



Ben Bartlett
Councilmember District 3

CONSENT CALENDAR
February 27, 2024

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Referral to the City Attorney: Eminent Domain Feasibility Analysis for 2902 and 2908 Adeline Street Properties and Abandoned House on 1946 Russell Street

RECOMMENDATION

Refer the City Attorney to conduct an analysis and report to the Council on the feasibility of using eminent domain to enable the City to purchase the blighted commercial properties on 2902 and 2908 Adeline Street, as well as the adjacent abandoned house on 1946 Russell Street for the purposes of developing mixed-use affordable housing.

CURRENT SITUATION

Our City is estimated to have more than 100 vacant residential buildings, and numerous vacant commercial properties. These often dilapidated properties negatively impact neighborhoods, business districts, City revenues, and the overall quality of life. One such example is the blighted properties on 2902 and 2908 Adeline Street, and the adjacent abandoned house located on the corner of Adeline Street and Russell Street (collectively “2902 Adeline”). The three properties were bundled by the Realtex Group of San Francisco for the purposes of developing housing. However, the project appears to be inactive, and for years has been in a state of persistent, significant, deterioration and disrepair, which has subjected the community to unsafe, and unhealthy conditions.

Chapter 12.92 of the Berkeley Municipal Code on Anti-Blight, states that the purpose of the chapter is to require “a level of maintenance of residential and commercial property which will promote healthy neighborhoods and protect and preserve the livability and appearance of the City.” Yet the dilapidated and unsafe conditions of 2902 Adeline continue to threaten the health, safety, and general welfare of our citizens.

Numerous community members and neighbors have complained about the dangerous conditions associated with the abandoned site. Community members noted several fire hazards, and the presence of rats and other vectors that transmit disease and parasites. It is for these reasons that we find 2902 Adeline to be in violation of BMC 12.92.030.

At the same time, the City has a pronounced need for mixed-use affordable housing. According to Berkeley's 1000 Person Plan to Address Homelessness and its accompanying affordable housing report, the City's current system has not created sufficient "permanently subsidized housing resources" to service the homeless population, and, instead, relies on short-term solutions, such as rapid rehousing, that do not provide any structural changes to the housing market. Furthermore, the number of people experiencing homelessness in Berkeley has increased by an average of 10% every two years, with dramatic racial disparities: since 2006, "65% of homeless service users in Berkeley identify as Black or African American."¹ To add to the problem, Berkeley's homeless services shelter beds have been serving "fewer unique households over time".²

As a result, the Council should uphold BMC 12.92 and ensure we take action by referring the City Attorney to analyze the feasibility of using eminent domain to purchase 2902 Adeline to develop mixed-use supportive housing that is both affordable and also provides mental and physical health care to its residents.³

This recommendation is within the City's authority. Chapter 12 of the municipal code goes on to state, "Whenever the City determines that property in the City is maintained as a nuisance," it shall follow per 12.92.050, and must provide a Notice to the Owner of Abatement of Nuisance.

As public agencies may condemn property only for public use, the City Attorney should include in the analysis a resolution of necessity as set forth in CCP §§ 1245.210 et seq. Such resolution must establish all of the following:

- The public interest and necessity require the project
- The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury
- The property in question is necessary for the project

BACKGROUND

The City has the power of eminent domain – to take private property for public use upon payment of just compensation. State law authorizes cities to condemn property

¹https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx#:~:text=Simply%20put%2C%20a%20plan%20to,right%2Dsizing%E2%80%9D%20the%20system.

²https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx#:~:text=Simply%20put%2C%20a%20plan%20to,right%2Dsizing%E2%80%9D%20the%20system.

³<https://www.cbpp.org/research/housing/supportive-housing-helps-vulnerable-people-live-and-thrive-in-the-community>

necessary to carry out their municipal duties and functions. In *Kelo v. New London*, the Supreme Court allowed the use of eminent domain to facilitate the city's redevelopment and community enhancement efforts.⁴ In *Hawaii Housing Authority v. Midkiff*, an eminent domain was used to break up land oligopolies, again in the interest of serving the community.⁵ Finally, in *Berman v. Parker*, the Court upheld Congress' directive to redevelop parts of DC to enhance the conditions of those living in substandard housing.⁶ While this strategy has not been readily employed by many cities, there are significant precedent-setting cases to justify the City of Berkeley considering this option as a way to acquire the 2902 Adeline properties to serve the public.

Based on the referral response item that originally appeared on the agenda of the May 16, 2017, Council Meeting and was submitted by City Attorney Zach Cowan, cities are permitted to use their eminent domain powers for purposes beyond those that the Legislature has expressly identified as public purposes. City Attorney Cowan concluded that providing affordable housing for those who cannot afford market-rate housing is a "public use" for purposes of eminent domain. In addition, with respect to open space, it has also long been generally recognized that providing open space is a public purpose. Similarly, acquiring property to provide public services, such as courthouses, municipal buildings, public health, or recreational services, is also appropriate. In sum, the City may use its power of eminent domain to acquire property for public services and buildings, affordable housing, and open spaces.

