



Housing Advisory Commission

HOUSING ADVISORY COMMISSION

AGENDA

Regular Meeting

Thursday, September 5, 2019
7:00 pm

South Berkeley Senior Center

2939 Ellis Street
Secretary Mike Uberti
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 July 11, 2019 Regular Meeting Minutes (Attachment 1)
5. **Discussion and Possible Action to Elect a Temporary Vice Chair for the September 5, 2019 Meeting – All**
6. **Discussion and Possible Action on Draft PY18 Consolidated Annual Performance and Evaluation Report (CAPER) – Kristen Lee, HHCS (Attachment 2)**
7. **Discussion and Possible Action to Approve the Resources for Community Development 2001 Ashby Predevelopment Loan Application – Housing Trust Fund Subcommittee (Attachment 3)**
8. **Discussion and Possible Action to Approve the Northern California Land Trust 2321-2323 10th Street Predevelopment Loan Application – Housing Trust Fund Subcommittee (Attachment 4)**
9. **Discussion and Possible Action to Approve the Transfer Tax Refund for 1638 Stuart Street – Amy Davidson, HHCS (Attachment 5)**
10. **Discussion and Possible Action to Appoint and Extend Subcommittees – All/Staff (Attachment 6)**
 - a. **Social Housing**
11. **Discussion and Possible Action to Make Recommendations to the City Council's Draft Affordable Housing Framework – All/Staff (Attachments 7-9)**

12. Discussion and Possible Action to Adopt Recommendations to Improve and Enforce the Smoke-Free Multi-Unit Housing Ordinance – Commissioner Lord (Attachment 10)

13. Update on Council Items (Future Dates Subject to Change) – All/Staff

- a. 1281 University Avenue Request for Proposals (9/10)
- b. Spring 2019 Bi-Annual Report (9/10)
- c. Annual Work Plan (9/10)
- d. Smoke Free Housing Ordinance Amendments (10/29)

14. Announcements/Information Items

- a. Wolfe, Fall 2019 Bi-Annual Report Considerations (Attachment 11)

15. Future Items

16. Adjourn

Attachments

1. Draft July 11, 2019 Regular Meeting Minutes
2. Rhianna Babka, HHCS, City of Berkeley's Draft Consolidated Annual Performance and Evaluation Report for Federal Program Year 2018 (July 2018 through June 2019)
3. Jenny Wyant, HHCS, Resources for Community Development 2001 Ashby Predevelopment Loan Application
4. Jenny Wyant, HHCS, Northern California Land Trust 2321-2323 10th Street Predevelopment Loan Application
5. Jenny Wyant, HHCS, Transfer Tax Refund for 1638 Stuart Street
6. Lord, Social Housing Subcommittee Report and Recommendation
7. July 16, 2019 Annotated Agenda Excerpt: Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing
8. July 16, 2019 Council Report: Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing
9. Wolfe, Framework for Affordable Housing (Regarding Housing for a Diverse, Equitable, and Creative Berkeley) Comments
10. Lord, Improve and Enforce the Smoke-Free Multi-Unit Housing Ordinance
11. Wolfe, Fall 2019 Bi-Annual Report Considerations

Correspondence

12. Invitation to Participate in the Regional Analysis of Impediments to Fair Housing Choice Stakeholders Workshops
13. Derek Sagehorn, Social Housing Proposal - 8/17/19 HAC Subcommittee

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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HOUSING ADVISORY COMMISSION
Regular Meeting
Thursday, July 11, 2019

Housing Advisory Commission

Time: 7:06 pm

South Berkeley Senior Center
2939 Ellis Street – Berkeley
Acting Secretary – Mike Uberti, (510) 981-5114

DRAFT MINUTES

1. Roll Call

Present: Xavier Johnson, Matthew Lewis (substitute for Leah Simon-Weisberg), Thomas Lord, Maryann Sargent, Alex Sharenko, Igor Tregub (substitute for Mari Mendonca), and Amir Wright.

Absent: Mari Mendonca (excused), Darrell Owens (unexcused), Leah Simon-Weisberg (excused), and Marian Wolfe (excused)

Commissioners in attendance: 7 of 8

Staff Present: Kristen Lee, Mike Uberti and Jenny Wyant

Members of the public in attendance: 4

Public Speakers: 3

2. Agenda Approval

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

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

3. Public Comment

There no speakers during public comment.

4. Approval of the June 6, 2019 Regular Meeting Minutes

Action: M/S/C (Wright/Lord) to approve the minutes.

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

5. Discussion and Possible Action to Approve the Substantial Amendment to the City of Berkeley's PY2018 (FY2019) and PY2019 (FY2020) Annual Action Plans to Maximize Emergency Solutions Grant (ESG) Funding for Shelter and Street Outreach

Action: M/S/C (Tregub/Sharenko) to recommend Council approve Substantial Amendments to the HUD Program Year (PY) 2018 and PY2019 Annual Action Plans to allocate the maximum allowable amount of ESG funds to shelter and street outreach, and away from rapid rehousing.

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

6. Discussion and Possible Action to Approve the Community Housing Development Organization (CHDO) Operating Funds NOFA Recommendations

Public Speakers: 2

Action: M/S/C (Johnson/Tregub) to recommend that Council approve the following funding allocations for Community Housing Development Organizations:

- Resources for Community Development at \$28,115
- Satellite Affordable Housing Associates at \$28,115
- With HOME CHDO funds allocated to the CHDO most likely to have a HOME-eligible project within the next two years, and the general funds allocated to the other CHDO.

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

7. Discussion and Possible Action to Appoint Subcommittees

a. Housing Trust Fund Subcommittee

Action: M/S/C (Tregub/Sharenko) to appoint Commissioners Johnson, Simon-Weisberg, and Wright to the Housing Trust Fund Subcommittee, which was created to advise the Housing Advisory Commission on Housing Trust Fund related matters through June 30, 2020.

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

8. Discussion and Possible Action to Adopt a Work Plan for FY 2019/2020

Action: M/S/C (Tregub/Sharenko) adopt a work plan that includes the items submitted by Commissioners Lord, Mendoca, and Wolfe and additions by Lewis to register all rental units in the city and allocate funding to Community Land Trusts and other democratized forms of housing, and note additional discretionary funds may be necessary to fund activities in response to Council referrals including outreach, videography and space.

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

9. Discussion and Possible Action to Adopt Recommendations to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

Public Speakers: 1

Action: M/S/C (Lewis/Johnson) to extend the meeting 15 minutes to 9:15pm.

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

Action: M/S/F (Lord/Sharenko) to postpone agenda item #9 to a future Housing Advisory Commission meeting.

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

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;
- 3) Making the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, removing language requiring the statements to be "sworn", and considering other, less threatening language that still expects a complaint be provided under the best of appellants knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., two separate complaints from different individuals within a six-month period, if the building contains three or more units, sworn statement under penalty of perjury).

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

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Referring to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

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

10. Discussion and Possible Action to Adopt a Draft Social Housing

Action: M/S/C (Lewis/Tregub) to extend the meeting five minutes to 9:20pm.

Vote: Ayes: Johnson, Lewis, Lord, Sargent, Tregub, and Wright. Noes: Sharenko.

Abstain: None. Absent: Mendonca (excused), Owens (unexcused), Simon-Weisberg (excused), and Wolfe (excused).

Action: M/S/C (Lord/Lewis) to appoint Commissioners Johnson and Lord to the Social Housing Subcommittee, which was created to advise the Housing Advisory Commission on Social Housing through September 30, 2019.

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

11. Update on Council Items

12. Announcements/Information Items

13. Future Items

14. Adjourn

Action: M/S/C (Johnson/Tregub) to adjourn the meeting at 9:20pm.

Vote: Ayes: Johnson, Lewis, Lord, Sargent, Sharenko, Tregub, and Wright. Noes: None.

Abstain: None. Absent: Mendonca (excused), Owens (unexcused), Simon-Weisberg (excused), and Wolfe (excused).

Approved on September 5, 2019

_____, Mike Uberti, Secretary



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission

From: Rhianna Babka, Community Service Specialist III

Date: August 19, 2019

Subject: **City of Berkeley's Draft Consolidated Annual Performance and Evaluation Report for Federal Program Year 2018 (July 2018 through June 2019)**

Beginning Friday, August 30, 2019, the public can review and comment on the City's Draft PY18 Consolidated Annual Performance and Evaluation Report (CAPER) for Program Year 2018 (July 1, 2018 to June 30, 2019). The HAC's September 5th meeting kicks off the public comment period. The draft CAPER will indicate areas that are still draft and are yet to be completed though staff are making every effort to finalize as much information as possible before submitting for your review. Some items in this report may remain incomplete until early to mid-September when our final draw to HUD is made and/or we obtain complete and final reporting numbers from our partner organizations.

The draft CAPER will be available for public review on the City's website at <https://www.cityofberkeley.info/ContentDisplay.aspx?id=15574>

The CAPER is a report required by the U.S. Department of Housing and Urban Development (HUD) which tells HUD and the public how the City spent its federal funds in the prior year. The HAC's review of the Draft CAPER is part of the City's Citizen Participation Process. Members or the public and the HAC can provide comment on the draft CAPER at the HAC's September 5th meeting. Additional public comments on the CAPER need to be submitted to me by Friday, September 20, 2019 at 5:00 p.m. The City must complete and submit the report to HUD, including City responses to all written public comments, by no later than September 30, 2019.

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Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission (HAC)

From: Jenny Wyant, Community Development Project Coordinator

Date: August 21, 2019

Subject: Resources for Community Development 2001 Ashby Predevelopment Loan Application

Recommendation

At its August 21, 2019 meeting, the HAC's Housing Trust Fund Subcommittee voted to recommend Resources for Community Development's (RCD) predevelopment loan request for an additional \$1.2 million for its proposed development at 2001 Ashby, the current site of the Cooperative Center Federal Credit Union (CCFCU). The Housing Trust Fund Subcommittee also recommended that RCD evaluate ways to reduce parking spaces and the parking footprint, if possible, in consideration of resident needs. (M/S/C: Simon-Weisberg/Johnson)

If recommended for funding by the HAC and approved by Council, RCD's total City predevelopment loan for 2001 Ashby would be \$1,568,000. The proposed use of the additional predevelopment funds is almost entirely acquisition costs. Because the City funds would be used for acquisition, the City would require recording a regulatory agreement against the property at the time RCD takes ownership of the site.

The available Measure O bond funds and Housing Trust Funds are expected to be reserved through the City's current Request for Proposals for affordable housing developments. RCD's existing predevelopment loan is comprised of General Funds received under Measure U1, and Council could allocate additional General Fund revenues to this project.

Housing Trust Fund Guidelines

The City's Housing Trust Fund guidelines:

- Allow predevelopment loan applications to be submitted at any time.
- State that predevelopment loans are "generally" the lesser of \$50,000 or \$5,000 per unit, but in practice the City has often exceeded this guideline.

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- Limit predevelopment loans to the lesser of \$100,000 or 10% of funds in any year. Exceeding that limit requires Council action, which has been done before. Council has not reserved any Housing Trust Funds in 2019, but authorized a Request for Proposals to reserve the available balance of both Measure O bond funds and the Housing Trust Fund, less the funds needed to fulfill existing funding reservations for Berkeley Way and 1601 Oxford.

The Housing Trust Fund Guidelines include costs related to site acquisition among the eligible predevelopment costs. In addition to the Council-approved Housing Trust Fund Guidelines, staff have adopted administrative guidelines that provide detail for HTF implementation, including standards for the use of predevelopment funds for acquisition. The City's predevelopment contribution towards acquisition costs may not exceed the lesser of 25% of the acquisition price, or 25% of the appraised value. The City's past predevelopment loans have not typically included acquisition funding. If City funds are used for acquisition, the City will record a Regulatory Agreement against the property, which will impose affordability restrictions.

Previous Housing Advisory Commission and Council Actions

On February 7, 2019, the HAC voted unanimously to recommend that Council reserve \$368,000 in predevelopment funding for RCD's 2001 Ashby project. On April 23, 2019, City Council reserved \$368,000 in U1 revenues for predevelopment.

Project Description

CCFCU selected Berkeley-based RCD to acquire and develop their site at 2001 Ashby for affordable housing, and entered into a purchase agreement to transfer the property in November 2019. RCD is working to gain land use entitlements and complete its due diligence before then. RCD submitted a pre-application to Planning in June, and is also hoping to pursue an expedited Planning approval process under SB35.

RCD is proposing 87 units, with a mix of studio, one-, two- and three-bedroom apartments affordable to households at or below 30% to 80% of area median income. Some of them would be set-aside for a to-be-determined special needs population, perhaps people who are homeless. The development will also include ground floor commercial space, including space for Healthy Black Families.

The City expects to close its \$368,000 predevelopment loan in August or early September. The loan will cover typical predevelopment period costs including architectural work, engineering, environmental studies, permit fees, an acquisition deposit, and other soft costs. The additional \$1.2 million would go towards the purchase price, acquisition loan costs, and closing costs. Bringing in additional City funds at this stage will help reduce some of the acquisition financing costs. RCD is pursuing a private \$6 million loan that would cover the majority of the acquisition cost, and is contributing \$28,000 of its own capital to fund predevelopment expenses.

Summary Analysis

The HTF Subcommittee reviewed the staff analysis of developer capacity, feasibility, and community objectives:

- RCD is an experienced, Berkeley-based developer, and staff did not identify any concerns with the applicant and development team capacity.
- There are no outstanding findings on any RCD projects the City funded in the past.
- Staff reviewed RCD's audited financials from 2017 and 2018 and found that RCD is in a stable position.
- The items identified in the predevelopment budget are all feasible within the timeline and budget identified. Generally, the proposed project appears to be feasible because it has many key elements: an experienced development team, site control, a flat, infill 0.6 acre site in an excellent location (adjacent to the Ashby BART station) that is zoned for multifamily housing, and proximity to amenities like Berkeley Bowl, in a better funding climate than has existed for years, with new state and local sources. The proposed size of 87 units will probably help make the project both more cost effective and competitive.
- RCD is proposing to use a mix of City, Federal Home Loan Bank Affordable Housing Program (AHP), Low Income Housing Tax Credit funding, and several State-funded programs including No Place Like Home, Multifamily Housing Program, and Infill Infrastructure Grants. This is a reasonable plan, though the City expects that RCD will refine their funding plan throughout the predevelopment period. RCD requested \$17 million in City funding through the current RFP.
- This site is in the Adeline Corridor Planning area, and during that planning process, participants have identified a need for more affordable housing in the neighborhood. Participants have also raised alarm with the decreasing African American population in South Berkeley, and this project could help address that issue by providing space for Health Black Families.
- RCD's proposal to provide both larger, family (2- and 3-bedroom units) and special needs units would assist populations that can face extra challenges with affordability. RCD is proposing to provide double the number of accessible units that would be required (10% physically accessible and 4% with sensory accessibility). Accessibility in excess of the requirements is a priority identified in the HTF guidelines.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission (HAC)

From: Jenny Wyant, Community Development Project Coordinator

Date: August 22, 2019

Subject: Northern California Land Trust 2321-2323 10th Street Predevelopment Loan Application

Recommendation

At its August 21, 2019 meeting, the HAC's Housing Trust Fund Subcommittee voted to recommend Northern California Land Trust's (NCLT) predevelopment loan request for \$50,000 for its proposed acquisition and renovation of 2321-2323 10th Street. (M/S/C: Johnson/Simon-Weisberg)

The available Measure O bond funds and Housing Trust Funds are expected to be reserved through the City's current Request for Proposals for affordable housing developments. Council could consider allocating General Funds received pursuant to Measure U1 to this project.

The Subcommittee's recommendation is subject to NCLT continuing to work with staff on Council-mandated requirements of the 2017 Development Loan Agreement (DLA) for the renovation of 1340-48 Blake Street and 2425 California Street. As a condition of that loan, NCLT agreed to work with a consultant to assess the potential of converting the properties from rentals to cooperatives, and agreed to update organizational documents to reflect a tripartite board structure consisting of 1/3 residents, 1/3 community members, and 1/3 members representing the public interest. NCLT's Board composition currently reflects that structure, but the organization's by-laws don't require it. The Subcommittee recommends that a predevelopment funding recommendation be subject to NCLT meeting the conditions of its 2017 DLA, and that the City's disbursement of predevelopment funds to NCLT be subject to completion of the following:

1. NCLT must provide an updated plan for assessing the feasibility of converting 1340-48 Blake and 2425 California to cooperatives; and
2. NCLT must work with its Board to update the organizational documents to include the tripartite structure.

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Housing Trust Fund Guidelines

The City's Housing Trust Fund guidelines:

- Allow predevelopment loan applications to be submitted at any time.
- State that predevelopment loans are “generally” the lesser of \$50,000 or \$5,000 per unit, but in practice the City has often exceeded this guideline.
- Limit predevelopment loans to the lesser of \$100,000 or 10% of funds in any year. Exceeding that limit requires Council action, which has been done before. Council has not reserved any Housing Trust Funds in 2019, but authorized a Request for Proposals to reserve the available balance of both Measure O bond funds and the Housing Trust Fund, less the funds needed to fulfill existing funding reservations for Berkeley Way and 1601 Oxford.

Project Description

NCLT is in contract to purchase 2321-2323 10th Street, located one block west of San Pablo Avenue between Bancroft Way and Channing Way. The property has two, 2-story buildings with four units each.

