



Kate Harrison
Councilmember, District 4

CONSENT CALENDAR
April 11, 2023

To: Honorable Mayor and Members of the City Council
 From: Councilmember Harrison
 Subject: Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

RECOMMENDATION

Refer \$579,000 to the June 2023 Budget Process for annual City staffing costs and for allied non-profits to implement and administer programs associated with acquisition and prevention of displacement from multi-family housing including the Small Sites Program, investments related to the Empty Homes Tax, and administrative implementation of the proposed Berkeley Community and Tenant and Opportunity to Purchase Act (COPA/TOPA):

Community Development Project Coordination for acquisition capacity of 3-6 additional projects per year (HHCS)	1.5 FTE (1 FTE for the Empty Homes Tax and 0.5 FTE for COPA/TOPA) - \$318,915* *Includes \$4,500 to support office, technology, and training needs
Community Development Project Coordination for COPA/TOPA (HHCS)	0.5 FTE - \$108,088
Deputy City Attorney II	0.35 FTE - \$101,884
Qualified Organization Capacity Support for two additional projects per year (in addition to existing allocation of \$100,000 to the Bay Area Community Land Trust)	\$50,000

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing and displacement crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been

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particularly burdensome in a city where 58% of residents are renters.¹ While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build or acquire sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.² Unfortunately, Alameda County's housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.³

As documented by the Rent Board-sponsored Anti-eviction Mapping Project Report, the crisis has contributed to extreme displacement, with the City losing "49.2% of its Black population between 1990 and 2020," and "only 30% of households below 80% of Area Median Income (AMI) occupy[ing] units that are [] affordable to them."⁴

The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions including enhancing the resources of the Small Sites Program to support acquisitions under the Empty Homes Tax and COPA/TOPA, and staffing to implement and administer the COPA/TOPA. The market will not do this on its own. Acquiring and preserving affordable housing is key to reaching the housing and equity goals codified in Berkeley's recently adopted 2023-2031 Housing Element and strategic plan because this is a cost-effective way to ensure the city does not lose the affordable homes it already has while it invests in producing more affordable homes overall.⁵ The City of Berkeley is pursuing a number of strategies to acquire properties and make them permanently affordable but is forced to do so without adequate resources for City staff, its non-profit partners and for acquisition of properties.

Before the 2008 financial crisis, Berkeley had a robust housing department. The department was downsized and merged with the health department to form Health, Housing, and Community Services (HHCS). Despite limited housing staff, the Department has excelled in face of unprecedented Council demand for housing and acquisition. In contrast to other housing strategies, acquiring existing properties does

¹ Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>.

² Id.

³ California Housing Partnership Housing Needs Dashboard, 2019, <https://chpc.net/housingneeds/?view=37.405074,-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production>.

⁴ "Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity," 2022.

⁵ *City of Berkeley Housing Trust Fund and Small Sites Program Guidelines*. <https://berkeleyca.gov/sites/default/files/2022-04/Housing-Trust-Fund-Guidelines.pdf>.

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not result in carbon-intensive demolition and it maximizes continuity and price security, minimizing displacement of long-term and low-income residents. However, to meet this demand in the face of the City's new Housing Element and other policies, it is critical to bolster staffing in the housing division.

BACKGROUND

The Small Sites program, which acquires and renovates occupied, multifamily rental properties and converts into permanently affordable units or non-equity housing cooperatives, has successfully purchased properties, most recently 13 units of affordable housing on Solano Avenue and eight units in South Berkeley on a church property.⁶ The program has been a critical piece of Berkeley's affordable housing strategy through the acquisition and rehabilitation of rental units. The sites guarantee below market rate rents.

On November 8, 2022 nearly two thirds of Berkeley voters approved Measure M, the Empty Homes Vacancy Tax, intended to incentivize owners of housing property to bring units back on the market and discourage speculation. The law will go into effect beginning January 1, 2024 and is expected to identify thousands of vacant units that could be candidates for acquisition, while also generating millions of dollars in revenue for housing acquisition and production. In addition to the staff needed to simply administer the tax, the City needs additional staff to help vet potential candidate properties identified as vacant and possibly available for acquisition. As a general tax, funds from the Empty Homes Tax will be placed into the General Fund. However, the voters in passing Measure M approved the non-binding intention of using the revenue in ways consistent with the Housing Trust Fund as well as other municipal purposes at the discretion of the Council.⁷

In addition, on March 10, 2020, COPA/TOPA was first presented to the Berkeley City Council's Land Use, Housing and Economic Development Policy Committee. The ordinance was heard again in March and May of 2021 before passing out of Committee on May 20, 2021 with a qualified positive recommendation. The Mayor held an informational work session on COPA/TOPA on January 27, 2022.⁸ The ordinance would create legal rights for tenants to make the first offer or match any final offer to buy their home whenever the owner chooses to put it up for sale. Alternatively, tenants could assign these rights to an affordable housing developer so that it can prevent the displacement of the tenants by acquiring the property and preserving its affordability. COPA/TOPA would also provide technical assistance, education, and financing to help make these purchases possible.

⁶ Savidge, Nico. "To Boost Affordable Housing, Berkeley Looks to Buy, Not Just Build." *Berkeleyside*, 19 Sept. 2022, <https://www.berkeleyside.org/2022/06/05/berkeleys-affordable-housing-acquisition-rehabilitation-small-sites>.

⁷ As discussed in the August 2022 Council report that accompanied the Empty Homes Tax and the tax ordinance.

⁸ Mayor Jesse Arreguín, "Tenant Opportunity to Purchase Act, Adding B.M.C. Chapter 13.89," January 27, 2022, <https://berkeleyca.gov/sites/default/files/2022-04/2022-01-27%20Item%2001%20Tenant%20Opportunity%20to%20Purchase%20Act.pdf>

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Thus, COPA/TOPA provides pathways to stabilize existing housing for tenants and preserve affordable housing, allows tenants to become first-time homeowners, and facilitates opportunities for democratic ownership of residential property. To be effective, COPA/TOPA requires a well-funded staffing infrastructure to administer and enforce it. Education, legal and technical assistance to tenants is also needed during implementation to ensure the rights that COPA/TOPA provides can be meaningfully exercised.

FUNDING DETAILS

HHCS' housing services are currently provided by two units; one unit, the Housing Development Unit, is dedicated to affordable housing development through the City's Housing Trust Fund, including the Small Sites Program. The unit has a total of 3.5 FTE. None of the staff are dedicated specifically to Small Sites. Instead, this program has been absorbed into the workload of the unit alongside other housing development projects.

The Department reports that at peak times ahead of multi-year predevelopment or development processes, each Small Sites Program project demands up to 0.5 FTE. The additional 1.5 FTE contemplated in this item could assist HHCS with expanding the capacity of the program and using data from the Empty Homes Tax to identify properties for acquisition and rehabilitation by the City or its partners, including the Land Trust, non-profit developers and the Berkeley Housing Authority.

Current Small Sites Program duties include, but are not limited to:

- Managing projects funded through the Small Sites Program, including acquisition, rehabilitation or new construction by other organizations (typically nonprofit developers);
- Coordinating the disposition of City-owned property for development as affordable housing as needed;
- Developing competitive solicitations (NOFAs, RFPs, RFQs) for development funding as well as consultant services;
- Providing technical assistance, reviewing funding applications, underwriting projects, and making funding recommendations;
- Preparing housing loan or grant agreements using boilerplate documents and negotiate revisions with borrowers. Researching and drafting other types of agreements as needed;
- Monitoring projects during predevelopment and construction. Reviewing and approving draw requests and work with the Department's fiscal unit to disburse funds;
- Preparing reports and presentations for the City Council and Housing Advisory Commission.

In addition, this budget referral includes the approximately .5 FTE as proposed by the Department in order to implement additional part-time support from HHCS to coordinate the acquisition of properties in connection with COPA/TOPA.

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The .5 FTE Community Development Project Coordinator duties will include:

- Program Design and Development, including coordinating with CAO to develop process, procedures, forms, etc.
- Developing and maintaining a webpage with certified Qualified Organizations (QO) and Supportive Partners (SP), active seller notices to tenants, and tenant/QO statements of interest
- Certifying and renewing QOs and SPs monitor and evaluate them on an ongoing basis
- Advising tenants and QOs on applying for SSP funding
- Developing targeted materials and provide ongoing education for landlords and tenants.
- Organizing trainings, meetings and webinars, and act as liaison to professional and civic groups, community organizations, and individuals

The City Attorney’s Office also indicates it will need additional resources to implement COPA/TOPA, as follows:

Deputy City Attorney II***		
Task	% FTE	Ordinance Reference
Adjudicate policy exemptions, such as definition of principal residence, family in family transfer, and medical hardship waivers	5%	13.89.050
Adjudicate non-compliance with ROFR (verifies bona fide offers when dispute reported)	5%	13.89.100
Landlord/tenant mediation	5%	13.89.170
Legal Analysis of potential violations	5%	13.89.170
Remedies/Civil Action for violations	10%	13.89.170
Support advising of tenants and QOs	5%	
	35%	

***This is strictly related to ordinance implementation and does not reflect any staffing required for legal challenges to the ordinance

Finally, this request also includes an additional \$50,000 per year to assist Qualified Organizations with staff support to acquire up to two projects per year. The \$25,000 per project line item is included to build sufficient project management capacity for partners with the City. HHCS already acquires approximately two projects per year through the Small Sites Program and provides \$100,000 in capacity support to the Bay Area Community Land Trust. Berkeley will need to support additional start-up capacity and allow for ongoing support through pre-development funds related to specific small sites and/or COPA/TOPA projects.

Thanks to the foresight of Berkeley voters, the Council and staff, the Council has a wide variety of General Fund, Special Tax, and fee revenue that can be used to acquire housing and maintain it as affordable for current residents and future generations. The Measure U1 tax, the Housing Trust Fund, Measure O, and Measure M Vacancy Tax all have a strong nexus to property acquisition.

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It is in the public interest to consider funding staff and non-profit support for acquisition of housing to remain perpetually affordable as part of the June, 2023 budget process.

FISCAL IMPACTS OF RECOMMENDATION

\$579,000 per year in staffing costs to enhance the Small Sites Program, fund programmatic and investment of Empty Homes Tax proceeds, and implement and administer COPA/TOPA.

ENVIRONMENTAL SUSTAINABILITY

Acquiring and rehabilitating existing housing stock can be a lower carbon alternative to demolition and building new affordable housing.

CONTACT PERSON

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