019 |
| CDBG | <ul style="list-style-type: none"> • Thomas Lord • Maryann Sargent • Leah Simon-Weisberg | <ul style="list-style-type: none"> • Review and make recommendations on the CDBG applications | End of the funding cycle |
| Housing Trust Fund | <ul style="list-style-type: none"> • Xavier Johnson • Igor Tregub | <ul style="list-style-type: none"> • Advise the HAC on Housing Trust Fund related matters | June 30, 2019 |
| Multifamily Housing Smoking Regulations | <ul style="list-style-type: none"> • Thomas Lord • Igor Tregub | <ul style="list-style-type: none"> • Study multifamily smoking regulations | April 30, 2019 |
| Student Housing | <ul style="list-style-type: none"> • Marian Wolfe • Amir Wright • Xavier Johnson (alternate) | <ul style="list-style-type: none"> • Explore and make recommendations on student housing strategies identified in the HAC’s FY2019 work plan • Council Referral (1/30/18): Refer to the City Manager and the Housing Commission to Consider Creating a Dedicated Revenue Stream from Campus Area Projects to Fund Housing for Homeless and Extremely Low Income Students, and Drafting a Letter Encouraging Exploration of University Funding Streams for Student Housing | June 30, 2019 |

Housing Advisory Commission

March 7, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Recommendation to Maintain a HAC Calendar**

Recommendation

1. Establish a list of HAC tasks that recur annually. Act so as to preserve this for future years.
2. Establish a 2019-2020 calendar that can be updated as the year proceeds. Establish a process for making the year-specific calendar that can be preserved for future years.
3. The Commission executive maintain these calendars as a recurring information item to assist the members

Background

The HAC has the following annual duties:

1. **Election of officers in February**
per the Commissioner's manual
2. **Adoption of a fiscal year work plan no later than June**
per Council resolution and as implemented in the Commissioner's manual
Berkeley's fiscal years begin on July 1st and end on June 30th
3. **Referral to council of biannual housing policy development and funding advice in April and October**
per BMC 19.44.020(B)(10)

April / October schedule per HAC resolution with the intent of alignment with Council fiscal year budgetary actions

4. Review of housing-related code enforcement practices and priorities

per BMC 19.44.020(B)(5-6)

Currently unscheduled other than an anticipated meeting with Jenny McNulty (Planning)

The HAC has neglected to implement this duty for a very long time. The duty is not negligible, however, as code enforcement failures have led - during that period - to loss of human life, among other problems.

5. Community Development Grant and Emergency Shelter Grant Program reviews.

per BMC 19.44.020(B)(2)

Currently a bit irregular

Note: The HAC has other duties per ordinance and per (future) Council referrals which do not adhere to a regular schedule, of course.

Both the work plan process and real-time needs add additional important work to the yearly agenda.

Rationale

Maintaining and carrying forward a schedule of annual recurring duties will begin to create an “institutional memory” for the HAC that will help future memberships “hit the ground running”, and carry out mandated duties efficiently.

Maintaining a fiscal year calendar might help the HAC to improve its productiveness and impact on City policy. For example, it will help members to conceptualize the trade-offs made when we forego perspective-sharing policy discussions among the Commission members in favor of lengthy “invited guest” presentations.



Housing Advisory Commission

To: Members of the Housing Advisory Commission
From: Commissioner Igor Tregub
Subject: Recommendation to the City Council to Change Certain Policies that Provide Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Housing Advisory Commission (HAC) recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

- 1) Punitive actions that result in the displacement of a homeowner presently occupying their home or renting it out (i.e., not intentionally leaving it vacant for an extended period of time) is the very last resort that city staff should take; should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to cause a nuisance to the public;
- 2) The Mayor, Councilmember representing the district of the address in question, and HAC are notified of the address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
- 3) Should the homeowner cite a financial hardship to their ability to on their own bring his or her property into compliance with applicable code, the City shall explore the use of anti-displacement funds to assist the homeowner and/or tenant residing on the premises with legal matters, relocation expenses, and/or other needs as applicable and appropriate.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and the possible use of available anti-displacement funds

BACKGROUND

The recommendations above are being proposed to in the future prevent displacements such as the one that has befallen a 76-year-old black veteran and 44-year owner of a South Berkeley residence. According to news sources such as the Oakland Post, “[his] family has lived there for 44 years and owned the house free and clear. By a legal process called receivership, the city has succeeded in placing Mr. Powell in a financial position beyond his means, in order for him to lose the house to foreclosure or sale. Receivership means that the house, after it is found to be in violation of the city’s housing code, is placed under the control of a ‘receiver,’ who then takes over the job of repairing the house.”¹

According to sources, “at no time did Mr. Powell object to doing the repairs on his house. He simply asked the city for assistance and negotiation, which the city subtly declined.”² Following an allegedly no-notice city inspection which found 23 code violations, all of which related to housing maintenance, and with alleged knowledge of Mr. Powell’s precarious financial situation, city staff nonetheless allegedly refused negotiations on city-imposed deadlines, which in turn led to the declaration of the property as a public nuisance.

The home is currently under receivership. Allegedly “the court-appointed receiver ... violated his mandate by having his contractor reconstruct the house rather than simply repair the code violations.”³ According to the Oakland Post, “this is what tripled his expenses, and tripled the debt placed on Mr. Powell. The receiver admitted, in a report that in shifting the work on the house from repairs to reconstruction, he was following city directions.”⁴

The recommendations above, if adopted, would lead to changes in city policy so that the situation that befell Mr. Powell is avoided in the future.

ENVIRONMENTAL SUSTAINABILITY

Efforts that prevent displacement have been found to contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

¹ <http://www.oaklandpost.org/2018/12/15/city-agency-set-seize-black-veterans-home/>

² *ibid.*

³ *ibid.*

⁴ *ibid.*

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and statewide efforts to prevent displacement and keep individuals and families in their homes.

ALTERNATIVE ACTIONS CONSIDERED

None

Housing Advisory Commission

March 7, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Consider Climate and the Housing Crisis**

Recommendation (adopt a problem statement)

The HAC adopt by resolution an agreement that the City of Berkeley should *[alternatively: should not]* urgently examine its current urban development strategies in light of the October 2018 release of the IPCC Special Report on Global Warming of 1.5°C.

Background

The conceit of Berkeley's and the State of California's urban development policy is that it is consistent with, and indeed advances the cause of combating global warming.

The IPCC Special Report on Global Warming of 1.5°C ("IPCC SR-15") makes it clear that that conceit is not merely false, but destructive of the habitability of the planet for human civilization.

Rationale

The climate science is complex and hard to absorb all at once. Nevertheless, it can be helpful to view policy questions through some "bottom line" lenses - hard constraints on public policy that can be readily understood.

One key concept in climate science is that of a "carbon budget". The carbon budget is the amount of unmitigated CO₂ (and other "greenhouse gasses") that can be safely emitted in pursuit of emissions reductions sometime later.

The carbon budget must also be spent for the basic reproduction of society - the provision of food, shelter, water, medical care and so forth.

There is no remaining carbon budget for “eventual” emissions mitigation in OECD countries. The carbon budget that remains for the basic reproduction of these developed societies will, at current rates of burning, be exhausted somewhere between ~15 years hence at the latest, and some number of years *prior* to today, frankly.

In discussing urban redevelopment in OECD countries, the IPCC suggests that no new urban structure be built that are not fossil free and net zero emissions – that will reduce overall emissions immediately. The IPCC also suggests that retrofitting existing buildings is a very high priority.

If the climate science in the IPCC report is at all correct, it implies that current efforts to stimulate urban redevelopment in this region are incompatible with maintaining a habitable planet – in spite of the “green” reputation of these policies.

This memo does not ask Commissioners or the City to accept the reality of this situation directly. It merely records agreement that the City must prioritize studying and responding appropriately to the climate science published by the IPCC in late 2018. The UN and the IPCC have sounded a very shrill alarm - we must not ignore it.