There exist healthy precedents for the successful use of eminent domain to establish affordable housing.

- a. Vermont Housing Land Fund: The Sarah Cole House was chosen for the project because of its history as an owner-occupied rooming house. Despite having resident owners, the building had fallen into disrepair. Neighbors first objected to the development as another assault on the neighborhood and protested to the local zoning board. BCLT responded with an appropriate site plan, staffing plan, and house rules. Opposition was dropped and the zoning was approved. After BCLT rehabilitated the house and grounds, area residents expressed satisfaction with the neighborhood improvement.
- b. In Lawrence, Kansas. This CDC promotes low-income housing by providing home ownership programs and credit counseling to help people qualify for mortgages. The organization acquires properties to sell to moderate and low-income people and renovate or build homes to sell to people not qualifying for

⁴ *Kelo et al. v. City Of New London et al.* <https://www.law.cornell.edu/supct/html/04-108.ZS.html>

⁵ *Hawaii Housing Auth. v. Midkiff* <https://supreme.justia.com/cases/federal/us/467/229/case.html>

⁶ *Berman v parker* <https://supreme.justia.com/cases/federal/us/348/26/case.html>

traditional loans. Tenants become homeowners through education, communication, home improvement, and creative financing.

POTENTIAL USES FOR PROPERTY

After thorough consideration of alternatives for this blighted property, we find it in the best interest of the City of Berkeley and its communities that we explore more affordable housing initiatives for this property. As it stands, the 2902 Adeline properties are prime locations for construction of new residential living accommodations.

At the same time, the City has a pronounced need for mixed-use affordable housing. Mixed-use housing development allows for the placement of a variety of land uses, including commercial, office, and residential uses, within the same development or district. Mixed-use developments allow for a balanced mix of local jobs and services to be situated at or near residential areas, promoting walkability by reducing the need for commuting trips to and from work. They also offer cost savings for both developers and residents, as commercial uses can help subsidize affordable housing units. Since Berkeley is in need of more local job creation and more affordable housing, especially for young people, the Council should seek to promote these types of developments to tackle both needs at once.

Mixed-use developments can also serve as artistic spaces like theaters, performance spaces, and community art spaces for neighbors to use and enjoy.

It is also possible to use these locations for open green spaces. Open space has long been generally recognized as a public purpose for land. A green space would provide welcome refuge in such a dense, commercial section of Berkeley. South Berkeley suffers from an inequitable amount of green space. In fact, the City Council passed the Equity in Green Space policy of 2017⁷, specifically prioritizing the creation of green space in South Berkeley.

Acquiring property to provide public services, such as municipal buildings, public health, or recreation, is also appropriate. Services like these are often starved of land in a city where property prices have risen astronomically in recent years.

The City may use its power of eminent domain to acquire the 2902 Adeline properties for affordable housing, open spaces, and public services and buildings.

RATIONALE FOR RECOMMENDATION

⁷ Cal. Berkeley City Council, Reg. Meeting, Referral. (2017). <https://drive.google.com/file/d/1J5Ded2H-8J1UCFw35n3cQKaHEEV8syQi/view?usp=sharing>

Our publicly owned land is scarce. Social service programs, housing developments, and other public services require adequate land, which is in short supply in Berkeley. There have been voluminous complaints from residents, neighbors, and local businesses, with health and safety complaints directly stemming from these properties. These properties are located near daycare centers, a park, and a library, directly impacting the safety of families and nearby residents when out walking. Given the current unsafe conditions of the 2902 Adeline properties, which are in violation of BMC 12.92.030 and the purpose of the BMC Chapter 12.92, the Council should refer the City Attorney to perform an analysis on the properties to conclude whether or not the City can and should use eminent domain to purchase the properties for public good. By using the properties for much-needed public benefits—such as recreational options— we will be serving Berkeley residents while also incentivizing property owners to maintain their parcels and promote healthy neighborhoods.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts of this recommendation are normal operating Staff time for the analysis to be conducted at normal hourly rates.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with conducting an analysis on the properties. However, if the City Attorney concludes the use of eminent domain is appropriate, maintaining the properties will promote healthy neighborhoods and protect and preserve the livability and appearance of the City. Given the fact that the properties are blighted, eminent domain will allow us to effectively address any potential environmental contamination of the building.

CONTACT PERSON

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Attachment

1. Photos of 2902 - 2908 Adeline Street Properties
2. Photos of abandoned house at 1946 Russell Street

Attachment 1:























Attachment 2:

