



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, APRIL 8, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: March 18, 2019**
2. **Review and Approve Draft Agendas:**
 - a. 4/23/19 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory Of**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

- None

Adjournment – Next Meeting Monday, April 15, 2019

Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.

Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting. After the deadline for submission, residents must provide 10 copies of written communications to the City Clerk at the time of the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.



COMMUNICATION ACCESS INFORMATION:

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. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

* * *

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on April 4, 2019.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, MARCH 18, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

Roll Call: 2:33 p.m. Councilmember Wengraf absent.

Public Comment: 0 speakers.

Review of Agendas

1. Approval of Minutes: March 11, 2019

Action: M/S/C (Harrison/Arreguin) to approve the minutes of 3/11/19.

Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – None; Absent - Wengraf.

2. Review and Approve Draft Agendas:

a. 4/2/19 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Harrison/Arreguin) to approve the agenda of 4/2/19 with the revisions noted below.

Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – None; Absent - Wengraf.

- *Time Critical Item – Unlawful Detainer Case (Arreguin) – Item added to agenda*
- *Item 3 West Campus Pool (Arreguin) – Councilmember Hahn added as a co-sponsor*
- *Item 4 WDDIC Relinquishment (Davila) – Councilmembers Harrison and Wengraf added as co-sponsors*
- *Item 5 Holocaust Remembrance (Wengraf) – Councilmembers Robinson, Hahn, and Mayor Arreguin added as co-sponsors*
- *Item 6 Music Festival (Robinson) – Councilmember Davila added as a co-sponsor*
- *Item 7 Support AB969 (Robinson) – Councilmembers Harrison and Davila added as co-sponsors*
- *Item 8 Support SCA1 (Robinson) – Mayor Arreguin and Councilmembers Droste and Harrison added as co-sponsors*
- *Item 11 Short Term Referrals (City Manager) – Item scheduled for April 23, 2019*

Policy Committee Track Items

- *Item 14 Book Festival (Arreguin) – Revised item submitted; Councilmembers Harrison, Davila, and Wengraf added as co-sponsors; Scheduled for April 2, 2019 Consent Calendar*
- *Item 15 Draft EIR (Arreguin) – Councilmember Wengraf added as co-sponsor; Scheduled for April 2, 2019 Action Calendar*

- *Item 16 Vehicle Dweller Program (Davila) – Revised item submitted. Scheduled for April 2, 2019 Action Calendar*
- *Item 17 Electrification (Harrison) – Councilmember Hahn added as a co-sponsor; Scheduled for April 2, 2019 Consent Calendar*
- *Item 18 Revolving Loan Fund (Robinson) – Referred to the Land Use, Housing, and Economic Development Committee*
- *Item 19 Adopt a Spot (Droste) – Scheduled for the April 2, 2019 Consent Calendar*

Order of Items on the Action Calendar

- Item 13 Rent Board Presentation
- Item 10 New Marina Fee
- Item 15 Upper Hearst Draft EIR
- Item 9 Cannabis Ordinance
- Item 16 Vehicle Dweller Program
- Item 12a/b Safe Lead-Paint Practices

- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
- Selected Item #15 Upper Hearst Draft EIR
- 4. Adjournments In Memory Of - None**

Scheduling

- 5. Council Worksessions Schedule – received and filed**
- 6. Council Referrals to Agenda Committee for Scheduling**
- Requested that the City Manager provide a date to agendaize the Short Term Rental item for discussion at the Agenda & Rules Committee
- 7. Land Use Calendar – received and filed**

Adjournment

Action: M/S/C (Harrison/Arreguin) to adjourn the meeting.

Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – None; Absent - Wengraf.

Adjourned at 3:08 p.m.

* * *

I hereby certify that these are the true and correct minutes of the meeting of March 18, 2019.



Mark Numainville, City Clerk

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, April 23, 2019
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

- DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

- DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.

City Manager Comments: The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.

Public Comment on Non-Agenda Matters: Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

1. **Cannabis Ordinance Revisions; Amending the Berkeley Municipal Code From: City Manager**

Recommendation: Adopt second reading of Ordinance Nos. 7,645-N.S., 7,646-N.S., 7,647-N.S., 7,648-N.S., and 7,649-N.S., amending the Berkeley Municipal Code (BMC) which would:

1. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for all cannabis business types;
2. Revise ordinance language to reflect State regulations;
3. Create a path to allow a new business type (Retail Nursery Microbusinesses); and
4. Protect youth by restricting cannabis advertising within the city.

The ordinances would adopt BMC Chapters 12.21 and 20.40, amend Chapters 12.22, and 23C.25, Sub-Titles 23E and 23F, and repeal Chapters 12.23, 12.25 and 12.27.

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

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

Consent Calendar

- 2. Contract: Masayuki Nagase for North Berkeley Senior Center Measure T1 Public Art Commission**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract for an amount not to exceed \$100,000, and any amendments thereto, with Masayuki Nagase for a public art commission for North Berkeley Senior Center.
Financial Implications: Public Art Fund - \$100,000
Contact: Jordan Klein, Economic Development, 981-7530
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 23, 2019**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$5,680,000
Contact: Henry Oyekanmi, Finance, 981-7300
- 4. Purchase Orders for Crayon Inc.: Using Riverside County's Joint Volume Licensing Program to Renew Microsoft's Enterprise Agreement**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a three-year renewal of the City's "Enterprise Agreement" (EA) for Microsoft licenses purchased through Crayon Inc., utilizing a cooperative purchasing agreement established by the County of Riverside's joint volume licensing program for the period beginning May 1, 2019 through April 30, 2022 for an amount not-to-exceed (NTE) \$2,968,000.
Financial Implications: Various Funds - \$2,968,000
Contact: Savita Chaudhary, Information Technology, 981-6500
- 5. Contract No. 118499-1 Amendment: Civic Makers, LLC for Enterprise Resource Planning (ERP) Change Management Support Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 118499-1 with Civic Makers, LLC for extension of Enterprise Resource planning (ERP) related Change Management Support Services, increasing the amount by \$400,000, for a total not to exceed \$529,025 from December 1, 2017 to June 30, 2021.
Financial Implications: FUND\$ Replacement Fund - \$400,000
Contact: Savita Chaudhary, Information Technology, 981-6500

Consent Calendar

- 6. Donation: Memorial Bench at Cesar Chavez Park in memory of Julio Costa Furtado**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Julio Costa Furtado.
Financial Implications: Marina Fund - \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 7. Donation: Memorial Bench at Cesar Chavez Park in memory of Barry Wofsy**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Barry Wofsy.
Financial Implications: Marina Fund - \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 8. Donation: Information Display Case at the Berkeley Rose Garden**
From: City Manager
Recommendation: Adopt a Resolution accepting a donation of an information display case valued at \$7,429 from the Friends of the Berkeley Rose Garden.
Financial Implications: \$7,429 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 9. Grant Application: Cosco Busan Round 2 Grant Program from the National Fish and Wildlife Foundation**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to: submit a grant application in the amount of \$182,000 to the National Fish and Wildlife Foundation for the Cosco Busan Round 2 Grant Program; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

Consent Calendar

- 10. Contract: Bay Cities Paving & Grading, Inc. for Street Rehabilitation & Surface Seals FY 2019 Project**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Street Rehabilitation & Surface Seals Project, Specification No. 19-11271-C; accepting the bid of Bay Cities Paving & Grading, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$5,688,307.
Financial Implications: Various Funds - \$5,688,307
Contact: Phillip Harrington, Public Works, 981-6300
- 11. Contract No. 10276A Amendment: Interface Engineering, Inc. for On-Call Electrical Engineering Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Interface Engineering, Inc., Contract No. 10276A, for on-call electrical engineering consulting services, increasing the contract amount by \$90,000, for an amount not-to-exceed \$220,000, and extending the contract from June 30, 2019 to June 30, 2020.
Financial Implications: Various Funds - \$90,000
Contact: Phillip Harrington, Public Works, 981-6300
- 12. Authorize Negotiation in the Open Market for the FY2018 Measure M Low Impact Development (LID) Woolsey Street Project, Specification 18-11183-C**
From: City Manager
Recommendation: Adopt a Resolution: 1. accepting staff report that no bids were received when Specification No. 18-11183-C, FY2018 Measure M Low Impact Development Woolsey Street Project was re-advertised; and 2. authorizing the City Manager to negotiate in the open market in accordance with Article XI, Public Works and Supplies, Section 67(a.) of the City Charter.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300
- 13. Resources for Community Development's 2001 Ashby Avenue Predevelopment Loan Application**
From: Housing Advisory Commission
Recommendation: Authorize funding for the Resources for Community Development (RCD) predevelopment loan application for \$368,000 for its proposed development at 2001 Ashby Avenue.
Financial Implications: See report
Contact: Amy Davidson, Commission Secretary, 981-5400

Consent Calendar

- 14. Senate Constitutional Amendment 1 and Assembly Bill 10**
From: Housing Advisory Commission
Recommendation: Endorse Senate Constitutional Amendment (SCA) 1 and Assembly Bill (AB) 10.
Financial Implications: See report
Contact: Amy Davidson, Commission Secretary, 981-5400

Council Consent Items

- 15. Support of AB-953 “Cannabis: state and local taxes: payment by digital asset”**
From: Councilmember Bartlett
Recommendation: That the City Council support the cannabis state and local taxes payment by digital asset bill, helping to address legal cannabis businesses’ underbanking problem by allowing state and local tax authorities to collect cannabis-generated taxes via stable digital currencies.
Financial Implications: Minimal
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 16. The Center for Food, Faith, and Justice and Green the Church: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**
From: Councilmember Bartlett
Recommendation: Adopt a resolution approving the expenditure of an amount not to exceed \$500 per council member, including \$500 from Councilmember Bartlett, to the “Black, Green, and Traumatized: Environmental Trauma and Mental Health” event hosted by The Center for Food, Faith, and Justice and Green the Church. The funds will be relinquished to the city’s general fund for this purpose from the discretionary council office budget of Councilmember Ben Bartlett and any other council members who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$500
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 17. Black Repertory Group Theater: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**
From: Councilmember Bartlett
Recommendation: Adopt a resolution approving the expenditure of an amount not to exceed \$3,000 per council member, including \$3,000 from Councilmember Bartlett, to the Black Repertory Group, with funds relinquished to the city’s general fund for this purpose from the discretionary council office budget of Councilmember Ben Bartlett and any other council members who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$3,000
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Council Consent Calendar

- 18. Budget Referral: Good Government Ombudsman**
From: Councilmember Harrison
Recommendation: Refer to the 2019/2020 budget process to establish a Good Government Ombudsman to facilitate enforcement of Berkeley's good government laws through the City Clerk and City Attorney's Office.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 19. Support for Zero Emission Bills**
From: Councilmember Harrison
Recommendation:
1. Adopt a resolution of support for two bills that will move California towards eliminating greenhouse gas emissions from the transportation sector: AB 40, which calls for all cars sold in California to be zero-emission by 2040, and AB 1418, which calls for all public school buses in California to be zero-emission by 2030.
2. Send letter of support to Senator Skinner and Assemblymember Wicks.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 20. Adopt an Ordinance Adding Chapter 13.104 to the Berkeley Municipal Code Establishing a Prohibition on Contracting with Vendors Acting as U.S. Immigration and Customs Enforcement (ICE) Data Brokers, or Those Providing Extreme Vetting Services to ICE** *(Reviewed by the Agenda and Rules Committee)*
From: Councilmembers Harrison, Davila, and Bartlett
Recommendation: That the City Council adopt the attached Sanctuary Contracting Ordinance as amended. This ordinance prohibits the award of city contracts to vendors acting as U.S. Immigration and Customs Enforcement data brokers, or those providing extreme vetting services.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 21. Letters In Support of SB 54 (Allen) and AB 1080 (Gonzalez)**
From: Councilmember Wengraf, Mayor Arreguin, and Councilmember Hahn
Recommendation: Send a letter of support for SB 54 (Allen) and AB 1080 (Gonzalez) to Senator Ben Allen and Assemblywoman Lorena Gonzalez with copies to Senator Skinner, Assembly Member Wicks and Governor Newsom
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
- 22. Co-Sponsor the Screening of "Near Normal Man"**
From: Councilmember Wengraf and Mayor Arreguin
Recommendation: That the City of Berkeley become an official co-sponsor of the screening and discussion of "Near Normal Man" on April 29th at Berkeley City College
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

Council Consent Calendar

- 23. Support for SB 188 (Hairstyle Anti-Discrimination Law)**
From: Councilmember Robinson
Recommendation: Send a letter to Senator Mitchell, Senator Skinner, and Assemblymember Wicks supporting SB 188, which would amend the California Fair Employment and Housing Act to prohibit racial discrimination on the basis of hairstyle.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, 981-7170
- 24. Support for ACA-1: Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval**
From: Councilmember Robinson
Recommendation: Adopt a resolution supporting ACA-1, which would allow local governments to raise property taxes to fund bonds for the purposes of financing public infrastructure and affordable housing projects, as well as reducing the required vote threshold to authorize certain local special taxes for the purpose of funding public infrastructure and affordable housing. Copies of the resolution to be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Assemblymember Aguiar-Curry.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, 981-7170
- 25. Support for AB 273 and AB 44: Prohibit Fur Trapping and Sales**
From: Councilmember Robinson
Recommendation: Adopt a resolution supporting Fish and Game Code amendment AB 273, which prohibits the trapping of fur-bearing and nongame mammals for recreational or commercial purposes, and AB 44, which amends the Fish and Game Code to prohibit the sale of fur products statewide.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, 981-7170
- 26. Refer to the City Manager and the Housing Advisory Commission to Consider Reforming the Affordable Housing Mitigation Fee** *(Reviewed by the Land Use, Housing & Economic Development Committee)*
From: Councilmembers Robinson and Hahn, Mayor Arreguin, and Councilmember Droste
Recommendation: Refer to the City Manager, the Planning Commission, and the Housing Advisory Commission to consider possible reforms to the Affordable Housing Mitigation Fee, including adopting a per-square-foot fee structure, potentially on a geographic basis.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Council Consent Calendar

**27. Relinquishment of Council Office Budget Funds: “Post-Memory: A Decade of Art and Activism in Berkeley,” an art exhibit in honor of Zachary Cruz
From: Councilmember Droste**

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per sponsoring Councilmember, with funds relinquished from the discretionary Council Office Budgets of Councilmember Droste and any other Councilmembers who would like to contribute. Funds would go to cover the costs of the art exhibit “Post-Memory: A Decade of Art and Activism in Berkeley” at UC Berkeley. 2019 marks the ten year anniversary of the death of Zachary Cruz who died from road violence on Berkeley streets. The art exhibit will honor Zachary and raise awareness about road safety and Vision Zero in Berkeley. Additional details about the exhibit are attached. Donations will go to A to Z Families for Safe Streets, c/o Los Angeles Walks, 830 Traction Ave 3rd Floor, Los Angeles, CA 90013.

Financial Implications: Councilmember's Discretionary Funds - \$250

Contact: Lori Droste, Councilmember, District 8, 981-7180

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

Action Calendar – Public Hearings

28. **ZAB Appeal: 1722 Walnut St** *(Continued from March 26, 2019)*
From: City Manager
Recommendation: Conduct a public hearing, and upon conclusion adopt a Resolution to affirm the Zoning Adjustments Board decision to deny Use Permit/Variance #ZP2018-0021 to legalize an unpermitted detached dwelling unit in the rear yard area of a lot legally developed with an eight-unit apartment building, and dismiss the appeal.
Financial Implications: None
Contact: Timothy Burroughs, Planning and Development, 981-7400

Action Calendar – Old Business

29. **Missing Middle Housing Report** *(Continued from March 26, 2019. Item contains revised and supplemental material.)*
From: Councilmembers Droste, Bartlett, Robinson, and Kesarwani
Recommendation: Refer to the City Manager to prepare a report to the Council of examining methods, including potential revisions to the zoning code, that may foster a broader range housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.
Given the range of requests included in this referral, it is expected that responding to the referral will require a combination of field research, consultation with design professionals and other cities and agencies, and community outreach and engagement. Council requests that staff initiate this work as soon as possible.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, 981-7180
30. **Adopt a Spot Initiative** *(Continued from April 2, 2019)*
From: Councilmembers Droste, Kesarwani, and Bartlett
Recommendation: Refer to the Public Works Commission and Parks and Waterfront Commission to develop an Adopt A Spot initiative; specifically outlining potential environmental benefits, program costs, staffing. Rationale: -Adopt a Spot programs enable a network of volunteer residents to assist in city maintenance and clean up efforts which have great impact using minimal City staff/funding. -Vision 2050 will include stormwater and watershed management goals, both of which this program would support.
Financial Implications: Staff time
Contact: Lori Droste, Councilmember, District 8, 981-7180

Action Calendar – New Business

- 31. Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers** *(Reviewed by the Agenda and Rules Committee)*
From: City Manager
Recommendation: Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.
Financial Implications: None
Contact: Mark Numainville, City Clerk, 981-6900
- 32. City Council Short Term Referral Process – Monthly Update**
From: City Manager
Contact: Mark Numainville, City Clerk, 981-6900
- 33a. Recommendations for a Fossil Fuel Free Berkeley**
From: Energy Commission
Recommendation: The Berkeley Energy Commission recommends the City Council refer to the City Manager to implement the recommendations listed below as well as additional measures outlined in the attached report to aggressively reduce greenhouse gas (GHG) emissions in the city and the region.
Financial Implications: Unknown
Contact: Billi Romain, Commission Secretary, 981-7400
- 33b. Companion Report: Recommendations for a Fossil Fuel Free Berkeley**
From: City Manager
Recommendation: Refer to the City Manager to continue to implement existing policies and programs that are consistent with the recommendations in the Berkeley Energy Commission’s Fossil Fuel Free Berkeley Report, such as the Building Energy Saving Ordinance and development of new building codes that promote building electrification, and also to complete new evaluations and analyses of current and potential future greenhouse gas reduction programs and policies in order to inform next steps for accelerating progress to a Fossil Fuel Free Berkeley.
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 34. Presentation: Alameda County Mosquito Abatement District**
From: Alameda County Mosquito Abatement District
Contact: Ryan Clausnitzer, Alameda County Mosquito Abatement District, (510) 783-7744

Action Calendar – Policy Committee Track Items

- 35. Air Quality Monitoring Program**
From: Councilmembers Bartlett and Harrison
Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 36. Paid Family Leave Policy in Berkeley to Supplement California Paid Family Leave Program**
From: Councilmembers Bartlett, Hahn, Harrison, and Davila
Recommendation: That the City Council adopt this policy and refer to the City Manager and City Attorney to amend the proposed ordinance based on the recommendations of the Paid Family Leave (PFL) Subcommittee and to conform to legal and code consistency requirements.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 37. Local Construction Workforce Development Policy**
From: Councilmember Bartlett and Mayor Arreguin
Recommendation: Policy Recommendation: That the City Council refer to the Planning Commission to address the shortage of qualified local construction workers; worker retention, and elevated labor costs through the creation of a construction workforce development policy. This local workforce development policy will encourage housing and nonresidential development applicants to require contractors to utilize apprentices from state-approved, joint labor-management training programs, and to offer employees employer-paid health insurance plans. The policy will help stabilize regional construction markets; and enhance productivity of the construction workforce Berkeley needs to meet its General Plan's build-out goals.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 38. U1 Funds for Predevelopment Costs of Proposed Development at 2001 Ashby Avenue**
From: Councilmember Bartlett and Mayor Arreguin
Recommendation: Adopt a Resolution allocating \$368,000 of General Funds from Measure U1 tax receipts to Resources for Community Development (RCD) for predevelopment costs at 2001 Ashby Avenue.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Action Calendar – Policy Committee Track Items

- 39. Creation of Vehicle Dwellers Governance Body**
From: Councilmember Bartlett
Recommendation: Refer to City Manager for policy language to create a Governance Body for permitted vehicle dwellers in Berkeley. This proposal is meant to engender purpose and responsibility among participants. Accordingly, the Governance Body should be self-governing, self-organizing, and self-funding. Governance body will uphold the conditions outlined in the report. The Governance Body will convene weekly at a set time, and act as the final decision making body and conflict resolution forum. All residents, whether in attendance or not, agree to comply with the Body's decisions. Matters related specifically to drugs, weapons, violence, and/or criminal activity will result in immediate termination of residents' tenancy. Such matters may be taken up at the discretion of the Governance Body which may uphold, modify, or set aside termination. In cases of conflict among residents, the procedures outlined in the report will take place.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 40. Resolution in Support of a Public Bank**
From: Councilmember Harrison
Recommendation: Adopt a resolution affirming Berkeley's support for public banking and send that resolution to Governor Newsom, Senator Skinner, and Assemblymember Wicks urging state legislation to enable local agencies to create public banks.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 41. Allocate \$200,000 from the Street and Open Space Improvement Fund for the Design and Construction of a Protected Milvia Bikeway Pilot Project between University Avenue and Allston Way**
From: Councilmember Harrison
Recommendation: Adopt a Resolution allocating \$200,000 from the Street and Open Space Improvement Fund (SOSIF) to design and construct a protected Milvia Bikeway pilot project between University Avenue and Allston Street.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, 981-7140

Action Calendar – Policy Committee Track Items

42. **Referral to City Manager to Return to Council with an Amnesty Program for Legalizing Unpermitted Dwelling Units**
From: Councilmembers Wengraf, Harrison, and Hahn, and Mayor Arreguin
Recommendation: That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

Information Reports

43. **Ethical Climate Audit Status Report**
From: City Manager
Contact: Paul Buddenhagen, City Manager's Office, 981-7000
44. **Ambulance Billing Audit Follow Up**
From: City Manager
Contact: David Brannigan, Fire, 981-3473
45. **Status Report: City at Crossroads as Long-Standing Need for Structured Approach to Line of Business Experts Function Intersects with ERP Implementation**
From: City Manager
Contact: Savita Chaudhary, Information Technology, 981-6500
46. **LPO NOD: 2300 Shattuck Avenue, #LMSAP2019-0001**
From: City Manager
Contact: Timothy Burroughs, Planning and Development, 981-7400
47. **LPO NOD: 1414 Walnut Street/#LMSAP2018-0005 for the Former Garfield School**
From: City Manager
Contact: Timothy Burroughs, Planning and Development, 981-7400

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use

permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department
2180 Milvia Street
Tel: 510-981-6900
TDD: 510-981-6903
Fax: 510-981-6901
Email: clerk@cityofberkeley.info

Libraries:
Main - 2090 Kittredge Street
Claremont Branch – 2940 Benvenue
West Branch – 1125 University
North Branch – 1170 The Alameda
South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