Housing Advisory Commission

March 7, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Consider a contradiction between “fair housing” and
“teacher housing”**

Recommendation (adopt a problem statement)

Adopt by resolution a recognition that there is *[alternative: is not]* a contradiction between the City of Berkeley’s stated goal of avoiding housing discrimination on the basis of age, family composition, and source of income vs. the City’s emerging goal of using public land and money to produce housing reserved for employees of BUSD.

Record objections to this proposition during discussion.

Include this proposition and recorded objections in our due-in-April housing strategy advice to Council.

This resolution **should not be misunderstood** to say that the City should abandon urgent efforts to support BUSD employees in the current housing market. It is merely to note the contradiction as an issue which the City should try to resolve.

Background (stakeholders, public concern, evidence)

Berkeley’s fair housing policies, including prohibitions against discrimination on the source of income, are reflected in the General Plan and in various ordinances.

The growing interest in dedicating public land and money to “teacher housing” has been publicly discussed by key public officials, both during public meetings and in the press.

Root Causes of the Contradiction

Difficult to identify with specificity in this setting, but worth trying to assess in the near future.

Citations

tbd. should cite general plan sections, BMC fair housing law, and news reports

Council Action Items

21. **Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation**

From: Councilmembers Harrison, Robinson, and Hahn

Recommendation: Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, 981-7140

Action: M/S/C (Harrison/Davila) to accept revised material from Councilmember Harrison on Item 21.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Droste.

Action: 3 speakers. M/S/Failed (Droste/Wengraf) to adopt the revised material submitted by Councilmember Harrison revised to read as follows:

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report.
2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report.
3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.
4. The Planning Commission is to consider the following language from the item submitted at the meeting: *It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.*

Vote: Ayes – Kesarwani, Wengraf, Droste; Noes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Abstain – None; Absent – Davila.

Councilmember Davila absent 8:38 p.m. – 9:14 p.m.

Council Action Items

Action: M/S/Carried (Harrison/Hahn) to adopt the revised material submitted by Councilmember Harrison revised to read as follows:

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by April 30, 2019.
2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report.
3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.
4. The Planning Commission is to consider the following language from the item submitted at the meeting: *It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.*

Vote: Ayes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Kesarwani, Droste; Absent – Davila.

Information Reports

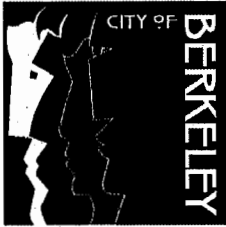
22. **Referral Response: Supporting Worker Cooperatives**
From: City Manager
Contact: Jordan Klein, Economic Development, 981-7530
Action: Item 22 held over to February 26, 2019.
23. **Referral Response: City Maintained Below Market Rate Units (BMR) Online Resource**
From: City Manager
Contact: Kelly Wallace, Housing and Community Services, 981-5400
Action: Received and filed.
24. **Mental Health Commission 2018/2019 Work Plan**
From: Mental Health Commission
Contact: Karen Klatt, Commission Secretary, 981-5400
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 0 speakers.

Adjournment

FEB 19 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY



Kate Harrison
Councilmember District 4

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: February 19th, 2019

Item Number: 21

Item Description: Refer to Planning Commission an Amendment to BMC 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

Supplemental/Revision Submitted By: Councilmember Harrison

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

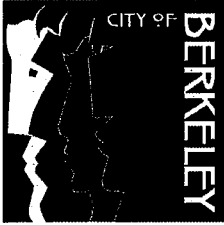
These changes refine those edits made in Supplemental 2 by clarifying that the Planning Commission should suggest modifications to the structure of the in-lieu developer fee, and adds a contingency plan in the case that the structure is modified before the fee level is set. The edits made in Supplemental 2 refer to two different commissions on different time frames, leaving the possibility of confusion and vagueness. The changes made in Supplemental 3 clarify these issues.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
February 19th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kate Harrison, Rigel Robinson, and Sophie Hahn

Subject: Refer on a Short Term Basis to the Planning Commission Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation and to Consider Modifying the In Lieu Fee Structure for Owner Occupied Units; Refer to the Housing Advisory Commission to Assess the Rate of a Fixed Per-Unit Fee for Owner-Occupied Developments.

RECOMMENDATION

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner-occupied projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by March 31st, 2019.
2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments; the Commission should return to Council with a report by March 31st, 2019.
3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.

BACKGROUND

A key strategy in Berkeley's effort to develop affordable housing requires that new housing construction include a portion of below market rate units, or be assessed an in-lieu affording housing fee. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirements section covers owner-occupied housing, while the AHMF Ordinance covers rentaled housing. The AHMF Ordinance for rental housing also provides for the Council to enact an enabling resolution to set the level of the fee and "additional limitations" on the application of the fee.

Under the AHMF, rental housing development is assessed a fixed, per-unit fee, currently \$37,000. Meanwhile, owner occupied housing (such as condominiums) are not assessed fees at a fixed rate. If a developer opts to pay the in-lieu fee rather than provide inclusionary affordable housing units, the fee is calculated as 62.5% of the difference between the actual final sales price of a unit and the price the unit would have been sold for had it been provided as inclusionary affordable housing. This complicated formula provides a high degree of uncertainty to developers.

In San Francisco, both rental and owner-occupied developments are assessed a fixed fee, and the in-lieu fee is higher for owner-occupied developments than for rentals in an effort to encourage rental housing.

This referral requests that the Planning Commission propose a fixed per-unit in-lieu fee that is higher than rental units, encouraging the development of needed rental units in Berkeley without unduly burdening the development of owner-occupied units.

The Inclusionary Housing Requirements section mandates inclusionary affordable housing in owner-occupied projects if they either 1) result in the construction of five or more new dwelling units, 2) result in the construction of fewer than five new units if they are added to an existing one- to four-unit property developed after August 14, 1986, and increase the total number of units to more than five, or 3) are built on lots whose size and zoning designation would allow construction of five or more dwelling units. Developers have exploited the ability to modify lot lines on contiguous properties they own so that no lot is big enough to include five or more units, thus avoiding any affordability requirement under condition 3.

The AHMF Enabling Resolution, meanwhile, covers only those projects that result in the construction of 5 or more new units of rental housing, regardless of whether the lot could fit more units or if the project is adding units to an existing building.

This item:

- Amends the Inclusionary Housing Requirements section to cover owner-occupied projects built on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units, regardless of how the property is divided.
- Asks the Planning Commission to amend the Inclusionary Housing Requirements to set a fixed per-unit in lieu fee, rather than the previous calculation of 62.5% of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

Update BMC Chapter 23C.12.020 and the Affordable Housing Mitigation Fee
to Close a Loophole Avoiding the Fee through Property Line Manipulation

- Amends the AHMF Enabling Resolution for rental housing to mirror the provisions of the Inclusionary Housing Requirements section regarding projects that add units to existing projects or are on property that could accommodate more than five units, including the amended language discussed above.

These changes regarding lot line manipulations should be referred to the Planning Commission on a short term basis, with a return deadline of March 31st, 2019. Further, the new fee level should be referred to the Housing Advisory Commission so that they may assess the appropriateness of the fee level. It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.

FISCAL IMPACTS OF RECOMMENDATION

May increase revenues to the Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Track Changes from Resolution No. 68,074-N.S

ORDINANCE NO. –N.S.

CLOSING MODIFIED PROPERTY LINE LOOPHOLE IN INCLUSIONARY HOUSING
REQUIREMENTS

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

Section 1. That the Berkeley Municipal Code Section 23C.12 is amended to read as follows:

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on ~~lots~~ any part of a single property or two or more contiguous properties under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units. For the purposes of this section, “common ownership and control” shall be interpreted broadly.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section [23E.20.080](#).

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999).

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NO. 68,074-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent-with section 22.20.065; and

WHEREAS, on June 27, 2017 the City adopted Resolution NO. 68,074, establishing the fee at \$37,000 per new unit of rental housing; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 and the Affordable Housing Mitigation fee both aim to address the need for below market rate housing and therefore should have parity in applicability;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
 - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units in such a property are subject to the requirements of this resolution;

- b) Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more units, regardless of how said property may be divided.
5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
7. No fee shall be assessed under the following circumstances.
 - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
 - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution No. 68,074-N.S. is hereby rescinded.

Track Changes from Resolution No. 68,074-N.S

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
 - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property or any part of two or more contiguous properties, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units on such a property are subject to the requirements of this resolution;
 - b) Residential housing projects proposed on any part of a property or two or more contiguous properties under common ownership and control whose size and zoning designation would cumulatively allow construction of five or more units.
- 4.5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
- 5.6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
- 6.7. No fee shall be assessed under the following circumstances.
 - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
 - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
- 7.8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
- 8.9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

Uberti, Michael

From: Marian Wolfe <marian.wolfe@gmail.com>
Sent: Monday, January 07, 2019 5:15 PM
To: Housing Advisory Commission
Subject: Draft Local Hazard Mitigation Plan

Hi Mike,

Please forward these suggestions to Jenny.

Thanks,

Marian

Dear Jenny,

Thank you for the thorough presentation at the January 3, 2019 HAC Meeting.

I have one question and one suggestion.

1. Will owner-occupied and rental housing be included in any programs that are adopted and funded as part of the Hazard Mitigation Plan? The reason I am raising this question is because the rental housing safety program does not include owner-occupied housing.
2. Is it possible to add another column to Table 2 in the draft plan for the high priority actions? This column could provide some estimate of costs that are involved. These costs could be reported on the basis of a unit, or a building or a block. I am not thinking of an aggregate cost estimate. Instead I think it would be useful for the public to understand what potential “order of magnitude” costs are involved for each higher priority action where possible.
3. Also, since some of these actions (and related costs) could be the responsibility of homeowners/commercial property owners, it would be good to identify which these are as well.

If you want to discuss this more, feel free to contact me.

Thank you.

Marian Wolfe

Housing Advisory Commission

Feb 19, 2019

To: Jenny McNulty, Planning
From: Commissioner Thomas Lord
Subject: **Response to draft Hazard Mitigation Plan**

Thank you for presenting the draft Hazard Mitigation Plan to the Housing Advisory Plan.

My feedback comments refer to this version of the report:

*2019 Local Hazard Mitigation Plan
First Draft Executive Summary and Mitigation Actions
December 18, 2018*

1. On page ES-3

The text lists six natural hazards and four human-caused hazards.

Table 1 includes the six natural hazards but only two of the four human-caused hazards (“terrorism” and “hazardous material release” are missing).

2. Needs-based hazard mitigation

One way to approach hazard mitigation is a “threat-forward” approach, as this report does. In this approach, threats are identified and enumerated. Their potential consequences are envisioned. Mitigations are identified to reduce or prevent adverse consequences.

Another approach is a “needs based” approach. In this approach, the City is parsed in terms of human needs, beginning with the most basic. I.e., the semi-famous “six ways to die” list. There are six basic ways to die prematurely:

1. too hot
2. too cold
3. thirst
4. starvation
5. disease

6. injury

Each of the ways to die corresponds to environmental *services* which can take various forms. For example:

- too hot / cold

services: temperature controlled shelter, temperature controlled means of local travel and public spaces

- thirst

service: access to a potable water supply

Through this lens, the built environment and infrastructure can be viewed as the provision of those vital services.

Finally, the threat-forward analysis can be parsed specifically as threats to those vital services. For example, fire and earthquake present threats of exposure to heat and cold by destroying shelter and/or damaging gas lines. Similarly, a prolonged gas outage related to climate change is a threat of exposure to extreme heat and cold.

I think it would be helpful to combine both threat-forward and needs based hazard analysis because I think the addition of needs based analysis can yield different and probably better plans.

For example, we currently plan for threats to water supply on the basis of conventional beliefs about the events likely to follow a major earthquake. This is reflected in our emergency caches and in encouragement of residents to keep a few days of water on hand.