NCLT is proposing to renovate the buildings and convert them to long-term affordability, operating it as a rental project or moving to a cooperative structure. Seven of the eight units are currently occupied. While NCLT has not income-certified the existing residents, four residents hold Section 8 vouchers and have incomes at or below 50% of the Area Median Income. NCLT intends to rent the vacant unit to another voucher holder.

NCLT is proposing to use the predevelopment funds to assess the current condition of the property, and develop a scope of work that prioritizes health and safety along with energy efficiency upgrades. The property seller provided an inspection report that provides an overall assessment of the property condition, and NCLT plans to hire consultants to further assess specific areas such as the project's waterproofing, hazardous materials, and engineering needs.

The predevelopment uses proposed are reasonable and are consistent with other projects at this stage of development. NCLT included construction management costs in their predevelopment request, and are planning to hire a third-party consultant.

Summary Analysis

The HTF Subcommittee reviewed the staff analysis of developer capacity, feasibility, and community objectives:

- NCLT is a small, Berkeley-based nonprofit with five part-time staff. The proposed project is expected to be of a similar scale to the renovations at Blake and California, and staff believe that it is within NCLT's capacity to carry out successfully. NCLT is proposing to work with the same development team that successfully completed Blake and California, including the architect, construction manager, and property manager.

- Staff recently monitored Blake and California, and as of August 2019, there are no compliance issues related to condition and management of the properties. However, as noted above, staff and NCLT need to continue to work on meeting the cooperative and Board requirements of the 2017 DLA.
- Staff reviewed NCLT's audited financial statements for 2017 and 2018. The organization is in a relatively stable financial position, though NCLT is continuing to recover from its 2011 bankruptcy.
- If the residents are interested, NCLT will work with them on establishing a resident-managed cooperative. Staff are not recommending including conversion to a cooperative as a condition of the loan since the conversion will not be possible if the existing tenants do not agree.
- The items identified in the predevelopment budget are all feasible within the timeline and budget identified. Generally, the project appears to be feasible, though NCLT will likely need to revise its estimated development budget once more is known about the condition of the property. NCLT will also need to analyze the projected rents once they know the incomes of the current residents.
- The proposed financing for the project includes a bank loan in addition to an estimated permanent loan from the City for \$975,629. NCLT submitted an application to the City for permanent financing through the current RFP. NCLT is proposing to secure an acquisition loan from Presidio Bank, a lender that has worked with NCLT on previous projects.
- This project is consistent with the goals of the City's Small Sites Program (which currently has no funds available) and would help meet City Council's identified objective to preserve 'naturally occurring' affordable housing and prevent displacement of low-income residents. If not restricted as affordable housing, subsequent owners of the property could raise rents (within the limits of the City's rent control ordinance), perform Ellis Act evictions, or reset unit rents to market rate at turnover.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission (HAC)
From: Jenny Wyant, Community Development Project Coordinator
Date: August 21, 2019
Subject: Transfer Tax Refund for 1638 Stuart Street

Recommendation

Recommend that City Council authorize the City Manager to grant an estimated \$10,260 to Bay Area Community Land Trust (BACLT) in the form of a transfer tax refund, in support of the renovation of 1638 Stuart Street and BACLT's operation of the property as affordable housing.

Current Situation and its Effects

BACLT submitted a letter addressed to the Housing Advisory Commission, requesting a refund of the transfer taxes for 1638 Stuart Street. BACLT is in the process of closing its Small Sites Program loan, which will support the renovation of eight residential units on the property that will be converted to long-term affordable housing.

McGee Avenue Baptist Church will maintain ownership of 1638 Stuart Street throughout the rehabilitation and operation as affordable housing. BACLT has entered into a 57-year lease with the Church in order to renovate and then operate the property for the length of the City's loan and regulatory agreement. The Church's transfer of the property to its affiliate LLC, and the recording of a memorandum of lease against the property trigger transfer taxes. The transfer taxes will be calculated based on the value of the lease, and the City's portion of the taxes is estimated to be \$10,260.

Background

1638 Stuart Street is an eight-unit property that has been vacant for more than 20 years. Using Small Sites Program funds, BACLT will renovate the property and bring the units back into active use, restricting them to households earning up to 80% of the area median income. The property is dilapidated, and has extensive renovation needs. With construction costs continuing to increase, the project would benefit from a reduction in the amount of transfer taxes owed. The funds would be better used to

support renovation needs, or for reserves that can help support the project's operations in the long term.

In 2014, City Council approved a transfer tax refund to the David Brower Center and Resources for Community Development related to the Oxford Plaza development when a transfer to an RCD-affiliated entity for refinancing triggered the transfer tax.

Attachments: BACLT letter dated 8/21/2019



Bay Area Community Land Trust

PO Box 2652, Berkeley, CA 94702

(510) 545-3258

info@bayareactl.org

www.bayareactl.org

August 21, 2019

To: The Housing Advisory Committee

I am writing to request that you recommend to the City Council that they approve the reimbursement of the Transfer Tax for the 1638 Stuart Street Apartments. BACLTL will lease the property from the McGee Avenue Baptist Church for the 57 year term of the City's loan. Even though there is no transfer of property, the law requires the City to charge a transfer tax based on the annual lease fee paid by BACLTL to the Church. This fee is calculated to be \$10,260.

BACLTL is working with the church to create 8 permanently affordable housing units at 1638 Stuart Street Apartments. The City is providing a loan of \$1,000,000 to support the renovation of the property, which is very much appreciated. However the budget is tight and the funds paid for transfer tax would be well spent if available to pay for the renovation costs. Therefore, we request that you recommend to the City Council that they approve the reimbursement of the transfer tax.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Rick Lewis". The signature is written in a cursive, flowing style.

Rick Lewis
Executive Director

Housing Advisory Commission

September 5, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Social Housing Subcommittee Report and Recommendation**

On August 17th, the Social Housing Subcommittee met with invited guest Matt Lewis. Three members of the public also attended.

The subcommittee formed the following recommendation for the full commission:

Recommendation

Renew the Social Housing Subcommittee to continue beyond September 30 and offer others a chance to join the subcommittee. The renewed subcommittee will have the following purposes:

1. To incorporate key points from our discussion into the draft proposal, *Social Housing in Berkeley*.
2. To form a specific proposal for presenting the document at the Housing Advisory Commission's housing innovations workshop.
3. To explore (at least) three broad points of agreement at future meetings:
 - a. That the City of Berkeley should play a role in establishing a social housing program in Berkeley.
 - b. That there should be an incentive structure for providing funding to the program.
 - c. That the management of the program's housing requires some form of checks and balances between the City, property Trust and management, and tenants. We may not be able to finalize the design of this system at the Commission level.

Action: M/S/C (Johnson/Lord) to make the above recommendation.

Vote: Ayes: Johnson, Lord. Noes: None. Abstain: None. Absent: None. (excused), and Wolfe (excused).

Subcommittee Discussion Highlights

Our discussion was assisted by Matt Lewis who's contributions based on his graduate research and experience in cooperative housing were invaluable.

Consider alternative legal structures

N.B.: *These notes from the discussion have not been reviewed yet by either Matt or Xavier and may contain accidental errors or misrepresentations. I apologize in advance if so.*

Matt made a number of observations about the proposed legal structure that sparked conversation:

1. Matt's preferred legal model for the trust would resemble that of the Berkeley Student Cooperative (BSC), for reasons that follow:
2. BSC is a single entity that includes property management.

An IRS rule, based on court decisions, *may* make it difficult for a separate Property Management Coop to obtain non-profit status.

The BSC is able both to own and lease properties for its use, managing both kinds of property.

3. Separate trust and property management entities may suffer a loss of some economies of scale.
4. Whatever the legal structure of property management, Matt pointed out the need for an internal juridical structure that provides some form of due process to tenants before they can be penalized. (BSC offers a model of such.)
5. If structured as a membership corporation, with the City and tenants being separate classes of members, the system should ensure that approval of *both* classes is required for charter changes.

This is to protect tenants from possibilities such as a future Council that wishes to unilaterally dismantle the system.

6. Matt mentioned that for some functions, an unincorporated association may be preferable to incorporation.
7. When Xavier observed that separate property management and trust entities might leave tenants in a lurch if the two entities disagree about fixing a problem with a unit, Matt suggested that if the property management entity is separate it should maintain a legal reserve to sue the Trust if needed.

8. Similarly, it might be desirable that tenants are able to direct some reserves to political activities such as ballot measure, as a check against City Council powers.

We all agreed that detailed concerns about the legal structure could not be solved at the subcommittee or full commission level.

Upon a suggestion from Xavier we agreed that it might be appropriate to find funding for a (likely external) director and staff to develop program implementation. Such an entity might also be helpful for implementing a Tenants Opportunity to Purchase Act (TOPA). We briefly touched on possible new sources of funding for such purpose.

Public inquiries

Thomas responded to two information requests from the public:

Question: Why should the Trust own both the land and improvements?

Answer: In part a fiduciary concern. By owning both, the Trust renders some of its assets (cash) illiquid, but its overall net worth is unchanged. This enhances the ability to borrow against the properties.

In part a financial and social concern. In models where each building is owned by its residents, first there is a loss of economies of scale in property management. Second, tenants must adopt a lifestyle that likely involves substantial engagement with governance of the building. For this program to be of general interest, it should be possible for tenants uninterested in governance to have a more or less conventional renter experience.

Question: Can the Trust build new properties? Would this system work for that?

Answer: Yes but for simplicity I chose to concentrate initially on acquisitions. I've observed that multi-family properties - particularly those that are rent controlled - are regularly available for purchase.

Action

In our conclusion, Xavier offered and the subcommittee adopted the recommendation and motion described above.

Action Calendar – Continued Business

- Ab. Companion Report to Peace and Justice Commission’s Resolution Asking to be an Assigned Advisory Role in Consulting on Socially Responsible Investments and Procurement** *(Continued from July 9, 2019.)*

From: City Manager

Recommendation: Continue to allow the City Council Budget and Finance Committee to provide investment policy oversight.

Financial Implications: See report

Contact: Dave White, City Manager's Office, 981-7000

Action: 5 speakers. M/S/C (Arreguin/Bartlett) to adopt Resolution No. 69,028–N.S. in Item Aa as revised in the supplemental material introduced by Mayor Arreguin.

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

- B. Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley’s Affordable Housing** *(Continued from July 9, 2019.)*

From: Mayor Arreguin, and Councilmembers Hahn, Harrison, and Robinson

Recommendation: Refer to the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts to consider the proposed Housing for a Diverse, Equitable and Creative Berkeley framework (the “Framework”) and return comments for consideration at a Special Meeting of the City Council in September, to inform a final version the City Council will adopt to govern Berkeley’s affordable housing policies, programs and projects through 2030.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, 981-7100

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

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

Action: M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 11:40 p.m.

Vote: All Ayes.

Action: 6 speakers. M/S/C (Hahn/Arreguin) to refer to the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts to consider the proposed Housing for a Diverse, Equitable and Creative Berkeley framework (the “Framework”) and return comments for consideration at a Special Meeting of the City Council in the early fall, to inform a final version the City Council will adopt to guide Berkeley’s affordable housing policies, programs and projects through 2030. The item is further amended to add a “Draft” notation, remove the phrase “rather than for profit-maximizing companies” from Section II, and remove reference to the 50% goal.

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



Office of the Mayor

ACTION CALENDAR

July 16, 2019

(Continued from July 9, 2019)

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín and Councilmembers Sophie Hahn, Kate Harrison and Rigel Robinson
 Subject: Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing

RECOMMENDATION

Refer to the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts to consider the proposed **Housing for a Diverse, Equitable and Creative Berkeley** framework (the "Framework") and return comments for consideration at a Special Meeting of the City Council in September, to inform a final version the City Council will adopt to govern Berkeley's affordable housing policies, programs and projects through 2030.

SUMMARY STATEMENT

With the public's generous support of 2018 Measures O and P and 2016 Measure U1, Berkeley has significant new local funds to support our affordable and homeless housing goals. Numerous advisory and decision-making entities, including the Measure O Bond Oversight Committee ("Measure O Committee"), Housing Advisory Commission (HAC), Planning Commission, Homeless Services Panel of Experts, City Staff - and the City Council as the final decision-making body - have a role in recommending, adopting or implementing policies, programs and projects using these and the City's other affordable and supportive housing resources. Several other entities may also play a role in recommendations or decisions affecting affordable and supportive housing including the Zoning Adjustments Board (ZAB) and the Mental Health and Homeless Commissions. *To support optimal coordination among these many bodies and cohesive action to realize Berkeley's affordable housing goals, it is imperative that the City Council provide a high-level roadmap for all to follow.*

There is a great deal of public process before us as we move forward to build an equitable housing future for Berkeley. We offer this Framework as a starting point for many future decisions, lighting a path for Berkeley to honor and maximize the powerful

opportunity presented by Measures O, P and U1, and the community's outstanding commitment to affordable and homeless housing.

This framework addresses *only* Berkeley's *affordable and supportive housing* strategies. Many strategies are already in place to support the creation of new market rate housing, and others are under consideration. Because the creation and preservation of affordable housing involves significant investments of City of Berkeley resources, a high-level, comprehensive framework, adopted by the City Council, is necessary to guide decision making by multiple entities over time.

BACKGROUND

In the past, the City of Berkeley had limited financial resources to fund the development and management of affordable and supportive housing. Berkeley created a Housing Trust Fund in 1990¹ which may collect money from a number of sources including fees from market-rate rental or ownership developments (pursuant to BMC Chapter 23C.12 - Inclusionary Housing Requirements), demolitions, and the sale of City-owned properties.² Funds are often insufficient to support multiple projects simultaneously, or to fund single, large projects in their entirety. As of 2015, the HTF received approximately \$7.6 million from fee programs, which was the only source of funding at that time.³ In December of 2018 (prior to the adoption of Measure O), the Housing Trust Fund had a balance of only \$3.5 million. In addition, that balance and other funds had been reserved for The Berkeley Way Project, which required at least \$13 million in City funds to move forward.⁴

Recently, Berkeley voters overwhelmingly endorsed three measures that together create an unprecedented opportunity for the City to fulfill the community's highest priorities: addressing the dual crises of housing affordability and homelessness.

Measure U1 (2016), which passed with 75% percent of the vote, increased the gross receipts tax on owners of five or more residential rental units, generating approximately \$5 million per year to increase affordable housing and protect Berkeley residents from

¹ City of Berkeley Housing and Community Services Department, Housing Trust Fund, <https://www.cityofberkeley.info/ContentDisplay.aspx?id=6532>

² City of Berkeley Housing Trust Fund Guidelines, https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/Revised%202016%20HTF%20GUIDELINES.pdf

³ Memo on Below Market Rate Housing and Housing Trust Fund Program Status, December 2015, https://www.cityofberkeley.info/Clerk/City_Council/2015/12_Dec/Documents/2015-12-01_WS_Item_03_Below_Market_Rate_Housing.aspx

⁴ Reserving Up to an Additional \$12.5M in Housing Trust Funds for the Berkeley Way Development, December 4, 2018, https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-4_Item_03_Reserving_Up_to_an_Additional_12_5M_in_Housing_Trust_Funds.aspx

homelessness.⁵ In November of 2018, Measures O and P were overwhelmingly passed by Berkeley voters.^{6,7} Measure O, supported by 77%, is a \$135 million affordable housing bond to create and preserve affordable housing. Measure P, which received 72% support, increases the real estate transfer tax on the top one-third of real estate transactions by 1% to fund rehousing, mental health and other services for the homeless, likely yielding \$6 to \$8 million per year.

Over ten years, these three measures are projected to generate more than \$200 million to create and preserve affordable housing, to keep vulnerable residents housed, and to rehouse individuals and families experiencing homelessness. Not surprisingly, given the high levels of support for these measures, the provision of affordable housing and homeless services was ranked as extremely or very important by 84% of respondents to a 2018 community survey⁸.

The message from Berkeley voters and residents is clear; it is now our responsibility to deliver maximum value for those who need help finding or sustaining housing, and for the entire community.

Berkeley is poised to undertake a major expansion of our affordable housing programs, using the new monies provided by Measures U1, O and P. Combined with already-existing affordable housing resources (Housing Trust Funds, inclusionary requirements and public land, among others) and supplemented with possible changes to the zoning code that could improve the mix and yield of affordable units, the City is well-positioned to meaningfully address Berkeley's highest priorities.

Diversity is one of Berkeley's key strengths. With the rapid influx of new workers to the Bay Area and additional students to UC Berkeley, our community is challenged to meet a variety of housing needs; in particular the needs of low and moderate income households and the homeless. Berkeley is committed to housing for its teachers, artists and artisans, seniors and students, young people entering the work-force, and the many other working individuals and families who cannot afford market-rate housing. Berkeley is also deeply committed to housing individuals and families experiencing

⁵ Full text of Measure U1,

<https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Measure%20U1.pdf>

⁶ Full Text of Measure O, <https://drive.google.com/file/d/1qdA7jW6J5IHgFSllcwHcb20x-fcfW3Xv/view?usp=sharing>

⁷ Full Text of Measure P,

<https://drive.google.com/file/d/1JbipUDMW62KqkI4szDoMEgAmN0lvZCLk/view?usp=sharing>

⁸ Discussion and Direction Regarding Potential Ballot Measures for the November 6, 2018 General Municipal Election, https://www.cityofberkeley.info/Clerk/City_Council/2018/03_Mar/Documents/2018-03-27_Item_23_Discussion_and_Direction_Regarding_-_Supp.aspx

homelessness, and ensuring that people with disabilities have accessible, supportive and affordable options.