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.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

~~~~~





Housing Advisory Commission

CONSENT CALENDAR

April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
 Subject: Resources for Community Development's 2001 Ashby Avenue  
 Predevelopment Loan Application

RECOMMENDATION

Authorize funding for the Resources for Community Development (RCD) predevelopment loan application for \$368,000 for its proposed development at 2001 Ashby Avenue.

FISCAL IMPACTS OF RECOMMENDATION

While there is not presently funding available in the City of Berkeley's Housing Trust Fund, the city is capable of allocating other resources to ensure the future success and viability of this predevelopment project for \$368,000.

CURRENT SITUATION AND ITS EFFECTS

At its February 7, 2019 meeting, the Housing Advisory Commission voted unanimously to support this \$368,000 pre-development loan to Resources for Community Development for its proposed development at 2001 Ashby. The votes for the meeting are located below.

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

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

BACKGROUND

This project is rated highly in terms of feasibility and addressing long term and systemic challenges in the South Berkeley and Adeline corridor area. By also serving as a location for the site of Healthy Black Homes, the project eventually will function as a convenient and effective location to address some of the communities hardest hit by displacement and gentrification within the City of Berkeley.

Resources for Community Development was selected by the Cooperative Center Federal Credit Union (CCFCU) after an RFP process. With 55-year affordability requirements, this development can serve the low-income community for years to come. Given the harshness of the housing crisis, this predevelopment loan application will move the needle forward in protecting everyone's right to safe and affordable housing.

#### ENVIRONMENTAL SUSTAINABILITY

Environmental impacts for a predevelopment loan will be none or minimal as the funding merely goes to research the feasibility and possible environmental impacts of a future development.

#### RATIONALE FOR RECOMMENDATION

This proposal, while it will need to be supported by additional money not currently present within the Housing Trust Fund, would help advance a reliable project that has been vetted by the Cooperative Center Federal Credit Union (CCFCU) for development. We are all aware of the Housing crisis hitting Berkeley and the East Bay and this project represents an important opportunity to preserve community, and to invest in affordable housing in the City of Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission considered other options such as not funding the predevelopment application, but found that the best step forward was to find a way to provide predevelopment funding for this particular project.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. Since no funds are available from the Housing Trust Fund at this time, the Council could refer this item to a Policy Subcommittee and/or to the Measure O Oversight Commission for consideration.

It is important to note that at the time of the Housing Advisory Commission recommendation, RCD estimated a City subsidy of approximately \$6 million. Subsequent to that recommendation, RCD revised its City subsidy estimate to nearly \$18 million. The increase is largely due to the unavailability of certain funding sources, including Alameda County A1 funds. It is typical for funding estimates to change during the predevelopment phase, as the project evolves and as the developer explores different funding options. RCD also revised the number, type, and affordability levels of the proposed rental units. The unit count increased from 85 to 88 units, and would include a roughly equal mix of studio, one-, two-, and three-bedroom apartments. Six units would be available to households earning up to 80% of the area median income (AMI), with the remainder serving households earning up to 30%, 50%, and 60% AMI.

#### CONTACT PERSON

Amy Davidson, Commission Secretary, HHCS, (510) 981-5406

**Attachments:**

- 1: Staff Memo to the Housing Advisory Commission - Resources for Community Development 2001 Ashby Predevelopment Loan Application



Health Housing and  
Community Services Department  
**Housing & Community Services Division**

## MEMORANDUM

**To:** Housing Advisory Commission (HAC)

**From:** Amy Davidson, Senior Community Development Project Coordinator

**Date:** January 28, 2019

**Subject:** Resources for Community Development 2001 Ashby Predevelopment Loan Application

### Recommendation

At its December 10, 2018 meeting, the Commission's Housing Trust Fund subcommittee voted to recommend Resources for Community Development's (RCD) predevelopment loan application for \$368,000 for its proposed development at 2001 Ashby, the current site of the Cooperative Center Federal Credit Union (CCFCU). (M/S/C: Tregub/Johnson)

The Housing Trust Fund guidelines allow project sponsors to apply for predevelopment funding at any time, with all recommendations for greater than \$50,000 going to the City Council for consideration. At this time, all the local funding in the Housing Trust Fund has been reserved for the Berkeley Way development so no funds are available. In November, voters passed Measure O, which will provide bond funding for affordable housing. Council has not yet identified priorities for this funding and will be working through its Policy Committee and with the to-be-appointed bond oversight bond to evaluate priorities. If the HAC recommended funding for this project, the Council's options include referring the project to one of those bodies for consideration.

### 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 reserved \$29.5M in HTF funding in 2018.

*A Vibrant and Healthy Berkeley for All*

### **Project Description**

CCFCU issued an RFP to select an organization to develop their site at 2001 Ashby and selected Berkeley-based RCD. CCFCU and RCD have entered into a Memorandum of Understanding outlining their plan for RCD to acquire the site and build 85 affordable apartments with ground floor commercial space, including space for Healthy Black Families. Because CCFCU wishes to sell by fall 2019, RCD is working to gain land use entitlements and complete its due diligence before then.

RCD is proposing 85 units, with a mix of studio, one-, two- and three-bedroom apartments affordable to households at or below 30% to 60% of area median income. Some of them would be set-aside for a to-be-determined special needs population, perhaps people who are homeless. RCD is committing \$28,000 of their working capital in addition to their staffing during this period. The predevelopment costs RCD is requesting assistance with include architecture and engineering expenses (45%), related testing, permits and fees, and a purchase deposit to CCFCU. These are all typical predevelopment period costs and are at a reasonable level for a project of this size.

### **Summary Analysis**

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

- Staff concluded that the proposed team is well qualified to undertake the proposed project. RCD is an experienced, Berkeley-based developer well known to City staff and the community, having developed and owning 56 buildings in the Bay Area. There are no outstanding findings on any RCD projects the City funded in the past.
- In addition to a feasible predevelopment proposal, the proposed project has many key elements of a feasible development: 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 85 units will probably help make the project both more cost effective and competitive. RCD projects requesting about \$6M from the City for development; this number is likely to change during the predevelopment period as RCD gathers information and other funding.
- 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 Healthy Black Families.







Housing Advisory Commission

CONSENT CALENDAR

April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
 Subject: Senate Constitutional Amendment 1 and Assembly Bill 10

RECOMMENDATION

Endorse Senate Constitutional Amendment (SCA) 1 and Assembly Bill (AB) 10.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts to supporting (SCA) 1 and (AB) 10.

CURRENT SITUATION AND ITS EFFECTS

The pieces of legislation described below have each been recently introduced for the 2019-2020 legislative session. The Berkeley Housing Advisory Commission considered both (SCA) 1 and (AB) 10 and recommended that the City Council endorse both measures at the February 7, 2019 Housing Advisory Commission meeting. The voting results are included below.

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

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

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

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

BACKGROUND

(SCA) 1 – introduced by Senators Allen and Wiener and co-authored by Senator Lara – propose that an amendment be placed on a future California State ballot that repeals Article 34 of the California State Constitution. This article presently “prohibits the development, construction, or acquisition of a low-rent housing project ... in any manner by any state public body until a majority of the qualified electors of the city, town, or

county in which [such a project] is proposed approve [it] by voting in favor at an election...”<sup>1</sup>

(AB 10) – introduced by Assembly Members Chiu, Bonta, Maienschein, Reyes, and Wicks and with multiple coauthors) – “for calendar years beginning in 2020, would increase the aggregate [low-income] housing [tax] credit dollar amount that may be allocated among low-income housing projects by an additional [\$500 Million] ... and would allocate to farmworker housing projects [\$25 Million] of that amount.”<sup>2</sup>

#### ENVIRONMENTAL SUSTAINABILITY

Investment in affordable housing opportunities, when coupled with viable transit options, has been found to contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

#### RATIONALE FOR RECOMMENDATION

The Berkeley City Council supports various efforts to invest in affordable housing, including at the state level.

#### ALTERNATIVE ACTIONS CONSIDERED

The Berkeley City Council can recommend for endorsement on a portion of the proposed pieces of legislation, or propose additional legislation to the endorsement request. While other housing bills of interest have been introduced for the 2019-2020 legislative session, their language is likely to change significantly in the coming months. Hence it is recommended that the City of Berkeley watches these bills, but takes no action at this time on these other bills.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission’s Report.

#### CONTACT PERSON

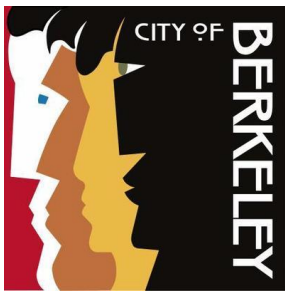
Amy Davidson, Commission Secretary, HHCS, (510) 981-5406

---

1

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SCA1&search\\_keywords=articl+34](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SCA1&search_keywords=articl+34)

<sup>2</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB10](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB10)



City of Berkeley, District 3  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR

April 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett  
Subject: Support of AB-953 “Cannabis: state and local taxes: payment by digital asset”

RECOMMENDATION:

That the City Council support the cannabis state and local taxes payment by digital asset bill, helping to address legal cannabis businesses’ underbanking problem by allowing state and local tax authorities to collect cannabis-generated taxes via stable digital currencies.

BACKGROUND:

In 2016, California voters passed Proposition 64 - the Adult Usage Marijuana Act. Today, California represents about a third of the North American cannabis market with the state taking in more than \$345 million in taxes last year alone. Proposition 64 was designed to create new revenue for the state and address public safety concerns by driving out the illegal market. However, these efforts are being compromised by cannabis businesses’ inability to engage in traditional banking services.

As a result, 70% of legal cannabis-related businesses across the US do not have a bank account, meaning this entire industry is run almost entirely in cash, creating profound implications for the industry’s sustainability, safety, and ability to pay taxes. In response to this, the Cannabis Banking Working Group (CBWG) was formed to address these concerns and concluded that while the current situation cannot stand, no policy outside of federal action could resolve this issue.

A possible solution is the use of stable coins. A stable coin is an electronic virtual currency tied to the US Dollar, thus inoculating the virtual currency from volatility. Therefore, stablecoins provide the same stability as cash, but is easier, safer, and less costly to administer.

To restate, AB-953, authorizes state and local tax agencies to use stablecoin to collect cannabis-related taxes. AB-953 presents an interim solution that will help realize legal cannabis’ promise of improved public safety and new revenue sources.

For more information:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB953](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB953)

FINANCIAL IMPLICATIONS: Minimal

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley’s Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

|                            |              |
|----------------------------|--------------|
| Councilmember Ben Bartlett | 510-981-7130 |
| Brian Gan                  | 510-981-7131 |

Attachment: (if necessary)

1. Draft Letter of Support

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981- • TDD: (510) 981-6903 • Fax: (510) 981-  
E-Mail:

Attachment 1:

April 1, 2019

The Honorable Assemblymember Phil Ting  
California State Assembly  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249

RE: Assembly Bill 953 (Ting) – Cannabis state and local taxes payment by digital asset - SUPPORT

Dear Assemblymember Ting,

The Honorable Mayor and Members of the Berkeley City Council are pleased to support AB 953, which will help address legal cannabis businesses’ underbanking problem by allowing state and local tax authorities to collect cannabis-generated taxes via stablecoin, providing a safe and cost-effective solution.

In 2016, California voters passed Proposition 64 – the Adult Usage Marijuana Act – with 57 percent of the vote. Today, California represents about a third of the North American cannabis market with the state taking in more than \$345 million in taxes last year alone (California Department of Tax and Fee Administration). Proposition 64 was designed to bring in new revenue for the state as well as address public safety concerns by driving out the illegal market. The post-Proposition 64 reality has been compromised by cannabis businesses’ inability to engage in traditional banking services.