Yet, from a needs based perspective, it seems like the threat of thirst is substantially more general than that. Prolonged drought, terrorist action, and even disasters that happen elsewhere in the region can lead to extended shortages or outages of potable water. Consideration from this angle *might* lead us to conclude we should plan a more general, higher-capacity, longer-term way to provide water in the case of an outage.

3. The threats of climate change and to a lesser extent terrorism are, in my opinion, understated.

The analysis is based on out-of-date climate science. Additionally, the analysis focuses mostly on sudden, extreme events and only mentions in passing the threat of prolonged or repeating conditions such as drought (a threat of thirst, obviously, but also disease). Climate refugee migration is also perhaps worth considering.

Critically, emissions reduction of the scale needed should itself be analyzed as a source of hazards.

For example, the IPCC, in its October of 2018 (SR-15 “Special Report on Climate Change of 1.5°C”), a scientific consensus is presented: very high levels of emissions reductions are needed immediately. The levels of needed reductions exceed our immediate capacity to fully mitigate them. Thus there is a significant possibility that either through self-imposition or due to extrinsic factors, we will experience prolonged electricity and gas outages, shortages of gasoline, and significant disruptions to commerce. (And remember: these challenging extremes are what we must *hope* happens because of the depth and rapidity of emissions reductions needed.)

Similarly, emissions reduction of the degree that are existentially necessary may entail a major disruption of commerce and day to day work, in turn presenting additional threats to social order (corresponding to the threat of death by injury).

I hope these observations are helpful. If an effort develops to look deeper into the latest climate science and the emissions mitigations needed in the short term, I can probably help to identify and become oriented with some useful scientific resources, especially the IPCC report referred to above (IPCC SR-15).

Regards, Thomas Lord

cc: Housing Advisory Commission

Housing Advisory Commission

March 7, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **A plan for the 19.44.020(B)(10) reports**

In 2016, voters amended the ordinance that defines the jurisdiction of the Housing Advisory Commission. Since then, it is our duty to have a kind of structured conversation with City Council, via the “(B)(10) reports”. Our role is to help create City housing policy and homelessness mitigation policy in this conversation.

We have not yet successfully implemented this directive from the voters. An implementation proposal I put forward in February and March of 2017 has made small progress so far, though it has certainly caused some fraught conversations among Commissioners.

My proposal comes down to adopting a simplified version of public policy process as taught at the Goldman School, and creating a simple system by which commissioners - acting individually or in groups - can contribute policy plan elements such as problem identification, root cause analysis, solution comparisons and so forth.

I’ve attached the original memo from 2017. It is imperfect and makes the proposal sound more complicated than it really is. I hope that we, the sub-committee, can discuss it a bit and propose a further simplified and clarified version to the full HAC.

Housing Advisory Commission

March 7, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Social housing model legislation**

Commissioners who have served with me for the past two years already know of my advocacy for starting a social housing program in Berkeley as a substantial alternative to inclusionary zoning and low income housing tax credits.

Social housing programs have the advantage of being largely self-funding if they are able to rely on municipal, state, and federal governments' ability to borrow at favorable rates.

Social housing programs have full control over rent prices, beyond the reach of even legislation such as Costa-Hawkins vacancy decontrol.

Social housing programs that use cooperative management systems save on operating costs and help to build resilient communities.

I refer commissioners to some recently published model legislation for social housing in the State of Maryland: HB1178 which has the synopsis:

Establishing the Social Housing Program in the Division of Development Finance of the Department of Housing and Community Development; establishing the Social Housing Fund as a special, nonlapsing fund; requiring the Governor to appropriate \$2,500,000,000 in the annual State operating or capital budget to the Fund for fiscal year 2021; altering the State income tax rate for individuals with a certain taxable income; etc.

<http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&stab=03&id=hb1178&tab=subject3&ys=2019RS>

Uberti, Michael

From: Uberti, Michael
Sent: Thursday, February 28, 2019 11:58 AM
To: Housing Advisory Commission
Subject: City of Berkeley Wildfire Safety Planning 2/5/19 & LHMP Local Hazard Mitigation Plan at Peace & Justice Commission on 2/4/19

From: Christine Schwartz [<mailto:cschwartz29@yahoo.com>]
Sent: Sunday, February 10, 2019 1:05 PM
To: Christine Schwartz <cschwartz29@yahoo.com>
Subject: City of Berkeley Wildfire Safety Planning 2/5/19 & LHMP Local Hazard Mitigation Plan at Peace & Justice Commission on 2/4/19

Hello,

If you can share the below videos, they may be of interest.

Best,

Christine Schwartz

Wildfire Safety Planning
<https://youtu.be/5hxafVTjzT0>

LHMP - Local Hazard Mitigation Plan
<https://youtu.be/rxfVOyBO5IY>

PLEASE SEND YOUR COMMENTS OF THE 1st DRAFT ONLINE TO: LHMP
at www.CityofBerkeley.info/Mitigation
hard copies at City Libraries. DEADLINE FEB 28, 2018 at 5pm
-SUBMIT WRITTEN FEEDBACK TO
Mitigation@CityofBerkeley.info
-Via Postal Mail to the Fire Department, public safety
-Via Business Hours drop off at the Fire Department

Uberti, Michael

From: David Mayer <davidm@mayerlabs.com>
Sent: Thursday, February 28, 2019 9:43 AM
To: xjohn2491@gmail.com
Cc: Housing Advisory Commission; Julie Sinai
Subject: Up coming March 7 meeting of HAC
Attachments: BUSD Board_AdminLetter to COB_re Workforce Housing_02262019.pdf

Dear Mr. Johnson,

My name is David Mayer, and I am one of the members of BeHOME (Berkeley Housing Opportunities for Municipal Employees -www.behomeberkeley.org). For nearly 2 years now, BeHOME has been working with Berkeley's School District (BUSD) in an effort to actualize work force housing for our city's educators on District property. We have been meeting with members of City Council and City Staff, and in the course have involved them along with affordable housing experts, public finance consultants and community members in 2 workshops.

Mayor Arreguin has forwarded to the HAC a request for Preplanning funding to be provided from the City of Berkeley housing funds. I attach hereto the letter from BUSD outlining the Districts' commitment to establishing Work Force Housing, its critical need, and the request.

Due to the momentum that is present, we ask the HAC to consider the request at the next meeting on March 7th. If would like members of BeHOME or from the District to present to the HAC at the meeting, we can help make such arrangements.

Thank you for your consideration.

David Mayer

E: davidm@behomeberkeley.org

Tel: 510-915-1687

February 26, 2019

Dear Mayor Arreguín and Honorable Members of the Berkeley City Council:

On behalf of the Berkeley Unified School District (“BUSD”), with more than 1,200 employees, and almost 10,000 students, the Berkeley School Board would like to thank you for your unanimous decision to place Measure O on the November 2018 ballot. That measure—which passed with over 77% of the vote—enables the City “to issue \$135 million in bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers.”

The success of Measure O was due in no small part to its explicit inclusion of funding affordable housing for teachers. The explicit support of housing for teachers was in part why the Berkeley School Board unanimously supported Measure O, and it was why the Berkeley Federation of Teachers supported and actively campaigned for Measure O.

To address this housing crisis, the Board held its third Work Session on February 6th, which focused on Educator Workforce Housing on District property. I am pleased to report to you that the Berkeley School Board unanimously voted to move forward. We specifically decided the following:

- Designate Director Julie Sinai and Superintendent Evans (or designee) to establish communication with the City, and to investigate sites, financing models and timelines and report back to the Board at its April 10, 2019 meeting.*
- Submit a letter to the Mayor and Council requesting Measure O support for educator workforce housing, as articulated in the measure, by expanding income eligibility to include up to 120% AMI.*
- Design a process to narrow the BUSD opportunity sites.*
- Engage the City in exploring a partnership to develop workforce housing for district staff - including but not limited to, financing from Measure O, timelines, and planning for site selection.*

With the above direction, we respectfully recommend the Berkeley City Council consider the following:

- 1. Amend the Housing Trust Fund and other relevant City of Berkeley housing policies to foster workforce housing for educators by expanding income eligibility to include up to 120% AMI.*
- 2. Support BUSD with an allocation of \$150,000 from Measure U1 or other appropriate sources for a planning and pre-development grant to conduct planning and pre-development work, including site analysis and selection, design and engage in a transparent public process, and to refine a timeline for project development.*
- 3. Work with the District to identify possible financing opportunities for capital development, including but not limited to, U1, Measure O, Developer Fees, and/or County or State sources.*

Background:

The need for teacher housing, as well as housing for our classified employees, is urgent and is well documented. BUSD recently contracted with the Center for City and Schools at UC Berkeley to help conduct a housing survey of all district employees, certificated and classified employees. Over 800 employees responded, which corresponds to over 60% of all district employees. The survey results

make clear that the current affordability crisis is creating significant housing security pressures on BUSD employees. In fact, over half of the households for District employees who rent are “cost burdened” (i.e., they spend more than 30% of their family income on rent) and 20% are “severely cost burdened” (i.e., they spend more than 50% of their family income on rent). Additionally, 78% of District employees who are not homeowners experience financial pressures due to high housing costs, which impacts their ability to stay with BUSD long-term. Combined with the financial burden, the survey showed social and physical health issues related to a significant number of BUSD employees driving long distances to get to Berkeley. These long commutes are resulting in increased health and wellness burdens, and reduced student and community engagement. One of the key statistics that the School Board and District Administration are grappling with is the fact that of District employees who don’t own their own homes, 78% indicated that housing insecurity is impacting their ability to stay with BUSD long-term. Not surprisingly, then, there is significant interest among District employees in workforce housing.

Income Eligibility:

We recognize that for Measure O to fund housing for teachers, as described in the Measure, it must expand income-eligibility from household income of 60% of AMI or below to up to 120% of AMI for Workforce Housing. The income level for the vast majority of District teachers is higher than 60% of AMI; yet, as the results from the survey show, they still cannot afford to live in or near the community in which they teach.

The Berkeley School Board respectfully requests that the City Council explicitly allow the use of Measure O funds to finance affordable housing for District educators (teachers and classified staff) through income-eligible units at up to 120% AMI.

Financing:

At our work session, we discussed the financial building blocks needed to actualize educator workforce housing. With the contribution of land by BUSD, the ability to attract tax credits due to favorable State of California Laws (the Leno Law), and the fact that educators are working middle class and can pay rent, the core elements of financing are in sight. However, there will be a missing funding gap that must be filled in order to ensure that our educator housing is available to all levels of BUSD educators today and into the future.

Site Selection:

In 2016-2017, the District commissioned a study to identify District owned opportunity sites that could accommodate housing. While the initial study identified four potential sites, it was only a preliminary inquiry and did not provide the Board with the information needed to narrow the sites. To conduct the necessary planning and public input process, the District needs Planning and Pre-development funds as soon as possible.

Timing:

At this time, the District’s capital budget does not include housing development as an allowable use of funds, and the Board is in the process of making \$2 million in reductions of our General Fund due to inadequate State funding for public education and increasing costs. Once we get the planning stage compete, the Board can narrow the sites and select a transparent process to move forward with design and financing strategies.

We are seeking a partnership with the City. With the possibility of District land combined with feasible financing, together, we have the opportunity to provide 100 or more units of affordable educator workforce housing. We hope that the Council will seek avenues to secure funding in the first phase of Measure O bonds and/or other appropriate funding source such as U1, to support planning, predevelopment and development of educator housing.

Once the Board approves the site selection, we intend to move quickly to prepare a proposal for funding with the intention of completing a meaningfully educator (teachers and staff) workforce housing development by Spring 2022. Given the scale of our intended project, and the funding that can be secured outside of the City, providing the "gap" funding will allow the City to leverage the public financing tool available while meeting the ballot commitment in an efficient way. We look forward to partnering with you to make this a reality.

Sincerely,



*Donald Evans, Ed.D
Superintendent*



*Julie Sinai
School Board Director*

CC: Dee Williams, City Manager