Berkeley's new affordable housing monies enable us to expand successful housing strategies the City is already pursuing and to significantly expand important strategies that were more difficult to achieve in the absence of meaningful local funds. The plan proposes expanding Berkeley's major existing affordable housing programs and putting substantial resources into directions that reflect core Berkeley values such as cooperative ownership, democratic control and the empowerment of underserved communities. It also proposes a suite of policies that should be broadly applied to all existing, expanded and new affordable housing initiatives.

This Framework is meant to serve as the "mission and goals" that will guide the next decade of action on affordable housing in Berkeley. Specific strategies, programs and projects will be developed in much more detail by the Measure O Committee (and, with respect to U1 funds, the HAC and to Measure P funds, the Homeless Services Panel of Experts); with input from other committees and commissions and from trusted community partners and the public; with the expertise and support of City Staff; and with refinement and approval by the Berkeley City Council.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES & LAWS

The City of Berkeley has numerous programs, policies and laws in place that directly or indirectly support the creation and preservation of affordable and supportive housing. Many of these are discussed in the proposed Framework, including rent control and eviction protections⁹, affordable housing fees and inclusionary requirements for for-profit developments¹⁰, a Small Sites Program, and the Tenant Opportunity to Purchase Act¹¹.

Housing affordability is the first objective of the Housing Element of the City of Berkeley General Plan. *Policy H-1 - Extremely Low, Very Low, Low and Moderate Income Housing* sets the goal of increasing housing affordable to residents with lower income, and outlines a number of actions to achieve this goal, including encouraging incentives for affordable housing development, utilizing the Housing Trust Fund to provide housing, and maintaining zoning requirements for the inclusion of affordable units in

⁹ Rent Stabilization and Eviction for Good Cause Ordinance, https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Ordinance_Rent_Stabilization_and_Eviction_for_Good_Cause.aspx

¹⁰ BMC Chapter 23C.12, Inclusionary Housing Requirements, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley23C/Berkeley23C12/Berkeley23C12.html>

¹¹ Small Sites Acquisition Program and Tenant Opportunity to Purchase, Feb 14, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/2017-02-14_Item_18b_Small_Sites_Acquisition.aspx

new housing developments¹². Housing affordability is also the subject of Land Use Policies LU-18 (Downtown Affordable Housing Incentives) and LU-25 (Affordable Housing Development) of the Land Use Element of the General Plan¹³ and of the City's affordable housing requirements in market rate buildings.¹⁴ Many of Berkeley's area-specific plans, such as the Downtown Area Plan, Adeline Corridor Specific Plan, and West Berkeley Plan, also highlight the importance of affordable housing to specific areas and neighborhoods.^{15, 16, 17}

2018's Measure O is the most recent affirmation of the community's desire to create and preserve housing affordable to serve populations not able to afford market rates. It sets a goal of achieving 10% reserved affordable housing by 2030.¹⁸ The Framework seeks to coordinate existing and new efforts toward achieving this goal.

ACTIONS/ALTERNATIVES CONSIDERED

While the City has made numerous commitments to affordable housing in the past and taken a variety of actions to encourage its development and preservation, many of these were made before Measure U1, O, and P's resources were contemplated or available. The need to allocate resources in a coordinated, efficient and rational manner is more urgent than ever as we set out to spend the significant new funds voters have generously provided.

Creating a clear roadmap for the many entities that will consider and decide on the use of both new and existing resources is the best way to ensure optimal allocations and maximum achievement of the community's goals. Looking at individual projects or programs absent a guiding plan and principals will not produce the optimization or

¹² Housing Element, Policy H-1 Extremely Low, Very Low, Low and Moderate Income Housing
https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx

¹³ Land Use Element, City of Berkeley General Plan,
https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Land_Use_Element_Introduction.aspx

¹⁴ BMC 23C.12 Inclusionary Housing Requirements,
<https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley23C/Berkeley23C12/Berkeley23C12.html>

¹⁵ Berkeley Downtown Area Plan,
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/FINAL_x-DAP%20document_120329.pdf

¹⁶ Adeline Specific Area Plan
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20SP%20Public_4.%20Housing_5.15.19.pdf

¹⁷ West Berkeley Plan, Housing and Social Services,
https://www.cityofberkeley.info/Planning_and_Development/Home/West_Berkeley_-_Housing_Social_Services.aspx

¹⁸ Full Text of Measure O, <https://drive.google.com/file/d/1qdA7jW6J5IHgFSllcwHcb20x-fcfW3Xv/view?usp=sharing>

coordination that is required to fulfill our mandates. Similarly, adopting a Framework without collecting input from the community and appropriate Commissions and Committees would not be appropriate. We see no alternatives that would ensure the work of many entities involved in forwarding affordable housing in Berkeley is harnessed towards commonly established, clearly stated and rationalized goals.

CONSULTATION/OUTREACH OVERVIEW & RESULTS

The intent of this referral is to launch a broad process of consultation to gather input from the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts and from community partners and the public. Because the Framework must be in place before other entities embark to fulfill their respective charges, consultation must be completed and the Framework adopted quickly.

This referral specifically requests feedback on *broad concepts, directions and goals*, not on *implementation strategies, programs or projects*. While Commissions, Committees, community partners and the public will no doubt be tempted to address these additional important elements at this time, specific strategies, programs and projects will not be addressed in the Framework itself. These will be developed and vetted over time by the Measure O Committee, the HAC and other appropriate entities, and will involve additional consultation with community partners and the public.

The attached draft Framework reflects consultation with the City Manager's Office and the Health, Housing, and Community Services Department, and with the item's four co-sponsors. The Framework was conceived and written with the support of Stephen Barton, PhD., former Executive Director of the City of Berkeley's Rent Board and former City of Berkeley Housing Director. The Framework, offered as a draft, now awaits input from the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts, community partners and, most importantly, the public.

RATIONALE FOR RECOMMENDATION

Traditionally, affordable housing has been the purview of the City Council, the Housing Advisory Commission and City Staff. Measure U1 further deputizes the HAC to make recommendations on the use of U1 funds and recommendations on expanding affordable housing in the City, and both Measures O and P established boards to provide recommendations on the use of their respective funds. Finally, the Planning Commission, the Land Use, Housing, and Economic Development Committee, the Zoning Adjustments Board and other City entities play important roles in supporting and producing affordable housing. It is important that all of these entities share a single

vision and, even when acting independently, are moving towards clearly articulated, Council-approved goals. A single cohesive Framework will help ensure that different funds, regulatory strategies and other resources available to be harnessed to the cause of affordable and supportive housing are each deployed for their optimal purpose within the broader ecosystem.

IMPLEMENTATION, ADMINISTRATION & ENFORCEMENT

The Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts are the most appropriate drivers of the public process. Each shall hold at least one publicly noticed meeting to take comments and review and discuss the proposed Framework. The Chair of each body shall prepare a set of comments, approved by the Commission and Committees, to present at the Special Meeting of the City Council in September. Given the urgency of this referral, lengthy reports are neither required nor feasible. Each body can choose its own preferred format for comments, and the Chair (or other chosen representative) will be provided 10 minutes at the September Special Meeting to present comments.

FISCAL IMPACTS

Costs for review of the proposed Framework by Commissions, Committees, and by the City Council at a Special Meeting are minimal and consist of staff time to notice and staff meetings, many of which are already regularly scheduled.

Ultimately, adoption of the Framework will provide the cohesion necessary to rationalize the use of the City's many affordable housing resources and allow the City to responsibly and efficiently allocate resources to best achieve community goals.

ENVIRONMENTAL SUSTAINABILITY

Carrying out the community process as proposed has no environmental impacts.

Creating and preserving affordable and homeless housing in Berkeley, a transit rich community, will allow lower income individuals and families to live closer to transit and to their workplaces, reducing greenhouse gas emissions by shortening commutes and decreasing reliance on personal vehicles. Building to high green standards, as required by the Framework, will ensure new and refurbished housing incorporates energy efficiency, electrification, water conservation and use of non-toxic materials, as well as other green building measures.

Preserving and refurbishing existing housing stock is an important environmental strategy, as reuse/repair/refurbishment of materials already in use maximizes the value of a building's embodied energy, and avoids expending additional embodied energy on

a new building, that can take decades or even a century to recapture.

Finally, increasing affordable housing in Berkeley will make the City more economically and racially equitable, which is a key factor of the City's sustainability and resilience goals, as outlined in Berkeley's Resilience Strategy.

OUTCOMES & EVALUATION

If robust input is received from diverse stakeholders and the Framework is adopted, the goals of this item will have been fully realized. The Framework will support achievement of Measure O's stated goal that 10% of Berkeley housing units be reserved affordable by the year 2030.

CONTACT

Mayor Jesse Arreguín, (510) 981-7100

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

Attachments:

1. Housing for a Diverse and Creative Berkeley: A Framework for Affordable Housing

Housing for a Diverse, Equitable and Creative Berkeley

A Framework for Affordable Housing

Councilmember Sophie Hahn and Mayor Jesse Arreguín

Written in collaboration with Stephen Barton, Ph.D.

EXECUTIVE SUMMARY

Berkeley is poised to undertake a major expansion of our housing affordability programs, using new monies provided by Measures U1, O and P. Combined with already-existing affordable housing resources and supplemented with possible changes to the zoning code that could improve the mix and yield of affordable units, the City is well-positioned to meaningfully address Berkeley citizens' highest priorities: to increase affordable housing and rehouse the homeless.

Diversity is one of Berkeley's key strengths. With the rapid influx of new workers to the Bay Area and additional students to UC Berkeley, our community is challenged to meet a variety of housing needs; in particular the needs of low and moderate income households and the homeless. Berkeley is committed to housing for its teachers, artists and artisans; seniors and students; young people entering the work-force; and the many other working families and individuals who cannot afford market-rates. Berkeley is also deeply committed to housing the homeless, and ensuring that people with disabilities have accessible, supportive and affordable homes.

Berkeley's new housing monies enable us to expand successful affordable housing strategies we are already pursuing and to expand important strategies that were more difficult to achieve in the absence of significant local funds. We propose expanding Berkeley's major existing affordable housing programs and putting substantial resources into directions that reflect core Berkeley values such as cooperative ownership, democratic control and the empowerment of underserved communities. We also propose a suite of policies that should be broadly applied to all existing, expanded and new affordable housing initiatives.

Major Existing Programs - Recommend to Expand:

Currently, the City of Berkeley works to maintain housing affordability through four primary strategies, each of which is backed by effective organizations within the City of Berkeley and by local non-profit affordable housing organizations. *These four strategies should be strengthened and expanded:*

1. Constructing New Non-Profit Affordable Units
2. Rent and Eviction Protections
3. Affordable Housing Fees and Inclusionary Requirements for For-Profit Developments
4. Direct Subsidies to Renters

Additional Important Programs - Recommend to Significantly Expand:

There are several additional strategies that the City should expand substantially as they offer excellent opportunities to create and preserve affordable rental *and ownership* housing aligned with Berkeley values. Some of these strategies require capacity-building within City Departments and in non-profit partners. ***These programs should be significantly strengthened and expanded:***

1. House and Support the Homeless
2. Transition some of Berkeley's existing rental housing to permanently affordable social ownership by expanding the Small Sites Program, accompanied by a Tenant or Community Opportunity to Purchase Act.
3. Provide innovative homeownership opportunities for moderate and low income residents, including cooperative ownership using the Community Land Trust model.
4. Significantly increase the supply of affordable live-work housing for artists and artisans.
5. Encourage adding incremental units, such as accessory dwelling units (ADUs) or low-rise multiplex units that complement neighborhood character.
6. Partner with UC Berkeley to support creation of housing appropriate and affordable to students, faculty and staff.

Policies to Ensure Equity and Sustainability:

While pursuing these strategies, there are several principles of equity and sustainability the City should apply to all of its affordable housing programs:

1. Ensure equitable access to scarce affordable housing, including accessible units with universal design features.
2. Codify Deep Green Building standards for healthy and sustainable buildings, and other measures to increase environmental sustainability.
3. Prioritize the use of public land for the creation of affordable housing.
4. Ensure those who build and rehabilitate our housing are paid fair wages and have access to health insurance, and support local apprenticeship programs.
5. Make changes to the City of Berkeley Zoning Code and project approvals processes to incentivize, facilitate and reward the production of affordable housing.

Following these programs and principles, Berkeley will be able to preserve and expand its diverse and creative character, support equity and opportunity, and offer meaningful, stable housing solutions to families and individuals not able to afford market rates.

This Framework addresses only Berkeley's *affordable* housing goals. Many strategies are already in place to support the creation of new market rate housing, and others are under consideration. Because the creation and preservation of affordable housing involves significant investments of City and other resources, a comprehensive roadmap, adopted by the City Council, is necessary to guide decision making by multiple entities over time.

I. INTRODUCTION

Many things make Berkeley a special and attractive place; nationally and internationally renowned for activism, intellect, innovation and the arts. We are lucky to be situated on the desirable West Coast of the United States and the Pacific Rim, bordering San Francisco Bay and adjacent to the largest Regional Parks network in America. But the core of what makes us a unique, important and engaging City is *the people of Berkeley, and our shared values of equity, opportunity and justice*. Our robust mix of backgrounds includes people of diverse ethnicities, religions, ages, gender identities, occupations and abilities. Without this mix, we lose the fundamental elements of our greatness and risk all that makes Berkeley one of the most uniquely desirable and impactful small cities in America.

Preserving and enhancing our diversity - and our humanity - in the face of unprecedented pressure on housing affordability is one of the greatest challenges we face. Rent control has long been a key strategy for Berkeley to provide stability and affordability to residents; our ability to keep it strong has been severely eroded by the State. Twenty years ago, working families could still afford to buy homes in Berkeley; with median home prices now topping \$1.3 million, that is no longer the case.¹ And with a dramatic rise in rents and evictions throughout the region and the State, the humanitarian disaster of homelessness accelerates.^{2, 3, 4}

¹ Oakland, Berkeley, Piedmont Real Estate, June 2019, <https://www.bayareamarketreports.com/trend/oakland-berkeley-real-estate-market-conditions-prices>

² New report underscores link between 'shocking' number of evictions, homelessness, Curbed LA, June 10, 2019, <https://la.curbed.com/2019/6/10/18659841/evictions-homelessness-rent-burden-los-angeles>

³ Implementation of Resolution 68,312 (Council Funding for Additional Services Amending Contracts with Eviction Defense Center ("EDC") and East Bay Community Law Center ("EBCLC")) For the Period Ending June 30, 2018, April 2, 2019, https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-02_Item_13_Implementation_of_Resolution.aspx

⁴ "Rising rents, home prices in Berkeley and the Bay Area displacing thousands", June 28, 2018, <https://www.berkeleyside.com/2018/06/28/rising-rents-home-prices-in-berkeley-and-the-bay-area-displacing-thousands>

Rising market rates for both rental and ownership housing in Berkeley is driven primarily by the huge increase in high paid workers flooding the Bay Area, and by UC Berkeley's addition of 35% more students over the last 20 years, bringing enrollment to over 41,000.⁵⁶ New Tech and other "white collar" workers pay well over \$1 million for the bungalows, duplexes and tract homes that used to house the Bay Area's middle income and poor residents, and are able to afford rents of \$3500 or more for a two bedroom apartment.⁷ Students in Berkeley are packed 2, 3 and 4 to a bedroom, some paying \$1,500 per month - per person - for a bunk. Everyone else is left behind.

Who is "everyone else?" *Everyone else* includes the teachers who teach our children; the nurses and home-care workers who support us when we are sick; the activists and not-for-profit workers who forgo high salaries to promote and serve the public interest; the artists and artisans who delight, entertain, feed and provoke us; the firefighters who come to our rescue and police who work to keep us safe; seniors who have contributed for decades and are now on fixed incomes and students who struggle to pay tuition and rent; young people entering the workforce and starting families, who are building our future; the waiters, baristas and retail workers who serve us; public sector workers who make sure our cities and counties can deliver, and who make our public institutions work; and many more. *Everyone else* also includes the disabled, whose ability to generate income may be limited; those suffering from mental illness or substance abuse, which afflict people from all walks of life; and our lowest income community members, especially those who have been subject for generations to discrimination and physical, psychic and economic violence. *These are the people Berkeley's affordable and supportive housing programs are designed to help.* We want them in our community.

The voters of Berkeley recently established three important new sources of funding to support the creation and preservation of affordable housing, to keep vulnerable people housed, and to rehouse the homeless: Measure U1 (2016), Measure O (2018) and Measure P (2018). Thanks to the generosity and care of Berkeley citizens, Berkeley for the first time has substantial local funds to support these important community goals. In addition, the City collects funds and obtains affordable units from for-profit developments as mitigation for affordable housing impacts. Finally, the City of Berkeley is completing an inventory of land it owns that might be allocated to affordable housing development.