As a result, 70% of legal cannabis-related businesses across the US do not have a bank account, meaning this billion dollar industry is run almost entirely in cash. For its part, California state government is bringing in hundreds of millions of dollars in cash delivered by armored vehicle. This underbanking has profound implications for the legal cannabis industry’s sustainability, safety, and ability to pay taxes. This is why the California State Treasurer convened the Cannabis Banking Working Group (CBWG) to address these concerns. In its 2018 report, CBWG concluded that while the status quo cannot stand, without federal action to legalize cannabis, no policy could solve this problem.

Stable virtual currency, also known as stablecoin, may provide a workable solution to cannabis’ cash problem. Stablecoin is tied to the US Dollar which inoculates the cryptocurrency from volatility experienced by other types of virtual currency. As such, stablecoin provides the same stability as cash but is far easier, safer, and less costly to administer. Examples of stablecoins on the market include TrueUSD, UPUUSD, and USDC – a stablecoin backed by Goldman Sachs.

Authorizing state and local tax agencies to collect and remit cannabis related taxes as an interim solution will help deliver on cannabis legalization’s promise for improved public safety as well as new and greater revenue sources. For these reasons and more, the Honorable Mayor and Members of the Berkeley City Council are proud to support AB 953.

Respectfully,

[Title of Report]

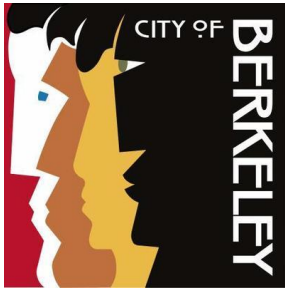
CALENDAR

the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin  
Mayor, City of Berkeley

Members of the Berkeley City Council





City of Berkeley, District 3  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR  
April 23rd, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett

Subject: The Center for Food, Faith, and Justice and Green the Church:  
Relinquishment of Council Office Budget Fund to General Fund and Grant  
of Such Funds

RECOMMENDATION:

Adopt a resolution approving the expenditure of an amount not to exceed \$500 per council member, including \$500 from Councilmember Bartlett, to the “Black, Green, and Traumatized: Environmental Trauma and Mental Health” event hosted by The Center for Food, Faith, and Justice and Green the Church. The funds will be relinquished to the city’s general fund for this purpose from the discretionary council office budget of Councilmember Ben Bartlett and any other council members who would like to contribute.

BACKGROUND:

The Center for Food, Faith, and Justice (CFFJ) is a nonprofit group that aims to address various interconnected social and environmental issues, such as poverty, and the relationship between huge health disparities and a rise in violence, in the South Berkeley community. CFFJ operates a wide range of initiatives, such as cooking classes for all ages and youth fellowship programs that act as outreach to neighborhoods to address nutrition, sustainability and housing issues.

Green the Church (GTC) is an initiative designed to tap into the power and purpose of the African American church community, and to explore and expand the role of churches as centers for environmental and economic resilience. The initiative works to empower all church members to develop practical solutions to economic and environmental issues in the Black community.

Donating to the “Black, Green, and Traumatized: Environmental Trauma and Mental Health” event hosted by The Center for Food, Faith, and Justice and Green the Church will provide the necessary resources for these organizations to educate and empower their communities on health, sustainability, and ecology resources.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$500 is available from fund. The cost is as follows: Donation to the “Black, Green, and Traumatized: Environmental Trauma and Mental Health” event hosted by the Center for Food, Faith, and Justice and Green the Church (\$500).

CONTACT PERSON:

|                            |              |
|----------------------------|--------------|
| Councilmember Ben Bartlett | 510-981-7130 |
| Brian Gan                  | 510-981-7131 |

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCIL MEMBERS FOR A GRANT TO BLACK REPERTORY GROUP TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

**WHEREAS**, Councilmember Ben Bartlett has surplus funds in their office expenditure account; and

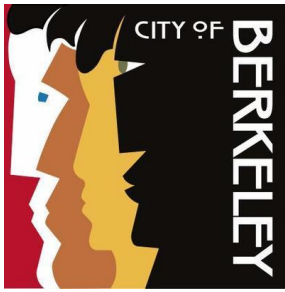
**WHEREAS**, California non-profit tax-exempt corporations – The Center for Food, Faith, and Justice and Green the Church - will receive funds in the amount of \$500; and

**WHEREAS**, The Center for Food, Faith, and Justice and Green the Church are nonprofit groups that provide access to health and sustainability education for underprivileged populations; and

**WHEREAS**, the provision of such services would fulfill the following municipal public purpose of providing educational programs, health equity, and promote cultural diversity among Berkeley residents.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Berkeley that funds relinquished by the Mayor and council members from their council office budget of up to \$500 per office shall be granted to the “Black, Green, and Traumatized: Environmental Trauma and Mental Health” event hosted by The Center for Food, Faith, and Justice and Green the Church.





City of Berkeley, District 3  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR

April 23rd, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett  
Subject: Black Repertory Group Theater: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds

RECOMMENDATION:

Adopt a resolution approving the expenditure of an amount not to exceed \$3,000 per council member, including \$3,000 from Councilmember Bartlett, to the Black Repertory Group, with funds relinquished to the city's general fund for this purpose from the discretionary council office budget of Councilmember Ben Bartlett and any other council members who would like to contribute.

BACKGROUND:

The Black Repertory Group is a long standing theatrical griot group that provides access to the dramatic arts for members from underserved populations. As a nonprofit organization, the Black Repertory Group Theater has provided access for and support to minority populations to learn and rediscover their cultural heritage through the productions of dramas, music, and dances. The theater has also been vital in helping young people raise their self-esteem, educating them on health and wellness, and preparing them for future careers. Donating to the Black Repertory Group Theater can enhance Berkeley's cultural diversity and allow constituents to explore and learn artistic and practical skills.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$3,000 is available from fund. The cost is as follows: Donation to the Black Repertory Theater (\$3,000).

CONTACT PERSON:

Councilmember Ben Bartlett 510-981-7130  
Brian Gan 510-981-7131

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE  
EXPENSE ACCOUNTS OF THE MAYOR AND COUNCIL MEMBERS FOR A GRANT  
TO BLACK REPERTORY GROUP TO PROVIDE PUBLIC SERVICES FOR A  
MUNICIPAL PUBLIC PURPOSE

**WHEREAS**, Councilmember Ben Bartlett has surplus funds in their office expenditure account; and

**WHEREAS**, a California non-profit tax-exempt corporation – the Black Repertory Group will receive funds in the amount of \$3,000; and

**WHEREAS**, the Black Repertory Group is a long standing theatrical griot group that provides access to the performance arts for underprivileged populations; and

**WHEREAS**, the Black Repertory Group provides education on African American history and their theater work is a cultural treasure to our community; and

**WHEREAS**, the provision of such services would fulfill the following municipal public purpose of providing educational programs, and promote cultural diversity among Berkeley residents; and

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Berkeley that funds relinquished by the Mayor and council members from their council office budget of up to \$3,000 per office shall be granted to the Black Repertory Group.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 23<sup>rd</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Budget Referral: Good Government Ombudsman

RECOMMENDATION

Refer to the 2019/2020 budget process to establish a Good Government Ombudsman to facilitate enforcement of Berkeley's good government laws through the City Clerk and City Attorney's Office.

BACKGROUND

Representative democracy requires transparency and accountability. In the post-Citizens United<sup>1</sup> landscape, big money<sup>2</sup> and lobbyists<sup>3</sup> can have an outsized effect on government undertakings. The people of Berkeley have enacted a series of reforms to support these values, beginning with the Berkeley Election Reform Act of 1974, a ballot measure that passed overwhelmingly and limited the amount of campaign contributions, among other reforms.

To promote the highest possible standard of ethical accountability, integrity, and independence among City employees and elected officials, Berkeley has a suite of "good governance" laws -- the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018).

A City Manager memo dated November 20, 2018 (attached) indicated that City administration is currently staffed to adequately enforce the Berkeley Election Reform Act, the Open Government Ordinance, and the Revolving Door Ordinance, but the mandates created by Public Financing Act have drawn employees away from other duties and implementation of the Lobbyist Ordinance is not fully feasible with current staffing levels.

The Fair Elections Act of 2016 established a public financing program to reduce the influence of private campaign contributions and ensure that personal wealth is not a

<sup>1</sup> <https://www.law.cornell.edu/supct/html/08-205.ZS.html>

<sup>2</sup> <https://citizenstakeaction.org/the-problem/>

<sup>3</sup> <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>

barrier to becoming an elected official. In two election cycles, the Fair Elections Act has already proven effective at achieving these goals, but the filing demands on the City Clerk's Office are burdensome and require more staff. Thus far, the Fair Elections Act has been enforced with existing staff because it is applicable only during election years, but the City Clerk's Office has had to shift employees from other functions to fulfill those duties.

The Berkeley City Council passed the Lobbyist Ordinance on October 2, 2018 with the intention of the City registering all lobbyists, providing ethics training, and maintaining quarterly reports. Thus far enforcement has been infeasible because of lack of staff.

An additional 1.0 FTE, designated as a Deputy City Attorney II, would allow full enforcement of the suite of good government laws including the Lobbyist Ordinance. Berkeley should invest in the principles of accountability by allocating funding for the 1.0 FTE the City Attorney office requires to enforce the laws Berkeley has already passed.

#### FISCAL IMPACTS OF RECOMMENDATION

According to the City Manager memo, approximately \$240,000 annually.

#### ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's climate and sustainability goals.

#### CONTACT PERSON

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

#### ATTACHMENTS

1: Fiscal and Administrative Impacts of the Lobbyist Ordinance



Office of the City Manager

November 20, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Subject: Fiscal and Administrative Impacts of the Lobbyist Ordinance

---

On October 16, 2018 the City Council adopted the second reading of Ordinance No. 7,629-N.S. the Lobbyist Registration and Regulation Ordinance. This new set of regulations will be effective on January 1, 2020.

At the first reading of the ordinance on October 2, 2018, the City Council requested that the City Manager provide an analysis of the costs and staff demands for implementation of the Lobbyist Ordinance. This specific analysis is provided below. When analyzing the impact of the Lobbyist Ordinance, it is important to consider the impact of administering the full package of Berkeley's "good government" laws – the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018).

Current staffing levels have been adequate to administer the existing mandates in the Berkeley Election Reform Act (BERA), the Open Government Ordinance (OGO), and the Revolving Door Ordinance. The addition of Public Financing in 2016 and the Lobbyist Ordinance in 2018 create two new significant mandates that are not accounted for in current staffing levels. In addition, neither mandate was adopted with a new revenue source and are funded from existing General Fund revenues.

As you will see below, the implementation of the Lobbyist Ordinance is a significant undertaking. To successfully implement and administer the Lobbyist Ordinance while continuing to administer and enforce existing "good government" laws staff estimates that 1.0 new FTE in the Deputy City Attorney II classification is required. The addition of a full FTE in the City Attorney's Office will allow for administrative and enforcement tasks to be properly re-distributed between the City Clerk Department and City Attorney's Office so that each department can have the bandwidth to absorb the new mandates. The fully loaded (salary plus benefits) cost of the new FTE is approximately

**\$239,804.** In addition to the staff cost, a new software module for lobbyist filings is estimated to cost approximately **\$20,000 per year.**

### **Lobbyist Registration Ordinance**

In evaluating the estimates for the costs to implement the Lobbyist Ordinance, staff based the estimates on implementation of a similar projects, the Public Financing Ordinance. However, it is likely that the administrative and enforcement demands for the Lobbyist Ordinance will exceed that of Public Financing. The Public Financing Ordinance is more intermittent in its demands on staff with most of the work falling around specific deadlines in an election year. The Lobbyist Ordinance will have more regular ongoing demands as lobbyists are registering and paying the fee throughout the year, completing their training on a rolling basis, and filing quarterly statements in every year. There will also likely be a more constant flow of complaints compared to BERA complaints that generally only arise during election season.

In addition, the estimates are difficult as staff does not know how many lobbyists will register and how many enforcement actions will there be year over year.

#### Components of Implementation (Dec. 2018 – Dec. 2019)

- Enhancement of NetFile System for Lobbyist Filing and Tracking
- Design of Required Forms
- Education for City Staff
- Education for Open Government Commission (OGC) Members
- Developing OGC Procedures for Administration, Investigation, and Enforcement
- Development of Required Trainings for Registered Lobbyists
- Development of Supplemental Regulations
- Development of Filing Procedures for Lobbyists
- Development of Staff Procedures
- Public Outreach and Education

#### Implementation Staff Demands (Dec. 2018 – Dec. 2019)

Estimated Staff Time (Current Staff) for Implementation:

15% Deputy Attorney  
 10% Senior Legal Secretary  
 50% Assistant Management Analyst  
 25% Assistant City Clerk

Software Costs