⁵ Student Enrollments, UC Berkeley Office of the Vice Chancellor of Finance, <https://pages.github.berkeley.edu/OPA/our-berkeley/student-enrollments.html>

⁶ Common Data Set 1999-00, UC Berkeley Office of Planning and Analysis, <https://opa.berkeley.edu/sites/default/files/1999-2000.pdf>

⁷ Berkeley Average Rent Trend Data, April 2019, <https://www.rentjungle.com/average-rent-in-berkeley-rent-trends/>

These Berkeley affordable housing resources can bring in matching Federal, State and/or County funds of as much as \$5 for every Berkeley dollar, significantly leveraging our investments. All of these resources together, allocated strategically, could yield well over 1,000 additional units of affordable housing. As stated in Measure O, the Berkeley City Council - and the voters - have adopted a goal of making 10% of Berkeley's housing reserved affordable by 2030. This means that ten years from now we intend to have 5,000 units available at below-market rates and set aside for people with diverse incomes, from extremely low- to middle-income, groups that are struggling to afford the cost of housing in our city.

We believe that Berkeley should aspire to make at least 30% of its housing, around 15,000 units, permanently affordable, and eventually strive to achieve 50% protected or reserved affordable housing, to match the "social housing" mix of progressive European cities such as [Amsterdam](#) and [Vienna](#).

Berkeley's [Measure O](#) provides for sale of \$135 million in bonds to fund capital expenditures for a variety of types of affordable housing. [Measure P](#) increased the real estate transfer tax on the most expensive one-third of real estate sales to rehouse the homeless and fund the services they need to remain housed. It is expected to bring in \$6 - \$8 million annually, depending on property sales. [Measure U1](#) increased the gross receipts tax on most residential rental properties to fund affordable housing and protect Berkeley residents from homelessness. In 2018 it realized \$5.1 million and will continue to increase as rents increase. Taken together, over the next ten years the City of Berkeley will likely have almost \$250 million in new revenue available for affordable housing and homelessness reduction. (For more detail on Berkeley's Affordable Housing resources see Appendix A - Funding Sources)

To allocate these and other affordable housing monies (such as developer impact fees) and allocate resources such as public land and inclusionary units, the City Council is advised by no fewer than three different advisory boards, as required under each measure, and receives input from the Planning Commission and numerous additional entities. This report is intended to help provide these advisory bodies, and the City Council, which has the ultimate responsibility to allocate all of these funds and resources, with a coherent framework. The goal is for our housing programs and expenditures to have a unifying sense of direction: to deploy the optimal mix of City resources for each purpose, to maximize the leveraging of local funds, and to meet the expressed needs and desires of the community.

Measure O funds are limited to traditional types of capital expenditures: buildings, grounds and other “hardscape” elements of projects. Measure P funds are available for programmatic as well as capital needs, including mental health and other supportive social services, and rent subsidies or operating cost subsidies necessary to rehouse the homeless and to support people who are at immediate risk of homelessness. U1 funding can be used for anything that is necessary for the creation of permanently affordable housing, and as such is the most flexible source of regular affordable housing funds. Because of this flexibility, at least some (and possibly all) U1 funds should likely be reserved for use where other more restricted funds are not available.

Affordable Housing fees paid by developers of market rate projects are deposited into Berkeley’s [Affordable Housing Trust Fund](#) (HTF), and can only be used for those fund purposes. In general, these include pre-development expenses and long-term loans to cover the capital costs of building or rehabilitating permanently affordable housing. Developers are allowed the alternative of providing “inclusionary housing” (where a market rate project includes affordable units within the development itself) and policy makers must consider what the best role for those units might be, as one component of a much larger set of affordable housing resources. With significant local, County, State and Federal funds now available to support Berkeley’s deeply subsidized units for very low and extremely low income people, inclusionary housing requirements for market rate developments could be redirected towards production of housing for low and moderate income families - at higher inclusionary percentages than are currently in place for more deeply affordable units.

This proposed framework is not intended as a comprehensive statement of all the City’s housing goals, which are provided in the [General Plan Housing Element](#). Our focus is on the creation and retention of affordable housing in concert with Berkeley’s goals and values, taking maximum advantage of the opportunities created by the passage of Measures U1, O and P, combined with the City’s pre-existing affordable housing resources: affordable housing mitigation fees, inclusionary housing and public land.

In addition to these Berkeley resources, there are a great number of Federal, State and County programs, some of which require local matching funds and others of which do not. The City also has the potential to revise its land use regulations to create housing opportunities; these require more systematic analysis.

When State and Federal funds are used, Berkeley is limited to supporting housing and services that meet their program criteria. Monies provided by Berkeley’s own generous voters are more flexible than State and Federal funds and can be strategically deployed to accomplish a broader spectrum of City priorities. Our job is to optimize each funding

source and adjust our land use policies to support the community's expressed goals, ensuring that Berkeley moves decisively to implement programs and policies that advance us towards 10% reserved affordable housing by 2030, and embody our values of equity, opportunity, health and environmental sustainability.

This report provides an overview of an approach to affordable housing that we believe reflects Berkeley's values and diversity. It looks at the loss of affordability that Berkeley has undergone over the past 20 years and the sources of that loss. It lists and briefly explains the broad range of housing policies and programs that Berkeley might pursue. It lists the resources Berkeley has available to meet the current crisis and the limitations placed on the use of each resource. It then matches policies and resources, explaining how each can best be used.

II. HOUSING AND BERKELEY VALUES

Berkeley values diversity. Interaction among diverse people fosters important community values, including equity, opportunity, learning, creativity, neighborliness, and democracy. Berkeley was once affordable to everyone, from the high-income residents of large single-family homes to the extremely low-income residents of single-room occupancy residential hotels, and to everyone in between. Berkeley was a national leader in inclusion, redrawing school attendance lines to integrate its schools, eliminating barriers for those with mobility and other physical limitations, preserving the affordability of rental housing by limiting rent while allowing landlords to receive a fair return on their investment, and protecting lower and middle income neighborhoods from the displacement of so-called Urban Renewal.

Now rising rents and home prices threaten to turn Berkeley into an enclave of mostly the well-to-do and university students, with a small number of low-income residents in subsidized units. Rent control enables tenants to remain in place as long as they can afford modest annual rent increases, but State law mandates that landlords can increase rents - even on rent controlled units - to current market rates when units turn over. Even in "inclusionary" apartments, rents have increased faster than the rate of inflation because the rent-setting formula for these units is based on the "area median income," (AMI) which increases as more high-income people move into Alameda County and low-income people are forced out.

We must do what we can to preserve the diversity of our City. A community that excludes most low and moderate income people is no longer a source of opportunity. A community no longer affordable to those who work for the common good rather than for profit-

maximizing companies will no longer be equitable. A community in which only a few of the most successful writers, researchers, artists and artisans are able to live will no longer be a creative, learning community.

Preservation of a diverse, equitable and creative Berkeley requires many different types of housing compatible with different neighborhoods to meet the housing needs of people with a range of incomes, family sizes, abilities and ways of life. It requires that we mobilize and carefully coordinate the use of our affordable housing resources to get the maximum benefit from each source, so that we continue to have housing affordable to our diverse residents.

Berkeley must create and preserve affordable housing at all scales - from accessory dwelling units to small scale multi-family, live-work and large apartment buildings. We also need to create units of various sizes, including units large enough for families to live long term, and for children to grow up in.

We need to make more of our housing work for people with varied mobilities and for the elderly, and to make more of our housing environmentally efficient. We are studying the concept of expanding housing beyond the Downtown and transit corridors by adding more duplex, triplex and quadruplex units within existing low density neighborhoods.

We must ensure that an important share of our City's housing is subject to social ownership that will keep it affordable; held by non-profit housing corporations, community land trusts and limited and non-equity cooperatives, and subject to deed restrictions. And we must establish community priorities for access to this scarce resource so that the affordable housing we create and preserve helps keep low and moderate income residents from being displaced, enables children to remain in school and low-wage workers to live near their jobs, and maintains our historic diversity.

III. THE AFFORDABILITY CRISIS

Across the Bay Area, almost 1 million jobs have been created since 1990.⁸ From 2009 to April 2019, the overall Bay Area job market increased by about 30%, while the tech industry increased by 56%.⁹ In Berkeley, there are more students and staff at the University of California, more private sector jobs within easy commute, and more people who appreciate the walkable, transit-oriented lifestyle provided by Berkeley's compact

⁸ Plan Bay Area 2040: Final Plan, <http://2040.planbayarea.org/the-bay-area-today>

⁹ "Tech employment in Bay Area reaches record highs.", <https://www.mercurynews.com/2019/06/14/tech-employment-bay-area-reaches-record-highs-google-apple-facebook-adobe/>

development and the wide range of cultural and social amenities. The diverse, open and forward thinking people of Berkeley and the Bay Area have made Berkeley a place where more people want to live, many of them with higher incomes than those already here.

This reality tracked by looking at average rents in Berkeley over time. At the end of 1998, just before State-mandated vacancy decontrol took effect, the average rent in the 20,000 apartments built before 1980 was \$720 a month. Twenty years later, at the end of 2018, it was \$1,956. If rents had increased only by the rate of inflation, they would instead average \$1,150 a month.¹⁰ As older units are vacated, average market rents rise ever higher, reaching \$2,200 for a one-bedroom and \$3,000 a month for older two-bedroom apartments in 2018, with increases of around 50 percent in just the last five years. Owners of older housing stock in Berkeley are able to increase their profits as they ride the exploding demand from high-paid professionals and the increases in UC Berkeley's student population - squeezing lower-income tenants who must pay most of their incomes to find housing near jobs or family, or end up homeless. Similarly, In 2000 the median home price was \$380,000. By 2013 it was \$704,000 and by 2019 it had reached \$1,300,000.

Housing is expensive to build, requires land to build on and lasts a long time if properly maintained. This has important implications for affordability. With few vacant sites available in Berkeley, the supply of housing can only increase by increasing the density of development, as is currently underway Downtown and along major transit corridors, and is being contemplated in other areas. However, only a minority of tenants can afford to pay enough rent to repay the cost of new construction, typically \$3,000 - \$4,000 monthly for a one bedroom apartment.¹¹ Theoretically, this new market-rate housing is helpful in diverting some of the increased demand from high-income tenants into new construction and away from older, more affordable buildings, thus reducing displacement; but it does not help meet the significantly increased demand from middle and lower-income tenants.

Most Berkeley tenants live in older housing, where the cost of construction was paid off long ago and the building can be operated and maintained for a lower rent. But the supply of older housing is fixed and, with rising demand, this is the housing sector that is undergoing huge rent increases and rapid gentrification.

Proponents of market solutions claim affordability is simply a matter of supply and demand, and the problem can be solved by building new housing. But while increased rents at the high end of the market encourage production of new housing that high-wage

¹⁰ Inflation as measured by the San Francisco-Oakland area Consumer Price Index for All Items except Shelter, "shelter" meaning rent and owners equivalent rent.

¹¹ New Apartments for Rent in Berkeley, CA. Apartments.com, <https://www.apartments.com/berkeley-ca/new/>

workers can afford, rent increases in older housing simply generate windfall profits for their owners and fuel displacement of middle and lower income tenants. State-mandated “vacancy decontrol” allows landlords to raise rents to market levels each time a unit turns over, even in cities like Berkeley with traditionally strong rent controls. Ultimately, owners of older housing with significantly lower costs are under no obligation to keep their rents low as well, and in the immediate, higher demand for older housing can never produce more of it.

It typically takes ten to fifteen years before rents in newly constructed buildings have the potential to level off as buildings age and the initial costs of construction are paid off. This is what is often called the process of “filtering down.” But this process is self-limiting. Once enough new housing is built to meet demand from higher-income tenants and high-end rent rates peak, or slightly decline, market-rate construction slows or stops, despite continued high demand among middle and lower income tenants who can’t afford even somewhat reduced market rents for new housing.¹² In plain terms, a family that can only afford \$1,200 or \$1,500 per month for a two-bedroom apartment will never benefit from a reduction in new-build market rents from \$4,000 to \$3,500, or even to \$2,000 - a very unlikely scenario. If rents at older units have also risen, middle and lower income tenants have no place to go.

The supply of new market-built housing will also always be limited by the need to cover construction and other development costs. For-profit developers simply will not build housing that doesn’t generate the returns they require - for banks and investors to provide the capital to build, and for their own need to generate profits. This is true even when significant demand for housing persists. If those who need housing can’t pay rents that will cover the cost of construction, capital and profits, *no amount of demand will generate new for-profit development.*

In the Bay Area’s exploding job market, with people coming to the region to take jobs at both higher and lower wages, new market-rate construction will at best absorb some of the demand from high wage workers and may reduce pressure to gentrify older neighborhoods. But it will not result in a flood of new market rate units and deeply reduced prices to meet the increased demand from the growing numbers of lower-wage workers who also need to be housed, or from those who have been displaced through gentrification.

¹² The State of the Nation’s Housing. Joint Center for Housing Studies of Harvard University (2018), p. 19-21, http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

High-wage jobs make up a majority of Bay Area jobs, but low-wage jobs are growing at a much faster rate. Approximately 90,000 low-wage jobs were added from 2016 to 2017 in the Bay Area, while the number of high-wage jobs decreased over the same time period.¹³ This means that new market-rate construction will not result in lower rents for most tenants, and indeed market rents are likely to continue to increase in older housing as well. Only reserved affordable or subsidized housing can meet the needs of families and individuals with incomes at moderate and low levels.

The question before us is whether we will let market forces decide who can reside in Berkeley, ultimately reserving it for those with high incomes and wealth, or whether we want to reshape the market so Berkeley can remain accessible to people of all backgrounds and incomes, who are essential to the life and vibrancy of our city.

IV. AFFORDABLE HOUSING IN BERKELEY - AN OVERVIEW

Berkeley today has about 49,000 housing units. About 2,500 of these are required to be permanently affordable to low- and moderate-income people.

This is done either through

- Government subsidies to create affordable apartments reserved for low-income residents at below-market rates and
- Land use regulations that require developers to set aside a certain percentage of apartments at rents affordable to low- and moderate-income families or individuals.

A fortunate minority of about 2,100 tenant households live in newer or recently renovated rental housing, mostly owned by non-profit housing organizations or limited or non-equity cooperatives, where the government has paid all or part of the cost of construction and rents greatly reduced. The non-profit organizations that own this housing have affordability as their mission, and in many cases rents only need to cover the ongoing costs of operation and maintenance and a set-aside for future repairs, typically \$600 to \$800 a month. Many of Berkeley's lowest-income residents can't afford even the greatly reduced "operating cost" rents offered by non-profit housing where government has paid the costs of construction. They require additional subsidy, either to the individual family or as an operating cost subsidy to the building owner. The Federal Section 8 program enables a family to pay 30% of its income for rent, with the government paying an additional amount to reach a "fair market rent". Several hundred of the Berkeley Housing Authority's Section 8 vouchers are currently allocated to non-profit housing to make units affordable to very low-income people.

¹³ MTC, Jobs by Wage Level, <https://www.vitalsigns.mtc.ca.gov/jobs-wage-level>

There are another approximately 400 “inclusionary” units within newer for-profit buildings that are set aside for low- and moderate-income tenants pursuant to City zoning regulations.¹⁴ Nearly half of these units are set aside for very low-income tenants receiving assistance through the Section 8 program. Most of these apartments are required to be kept affordable for the life of the building, but the rent-setting formula they are subject to is based on the “Area Median Income” (AMI), which does not fully guarantee affordability. The formula, determined by the U.S. Department of Housing and Urban Development, results in rents that increase faster than the incomes of many low-income people.¹⁵ This is because AMI, based on an average of all regional wages, increases rapidly when more high-income people move into the area and displace lower-income people, rather than, for example, tracking increases in wages for low income workers, which rise much more slowly over time than the average of all wages - if at all.¹⁶

In addition to buildings with below-market rents, about 1,500 tenant households in Berkeley receive monthly rental assistance through the Federal Government’s Section 8 program, which is administered by the Berkeley Housing Authority (BHA). Over 200 authorized Section 8 vouchers go unused because the Federal government does not fund the BHA at an amount adequate to enable tenants to pay market rents and cover the cost of all of its vouchers. Instead, the BHA has to choose between paying a competitive rent but restricting the number of households it can support, or subsidizing more households but falling behind the market and risking having landlords leave the program. About one quarter of the units occupied by tenants assisted through the BHA are in non-profit or inclusionary housing as described above, but three quarters are in for-profit housing. When Federal subsidies fall behind the market, owners of these units often leave the program and rent to much higher income residents at market rate.

Many extremely low-income people need ongoing social and health services in order to live independently. The term used to describe housing with services formally tied to or operated from the building, unit or tenant is “supportive housing.”¹⁷ The Federal “Shelter Plus Care” supportive housing program administered by the City of Berkeley assists about 260 formerly homeless households with a combination of rent subsidy and ongoing social services. About half of the tenants assisted through the Shelter Plus Care program are

¹⁴ Apartment Buildings with City of Berkeley BMR Program Units, [https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3 - General/2017-07%20BMR%20list%20of%20properties.pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/2017-07%20BMR%20list%20of%20properties.pdf)

¹⁵ U.S. Department of Housing and Urban Development, Income Limits, <https://www.huduser.gov/portal/datasets/il.html>

¹⁶ Low-Wage Work in California Data Explorer, UC Berkeley Labor Center, <http://laborcenter.berkeley.edu/low-wage-work-in-california/>

¹⁷ United States Interagency Council on Homelessness, Supportive Housing, <https://www.usich.gov/solutions/housing/supportive-housing/>

placed outside of Berkeley due to the difficulty of finding places in Berkeley, but still receive services from Berkeley.

Berkeley thus has approximately 4,000 tenants who live in housing which is reserved for low- and moderate-income people at affordable rents or are provided with on-going subsidies that enable them to pay market rents. With the additional funding provided by measures O, P and U1, the City should be able to increase this number to over 5,000 and reach its goal of having 10% of its housing reserved affordable for low- and moderate-income people.

This goal does not include the tenants covered by rent stabilization (“rent control”). Due to the extraordinary rent increases of the last several years, there are several thousand tenants with rents that are now significantly below current market rates, but these units are only kept affordable for the tenant who lives there now.¹⁸ Once the tenant moves out, the rent is reset to current market rates, so that apartments in Berkeley are increasingly rented to higher-income tenants who can better afford our rapidly increasing rents.

Under the vacancy decontrol provisions imposed on Berkeley by the State legislature, as tenants in deeply affordable rent controlled units move out, rents can be, and usually are, increased to current market levels. These apartments thus experience huge rent increases - reset to market rates - resulting in a significant loss of affordable housing for Berkeley. Pressure for landlords to evict or otherwise incentivize these long term rent stabilized tenants to move is strong; these are the kinds of vulnerable tenants whose stories we hear when Berkeley’s housing retention service providers testify before the City Council.

As a result of these and other pressures, Berkeley will have to work hard to maintain its current level of economic diversity.

Maintaining diversity requires Berkeley to both increase the supply of housing overall and to remove a substantial part of our housing, new and existing, from the speculative market. This protected affordable housing should be allocated on the basis of need, using techniques ranging from non-profit and community ownership to regulation of rents (through traditional rent control and dedicated affordable units), and creation of new forms of home ownership that ensure homes will remain affordable now, and for future generations.

¹⁸ Bursell, Lief and Fabish, Jen. Market Medians: January 1999 through December 2018. Rent Stabilization Board. 21 March 2019, https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/INFO_Market%20Medians%20Report%20for%20Q3%20and%20Q4%20of%202018.pdf

V. EXISTING AFFORDABLE HOUSING PROGRAMS AND NEW OR EXPANDED OPPORTUNITIES

Introduction:

The City of Berkeley has the opportunity to build on its current programs and to expand in new directions to better deal with its housing affordability crisis. This chapter begins with a brief listing of current programs and new opportunities and then examines each in more detail. These goals are intended to allow Berkeley to make the changes it needs in order to preserve its character as a diverse and creative community, and meet its 10% affordability goal. As we move forward it will be important to maintain a balance between all of them.

Major Existing Programs - Recommend to Expand:

1. Constructing New Non-Profit Affordable Units

Through the Housing Trust Fund the City provides capital to non-profit housing developers to construct multi-family buildings, usually on or near major transit corridors and downtown. These projects qualify for additional State and Federal subsidies and offer maximum leverage for Berkeley dollars while increasing the supply of modern, accessible, energy efficient and green housing affordable to lower-income residents.

New non-profit developments are currently the main housing affordability strategy in the City of Berkeley, and primarily serve very low-income people with incomes ranging from 30% to 60% of Area Median Income. For one person in Alameda County, 30% of AMI is \$26,050 and 60% is \$52,080, while for a family of four, 30% of AMI is \$37,150 and 60% is \$74,340.¹⁹ These are predominantly lower-wage working people or people with low retirement or disability incomes, but there are many people with incomes even lower. Serving people with incomes below 30% of AMI requires additional subsidy. Some non-profit housing developments include supportive services on site for the formerly homeless, people with disabilities and seniors.

¹⁹ HUD Income Guidelines, Effective April 24, 2019, https://www.cityofberkeley.info/BHA/Home/Payment_Standards_Income_Limits_and_Utility_Allowance.aspx

Opportunities for Expansion:

This method of achieving housing affordability is the easiest to expand with new resources from Measure O. The City already has the knowledge and experience to successfully execute these projects and there are several large, trusted local non-profit housing developers to work with. While new construction is extremely expensive, local funding can draw matching dollars from the Federal government (mostly [Low-Income Housing Tax Credits](#)), the State (from cap and trade revenue, state housing bonds, and many [other sources](#)), and from the Alameda County Housing Bond ([Measure A1](#)). Together, outside sources of funding can leverage Berkeley dollars up to 5:1, allowing Berkeley's investment of local dollars to generate significantly more units than would otherwise be possible.

In general, County, State and Federal funding sources require that the residents of subsidized housing have incomes at or below 60% of AMI, meaning these developments serve mostly low and extremely low income residents. In today's Bay Area economy, teachers (average annual salary \$71,738), personal care providers (average annual salary \$33,332), and administrative assistants, (average salary of \$51,991) would be eligible for this type of housing, as well as individuals living on Social Security for the elderly or disabled.

2. Rent and Eviction Protections

Berkeley has extensive regulatory protections for tenants of rental housing through the Rent Stabilization and Eviction for Good Cause Ordinance ("Rent Control") and the Rent Stabilization Board, which provides legal assistance to tenants facing eviction. The City also protects rent controlled units through restrictions on demolition, conversion of rental properties to condominiums and short-term rentals, and other protections.

Opportunities for Expansion:

Without changes to State laws, Berkeley is limited in its ability to achieve stability for renters and to increase protections for rent controlled housing and tenants. The Ellis Act allows landlords to go out of the rental business by evicting all the tenants in a building rather than selling it to another owner who will maintain the property as a rental. It serves no legitimate purpose and should be repealed. The State of California's Costa-Hawkins Act, which instituted "vacancy decontrol," allows rents to be reset to market rates upon conclusion of each tenancy, denying Berkeley and other cities the power to limit increases to a fixed percentage when units turn over. It also prevents regulation of rents in buildings constructed after 1979 and

regulation of rents in single-unit properties, even when owned by large corporate landlords. These prohibitions should be revised or repealed.

3. Affordable Housing Fees and Inclusionary Requirements for For-Profit Developments

The Downtown and major transit corridors have been rezoned to encourage private construction that adds to the supply of market-rate housing while also requiring new rental developments to either include a certain percentage of apartments at below-market rents (formerly 10% and now 20% of units)²⁰ or pay into the Housing Trust Fund (HTF) to support non-profit housing development (\$37,962 per market-rate unit built as of July 2018).²¹ There are similar inclusionary requirements and fees for condominiums²². Currently, for market rate rental developments, the 20% inclusionary units required must be affordable to people with very low incomes, no greater than 50% of AMI, and half of them (10% of all units in the building) must first be offered to tenants receiving Section 8 housing assistance or in Berkeley's Shelter Plus Care Program.

Opportunities for Expansion:

At present, the City offers developers a choice between paying an affordable housing mitigation fee or providing below-market rate units as part of the project. When fees were one of Berkeley's most important sources of revenue for the Housing Trust Fund it made sense to have both alternatives, and opinions have differed (with worthy arguments made on both sides) as to whether it was better for the City to obtain money for the Affordable Housing Trust Fund or for affordable units to be built on site.

The traditional argument in favor of obtaining the affordable housing fee from a market rate development rather than on-site inclusionary units is that local affordable housing dollars can be significantly leveraged with other public dollars to net many more affordable units within an all-affordable project built at another location. The argument in favor of obtaining the on-site inclusionary units has been that it ensures low-income residents are integrated within mixed-income neighborhoods and buildings, that affordable units are built right away, not at some future unknown time and location. In neighborhoods with few opportunity sites for affordable housing such as the Downtown, including affordable units within market rate developments is often the only way to achieve affordability.

²⁰ Berkeley Municipal Code Chapter 23C.12 Inclusionary Housing Requirements

²¹ Berkeley Municipal Code Section 22.20.065 Affordable housing mitigation fee

²² Berkeley Municipal Code Chapter 21.28 Condominiums and Other Common Interest Subdivisions

With \$135 million in Measure O funds available to be leveraged with other public monies to support the creation and preservation of deeply affordable units (serving individuals with incomes up to 60% of AMI), the relatively small sums that mitigation fees generate are less important to the overall success of Berkeley's affordable housing strategies. By requiring market rate developments to include affordable units on site rather than pay a mitigation fee, Berkeley can achieve the goals of integration and dispersal without significant impacts to our ability to fund all-affordable projects.

In addition, with inclusionary units now just one part of a multifaceted affordable housing strategy, the possibility of requiring a different mix and number of on-site affordable units should be considered. One alternative or supplemental formula for inclusionary unit requirements in market rate developments would be to offer developers the opportunity to produce low- and moderate-income units (affordable to people with incomes between 80% and 120% of AMI) rather than the currently required deeply affordable units (below 80% AMI), but at higher percentages of the project than the current 20%. It is likely that market rate developments could include 30%, 40% and possibly higher percentages of units at low and moderate rates and still return a reasonable profit. Because there are fewer County, State and Federal funds for low- and moderate-income units than very- and extremely-low, *asking market rate developers to subsidize low and moderate income units may be a good strategy to achieve a greater mix of affordability levels Citywide and gain more permanently affordable units overall.*

4. Direct Subsidies to Renters

Berkeley provides individual rent subsidies through the [Berkeley Housing Authority](#), which assists 1,600 Berkeley households with Federally funded [Section 8 housing vouchers](#), and the City operates a Federally funded [Shelter Plus Care](#) program that provides monthly rental assistance and social service support to around 200 formerly homeless Berkeley residents, about half of them having chosen housing outside of Berkeley due to the difficulty of finding places in Berkeley.

Opportunities for Expansion:

Measure P funds could be used for this purpose if recommended by the Homeless Services Panel of Experts, and other City funds might be applied to expand direct renter subsidies and "rapid rehousing," as is proposed in the City's [1,000 Person Plan to Address Homelessness](#).

Additional Important Programs - Recommend to Significantly Expand:

There are several additional strategies that the City should expand substantially as they offer excellent opportunities to create and preserve affordable rental *and ownership* housing aligned with Berkeley values. Some of these strategies require capacity-building within City Departments and in non-profit partners. ***These programs should be significantly strengthened and expanded:***

1. House and Support the Homeless

In response to the Pathways Project, staff prepared a 1000 Person Plan to Address Homelessness, which considered resources and interventions required to house the currently unhoused population of Berkeley and to prevent inflow of future homelessness. According to the Plan, ending homelessness will require targeted investments in various interventions to ensure that each individual experiencing homelessness receives an appropriate, timely response according to their needs, including targeted homelessness prevention, light-touch housing problem-solving, rapid rehousing, or permanent subsidies. In addition, the Homeless Services Panel of Experts will provide an essential source of guidance in developing effective strategies to prevent and end homelessness in Berkeley.

In general, people with extremely low incomes (at or below 30% of AMI), are unable to afford even the below-market rent that a non-profit housing provider needs in order to cover operating and maintenance expenses. People living on Social Security for the elderly or disabled have incomes of 14% to 20% of AMI (\$932 a month for an individual, \$1,564 a month for a couple). This means that under Federal standards they can “afford” only \$280 to \$470 a month for housing, and even that is a hardship considering how little income they start with.

The Housing Trust Fund Guidelines call for 20% of housing funded through the HTF to be affordable to people with incomes at or below 30% of AMI, but non-profit housing organizations have had difficulty obtaining ongoing subsidies to create housing at this level of affordability.²³ The City has been forced to rely on limited Federal funding - especially project-based Section 8 through the Berkeley Housing Authority.

²³ City of Berkeley Housing Trust Fund Guidelines, April 5, 2016, https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/Revised%202016%20HTF%20GUIDELINES.pdf

Opportunities for Expansion:

Measure P funding has the potential to fill this gap and to encourage non-profit housing providers to increase their service to the homeless, as discussed in the 1,000 Person Plan to address homelessness.

Measure P funding will vary somewhat from year to year because it is based on the value of the top 1/3 of real estate transactions in a given year. For this reason, the City should allocate only a portion of initial Measure P receipts to ongoing subsidies and supportive services, so that it can be sure it can sustain those commitments from year to year. The amount that is likely to vary from year to year, perhaps one-quarter to one-third (Finance Department staff may be able to provide an accurate estimate, based on historical data regarding fluctuations), should then go to one-time expenditures such as capital subsidies to expand the supply of permanently affordable housing available to the homeless. For example, in the Berkeley Way project, the City has agreed to provide a capital fund that will cover 10 years of operating subsidies.

The 1000 Person Plan covers in detail strategies necessary to rehouse Berkeley's homeless. Creation of deeply affordable housing is one element of this Plan. The Homeless Services Panel of Experts will make recommendations regarding the use of Measure P funds, which may be used to fund the "support" in Supportive Housing, and for many other purposes.

2. Transition some of Berkeley's existing rental housing to permanently affordable social ownership by expanding the Small Sites Program, accompanied by a Tenant or Community Opportunity to Purchase Act.

Most of Berkeley's neighborhoods used to house people with diverse incomes, but the affordability crisis is reducing that diversity²⁴. Preservation of neighborhood socioeconomic character will require transitioning some existing housing from the for-profit market to various forms of socially responsible ownership intended to maintain affordability. Last year the City Council allocated an initial one million dollars to start a Small Sites Program and begin the process of supporting acquisition and rehabilitation of properties with up to 25 units. The Small Sites Program will provide funds to non-profit developers to allow for the acquisition of small multi-unit properties vulnerable to real estate speculation, and reserve them

²⁴ Romem, Issa and Elizabeth Kneebone, 2018. "Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?" <https://terncenter.berkeley.edu/disparity-in-departure>

for low-income individuals and families. This process is also an opportunity to expand limited equity cooperative ownership.²⁵

The Small Sites program requires a different approach from the City's current focus on partnership with large non-profit housing developers. Two-thirds of the rental housing covered by rent stabilization has less than 20 units. The large non-profit housing organizations avoid properties with less than 20 units because these buildings have higher management costs and are generally more costly to finance than larger developments. In addition, non-profit developers tend to prefer new construction to the uncertainties of acquisition and rehabilitation of existing buildings. Cost-effective management of smaller properties *can be provided* when residents take on significant responsibility for the property and receive appropriate education and support.

Another current barrier to the Small Sites Program is that residents of small buildings often have a mix of incomes, which reduces the available subsidies under Federal and State programs that limit assistance to units occupied by people with incomes no greater than 60% AMI. *Local funding can make an important contribution to the Small Sites Program.*

Opportunities for Expansion:

Measure O and Measure U1 both offer funds that can be used for small sites with mixed-income residents. The City should substantially increase its efforts to transition existing small apartment buildings to permanent affordability. The Small Sites Program should be tied to a Tenant or Community Opportunity to Purchase Act (TOPA or COPA) to enable groups of existing tenants or non-profit partners to buy and maintain this naturally occurring affordable housing and prevent displacement. Through a TOPA, landlords must provide legal notice to tenants of their opportunity to purchase a property when it is placed on the market. If a tenant or tenants decide to purchase, they must form a tenant organization to manage the building, and take on other management responsibilities. This model has seen success in other communities, including Washington D.C.²⁶

²⁵ City of Berkeley, Referral to City Manager, Establishment of Affordable Housing Small Sites Fund, https://www.cityofberkeley.info/Clerk/City_Council/2015/12_Dec/Documents/2015-12-15_Item_54_Referral_to_City_Manager_Establishment_-_Rev.aspx

²⁶ Small Sites Acquisition Program and Tenant Opportunity to Purchase, February 14, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/2017-02-14_Item_18b_Small_Sites_Acquisition.aspx

3. Provide innovative homeownership opportunities for moderate and low income residents, including cooperative ownership using the Community Land Trust model

By taking on full or partial responsibility for management of a property, residents strengthen their community. In years past, Berkeley had programs to support both individual and cooperative homeownership. At a time when working families can no longer afford to buy homes in Berkeley, the City should give renewed attention to resident ownership and participation.

Berkeley currently has about 300 units in limited-equity and non-equity cooperatives, half of these established without City assistance at a time when real estate values were much lower. Encouraging residents to take ownership or responsibility for the operation and management of their housing, while keeping it permanently affordable, was an important part of Berkeley's housing programs in the 1970s through the 1990s. Unfortunately, since then this model has received little attention.²⁷ Current housing programs miss opportunities to build democratic organizations in which people learn organizational skills and collaborative problem solving, and have input into the management and physical condition of their homes, a model sometimes referred to as "social housing."

Berkeley has no currently active programs to create individual or cooperative homeownership opportunities, in part because it is difficult to combine the use of Low-Income Housing Tax Credits with resident ownership. Measure O and Measure U1 both provide funding that can be used to support cooperative homeownership and community land trusts.

Individual homeownership opportunities: Although they are few in number, Berkeley has some small parcels of publicly owned land embedded in neighborhoods that may be suitable for townhouse-style or other low-rise homes. In order to preserve affordability, the City should either retain ownership of the land or convey it to a community land trust, rather than selling it outright. Working with Habitat for Humanity or a similar organization could reduce the cost of construction and increase affordability for these units.

²⁷ S. Barton, "From Community Control to Professionalism: Social Housing in Berkeley, California, 1976 – 2011", *Journal of Planning History*, May 2014, V.13:2, pp. 160 – 182.

Cooperative homeownership opportunities: Limited-equity and non-equity housing cooperatives provide an affordable, democratic version of homeownership in which a property is owned by a nonprofit cooperative corporation, made up of tenants of the property. Initial capital subsidy makes them permanently affordable to very low, low and moderate-income people. When the residents take responsibility for the management of their buildings they can keep costs down, which makes cooperatives suitable for small multi-family properties.

Importance of affiliation with a Community Land Trust or larger cooperative: Experience has shown that housing cooperatives need ongoing training, technical assistance and oversight from a larger organization. This larger organization can be a Community Land Trust, which owns the land under the cooperatively owned buildings or, in the case of the Berkeley Student Cooperative, a larger cooperative that maintains and renovates affiliated properties while supporting residents in operating their individual buildings. Measure U1 monies could be used to provide organizational support to strengthen the capacity of local land trusts, which at present are relatively small organizations. In 2018 the City Council used U1 funds to provide a small capacity-building grant to the Berkeley-based Bay Area Community Land Trust.

It will be necessary to expand the organizational capacity of Berkeley's land trust to support a larger program utilizing this model. Community Land Trusts receiving support from the City of Berkeley should be required to meet the Federal definition of a Community Land Trust (Housing and Community Development Act of 1992, Section 213, Housing Education and Organizational Support for Community Land Trusts), which ensures that residents of affiliated properties serve on the land trust governing board.²⁸

Other models - Challenges: Berkeley has an inclusionary requirement for condominium developments and there are currently a small number of below-market condominiums reserved for low-income owners. *Caution is needed in creating low-income condominiums because rising monthly assessments and occasional special assessments for major renovations can become unaffordable for lower-income owners.*

In addition, residents can misunderstand the condominium form of ownership and underestimate the need to work cooperatively with other owners. Cooperatives are

²⁸ HR 5334- Housing and Community Development Act of 1992, Section 213.
<https://www.congress.gov/bill/102nd-congress/house-bill/5334/text>

less likely to have this problem. In the past, the City provided down-payment assistance on a shared-equity basis (meaning that the owners of the cooperatives had to repay a portion of the property's value at sale), but the cost of single-family homes has far surpassed the City's ability to provide effective down-payment assistance. As described above, several useful models exist to support homeownership without these challenges, and should be included in Berkeley's affordable housing mix.

4. Significantly increase the supply of affordable live-work housing for artists and artisans.

Berkeley has a long tradition of live-work housing, mostly located in West Berkeley, and much of it lacking legal recognition. There are only a few units of permanently affordable live-work housing citywide. In part this is because it is difficult to use State and Federal subsidies for this purpose. In addition, certain subsidy program regulations make it difficult to allocate live-work housing to the artists and artisans that it is intended for.

As an alternative, live-work housing can easily be organized to include resident ownership or resident participation in property management.

Opportunities for Expansion:

Live-work units are allowed in most of Berkeley's Commercial and Manufacturing districts. Measure O and Measure U1 both provide funding that can be used for affordable artists and artisan live-work housing using ownership or other participatory models. The City also has the potential to require affordable live-work units, or provision of land for such units, as part of development approvals throughout Berkeley.

5. Encourage adding incremental units, such as accessory dwelling units (ADUs) or low-rise multiplex units, that complement neighborhood character.

There are many opportunities to add one, two or more units to existing properties at relatively modest cost. When sold as condominiums such units can be affordable to middle-income families who have difficulty entering the current market for single-family homes. Accessory dwelling units (ADUs), even rented at market rate, can also be affordable to middle income individuals. In addition, low-rise multi-family housing such as duplexes, triplexes, courtyard apartments, and multiplexes can also be inserted into existing neighborhoods, and may provide additional opportunities for middle-income families to enter the housing market.

Opportunities for Expansion:

Where possible, the City should encourage addition of family-sized units as well as smaller ADUs. The City Council recently approved a referral to study the possibility of allowing up to four-plexes into areas currently zoned for a single family home and ADU. These housing types are already allowed in most other zones. Modest incentives such as expedited review of applications, low interest loans or small capital subsidies may be sufficient to persuade property owners who add such units to reserve them for lower-income families. These incentives should be explored, and a program developed to support the reservation of additional neighborhood units for affordable housing.

6. Partner with UC Berkeley to support creation of housing appropriate and affordable to students, faculty and staff.

Enrollment increases that far exceed UC Berkeley's Long Range Development Plan have resulted in an extreme shortage of student housing and a very high incidence of student housing insecurity and homelessness, while the general housing affordability crisis forces faculty and staff to live far from campus.

The University of California should take greater responsibility for housing its students. This will require the Regents to allocate more funding for student, faculty and staff housing and the State legislature to include this funding in the State budget. In addition, the Regents must stop the practice of increasing enrollment without regard for the carrying capacity of both UC Berkeley and the City of Berkeley.

Opportunities for Expansion:

The Berkeley Student Cooperative serves students in community college and the Cal State system as well as at U.C. Berkeley. It is eligible for funding through the Housing Trust Fund and some Measure O funding could be used to help purchase existing buildings near campus to make them permanently affordable to their student residents, who predominantly come from low-income families. While the City of Berkeley may choose to allocate some Housing Trust Funds to student housing, the University of California should provide the vast majority of funding for this important type of housing, as it is the University's responsibility to ensure their students are housed.

Policies to Ensure Equity and Sustainability:

Finally, while pursuing these strategies, there are several principles of equity and sustainability that the City should apply to all of its affordable housing programs:

1. Ensure equitable access to scarce affordable housing, including accessible units with universal design features.

Berkeley makes very limited use of City-established priorities in the allocation of affordable housing. In part this is due to the rules attached to State and Federal funding and in part to potential City administrative costs. A lack of State or local definitions of universal design also makes it difficult to adequately review projects for accessibility.

Opportunities:

Housing units with universal design elements that ensure access for those with mobility limitations should be included in all City-supported affordable housing. To support this, Berkeley should codify both baseline and enhanced universal design housing elements. In addition, to the extent legally allowable, Berkeley should establish a set of priorities for access to below-market rate housing. These priorities could include (but not be limited to):

- People at risk of displacement or who have been displaced from Berkeley, in particular those who have been subject to redlining or other discriminatory housing and lending practices in the past, including foreclosures;
- People who formerly experienced homelessness in Berkeley;
- Artists and artisans who need live-work spaces;
- Families with children in Berkeley schools; and
- People who work in Berkeley; in particular those who work for the Berkeley Unified School District or in emergency services (firefighters, doctors, police, nurses, etc.).

2. Codify Deep Green Building standards for healthy and sustainable buildings, and emphasize other measures to increase environmental sustainability.

Berkeley Deep Green Building is an ambitious program designed by building and clean energy professionals and environmentally-minded citizens as part of the Berkeley Zero Net Energy++ Working Group. It sets forward a detailed plan to incentivize these and other green and healthy building practices. The five goals of Berkeley Deep Green Building are to:

1. Support zero-net energy at the individual building and community scale;
2. Reduce embodied energy in building materials and practices;

3. Reduce toxicity in building materials;
4. Source sustainability produced materials from fair trade, fair wage and culturally and environmentally friendly suppliers; and
5. Conserve water.

Some of these goals are already addressed in City codes and policies; some require expansion or codification.

The City of Berkeley has a variety of programs and Building and Zoning Code provisions that seek to address green building. These include energy efficiency audits under the Building Energy Saving Ordinance (BESO), LEED gold standards for larger downtown buildings, Bay-friendly landscaping for projects over a certain size, and stormwater and waste management during construction.²⁹ In addition, a number of solar, energy efficiency and other green building proposals have been referred to the City Manager over time, but have not yet been implemented. Pending codification or implementation, affordable projects should strive to meet all Deep Green Building and other state of the art green building practices.

Building affordable units near transit is also an environmental strategy. This is especially true when parking is reduced or eliminated. Because lower-income people use transit at significantly higher rates than people with higher incomes, siting affordable housing near transit can yield increased ridership - and reduce the displacement of lower-income households. A UCLA study of the effects of Transit Oriented Development on transit use in Los Angeles found that allowing market-rate housing with parking near transit contributed to a significant reduction in transit use. , Lower income people who previously rode transit were displaced to the outer reaches of the region, and were forced to commute long distances, often by car. They were replaced in their previous transit-rich neighborhoods with more affluent people who can afford cars and use transit much less frequently, resulting in large reductions in transit use citywide, despite massive public transit investments and the creation of significant new transit-oriented housing.³⁰

3. Prioritize the use of public land for the creation of affordable housing.

Land is expensive in Berkeley and securing appropriate sites for affordable housing is costly and difficult. The City owns several sites which may be appropriate for affordable housing development. Other parcels may also be eligible for housing but

²⁹ Building Energy Saving Ordinance, <https://www.cityofberkeley.info/BESO/>.

³⁰ "Transit-oriented development? More like transit rider displacement," L.A. Times, Feb. 20, 2018, <https://www.latimes.com/opinion/op-ed/la-oe-roenthal-transit-gentrification-metro-ridership-20180220-story.html>

would require remediation. In 2017, the City purchased a property at 1001 - 1011 University Avenue, with the express intention of converting the property for use as affordable housing.³¹ The City should take steps to offer whatever public land is available, appropriate and safe to qualified affordable housing projects.

4. Ensure those who build and rehabilitate our housing are paid fair wages and have access to health insurance, and support local apprenticeship programs.

As in the entire Bay Area, there is a severe shortage of skilled construction workers in Berkeley, partly because their wages are often insufficient to allow them to live in the very buildings they help construct. Berkeley contributes to solving this problem by requiring builders of City-assisted housing to pay their workers prevailing wage (the hourly wage paid to the most workers in an area working on similar jobs) and through project labor agreements in areas of the City with community benefit requirements. Labor organizations are, for their part, supporting construction of modular, factory-built housing that can modestly reduce construction costs. Additional approaches should include stronger protections against wage theft, expanded apprenticeship programs that help local residents start careers in construction and policies ensuring that workers on large projects receive adequate benefits. Healthcare is particularly important for construction workers; by its nature construction work is physically demanding. Injuries and physical stress are frequent, even on well-managed sites.

5. Make changes to the City of Berkeley Zoning Code and project approvals processes to incentivize, facilitate and reward the production of affordable housing.

The City has taken a number of steps to incentivize and facilitate the production of affordable housing. Affordable projects receiving Housing Trust Fund monies are automatically expedited and prioritized for permits, inspections, and other City of Berkeley administrative processes.³² Additional referrals have been made to reduce development fees for affordable projects, create additional density bonuses for affordable projects, and otherwise ease restrictions on affordable projects. The State Density Bonus program provides significant benefits to projects that build

³¹ Acquisition of Real Property at 1001 University Avenue, 1007 University Avenue, 1011 University Avenue, and 1925 Ninth Street, March 27, 2017
https://www.cityofberkeley.info/Clerk/City_Council/2017/03_Mar/Documents/2017-03-28_Item_32_Acquisition_of_Real_Property.aspx

³² Berkeley Municipal Code Chapter 19.62 Priority Permit Processing for Housing for Low and Moderate Income Persons

inclusionary units, and affordable projects meeting specific criteria are approved “by right” under SB 35.

In addition to these supports and incentives for affordable projects, the Berkeley City Council recently increased the affordable housing mitigation fee to \$37,962 per market-rate unit. The fee had been set at \$28,000 in 2012, “discounted” by the City Council to \$20,000 in 2013, raised to \$34,000 in 2016, and then to the current rate in 2017.³³³⁴³⁵ The City also doubled its inclusionary requirement from 10 to 20% of units in all developments with five or more units.³⁶ The City should continue to develop and implement policies, programs and regulatory mechanisms to expedite, maximize, incentivize and reward the creation and preservation of affordable housing.

VI. CONCLUSION

The **Framework for a Diverse, Equitable and Creative Berkeley** is a high-level roadmap to guide the many City entities involved in moving our affordable housing goals forward. As each navigates its own path, all must be headed to the same destination.

Berkeley has an unprecedented opportunity to significantly increase the City’s stock of affordable housing and to preserve the limited affordability that already exists. Housing is a human right, and the severity of the Bay Area’s housing crisis calls us to action. We must ensure that our homeless can be rehoused, our vulnerable seniors, youth and disabled neighbors remain housed, our dedicated public and not-for-profit workers can make homes in our community, and our artistic, activist and academic residents can thrive. We have a duty to ensure that people of all backgrounds, ethnicities, ages, religions, gender identities, occupations, and abilities can be, and are, housed in Berkeley.

We are embarking on a path to achieve 10% reserved affordable housing in Berkeley, and to lay the institutional and policy foundations for a future with 30% and eventually up to 50% affordable or “social” housing. It’s an exciting and demanding venture, but essential to preserve and expand all that makes Berkeley an exceptional place to live, work, learn, play and thrive.

³³ Resolution No. 66,809, October 7, 2014

³⁴ Resolution No. 67,614-N.S., July 12, 2016

³⁵ Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee

³⁶ Berkeley Municipal Code Chapter 23C.12 inclusionary housing Requirements

To: Housing Advisory Commission

From: Marian Wolfe, Vice-Chair Housing Advisory Commission

Subject: Framework for Affordable Housing (Regarding Housing for a Diverse, Equitable, and Creative Berkeley)

Date: September 5, 2019

Introduction

I have undertaken a detailed review of the two parts of the Framework – the shorter Council Recommendation and the longer background report. To make this review easier for you I am providing both a brief summary of my comments, which is then followed by detailed comments that are linked to actual page numbers and statements in the two reports.

Two basic recommendations for the use of Measures O, P, and U1 listed in the framework are:

- Expand existing affordable housing programs
- Provide substantial resources into additional directions such as co-op ownership, democratic control and empowerment of underserved communities.

If I agree with recommendations and background information, I have not listed any comments. My detailed comments below refer to policy issues, economic considerations, factual errors, and polemical statements that I believe are inappropriate for this type of document.

Finally, I recommend that when you look at my detailed comments, you have the framework document in front of you for some “back and forth” review. The page numbers refer to the numbers that are on the document itself (and not the July 2019 City Council agenda packet page numbers). I hope that no one finds this confusing. If so, I can modify the page references.

Summary of Comments

1. Improve Understanding of Current Programs

- Use of Measure P funds for rent subsidies – while good in theory, in practice it is really important to provide some estimates of the number of people who can be helped and the cost to the City. The City would not want to start providing subsidies only to stop the program. Rental housing subsidies can be very expensive, and Measure P is not a guaranteed revenue source since revenue from Measure P is based on sales transactions (which vary) and will sunset after 10

years.

- TOPA is not a program that is operating in the City, and is not one which could easily be adopted. (See more detailed comments below.)
- Rent Control – The City cannot establish more restrictive rent control on its own, given Costa Hawkins. And, the ballot measure intended to overturn Costa Hawkins on the November 2018 ballot was defeated by a large majority of voters.

2. Political Statements about the Housing Market

- Statements that refer to landlords as “profit maximizers” are not accurate. There are a range of owners with different motivations, including wanting to retain long term tenants.
- Another statement which really stood out was the comment that the only people who can afford housing in Berkeley are those people who work for profit maximizing companies. This is untrue.
- Finally, I was surprised to see that one long term goal would be that half of the housing supply in Berkeley should be affordable, since two European cities have achieved this. In order to make this statement there would need to be a much more detailed assessment of all the changes that would need to be made to the Berkeley housing market (that operates in a much larger urban framework).

3. Challenges Regarding New Programs (Land Trust, Co-ops, and TOPA) - These three approaches require motivated tenants, administrative support, local funding, and suitable sites whose owners wish to sell. I believe that the challenges these approaches face need to be acknowledged more in the framework.

4. Income Limits – Several of the target groups, such as employees of BUSD, families with children in Berkeley schools, etc. may have household incomes that exceed lower-income thresholds. If this is the case, then leveraging with outside funds is no longer possible, and the City will need to provide more local funding. I believe that this caveat needs to be included.

5. Use of Publicly Owned Land – Identifying publicly owned land suitable for housing continues to be a challenge. I was surprised to see that the Premier Cru properties were mentioned as properties that are available but would require remediation. I have written several memos that present the obstacles to developing these sites for affordable housing. Stating that “remediation” is required is an understatement of the challenges of using these sites for permanent affordable housing.

6. Economic Analysis of Changing Inclusionary Requirements and Helping to Build ADU’s, and Small Unit Development – I believe that Councilmembers already know that

any changes to the Inclusionary Housing Requirements will need a financial feasibility assessment. The City has already undertaken this assessment for previous policy changes. What is less clear is whether anyone has undertaken financial analyses of the costs of adding ADU's (either as rentals or for-sale) and building two, three, or four-unit projects that could become sources of more affordable ownership. This is important in order to establish how affordable these units could be without financial subsidies.

7. Teaming with UC Berkeley to Develop More Student Co-Ops – As part of the HAC's student sub-committee, we learned about challenges in working with UC Berkeley on a joint effort to expand affordable housing for students. One issue which was unresolved was how to define student income, if students were still receiving financial support from their families.

8. Establishing Priorities for Access to Affordable Housing – Only recently has the establishment of priorities for affordable housing - to be given to households who were subject to redlining, or to other discriminatory housing and lending practices in the past, including foreclosures, been suggested as City policy. My principal concern is how the household or City will document this past discrimination. I believe more thought should be given to how this will work (and how evidence is documented) before we assume that this priority is possible.