A purely paper-based filing system for lobbyist registration and reporting would not result in any additional software costs. However, the information contained in the filings would not be searchable or downloadable by the public and would be less transparent and user-friendly to review. Paper-based systems are more labor-intensive and will add to the staff time demands and costs because the filings must be mailed or hand-delivered to the city, then staff must scan the filings, manually redact addresses, e-mails, and phone numbers, then manually upload them into the tracking system.

For an electronic filing system, the cost can vary significantly based on the complexity and features of the system. NetFile, our current e-filing vendor for campaign, public financing, and Form 700 filings, has experience with lobbyist registration systems in other cities. They estimate that a basic e-filing system for lobbyist forms would cost at least **\$20,000 per year** and could increase depending on the built-in features. Of course, the benefit of electronic filing systems are that the information is available to public more quickly, the information is searchable and downloadable, it is easier for the filers to file, and requires less staff time to process.

Ongoing Lobbyist Ordinance Requirements

- Filer Education, Training, Questions and Advice
- Initial and Annual Registration Tracking
- Registration Form Review
- Fee Collection and Accounting
- Quarterly Filing Noticing and Tracking
- Quarterly Non-Filing Enforcement
- Mandated 5% Audit of Filings
- Training Noticing and Tracking
- Training Certification Enforcement
- OGC Complaint Summary Reports
- OGC Enforcement Investigations
- OGC Enforcement Action Stipulation Negotiations

Ongoing Lobbyist Ordinance Staff Demands

15% Deputy City Attorney  
 10% Senior Legal Secretary  
 15% Investigator  
 20% Assistant Management Analyst  
 10% Assistant City Clerk

### Oakland's Experience

Oakland's Public Ethics Commission ("PEC") is tasked with enforcing the Oakland Lobbyist Registration Ordinance. By way of background, the PEC has six (6) staff members including the Executive Director, Deputy Director/Prosecutor, two Ethics Analysts, an Investigator and an Administrative Assistant II. Oakland advised us that they have an administrative person who spends about a quarter of her time as the filing officer for lobbyist registrations and reports. Their investigators spend about 15% of their time investigating allegations relating to the Ordinance and the Prosecutor spends about the same amount on prosecution, although they believe more staffing is needed. In addition, they receive legal support from the City Attorney's Office.

### **Administration of All Berkeley Good Government Laws**

As mentioned above, Berkeley currently has a complete suite of "Good Government Laws" including the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018). All of these laws are jointly administered and enforced by the City Attorney's Office and the City Clerk Department. The Lobbyist Ordinance is the third good government law added to the municipal code in the past two years without any new dedicated funding or increased staffing. All additional administration and enforcement has been completed with existing FTEs and all funds have come from existing General Fund sources.

In addition to this set of laws, the City Council has approved moving forward with the development of a **policy committee** structure for the City Council. This new committee structure will have significant benefits for the development and consideration of legislation, but will also significantly add to the staff demands in the City Clerk Department and the City Attorney's Office.

The estimated ongoing staff demands for current laws (BERA, Revolving Door, OGO, Public Financing):

- 35% of Deputy Attorney
- 15% of Senior Legal Secretary
- 65% Assistant Management Analyst
- 50% Assistant City Clerk



The estimated ongoing staff demands for the Lobbyist Ordinance:

15% Deputy City Attorney  
10% Senior Legal Secretary  
15% Investigator  
20% AMA  
10% ACC

The estimated ongoing staff demands for current laws + the Lobbyist Ordinance:

50% of Deputy Attorney  
30% of Senior Legal Secretary  
15% Investigator  
85% AMA  
60% Assistant City Clerk

The total, cumulative staff demands of this group of laws is estimated to be 2.40 FTEs.

Approximately 1.0 FTE are adequate staffing for BERA, OGO, and Revolving Door administration. The remaining 1.4 FTE for the Lobbyist Ordinance and Public Financing are a deficit to current staffing levels. The addition of the 1.0 FTE in the City Attorney's Office mentioned at the top of this memo should provide adequate staffing for the implementation phase of the Lobbyist Ordinance. Depending on the number of lobbyists that register with the City and the number of enforcement actions initiated, additional staffing may be required.





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 23<sup>rd</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Support for Zero Emission Bills

RECOMMENDATION

1. Adopt a resolution of support for two bills that will move California towards eliminating greenhouse gas emissions from the transportation sector: AB 40, which calls for all cars sold in California to be zero-emission by 2040, and AB 1418, which calls for all public school buses in California to be zero-emission by 2030.
2. Send letter of support to Senator Skinner and Assemblymember Wicks.

BACKGROUND

Both AB 40 and AB 1481 are California state bills that aim to eliminate fossil fuels in our transportation sector. AB 40 (Ting and Kalra) would require the state to develop a comprehensive strategy to ensure that the sales of all new motor vehicles in California are zero-emission vehicles by 2040. AB 1418 (Chiu) would require, starting in 2020, each public utility to create comprehensive reports to the California Energy Commission on their efforts to convert all vehicles and infrastructure to be zero-emission. Included in the bill is an ambitious plan to specifically convert school districts and school buses to be zero-emission.

In America, the transportation sector represents roughly 28% of all greenhouse gas emissions. In California, the percentage is even higher at 40%. Zero emission vehicles are increasingly common and an easy way to decrease carbon footprints on an individual and collective scale. AB 40 will make individual purchase of electric cars far easier across the state, and AB 1418 will compel all government agencies in California to decarbonize their infrastructure and transportation and make public investments in green technology.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

Every year, Californians emit millions of tons of greenhouse gases as a result of cars and other vehicles that combust petroleum-based products such as gasoline. Transitioning to all electric vehicles will reduce greenhouse gas emissions.

CONTACT PERSON

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

Attachments:

- 1: Resolution
- 2: Letter of Support for AB 40 (Ting)
- 3: Letter of Support for AB 1418 (Chiu)

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

## RESOLUTION SUPPORTING THE ZERO-EMISSION VEHICLE COMPREHENSIVE STRATEGY (AB 40) AND THE CLEAN BUS BILL (AB 1418)

WHEREAS, the acceleration in global average temperature is leading to the climate changing at incredibly rapid pace; and

WHEREAS, human actions such as burning fossil fuels contribute to the greenhouse gases within the atmosphere, thus increasing the scope of climate change and negatively impacting human and environmental health through pollution; and

WHEREAS, a UN climate report found that net carbon emissions must be reduced to zero by 2050. All greenhouse gas emissions must be reduced by 2030 in order to keep the overall global temperature below a 2 degree Celsius increase tipping point; and

WHEREAS, devastating effects like rising sea levels, increased natural disasters, increased extreme weather events, and overall decreased habitability of the world will occur without rapid changes. This will lead to widespread human health effects like heatstroke, hypothermia, death from natural disaster, mass displacement, and mass loss of life and property will occur<sup>1</sup>; and

WHEREAS, the United States ranks second in the world in total carbon emissions and third in per capita emissions<sup>2</sup>; and

WHEREAS, the United States accounts for over 17% of global carbon emissions<sup>3</sup> and California accounts for over 6.6% of the United States' carbon emissions<sup>4</sup>; and

---

<sup>1</sup> Freeman, David. "We're Falling Short on Efforts to Stop Global Warming. Here's How We Can Get on Track." *NBCNews.com*, NBCUniversal News Group, 9 Oct. 2018, [www.nbcnews.com/mach/science/new-climate-report-shows-efforts-end-global-warming-are-falling-ncna918121](http://www.nbcnews.com/mach/science/new-climate-report-shows-efforts-end-global-warming-are-falling-ncna918121).

<sup>2</sup> "Each Country's Share of CO2 Emissions." *Union of Concerned Scientists*, UCS, 11 Oct. 2018, [www.ucsusa.org/global-warming/science-and-impacts/science/each-countrys-share-of-co2.html](http://www.ucsusa.org/global-warming/science-and-impacts/science/each-countrys-share-of-co2.html).

<sup>3</sup> "Each Country's Share of CO2 Emissions." *Union of Concerned Scientists*, UCS, 11 Oct. 2018, [www.ucsusa.org/global-warming/science-and-impacts/science/each-countrys-share-of-co2.html](http://www.ucsusa.org/global-warming/science-and-impacts/science/each-countrys-share-of-co2.html).

<sup>4</sup> "U.S. Energy Information Administration - EIA - Independent Statistics and Analysis." *State-Level Energy-Related Carbon Dioxide Emissions, 2005-2016*, US Energy Information Administration, 27 Feb. 2019, [www.eia.gov/environment/emissions/state/analysis/](http://www.eia.gov/environment/emissions/state/analysis/).

WHEREAS, 40% of carbon emissions in California come from the transportation sector<sup>5</sup> so to address climate change the number of fossil fuels burned by cars in California must be cut down

WHEREAS, a climate emergency has been declared in Berkeley<sup>6</sup>; and

WHEREAS, two bills recently introduced address the problem of climate change. AB 40 calls for all new cars sold in California to be run off clean energy by the year 2040 and AB 1418 calls for public school buses in California to be replaced with electric school buses by the year 2030;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley hereby supports Assembly Bill 40 and Assembly Bill 1418.

---

<sup>5</sup> “State CO2 Emissions from Fossil Fuel Combustion, 1990-2016.” *Energy Resources for State and Local Governments*, US Environmental Protection Agency, 2016, [www.epa.gov/sites/production/files/2017-09/documents/co2ffc\\_2015.pdf](http://www.epa.gov/sites/production/files/2017-09/documents/co2ffc_2015.pdf).

<sup>6</sup> “Resolution No. 68,486 - N. S.: Endorsing the Declaration of a Climate Emergency.” *Berkeley City Council Resolution*, 12 June 2018, [www.cityofberkeley.info/uploadedFiles/Council\\_2/Level\\_3\\_-\\_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf](http://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf).

April 23<sup>rd</sup>, 2019

The Honorable Phil Ting  
California State Assembly  
P.O. Box 942849  
Sacramento, CA 94249

**Re: Support from Berkeley City Council for AB 40 (Ting) – Zero Emission Vehicles**

Dear Assemblymember Ting,

Berkeley City Council writes in support of AB 40, a comprehensive strategy to ensure that all sales of motor vehicles have transitioned to zero-emission vehicles by 2040.

In California, 40% of all carbon emissions are derived from our transportation sector. The United Nations Intergovernmental Panel on Climate Change recommends that we aggressively reduce all emissions by 2030, or we risk reaching the 2 degree Celsius tipping point that may cause increased natural disasters and inhabitable climate event.

AB 40 will make the sales of electric vehicles across California far easier and will significantly reduce greenhouse gas emissions from our state.

Thank you for your leadership on climate issues.

Respectfully,  
Berkeley City Council

CC: Assemblymember Buffy Wicks  
Senator Nancy Skinner

April 23<sup>rd</sup>, 2019

The Honorable David Chiu  
California State Assembly  
P.O. Box 942849  
Sacramento, CA 94249

**Re: Support from Berkeley City Council for AB 1418 (Chiu) – Transportation electrification: Electric Schoolbuses**

Dear Assemblymember Chiu,

Berkeley City Council writes in support of AB 1418, which would require each public utility and school district to create comprehensive reports to the California Energy Commission on their efforts to convert all vehicles and infrastructure to be zero-emission.

In California, 40% of all carbon emissions are derived from our transportation sector. The United Nations Intergovernmental Panel on Climate Change recommends that we aggressively reduce all emissions by 2030, or we risk reaching the 2 degree Celsius tipping point that may cause increased natural disasters and inhabitable climate event.

AB 1418 is an ambitious investment in renewable infrastructure and zero-emission vehicles from our state, and will significantly reduce greenhouse gas emissions from our state.

Thank you for your leadership on climate issues.

Respectfully,  
Berkeley City Council

CC: Assemblymember Buffy Wicks  
Senator Nancy Skinner





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, Davila and Bartlett

Subject: Adopt an Ordinance Adding Chapter 13.104 to the Berkeley Municipal Code Establishing a Prohibition on Contracting with Vendors Acting as U.S. Immigration and Customs Enforcement (ICE) Data Brokers, or Those Providing Extreme Vetting Services to ICE

RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance as amended. This ordinance prohibits the award of city contracts to vendors acting as U.S. Immigration and Customs Enforcement data brokers, or those providing extreme vetting services.

POLICY COMMITTEE RECOMMENDATION:

On March 11, 2019, the Agenda and Rules Committee adopted the following action: M/S/C (Harrison/Arreguin) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance. Since that time, Councilmember Harrison met with the City Manager, City Attorney and the Department of Information Technology to further refine the ordinance so that it can be effectively implemented. By adopting this ordinance, the City will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities.

FINANCIAL IMPLICATIONS:

City Manager staff time will be necessary in order to review/certify compliance and update prospective contract terms. In addition, City Manager staff time may be necessary in order to submit waiver requests to Council, notify potential violators, conduct investigations and provide legal support in the case of legal proceedings.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Harrison 510-981-7142

ATTACHMENT:

1. Proposed BMC Chapter 13.104: Sanctuary City Contracting Ordinance

ORDINANCE NO. -N.S.

ADDING CHAPTER 13.104 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A  
SANCTUARY CONTRACTING ORDINANCE

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

Section 1. That a new Chapter 13.104 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 13.104**

**SANCTUARY CITY CONTRACTING**

**Sections:**

- 13.104.010 Title.**
- 13.104.020 Definitions.**
- 13.104.030 Prohibition on Use of City Resources.**
- 13.104.040 Investigation and Reporting.**
- 13.104.050 Enforcement.**
- 13.104.060 Severability.**
- 13.104.070 Construction.**
- 13.104.080 Chapter Supersedes Existing Law and Regulations.**
- 13.104.090 Effective Date.**

**13.104.010 Title.**

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

**13.104.020 Definitions.**

- A. "City" means the City of Berkeley, California.
- B. "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - 1. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - 2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- C. "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.

Extreme Vetting Does not include the following:

- 1. The City's computer-network health and performance tools;
- 2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and

cyber-forensic based investigations and prosecutions of illegal computer based activity.

D. "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.

E. "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**13.104.030 Prohibition on Use of City Resources.**

A. No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of this ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives.

The following processes shall be followed in considering a waiver: The City Manager or designee shall file a waiver request. The Council shall make the final decision on granting the waiver.

B. All public works, construction bids, requests for information, requests for proposals or any other solicitation issued by the City shall include notice of the prohibition listed above.

C. For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:

1. Information available on federal contracting websites, or in the absence of those, another common source of federal data;
2. A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE.

D. Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this Section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) business days of notification, or seven (7) business days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) business days of the determination.

**13.104.040 Investigation and Reporting.**

A. The City Manager, or their designee, shall review compliance with Section 13.104.030. The City Manager may initiate and shall receive complains regarding violations of Section 13.104.030. All officers, employees, departments, boards,

commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Section 13.104.030.

B. By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 13.104.030 over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section 13.104.030, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

**13.104.050 Enforcement.**

A. Right to Cure. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.

B. Cause of Action. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court competent jurisdiction to enforce this Ordinance.

C. Civil Penalties. If the City is found liable in a cause of action brought by an individual under subsection B. above for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.

D. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection B. reasonable attorney's fees and costs in an amount not to exceed \$15,000.

E. Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.

F. Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 13.104.030C.2., shall be guilty of a misdemeanor and up to a \$1,000 fine.

**13.104.060 Severability.**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

**13.104.070 Construction.**

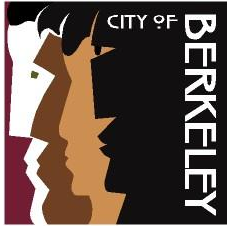
The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

**13.104.080 Chapter Supersedes Existing Law and Regulations.**

The provisions of this chapter shall supersede any conflicting law or regulations.

**13.104.090 Effective Date.**

This Ordinance shall take effect on July 1, 2019.



Kate Harrison  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

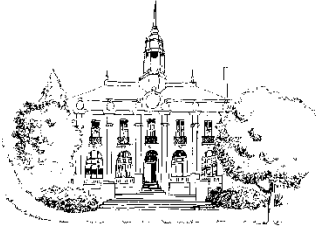
**Meeting Date:** February 26, 2019

**Item Number:** 15

**Item Description:** **Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission**

**Submitted by:** **Councilmember Harrison**

Added a right to cure provision in the enforcement section. Amended the Cause of Action subsection to remove the damages provision and limit civil penalties to arbitrary and capricious violations. Limited reasonable attorney's fees and costs to \$15,000.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### ACTION CALENDAR

January-February 26<sup>9</sup>, 2019

*(Continued from November 13, 2018)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison, Councilmember Kriss Worthington, Councilmember Cheryl Davila, and Councilmember Ben Bartlett

Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

#### RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

#### BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the city to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:  
<https://drive.google.com/file/d/1V9nY1BeWSbFOlqb7YF5opB4rlkBkvBqd/view?usp=sharing>

#### FINANCIAL IMPLICATIONS:

Minimal.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170



ORDINANCE NO. -N.S.

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

**Section 1. Title**

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

**Section 2. Definitions**

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - a) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**Section 3. Prohibition on Use of City Resources**

- 1) No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
  - a) The intent and purpose of this ordinance;
  - b) The availability of alternative services, goods and equipment; and
  - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
  - a) Information published by reliable sources
  - b) Information released by public agencies
  - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
  - d) Information submitted to the City Manager by any member of the public, and

thereafter duly verified

- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

#### Section 4. Investigation And Reporting

- (a) The City Manager, or his or her designee, shall review compliance with Section 3. The City Manager may initiate and shall receive complaints regarding violations of Section 3. After investigating such complaints, the City Manager shall issue findings regarding any alleged violation. If the City Manager finds that a violation occurred, the City Manager shall, within 30 days of such finding, send a report of such finding to the City Council, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Sections 3.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Manager.
- (c) By May 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 3 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

#### Section 5. Enforcement

- (a) Right to Cure. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.
- ~~(a)(b)~~ Cause of Action. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- ~~(b)(c)~~ (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (ab) above, for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- ~~(e)(d)~~ (e) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs in an amount not to exceed \$15,000.

~~(d)~~(e) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.

~~(e)~~(f) Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

**Section 6. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

**Section 7. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

**Section 8. Effective Date**

This Ordinance shall take effect on [DATE].

**REVISED  
AGENDA MATERIAL  
for Supplemental Packet 2**

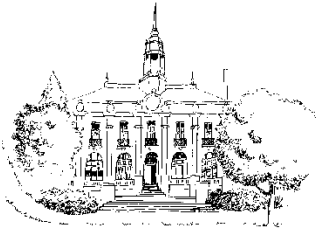
**Meeting Date:** October 16<sup>th</sup>, 2018

**Item Number:** 21

**Item Description:** Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

**Submitted by:** Councilmember Worthington

Add Councilmember Harrison as co-sponsor.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### CONSENT CALENDAR

October 16, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember [Cheryl Davila, Kate Harrison, and](#) Kriss Worthington  
Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

#### RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

#### BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the City to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:  
<https://drive.google.com/file/d/1V9nY1BeWSbFOlgb7YF5opB4rkBKvBqd/view?usp=sharing>

#### FINANCIAL IMPLICATIONS:

Minimal.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

ORDINANCE NO. -N.S.

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

**Section 1. Title**

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

**Section 2. Definitions**

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - a) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**Section 3. Prohibition on Use of City Resources**

- 1) No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
  - a) The intent and purpose of this ordinance;
  - b) The availability of alternative services, goods and equipment; and
  - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
  - a) Information published by reliable sources
  - b) Information released by public agencies
  - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
  - d) Information submitted to the City Manager by any member of the public, and thereafter duly verified
- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the

determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

#### **Section 4. Investigation And Reporting**

- (a) The City Manager, or his or her designee, shall review compliance with Section 3. The City Manager may initiate and shall receive complaints regarding violations of Section 3. After investigating such complaints, the City Manager shall issue findings regarding any alleged violation. If the City Manager finds that a violation occurred, the City Manager shall, within 30 days of such finding, send a report of such finding to the City Council, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Sections 3.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Manager.
- (c) By May 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 3 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

#### **Section 5. Enforcement**

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

#### **Section 6. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

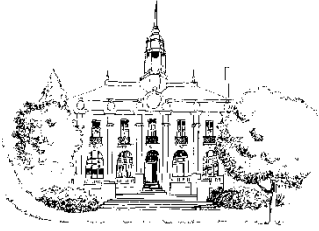
#### **Section 7. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

#### **Section 8. Effective Date**

This Ordinance shall take effect on [DATE].





## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### ACTION CALENDAR

February 26, 2019

*(Continued from January 29, 2019)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington, Councilmember Cheryl Davila, and  
Councilmember Ben Bartlett

Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice  
Commission

#### RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

#### BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the city to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:  
<https://drive.google.com/file/d/1V9nY1BeWSbFOlgb7YF5opB4rlkBKvBqd/view?usp=sharing>

#### FINANCIAL IMPLICATIONS:

Minimal.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

ORDINANCE NO. -N.S.

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

**Section 1. Title**

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

**Section 2. Definitions**

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - a) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**Section 3. Prohibition on Use of City Resources**

- 1) No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
  - a) The intent and purpose of this ordinance;
  - b) The availability of alternative services, goods and equipment; and
  - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
  - a) Information published by reliable sources
  - b) Information released by public agencies
  - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
  - d) Information submitted to the City Manager by any member of the public, and

thereafter duly verified

- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

#### **Section 4. Investigation And Reporting**

- (a) The City Manager, or his or her designee, shall review compliance with Section 3. The City Manager may initiate and shall receive complaints regarding violations of Section 3. After investigating such complaints, the City Manager shall issue findings regarding any alleged violation. If the City Manager finds that a violation occurred, the City Manager shall, within 30 days of such finding, send a report of such finding to the City Council, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Sections 3.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Manager.
- (c) By May 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 3 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

#### **Section 5. Enforcement**

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

#### **Section 6. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

**Section 7. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

**Section 8. Effective Date**

This Ordinance shall take effect on [DATE].



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Susan Wengraf, Mayor Arreguin & Councilmember Hahn  
Subject: Letters In Support of SB 54 (Allen) and AB 1080 (Gonzalez)

RECOMMENDATION:

Send a letter of support for SB 54 (Allen) and AB 1080 (Gonzalez) to Senator Ben Allen and Assemblywoman Lorena Gonzalez with copies to Senator Skinner, Assembly Member Wicks and Governor Newsom

FINANCIAL IMPLICATIONS:

None

BACKGROUND:

SB 54 and AB 1080 will ensure that California is on the forefront of reducing plastic pollution from single use packaging and products. Both bills set goals to reduce plastic waste from packaging and product sources.

Single use plastic packaging in California generates tons of non-recyclable and non-compostable waste, impacting our health and environment. Packaging products are designed to be used only once and then discarded. Nearly every piece of plastic ever produced still exists in our environment. It never decomposes. As the plastic breaks up into smaller and smaller pieces, the fragments contaminate the soil, food and drinking water.

Currently, less than 9% of plastics are recycled and that percentage is dropping as China's National Sword and policies in other countries restrict the foreign waste that they accept. These materials are piling up in recycling centers, being sent to the landfill or shipped to illegal facilities in South East Asia where they are most likely incinerated.

Producers must take responsibility for reducing waste and designing packaging and products that will not harm our environment. As the fifth largest economy in the world, California should lead in finding solutions to the growing plastic pollution crisis.

ENVIRONMENTAL SUSTAINABILITY:

Support of SB 54 and AB 1080 is in complete harmony with the goals of our Climate Action Plan.

CONTACT PERSON

Councilmember Susan Wengraf

Council District 6

510-981-7160

Attachments:

- 1: [SB 54](#)
2. [AB 1080](#)
3. Letter of support for SB 54
4. Letter of support for AB 1080

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

**SENATE BILL**

**No. 54**

---

**Introduced by Senators Allen, Skinner, Stern, and Wiener  
(Principal coauthor: Assembly Member Gonzalez)**

**December 11, 2018**

---

An act to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

SB 54, as amended, Allen. California Circular Economy and Plastic Pollution Reduction Act. The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste, including, among other solid waste, single-use plastic straws.

The Sustainable Packaging for the State of California Act of 2018 prohibits a food service facility located in a state-owned facility, operating on or acting as a concessionaire on state property, or under contract to provide food service to a state agency from dispensing prepared food using a type of food service packaging unless the type of food service packaging is on a list that the department publishes and maintains on its internet website that contains types of approved food service packaging that are reusable, recyclable, or compostable.

Existing law makes a legislative declaration that it is the policy goal of the state that not less than 75% of solid waste generated be source reduced, recycled, or composted by 2020.

This bill would establish the California Circular Economy and Plastic Pollution Reduction Act, which would require the department, in consultation with the State Water Resources Control Board and the

Ocean Protection Council, to adopt regulations to source reduce and recycle 75% of single-use packaging and products sold or distributed in California by 2030. The bill would require the department to adopt regulations to accomplish that requirement, including, among others, regulations to require businesses to source reduce, to the maximum extent feasible, single-use packaging and products, to recycle, and require businesses to source reduce, at least 75% of single-use plastic packaging and products by 2030, and to require that all single-use packaging and products distributed or sold in California are recyclable or compostable on and after 2030. The bill would require the department, on or before January 1, 2021, to prepare and approve a scoping plan to set a baseline for and achieve those reduction and recycling requirements.

The bill would require the department to develop criteria to determine which types of single-use packaging or products are reusable, recyclable, or compostable. The bill would require local governments, solid waste facilities, recycling facilities, and composting facilities to provide information requested by the department for purposes of developing that criteria. By imposing additional duties on local governments, the bill would impose a state-mandated local program.

The bill would require a manufacturer of single-use plastic packaging or products sold or distributed in California to demonstrate a recycling rate of not less than 20% on and after January 1, 2022, and not less than 40% on and after January 1, 2026, as a condition of sale, and would authorize the department to impose a higher recycling rate as a condition of sale, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes



CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1080**

---

Introduced by Assembly Members Gonzalez, *Calderon*, Friedman, and Ting  
(Principal coauthor: Senator Allen)  
~~(Coauthor: Assembly Member Boerner Horvath)~~ (Coauthors: Assembly Members  
*Boerner Horvath and McCarty*)  
(Coauthors: Senators Skinner, Stern, and Wiener)

February 21, 2019

---

An act to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1080, as amended, Gonzalez. California Circular Economy and Plastic Pollution Reduction Act.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste, including, among other solid waste, single-use plastic straws.

The Sustainable Packaging for the State of California Act of 2018 prohibits a food service facility located in a state-owned facility, operating on or acting as a concessionaire on state property, or under contract to provide food service to a state agency from dispensing prepared food using a type of food service packaging unless the type of food service packaging is on a list that the department publishes and maintains on its internet website that contains types of approved food service packaging that are reusable, recyclable, or compostable.

Existing law makes a legislative declaration that it is the policy goal of the state that not less than 75% of solid waste generated be source reduced, recycled, or composted by 2020.

This bill would establish the California Circular Economy and Plastic Pollution Reduction Act, which would require the department, in consultation with the State Water Resources Control Board and the Ocean Protection Council, to adopt regulations to source reduce and recycle 75% of single-use packaging and products sold or distributed in California by 2030. The bill would require the department to adopt regulations to accomplish that requirement, including, among others, regulations to *require businesses to source reduce*, to the maximum extent feasible, single-use packaging and products, to *recycle, and require businesses to source reduce or recycle reduce*, at least 75% of single-use plastic packaging and products by 2030, and to require that all single-use packaging and products distributed or sold in California are recyclable or compostable on and after 2030. The bill would require the department, on or before January 1, 2021, to prepare and approve a scoping plan to set a baseline for and achieve those reduction and recycling requirements.

The bill would require the department to develop criteria to determine which types of single-use packaging or products are reusable, recyclable, or compostable. The bill would require local governments, solid waste facilities, recycling facilities, and composting facilities to provide information requested by the department for purposes of developing that criteria. By imposing additional duties on local governments, the bill would impose a state-mandated local program.

The bill would require a manufacturer of single-use plastic packaging or products sold or distributed in California to demonstrate a recycling rate of not less than 20% on and after January 1, 2022, and not less than 40% on and after January 1, 2026, as a condition of sale, and would authorize the department to impose a higher recycling rate as a condition of sale, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

#### DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

April 23, 2019

The Honorable Ben Allen  
California State Senator  
State Capitol, Room 4076  
Sacramento, CA 95814

**RE: S.B. 54 (Allen): California Circular Economy and Plastic Pollution Reduction Act  
Support from the Berkeley City Council**

Dear Senator Allen:

On behalf of the Berkeley City Council, I want to express Berkeley's strongly support of S.B. 54. The City Council thanks you for initiating legislation to reduce single use plastic waste from packaging and product sources. S.B. 54 works in harmony with Berkeley's Climate Action Plan goals.

Single use plastic packaging in California generates tons of non-recyclable and non-compostable waste, impacting our health and environment. Packaging products are designed to be used only once and then discarded. Nearly every piece of plastic ever produced still exists in our environment. It never decomposes. As the plastic breaks up into smaller and smaller pieces, the fragments contaminate the soil, food and drinking water.

Currently, less than 9% of plastics are recycled and that percentage is dropping as China's National Sword and policies in other countries restrict the foreign waste that they accept. These materials are piling up in recycling centers, being sent to the landfill or shipped to illegal facilities in South East Asia where they are most likely incinerated.

The City of Berkeley is in full support of mandating that producers must take responsibility for reducing waste and designing packaging and products that will not harm our environment. As the fifth largest economy in the world, California should lead in finding solutions to the growing plastic pollution crisis.

I applaud you for your leadership in creating this legislation!

Susan Wengraf  
Vice Mayor  
City of Berkeley

CC: Senator Nancy Skinner, Assembly Member Buffy Wicks, Governor Gavin Newsom

April 23, 2019

The Honorable Lorena Gonzalez  
California Assembly Member  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0080

**RE: A.B 1080 (Gonzalez): California Circular Economy and Plastic Pollution Reduction Act  
Support from the Berkeley City Council**

Dear Assembly Member Gonzalez:

On behalf of the Berkeley City Council, I want to express Berkeley's strongly support of A.B. 1080. The City Council thanks you for initiating legislation to reduce single use plastic waste from packaging and product sources. A.B. 1080 works in harmony with Berkeley's Climate Action Plan goals.

Single use plastic packaging in California generates tons of non-recyclable and non-compostable waste, impacting our health and environment. Packaging products are designed to be used only once and then discarded. Nearly every piece of plastic ever produced still exists in our environment. It never decomposes. As the plastic breaks up into smaller and smaller pieces, the fragments contaminate the soil, food and drinking water.

Currently, less than 9% of plastics are recycled and that percentage is dropping as China's National Sword and policies in other countries restrict the foreign waste that they accept. These materials are piling up in recycling centers, being sent to the landfill or shipped to illegal facilities in South East Asia where they are most likely incinerated.

The City of Berkeley is in full support of mandating that producers must take responsibility for reducing waste and designing packaging and products that will not harm our environment. As the fifth largest economy in the world, California should lead in finding solutions to the growing plastic pollution crisis.

I applaud you for your leadership in creating this legislation!

Susan Wengraf  
Vice Mayor  
City of Berkeley

CC: Senator Skinner, Representative Wicks, Governor Newsom



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf and Mayor Arreguin  
Subject: Co-Sponsor the Screening of "Near Normal Man"

RECOMMENDATION:

That the City of Berkeley become an official co-sponsor of the screening and discussion of "Near Normal Man" on April 29<sup>th</sup> at Berkeley City College

FINANCIAL IMPLICATIONS:

None

BACKGROUND

Ben Stern, who survived two ghettos, nine concentration camps and two death marches, faced Nazi's a second time 30 years later in 1978, when the Nazis planned a march in Skokie, Illinois. Stern sparked a fierce public battle opposing the Nazis and the ACLU, which defended the Nazis' First Amendment rights to free speech. Skokie, a community heavily populated with Holocaust survivors – were urged to "stay home, close the shades and let it pass." Stern refused and instead built a national following with more than 750,000 people of all backgrounds, religions and races who signed petitions to protest the Nazi rally. When the Illinois Supreme Court affirmed their right to march in Skokie, more than 60,000 people pledged to show up and counter-demonstrate. Only then did the Nazis cancel their march.

Now, 40 years later, Ben Stern, living in Berkeley, California, and subject of the award-winning documentary film, "Near Normal Man", will speak out against Hate Speech again and invoke everyone to use their Freedom of Speech better and louder in resistance to growing hatred, rage, violence and mass murders in our country and world. For Stern, who defied the Nazis three times in one lifetime, this conversation with the audience, many who are also immigrants, will offer a compelling reminder of the dangers in our country today.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON:

Councilmember Wengraf

Council District 6

510-981-7160

Attachments: Flyer



Near Normal Man, An award-winning, documentary film of a deeply personal story about racism and genocide, surviving, and remaining human

One young man defied the forces that sought to destroy him, then sparked a fierce public battle 30 years later, for justice in America; leading with courage, kindness and hope.

## Film Screening & Real Conversation

**Q & A With  
Ben Stern**

**Holocaust Survivor and Social Justice Activist  
2017 James Joyce Award Winner**

**and**

**Charlene Stern  
Producer/Director**

**Monday, April 29, 2019**

**5:30 pm**

**Berkeley City College Auditorium**

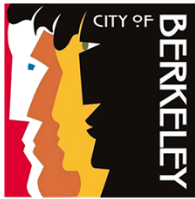
**Refreshments will be provided**

**[www.nearnormalman.org](http://www.nearnormalman.org)**



**Berkeley City College  
2050 Center St. Berkeley, A 94704**

**For questions, please email  
[bcc-campuslife@peralta.edu](mailto:bcc-campuslife@peralta.edu)**



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for SB 188 (Hairstyle Anti-Discrimination Law)

RECOMMENDATION

Send a letter to Senator Mitchell, Senator Skinner, and Assemblymember Wicks supporting SB 188, which would amend the California Fair Employment and Housing Act to prohibit racial discrimination on the basis of hairstyle.

BACKGROUND

Under the 1959 California Fair Employment and Housing Act (FEHA), it is unlawful to engage in discrimination on the basis of certain protected characteristics in the workplace or housing sector. Protected categories include an individual's actual or perceived race, religious beliefs, disability status, marital status, sex, or sexual orientation.

SB 188 (Mitchell) would amend FEHA in order to "provide that the definition of race also include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles, and would define protective hairstyles for purposes of these provisions." In other words, it eliminates forms of disparate impact discrimination that occur in appearance and grooming codes, and clarifies that individuals of all races have the right to maintain natural hair.

The mission of SB 188 is consistent with local goals, as stated in Berkeley Municipal Code Section 1.22.010, declaring "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

This proposed FEHA amendment is a crucial step for California to take towards eliminating racial discrimination in all its forms.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

[Title of Report]

CONSENT CALENDAR  
April 23, 2019

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Mars Svec-Burdick, Intern

Attachments:

1: Letter of support

2: Bill Text - SB 188:

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB188](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB188)



April 23, 2019

The Honorable Holly Mitchell  
California State Senate  
State Capitol, Room 5050  
Sacramento, CA 95814

RE: SB 188, Mitchell, Hairstyle Anti-Discrimination Law  
Support from the Berkeley City Council

Dear Senator Mitchell:

The Berkeley City Council would like to convey support for your bill SB 188, regarding protections against racial discrimination on the basis of hairstyle.

As proposed, this bill addresses ongoing discrimination faced by racial minority groups in the workplace and housing sector. Current law does not go far enough to prevent disparate impact discrimination in appearance and grooming codes, wherein hair styling rules may permit members of some groups to wear their hair naturally, but requires others to undergo more extensive procedures. SB 188 is an important and necessary reform because it closes this loophole, by amending the 1959 California Fair Employment and Housing Act (FEHA) to include natural hairstyle and other inherited personal traits under the protected category of race.