9. Factual Errors

- Sources of funds for the HTF – revenues were stated as those from fee programs. The Framework does not mention revenues from HOME and CDBG. Text should be edited.
- Increase in jobs in the Bay Area between 1990 and 2019 – Percentage increase, as stated, is incorrect. Text should be edited.
- Decrease in in high-wage jobs was reported, but the data sources provides information on the decrease in middle-wage jobs. Text should be edited.

Detailed Comments on Framework Summary (Council Recommendation)

Misleading or Incorrect Statements:

Page 2 - As of 2015, the HTF received approximately \$7.6 million from fee programs, which was the only source of funding at that time.

This is not true. HOME and CDBG are also sources of funds for the HTF.

Page 3 – Description of Measure P is somewhat incomplete when initially stated here.

This description of Prop. P is somewhat misleading. First, the increase in the transfer tax only lasts for ten years (and I believe this should be mentioned at the beginning, although it is mentioned in the longer discussion of the framework). Secondly, the initial threshold sales price should explicitly include the starting amount of \$1,500,000 that will be adjusted annually to capture the top 33% of transfers.

Page 4 - Review of Existing Plans, Programs, Policies & Laws

TOPA is mentioned here as one of the City's programs. Although it has been discussed, it is currently not one of the City's programs at present.

Inappropriate Political Statement:

On page 4, there is a statement that is very political and is not completely accurate. It is the following:

“The plan proposes ... putting substantial resources into directions that reflect **core** Berkeley values such as cooperative ownership, democratic control and the empowerment of underserved communities.

I have lived in Berkeley (without any breaks) for 33 years (and another 11 years when I was a student). Up until recently cooperative ownership has not been a major aspect of policy or sentiment, but a goal expressed by some citizens and elected officials. Even more importantly, I do not believe that Berkeley residents have shared, core values. This statement assumes a shared mindset that does not exist.

Detailed Comments on Framework Report

Major Existing Programs - Recommend to Expand – Listed on Page 2

Four programs are mentioned. The first three are correct. However, the fourth one – Rental Vouchers – is not a City program, but a federal program that is managed by the City. I think it is misleading to include this along with the first three programs, and I would create a separate paragraph for it.

Additional Important Programs - Recommend to Significantly Expand – Listed on Page 2:

1. Transition some of Berkeley's existing rental housing to permanently affordable social ownership by expanding the Small Sites Program, accompanied by a Tenant or Community Opportunity to Purchase Act.

HAC staff undertook research on the TOPA approach for the City. It is clear that the City would need to provide a lot of technical assistance for a TOPA program, so I am concerned that this approach is still highlighted in the framework. Please remove it. A small sites program is very different.

2. Provide innovative homeownership opportunities for moderate and low income residents, including cooperative ownership using the Community Land Trust model.

This works if technical assistance would be provided and if there would be sites or existing developments that would work with this approach.

3. Significantly increase the supply of affordable live-work housing for artists and artisans.

Should the caveat of "income-eligible" be added here?

4. Encourage adding incremental units, such as accessory dwelling units (ADUs) or low-rise multiplex units that complement neighborhood character.

If city financial assistance is to be provided, then there needs to be some quid pro quo – owners of the new ADUs need to rent them under a rent-restricted program if they receive financial assistance, including fee waivers.

5. Partner with UC Berkeley to support creation of housing appropriate and affordable to students, faculty and staff.

This was one of the HAC's hopes, but we have gotten nowhere. I wonder how the lawsuit will impact this.

Policies to Ensure Equity and Sustainability- Listed on Page 2:

“Prioritize the use of public land for the creation of affordable housing.”

This is good in theory, but we haven't gotten very far with this strategy since there are very few appropriate city-owned sites (that is, in addition to those identified by BUSD).

Comment on this statement on Page 5:

“These Berkeley affordable housing funds and resources can bring in matching funds of as much as \$5 for every local dollar, significantly leveraging Berkeley's investments.”

Every time that leveraging is mentioned it is important to remember that projects will only be able to leverage outside funds if affordability is kept at 60% AMI or below in order to be competitive. There are other places in the framework that acknowledges this, but I think that the public needs to be reminded about this limitation.

Comment on this statement on Page 6:

“U1 funding can be used for anything that is necessary for the creation of permanently affordable housing, and as such is the most flexible source of regular affordable housing funds. Because of this flexibility, at least some (and possibly all) U1 funds should likely be reserved for use where other more restricted funds are not available.”

Remember that U1 cannot be used for bonding for housing, since U1 funds are technically General Funds. So U1 funds are not really as flexible as this statement makes it seem.

Another Comment on a Page 6 statement:

“With significant local and County, State and Federal funds now available to support Berkeley's deeply subsidized units for very low and extremely low income people, inclusionary housing requirements for market rate developments could be redirected towards production of housing for low and moderate income families - at higher inclusionary percentages than are currently in place for more deeply affordable units.”

It is very important to undertake financial analysis of requiring higher percentages. Be sure to consider pro forma analyses before making this conclusion. It will also help out later when there could be push back from developers.

I would have added the following phrase to the above statement...at higher

inclusionary percentages (that are financially feasible) than are currently in place for more deeply affordable units.

Comment on a Page 7 statement:

“When State and Federal funds are used, Berkeley is limited to supporting housing and services that meet their program criteria. Monies provided by Berkeley’s own generous voters are more flexible than State and Federal funds and can be strategically deployed to accomplish a broader spectrum of City priorities.”

It is very important to remember, however, that the City will need to subsidize affordability gaps completely and/or provide other incentives, such as zoning changes, since our local funds cannot be leveraged with outside sources if moderate-income groups are targeted.

HOUSING AND BERKELEY VALUES (Page 7)

“Berkeley was a national leader in inclusion, redrawing school attendance lines to integrate its school system, eliminating barriers for those with mobility and other physical limitations, preserving the affordability of rental housing by limiting rent increases to the level necessary for landlords to receive a fair return on their investment, and protecting lower and middle income neighborhoods from the displacement of so-called Urban Renewal.”

This is somewhat misleading. We really didn’t have urban renewal, so the City is taking credit for something it did not really do. A better way of stating this would be: Protecting lower and middle income neighborhoods from displacement by not adopting significant urban renewal policies.

THE AFFORDABILITY CRISIS (page 9)

I understand that the background information is provided to make a case for the framework to be adopted. However, it is difficult to ignore mistakes that would have been caught by a careful review of the document. Here are two examples:

Statement on page 9:

“Across the Bay Area, almost 1 million jobs have been created since 1990 - an increase of 33% over just 30 years.⁸ From 2009 to April 2019, the overall Bay Area job market increased by about 30%, while the tech industry increased by 56%.⁹”

This makes no sense. If the increase since 1990 was 33%, how could the increase in the last ten years be 30%? One of these numbers is not correct, since this would imply that job growth between 1990 and 2009 (almost as twenty year time period) was only 3%.

Statement on page 10:

“Approximately 90,000 low-wage jobs were added from 2016 to 2017 in the Bay Area, while the number of **high-wage jobs decreased in absolute numbers and as a percentage over the same time period.**¹³ “

I consulted the source provided here, and the actual source material indicates that the number and percentage of middle wage jobs has decreased, not high-wage jobs. So, the correct statement could actually make a stronger case for the framework.

EXISTING AFFORDABLE HOUSING PROGRAMS AND NEW OR EXPANDED OPPORTUNITIES

Opportunities for Expansion (page 15)

Rent and Eviction Protections:

“The State of California’s Costa-Hawkins Act, which instituted “vacancy decontrol,” allows rents to be reset to market rates upon conclusion of each tenancy, denying Berkeley and other cities the power to limit increases to a fixed percentage when units turn over. It also prevents regulation of rents in buildings constructed after 1979 and regulation of rents in single-unit properties, even when owned by large corporate landlords. These prohibitions should be revised or repealed. “

It is important to mention here that there was a recent state ballot measure (Prop 10 placed on the November 2018 ballot) that was designed to overturn Costa Hawkins this which failed. (Nearly 2/3 of voters voted against the repeal). Berkeley, as a local government, cannot overturn Costa-Hawkins, and so for now, we cannot suggest rent control as a policy to expand affordable housing.

Inclusionary Requirements (page 17)

“Because there are fewer County, State and Federal funds for low- and moderate-income units than very- and extremely-low, asking market rate developers to subsidize low and moderate income units may be a good strategy to achieve a greater mix of affordability levels Citywide and gain more permanently affordable units overall.”

This may work, but it is necessary to do a pro forma analysis and also talk about what level of density bonus would be required and what reduction in parking requirements would be needed in order for a project to still “pencil out” even while providing more low- and moderate-income units.

Direct Subsidies to Renters (page 17)

Measure P funds could be used for this purpose {direct subsidies to renters} if recommended by the Homeless Services Panel of Experts, and other City funds might be applied to expand direct renter subsidies and “rapid rehousing,” as is proposed in the City’s [1,000 Person Plan to Address Homelessness](#).

Before suggesting this, I recommend undertaking the calculations to see if there are limits to how many people can be helped and for how long they can be helped. Rental subsidies are very expensive, and Measure P funds are being pledged for many purposes.

Additional Important Programs - Recommend to Significantly Expand (Page 18)

Operating Subsidies for Berkeley Way (page 19)

“The amount that is likely to vary from year to year, perhaps one-quarter to one-third . . . , should then go to one- time expenditures such as capital subsidies to expand the supply of permanently affordable housing available to the homeless. For example, in the Berkeley Way project, the City has agreed to provide a capital fund that will cover 10 years of operating subsidies.”

Important: If Measure P is providing a capital fund to pay for 10-years of operating subsidies, this would not be a good example of using Measure P for capital expenditures. Staff and council should be sure to review the definitions of capital expenditures and operating subsidies.

“Transition some of Berkeley's existing rental housing to permanently affordable social ownership by expanding the Small Sites Program, accompanied by a Tenant or Community Opportunity to Purchase Act. . . This process is also an opportunity to expand limited equity cooperative ownership.” (Page 19)

I strongly suggest that City policies first focus on the small sites rental program and then see if the City has the staff to undertake limited equity co-ops and/or TOPAs.

Provide innovative homeownership opportunities for moderate and low income residents,

including cooperative ownership using the Community Land Trust model (page 20)

“Berkeley currently has about 300 units in limited-equity and non-equity cooperatives...”

Do these include student co-ops? If so, it should be stated

Individual homeownership opportunities (page 21)

“Although they are few in number, Berkeley has some small parcels of publicly owned land embedded in neighborhoods that may be suitable for townhouse-style or other low-rise homes. In order to preserve affordability, the City should either retain ownership of the land or convey it to a community land trust, rather than selling it outright. Working with Habitat for Humanity or a similar organization could reduce the cost of construction and increase affordability for these units. “

This is a good idea, but we must be aware that only a handful of units could be provided this way given the scarcity of city-owned sites. Again, consider administrative costs of supporting this program.

Other Models - Challenges: (page 22)

“In addition, residents can misunderstand the condominium form of ownership and underestimate the need to work cooperatively with other owners. Cooperatives are less likely to have this problem.”

It would be good to explain why cooperatives are more likely to work than condominium form of ownership.

Significantly increase the supply of affordable live-work housing for artists and artisans. (Page 22)

“The City also has the potential to require affordable live/work units, or provision of land for such units, as part of development approvals throughout Berkeley.”

It would be helpful to include some models of this as practiced in other cities.

Encourage adding incremental units, such as accessory dwelling units (ADUs) or low-rise multiplex units, that complement neighborhood character (page 23)

“There are many opportunities to add one, two or more units to existing properties at relatively

modest cost. When sold as condominiums such units can be affordable to middle-income families who have difficulty getting into the current market for single-family homes. Accessory dwelling units (ADUs), even rented at market rate, can also be affordable to middle income individuals. In addition, low-rise multi-family housing such as duplexes, triplexes, courtyard apartments, and multiplexes can also be inserted into existing neighborhoods, and may provide additional opportunities for middle-income families to enter the housing market.”

I encourage some pro forma development. The cost of adding an additional unit to an existing parcel can be higher than you think, particularly if the unit pays required fees.

Opportunities for Expansion: (page 23)

“Where possible the City should encourage addition of family-sized units as well as smaller ADUs. The City Council recently approved a referral to study of the possibility of allowing up to quadplexes into areas currently zoned for a single family home + ADU. These housing types are already allowed in most other zones. Modest incentives such as expedited review of applications, low interest loans or small capital subsidies may be sufficient to persuade property owners who add such units to reserve them for lower-income families. These incentives should be explored, and a program developed to support the reservation of additional neighborhood units for affordable housing. “

I would be happy to provide technical assistance in this area, since I have participated in similar work for Santa Cruz County as part of a larger team.

Opportunities for Expansion: (page 24)

“The Berkeley Student Cooperative serves students in community college and the Cal State system as well as at U.C. Berkeley. It is eligible for funding through the Housing Trust Fund and some Measure O funding could be used to help purchase existing buildings near campus to make them permanently affordable to their student residents, who predominantly come from low-income families. While the City of Berkeley may choose to allocate some Housing Trust Funds to student housing, the University of California should provide the vast majority of funding for this important type of housing, as it is the University’s responsibility to ensure their students are housed.”

How is household income defined if city funds are used? Would income include parent’s income for students supported by their parents in college? Estimating income can be complicated. Do not assume that all students who would want to live in co-ops predominantly come from low-income families unless the City has actual information to support this assertion.

Policies to Ensure Equity and Sustainability (page 25)

“People at risk of displacement or who have been displaced from Berkeley, in particular those who have been subject to redlining or other discriminatory housing and lending practices in the past, including foreclosures.”

This will require a lot of documentation if it is done accurately. Would the tenant/buyer provide the documentation?

“Artists and artisans who need live-work spaces”

Assume that they are below a certain income threshold?

“Families with children in Berkeley schools”

Assume that they are below a certain income threshold?

“People who work in Berkeley; in particular those who work for the Berkeley Unified School District or in emergency services (firefighters, doctors, police, nurses, etc.)”

Assume that they are below a certain income threshold?

“Locating high densities of housing near or on transit corridors and reducing parking requirements at such developments can yield increased public transit use and greater incidence of people living closer to their workplaces.”

Transit doesn't mean you live closer to your job. And, what about two- or more workers in the household – who work at different locations? While it is true that a location near transit could increase transit use, it may not result in residents living closer to their jobs.

Prioritize the use of public land for the creation of affordable housing. (Page 26)

“Other parcels may also be eligible for housing but would require remediation. For example in 2017, the City purchased a property at 1001 - 1011 University Avenue, with the express intention of converting the property for use as affordable housing.”

This property was purchased without any cost considerations of how much it would take to re-use it or demolish it. This is not a good approach for the future – it makes more sense to undertake due diligence first. I would not include these properties as good

examples of the use of public land, given all the constraints which I have documented in other memos to the City. Let me know if you want me to provide you with the background material again.

POLITICAL STATEMENTS

There are several statements in the longer framework discussion where the phrasing and content appear to be politically motivated. As a professional, these statements “jumped out” at me, and so I have listed them below, along with alternative means of expressing somewhat similar ideas.

Comment on this statement on Page 5: We believe that Berkeley should aspire to make at least 30% of its housing, around 15,000 units, permanently affordable, and eventually strive to achieve 50% protected or reserved affordable housing, to match the “social housing” mix of progressive European cities such as [Amsterdam](#) and [Vienna](#).

I am sure that staff means well but this is so, so unrealistic given that we are in the United States, and that Berkeley is only one City in this country. This can be a goal for progressive advocates, but I do not believe it belongs in a publicly circulated document sponsored by the City.

Page 8 Statement

We must do what we can to preserve the diversity of our City. A community that excludes most low and moderate income people is no longer a source of opportunity. ~~A community no longer affordable to those who work for the common good rather than for profit-maximizing companies will no longer be equitable.~~

I crossed out the sentence here, since it is just wrong and sounds so very political.

People who are not “profit-maximizers” can still afford to live in Berkeley. For example, according to a 2011 article in the Berkeleyside, the average salary for a UC Berkeley professor was \$149,100. If two professors lived together, they can definitely afford Berkeley housing. And, these are 2011 figures, so it is very likely that the average UC Berkeley professor makes more.

The Affordability Crisis – Pages 9 and 10

Below, I have copied in several statements from the framework that describe market

conditions, and I have provided alternative wording which is less political.

“Owners of older housing stock in Berkeley are able to increase their profits as they ride the exploding demand from high-paid professionals and the increases in UC Berkeley’s student population - squeezing lower-income tenants who must pay most of their incomes to find housing near jobs or family, or end up homeless. “

Owners of older housing stock in Berkeley are able to increase profits (assuming that repair and maintenance costs do not rise as quickly as rents) as they benefit from increased demand from well-paid professionals and UC Berkeley students. This results in the need for lower-income tenants to pay more of their incomes for housing located near jobs or family, or end up homeless.

”But while increased rents at the high end of the market encourage production of new housing that high-wage workers can afford, rent increases in older housing simply generate windfall profits for their owners and fuel displacement of middle and lower income tenants.”

My Comment: These windfall profits would only be possible if a long term owner owns the property (so that there are lower mortgage payments). However, if there is a new owner, it is very unlikely that higher rents would not result in windfall profits, given the higher costs of financing to acquire the property. This topic was my dissertation focus at UC Berkeley, and I would be glad to explain more if anyone is interested.

Statements on page 14:

“Maintaining diversity requires Berkeley to both increase the supply of housing overall and to remove a substantial part of our housing, new and existing, from the speculative market.”

If it is speculative then there is no guarantee that rents would rise. What is actually being described here are market forces. The word “speculative” again adds a slant to the discussion.

“This protected affordable housing should be allocated on the basis of need, using techniques ranging from non-profit and community ownership to regulation of rents (through traditional rent control)”

Berkeley can only operate with Costa Hawkins rent control now, so rent control is not really a solution.

Partner with UC Berkeley to support creation of housing appropriate and affordable to students, faculty and staff. (Page 32)

“The University of California **should** take greater responsibility for housing its students. This will require the Regents to allocate more funding for student, faculty and staff housing and the State legislature to include this funding in the State budget. In addition, the Regents **must stop** the practice of increasing enrollment without regard for the carrying capacity of both UC Berkeley and the City of Berkeley.”

Remember that the university does not need to listen to the City. I would not use language like “should” and “must” given the lawsuit situation.

Codify Deep Green Building standards for healthy and sustainable buildings, and emphasize other measures to increase environmental sustainability. (Page 33)

“Source sustainability produced materials from fair trade, fair wage and culturally and environmentally friendly suppliers.”

Culturally friendly suppliers??? This does not sound right and could be defined in ways that sound less discriminatory and more succinct.

Housing Advisory Commission

September 5, 2019

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Improve and enforce the Smoke-Free Multi-Unit Housing Ordinance**

Preface addressed to the Housing Advisory Commission

Below is a draft referral to City Council.

The recommendation to the HAC is to send the referral below to council, and to transmit a copy to the City Council Agenda Committee so that it arrives along with our July recommendations.

Introduction

On July 11, 2019, the Housing Advisory Commission referred to council proposals for modifying policies for enforcement of the Smoke-Free Multi-Unit Residences ordinance (BMC 12.70.035).

The recommendations within go farther in two ways:

1. Current City policy contradicts the existing ordinance. We propose that the City Manager be directed to make policy consistent with the law.
2. We suggest changes to the ordinance itself and related enforcement policies, in light of experience reports received by the Housing Advisory Commission and by some individual members thereof.

Recommendation

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that those policies do not contradict the ordinance.

Details of the contradictions between policy and law are explained below.

Additionally, modify BMC 12.70.035 to require that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.

2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City's brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Modify BMC 12.70.035 so that the City will receive non-anonymous but confidential complaints and record these for one year. Upon the first such complaint in a 6 month period, the City shall send appropriate notice as in section 12.70.035(C) to all units in the building, informing tenants about the prohibition and penalties. (Confidentially shall be preserved for the personal safety of the filer of such a complaint.) For purposes of (non-confidential) second and third complaints, notice on the basis of a confidential complaint is treated as 12.70.035(C) notice.
5. Establish a City policy that City inspection officers and other enforcement officers who enter a multi-unit residence and observe clear evidence of tobacco smoking *may* and in some cases *should* report that fact to the City's Code Enforcement Officer who shall treat that the same way as a non-anonymous tenant complaint. (Thus, it may serve as the first, second, or third complaint for enforcement purposes.)

Explanations and Rationales

1. Aligning enforcement policy with the law

The complaint form on the City's website contains a statement of policy (in an "Information Sheet") that is not consistent with ordinance. Item 5 on the information sheet reads (emphasis in the original):

If it is the second complaint within a six month period a note is made and no additional notice will be sent to the person(s) responsible. The second complaint can be made by the same resident as the first complaint or by a resident in another unit in the same building. ***The second complaint must be dated at least 10 days after the date of the notice sent by City of Berkeley to the person(s) responsible.*** You may call the Tobacco Prevention Program (see #10) for this information.

The highlighted section is the problem. BMC 12.70.035(D) says:

If within a six month period following issuance of a notice under subdivision C, the City receives at least two complaints from residents of at least two separate units of the same multi-unit residence [...] *the person(s) responsible for the violation shall be guilty of an infraction [...] [emph. added].*

The 10 day delay rule, imposed by policy, contradicts the plain language of the law which contains no such delay period.

Presumably the delay period is meant to ensure that the person(s) responsible for the violation have time to receive, read, and act upon the warning. It may in fact be a reasonable grounds for appeal that the second and third complaints arrived too quickly for the person(s) accused to have corrected the problem. Nevertheless, in individual circumstances, it might also be an unreasonable grounds for appeal.

In any event, the ordinance does not support the 10 day delay policy.

It may be helpful to modify BMC 12.70.035(D) to make it clear that second and third complaints must refer to a violation or violations that occur after section (C) notice has been made.

It may be helpful to modify BMC 12.70.035(D) to use the date of delivery of a notice, and for the City to send notices using the USPS confirmed delivery service.

Returning to the policy declarations on the “Information Sheet”, the City declares in item 6 (emphasis in the original):

If it is the third complaint, information about the person(s) responsible is sent to the City Enforcement team and a citation may be issued. ***Please note that the issuance of a citation is an absolutely discretionary process based on the City’s resources, competing time constraints, and whether it is clear that the complaints are being filed in good faith.*** Only two complaints may be made by tenants in the same unit. All three complaints may not be made by tenants in the same unit.

The Code Enforcement Officer and City Attorney no doubt enjoy broad prosecutorial discretion but the statement above declares a policy wide open for prosecutorial abuse.

Criteria such as “competing time constraints” and “based on the City’s resources” are so vague as to mean nothing more than “we’ll enforce it if we feel like it”. Further, there are no criteria or checks on the judgment of whether or not a complaint was made in good faith.

Such reservations of discretion are intimidating and excessive for what should be, in many cases, a nearly ministerial process of checking the complaint forms and issuing

a citation.

The City Manager should form policy that if the Code Enforcement team decides not to issue an infraction, they must clearly state the reasons for their decision and inform the complaint filers of these reasons. Complaint filers must have a right to appeal and, if appropriate, amend their complaints with further evidence.

The City's declared indifference to enforcing the ordinance risks worsening the threat of retaliation. This is a very serious threat. See item 4, below.

2. Enforce signage violations under the Residential Safety Program

Smoke free housing is a safety issue and the signage is part of how that condition is maintained. Since such signage is unambiguously part of the condition of the physical structure, it should be treated as a building code requirement enforced under the Residential Safety program.

3. Enforcing brochure requirements

Evidence from the Berkeley Considers survey and heard by HAC commissioners strongly suggests that in many cases, making everyone aware of the ordinance is enough for some tobacco smokers to change their behavior.

The City should take that seriously, and take steps to boost awareness of the ordinance.

Based on anecdotal evidence, tenants seem generally to have never received the brochure that informs them of their rights and responsibilities under the ordinance. In the Berkeley Considers survey, several respondents indicated their surprise at learning their is such an ordinance.

Making systematic violations of the brochure requirement an infraction provides tenants with an alternative mode of complaint that can potentially help resolve ongoing violations without risking personal retaliation for pointing the finger at a particular tobacco smoker or smokers.

Here, prosecutorial discretion can be again aided by policy. Upon credible evidence that a landlord is in violation, the Code Enforcement Officer might (by policy) issue a first warning to the property owner or landlord, and send the brochure to all units.

Finally, in one instance, an ad for tenants advises potential applicants that the building is "slowly transitioning" to non-smoking, implying that smoking is permitted and lawful by existing tenants. Systematically misinforming potential tenants of their

rights should be treated as a violation of the brochure provision. (See attached ad, page 2, criteria 1.)

4. Non-anonymous but confidential complaints

The Commission and Subcommittee heard repeatedly, and the Berkeley Considers survey also suggested, that many fear filing a complaint for threat of retaliation.

The threat of retaliation is quite real. Notably, Carol Denny who has been a tireless advocate for strengthening this ordinance was recently assaulted at and near the residential property where she lives, allegedly in part as retaliation for filing complaints under the ordinance. She received a concussion in one of these assaults.

5. City enforcement officials of any kind should report violations

Under the existing ordinance, infractions may be issued for reasons other than the “three complaint” process.

Serious and ongoing situations like Ms. Denny’s (described above) make it clear that sometimes, such alternative enforcement is a appropriate and a matter of public safety.

Any City enforcement officer (including police officers) entering a property and observing clear evidence of tobacco smoking, especially evidence of tobacco smoking associated with particular tenants or units, *may* report that evidence to the Code Enforcement Officer.

City officials called to a building because of a complaint related to the ordinance (such as signage violations, brochure violations, or calls to the scene of violent retaliation) *should* be on the lookout for clear evidence of tobacco smoking, reporting such back to the Code Enforcement Officer.

In this way, the ordinance may be enforceable in extreme cases while reducing the risk of retaliation (or further retaliation, as the case may be) against residents.

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Studio at Crossroads Village MHA

Berkeley

OPEN HOUSE

Sunday July 3rd 2pm-3pm

-or-

Thursday July 7th 7pm-8pm

430 square foot studio apartment on the first floor available at Crossroads Mutual Housing Association, a 26 unit 2 building complex located almost at the corner of University and [San Pablo Avenues](#) in [Berkeley](#). Move in date is [August 15](#), preferably, or [Sept. 1st](#).

We are self-managed and operated. We need new members who are excited to be a part of making Crossroads a better place to be. Attend monthly board meetings, join the board, help keep common areas clean, host barbeques for your neighbors or ? Your enthusiasm and self-motivated follow through in participation is what we are looking for. Be creative with what that might look like for you.

You join the non-profit organization that is Crossroads Mutual Housing Association with your \$656 security deposit plus \$25 membership fee. There is no equity, and no individual ownership of the units. This is perpetual affordable housing. With permission you may alter the interior of your apartment, but you will not be reimbursed for upgrades.

47 people live here, ranging from 1-75 years old. We are very diverse; many languages are spoken here. Turnover is extremely low. Some families have lived

http://coopnet.ork.net/home/studio_at_crossroad...

here for generations. Though, initially, the idea for Crossroads was for it to be a place where you could live cheaply and save enough money to buy a house and move on. We do not accept Section 8 vouchers.

Studio completely redone two years ago with wall to wall carpeting, fresh paint, linoleum in kitchen, new cabinets, counter top and tile. Garage and laundry facilities on premises. New tenant would be first on a waiting list for a parking space.

Complex is gated and very private from the hustle and bustle of the city streets. Lots of potted plants, a shared patio with a barbeque right behind the studio. Bicycle racks in the courtyard. We have a meeting room which may be used to host your private events, birthday parties, meetings, etc. for free.

Rent includes gas, water and garbage. You pay the electric bill for your unit (ranges from \$9-60/month depending on your usage).

Applicants must meet the following criteria:

1. Be non-tobacco smokers (we are slowly transitioning to a non-smoking building by requiring new tenants to be non-smokers).
2. When living at Crossroad you may not own or rent a property elsewhere, or otherwise have an additional dwelling.
3. Be interested and excited to participate in the operations of the building and actually do it!
4. Your income must be at least 3 times the monthly rent of \$328. That means \$984/month or \$11,808 annually. At the time of move in you also must not make more than \$45,100 annually. 2 adults may not make more than \$51,000 annually.
5. Be willing to observe quiet hours from 10pm-6am and simultaneously not be super sensitive to noise transmission through the walls, floors, and ceiling. We have no insulation and sound travels easily between units.
6. No more than 2 people may occupy the studio.

OPEN HOUSE

Sunday July 3rd 2pm-3pm

-or-

Thursday July 7th 7pm-8pm

Please join us for an open house to view the apartment, meet a couple members, and ask any questions. You may fill out an application at that time or e-mail me for a copy (I have photos too, just ask). Be sure to attach \$10 check or money order for the credit check. From the qualified applications we receive we will be doing interviews by committee from July 17-19th and will notify interviewees of acceptance by July 20th.

Entrance is located just north of the Wells Fargo Bank through the black metal gate. Use gate code posted there to gain access.
1970 San Pablo Ave, Berkeley, 94702.

Unit Available

Units at Atchison Village, Richmond - Click [HERE](#)

Co-op Training & TA Available at BACLT

NOW for new & existing co-ops! Need board training on Property Management, Finances or other issues? Need help starting a Co-op? Contact: BayAreaCLT.org or call 510-545-3258.

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Let us know when you have a Co-op vacancy. We'll post it under "Units Available" and it will be seen by hundreds of folks looking for a co-op. Contact us at: CoopNetwork

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To: Members of the Housing Advisory Commission
From: Marian Wolfe, Vice-Chair, Housing Advisory Commission
Subject: Fall 2019 Bi-Annual Report Considerations

Date: September 5, 2019
.....

In Spring 2019, the HAC submitted the first of two bi-annual reports required by Ballot Measure U1. Ballot Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “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.” The major recommendations at that time were to provide \$5 million dollars of discretionary funds for Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs. These recommendations are broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019. Staff will provide this information to the HAC, and in turn, the Chair and Vice-Chair will update the Spring 2019 report.

One important factor to consider is that there is now a draft Housing Framework which the HAC, other City Commissions, the Measure O Bond Oversight Committee, the Homeless Services Panel of Experts, City Staff, and the Council will be reviewing and discussing. This Housing Framework, once adopted, will apply to Housing Trust Funds, as well as to Measures U1, O, and P Revenues.

At a future meeting, we may wish to discuss how this evolving process impacts the HAC’s responsibility with regards to U1 funds. Do we assume that the City’s information on revenues and expenditures will continue to report information on U1 funds separately from other housing funds? (This is important since U1 revenues cannot be used to finance housing bonds in the way that Measure O funds can be used. The HAC may decide it is important to monitor this situation.)

Uberti, Michael

From: Housing Advisory Commission
Sent: Monday, July 29, 2019 12:47 PM
Subject: FW: Invitation to Participate in the Regional Analysis of Impediments to Fair Housing Choice Stakeholders Workshops

Importance: High

Hello,

Please see the message below regarding workshops, including one in Berkeley on August 13th.

Thank you,

Mike Uberti

Community Development Project Coordinator
City of Berkeley Health, Housing & Community Services Department
2180 Milvia Street, 2nd Floor, Berkeley CA 94704
510.981.5114
muberti@cityofberkeley.info

From: Patricia Wells [mailto:PWells@oakha.org]
Sent: Monday, July 29, 2019 11:23 AM
To: Patricia Wells <PWells@oakha.org>
Subject: Invitation to Participate in the Regional Analysis of Impediments to Fair Housing Choice Stakeholders Workshops
Importance: High

Greetings!

On behalf of the Alameda County AI Collaborative, I invite you and/or your colleagues to join us at one of three upcoming stakeholders workshops for the *Alameda County Regional Analysis of Impediments to Fair Housing Choice (Regional AI)*.

I am reaching out to you because of your expertise and your organization's contributions to help ensure Oakland is a vibrant community for all.

During the Regional AI workshop, you will have an opportunity to provide feedback regarding your organization's programs/projects, fair housing issues in the County, and potential solutions to those issues.

The results of the workshop will be submitted as part of the County's AI report, and will help guide future housing policies and housing goals, so I hope you can find a workshop that fits your schedule. Please reserve your seat at the workshop of your choice at the link below.

There are three options for workshop dates and locations available:

- **Workshop #1 - Tuesday, August 13, 2019, 10:30 a.m. to 12 p.m.**
 - Berkeley Central Library, 3rd Floor Community Meeting Room, 2090 Kittredge St., Berkeley, CA 94704
- **Workshop #2 - Wednesday, August 21, 2019, 2 p.m. to 3:30 p.m.**
 - Oakland Library, 81st Avenue Branch, 2nd Floor Community Room, 1021 81st Ave., Oakland, CA 94621

**** The OHA team will be attending the Oakland August 21st workshop.****

- **Workshop #3 - Thursday, August 22, 2019, 2 p.m. to 3:30 p.m.**
 - Alameda County Housing and Community Development Building, Public Meeting Room, 224 Winton Ave., Hayward, CA 94544

Please RSVP at the following link: <https://www.eventbrite.com/e/alameda-county-regional-analysis-of-impediments-stakeholder-workshop-registration-66397395397>

Thank you for your partnership,

Patricia Wells

Patricia Wells
Deputy Executive Director
Oakland Housing Authority
1619 Harrison Street
Oakland, California 94612
(510) 874-1517 (Office)
(510) 874-1674 (Fax)
Oakha.org

OHA offices will be closed to the public every other Friday. Please look on our website, www.oakha.org, for a complete schedule of office closure dates.

Uberti, Michael

From: Derek Sagehorn <sagehoe@gmail.com>
Sent: Thursday, August 15, 2019 11:16 AM
To: Housing Advisory Commission
Subject: Social Housing Proposal - 8/17/19 HAC Subcommittee

Hello,

I write in support of the proposal "A Plan to Solve the Housing Crisis Through Social Housing" before the HAC subcommittee. This model merits serious consideration by city leaders as a way to guarantee security to residents as well as financial sustainability to the building and operation of subsidized housing. The solidarity rent and re-investment reserve are critical components that are novel to the Berkeley and American subsidized housing sector but are best practices in global social housing schemes.

As an Oaklander, I hope that my city can follow Berkeley's lead in developing a similar social housing strategy. As these ideas develop, please ensure special attention is paid to governance as it relates to operation and maintenance costs. The deferral of routine maintenance and critical capital improvements is politically easy but punishes current and future tenants.

Thank you for your consideration of this item.

Sincerely,

--

Derek Sagehorn
(925) 783-1963
sagehoe@gmail.com