This proposed FEHA amendment is consistent with the City of Berkeley's mission to observe universal human rights without distinction according to race or nationality, and represents a crucial step towards ensuring workplace and housing equality for all Californians.

Thank you for introducing this important piece of legislation, and striving to eliminate racial discrimination in all its forms.

Sincerely,

Berkeley City Council

CC: Senator Nancy Skinner  
Assembly Member Buffy Wicks





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for ACA-1: Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval

RECOMMENDATION

Adopt a resolution supporting ACA-1, which would allow local governments to raise property taxes to fund bonds for the purposes of financing public infrastructure and affordable housing projects, as well as reducing the required vote threshold to authorize certain local special taxes for the purpose of funding public infrastructure and affordable housing. Copies of the resolution to be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Assemblymember Aguiar-Curry.

BACKGROUND

Introduced by Assemblywoman Aguiar-Curry on December 3, 2018, ACA 1 would significantly increase the ability of local governments to fund badly needed public infrastructure and affordable housing projects. If adopted and passed by the voters, it would authorize local governments to raise property taxes beyond the 1% maximum established by Prop 13 for the purposes of funding bond payments to finance public infrastructure and affordable housing projects, as well as reducing the required vote threshold to pass specified types of local taxes to fund the same types of projects.

Since the passage of Proposition 13 in 1978, which limits property tax to 1%, local governments have had to find new ways to generate revenue, resulting in extensive funding loss. While overall California local revenue has slightly increased since 1978, municipal governments in California have shown much less growth than in other areas of the country.<sup>1</sup>

Affordable housing is a critical need across the state, and public infrastructure has been allowed to fall into disrepair. This measure would empower local governments with the tools necessary to address both these crises.

The attached resolution states the City of Berkeley's endorsement of the bill and subsequent ballot measure. Copies of the resolution will be sent to Senator Nancy

---

1

[https://lao.ca.gov/publications/report/3497#What\\_Happened\\_to\\_Local\\_Government\\_Revenues\\_After\\_Proposition.A013.3F](https://lao.ca.gov/publications/report/3497#What_Happened_to_Local_Government_Revenues_After_Proposition_A013.3F)

Skinner, Assemblymember Buffy Wicks, and the bill's author, Assemblywoman Aguiar-Curry.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with the City's climate and environmental goals.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Jilly Choi, Intern

Attachments:

1: Resolution

2: Bill Text – ACA 1:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200ACA1](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA1)

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

RESOLUTION IN SUPPORT OF ACA-1

WHEREAS the State of California faces a housing affordability crisis that demands government investment, and;

WHEREAS, restricted financing has allowed the State's public infrastructure to fall into server disrepair, and;

WHEREAS, the passage of Proposition 13 has devastated the ability of local governments to finance the public projects badly needed to address these crises, and;

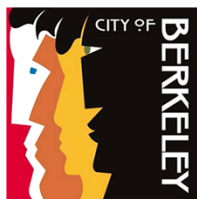
WHEREAS, ACA-1 gives local governments the tools they need to build affordable housing and repair public infrastructure.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby endorses ACA-1 and the ballot measure that will result from its passage; and

BE IT FURTHER RESOLVED that the City of Berkeley may be listed as a supporter of said ballot measure by the official proponents of the measure; and

BE IT FURTHER RESOLVED that copies of this resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Assemblymember Aguiar-Curry.





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for AB 273 and AB 44: Prohibit Fur Trapping and Sales

RECOMMENDATION

Adopt a resolution supporting Fish and Game Code amendment AB 273, which prohibits the trapping of fur-bearing and nongame mammals for recreational or commercial purposes, and AB 44, which amends the Fish and Game Code to prohibit the sale of fur products statewide.

BACKGROUND

Introduced on January 24, 2019 by Assemblymember Lorena Gonzalez, the Wildlife Protection Act of 2019 (AB 273) proposes a series of amendments to the Fish and Game Code. By limiting the distribution of trapping licenses and eliminating fur dealer and fur agent licenses entirely, the Act seeks to combat the exploitation of native California mammals.

Introduced on December 03, 2018 by Assemblymember Laura Friedman, the Fur Products Prohibition Act (AB 44) proposes a prohibition on the manufacture or sale of fur products throughout the state. Imposing this ban would allow California to take a lead on this issue nationally, by becoming the first state to do so. As the second of several prominent California cities to have already taken this step, the City of Berkeley should support the proposal.

AB 273 and AB 44 both reflect the majority support for animal rights expressed by state voters at the ballot box, most recently in the 2018 passage of Proposition 12, which set humane confinement standards for fowl and livestock.

The attached letters state the City of Berkeley's endorsement of the proposed Code amendments. Copies will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and the bills' authors, Assemblymember Lorena Gonzalez and Assemblymember Laura Friedman.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with the City's environmental goals.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Mars Svec-Burdick, Intern

Attachments:

1: Letter of support to Assemblymember Lorena Gonzalez

2: Letter of support to Assemblymember Laura Friedman

3: Bill Text -

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB273](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB273)

4: Bill Text -

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB44](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB44)



April 23, 2019

The Honorable Lorena Gonzalez  
Member of the Assembly  
State Capitol, Room 2114  
Sacramento, CA 95814

Re: AB 273 (Gonzales) – Wildlife Protection Act  
Support from the Berkeley City Council

Dear Assemblymember Gonzalez,

The Berkeley City Council would like to convey its full support for your bill AB 273, which seeks to protect native species by limiting the trapping of animals statewide.

The production process of commercial fur products entails varying and extensive forms of recognized animal cruelty, in addition to causing the decline of native species populations. Fur trade industry values are inconsistent with the standards of humane, sustainable, and dignified treatment of commercially used fur-bearing mammals.

Under current law, the manufacture and sale of fur is already prohibited in major metropolitan areas of the state, reflecting the electorate's withdrawal of support from the practice. The Wildlife Protection Act of 2019 is an important and necessary reform because it updates the Fish and Game Code to impose stricter controls pre-manufacturing, by limiting the distribution of trapping licenses and eliminating fur dealer and fur agent licenses entirely.

The proposed amendments to the Fish and Game Code are consistent with the City of Berkeley's local effort to ban fur products, and represent an important step towards ensuring the conservation of native species.

Thank you for introducing this important piece of legislation, and striving to protect California wildlife.

Respectfully,  
Berkeley City Council

CC: Senator Nancy Skinner  
Assembly Member Buffy Wicks

April 23, 2019

The Honorable Laura Friedman  
Member of the Assembly  
State Capitol, Room 2137  
Sacramento, CA 95814

Re: AB 44 (Friedman) - Fur Products Prohibition Act  
Support from the Berkeley City Council

Dear Assemblymember Friedman,

The Berkeley City Council would like to convey its full support for AB 44, which seeks to protect native species by limiting the trapping, manufacture, and sale of fur products statewide.

The production process of commercial fur products entails varying and extensive forms of recognized animal cruelty, in addition to causing the decline of native species populations. Fur trade industry values are inconsistent with the standards of humane, sustainable, and dignified treatment of commercially used fur-bearing mammals.

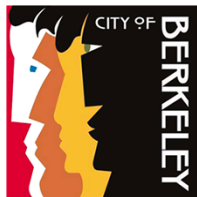
Under current law, the manufacture and sale of fur is already prohibited in major metropolitan areas of the state, reflecting the electorate's withdrawal of support from the practice. The Fur Products Prohibition Act is an important and necessary reform because it will have even wider impact, by updating the Fish and Game Code to prohibit the manufacture or sale of fur products throughout the whole state.

The proposed amendments to the Fish and Game Code are consistent with the City of Berkeley's local effort to ban fur products, and represent an important step towards ensuring the conservation of native species.

Thank you for introducing this important piece of legislation, and striving to protect California wildlife.

Respectfully,  
Berkeley City Council

CC: Senator Nancy Skinner  
Assembly Member Buffy Wicks



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson, Sophie Hahn, Mayor Jesse Arreguin,  
 and Councilmember Lori Droste

Subject: Refer to the City Manager and the Housing Advisory Commission to Consider  
 Reforming the Affordable Housing Mitigation Fee

RECOMMENDATION

Refer to the City Manager, the Planning Commission, and the Housing Advisory Commission to consider possible reforms to the Affordable Housing Mitigation Fee, including adopting a per-square-foot fee structure, potentially on a geographic basis.

POLICY COMMITTEE RECOMMENDATION

On March 21, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Hahn/Droste) to send the item to the full Council with a Positive Recommendation. Vote: Ayes – Hahn, Droste; Noes – None; Abstain – None; Absent – Arreguin.

BACKGROUND

Currently, all new residential development of five units or more must either pay an Affordable Housing Mitigation Fee to the City's Affordable Housing Trust Fund, set aside 20% of a project's units as below market rate housing, or some combination of the two. For rental developments, the fee is currently calculated based on the number of residential units in the project according to the following formula (BMC Section 22.20.065):

$$[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$$

Where:

A = Total number of units in the project

B = Number of Very-Low Income Units provided in the project.

C = Number of Low-Income Units provided in the project.

By calculating Affordable Housing Mitigation Fees on a per-unit basis, current law incentivizes developers to build fewer units. In the past, developers have replaced standard layouts (studio, one-bedroom, and two-bedroom units) with dorm-style layouts (up to eight beds per unit). This increases the *density* of each unit but reduces the overall *number* of units, allowing applicants to pay significantly smaller fees without providing any additional housing.

Another way for developers to reduce their contribution to the Affordable Housing Trust Fund is to build larger, more expensive units, rather than smaller, more affordable units. This perverse incentive is clearly in opposition to the City's affordable housing goals.

This problem was highlighted in a recent report by the Turner Center. In interviews with architects and builders, they were told that a conscious decision was sometimes made to increase unit size but decrease unit count to reduce fees.<sup>1</sup> Calculating the fee on a per-square-foot basis eliminates that incentive. Developers would no longer be able to reduce their contribution to the Affordable Housing Trust Fund by manipulating floor layouts. In addition, by eliminating the financial penalty for building more units, developers would be incentivized to propose denser projects, which is directly in line with the City's housing goals.

Such a change was recently enacted in San Francisco, taking effect January 1<sup>st</sup> of this year. The language from San Francisco's website (<https://sf-planning.org/inclusionary-affordable-housing-program>) describing the process they undertook to arrive at their new model is attached. Staff and the Commissions should consider their research, methodology, and conclusions when drafting their response.

A per-square-foot fee may not be desirable across all neighborhoods in Berkeley. The same Turner Center study found that "in some cities there is a need for larger family-sized units, and in those places a per-square-foot fee that incentivizes smaller units might be less desirable."<sup>2</sup> In considering this referral, staff and the Commissions should consider the need for different housing types in different parts of the City. A per-bed fee may be more appropriate for some neighborhoods where micro-units would be out of place while still disincentivizing dorm-style layouts.

This referral asks staff and the Commissions to analyze the current fee structure and possible alternatives, with particular regard to the per-unit form. Staff and the Commissions should consider the need for different styles of housing in different parts of the city. The final recommendation presented to council should include one or more possible amendments to the code to address these changes.

#### FINANCIAL IMPLICATIONS

Potential revenues increases to the Affordable Housing Trust Fund from larger structures facing higher fees; potential revenue decreases from smaller units facing lower fees. Analysis must be conducted to determine the overall effect of these countervailing forces. Multiple fee levels should be assessed, including those that results in net zero changes in Affordable Housing Trust Fund revenues and those that increase revenues.

#### ENVIRONMENTAL SUSTAINABILITY

---

<sup>1</sup> [http://turnercenter.berkeley.edu/uploads/Development\\_Fees\\_Report\\_Final\\_2.pdf](http://turnercenter.berkeley.edu/uploads/Development_Fees_Report_Final_2.pdf)

<sup>2</sup> Ibid

Increasing the affordability and density of housing near public transit has the potential to substantially reduce greenhouse gas emissions in line with the City's environmental goals. Potential revenue increases to the Affordable Housing Trust Fund could permit greater expenditures on housing affordability near transit.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: San Francisco's Amendments (<https://sf-planning.org/inclusionary-affordable-housing-program>)

Attachment 1: San Francisco's Amendments

## 2019 Affordable Housing Fee Update

Effective January 1, 2019, residential development projects that comply by paying the Affordable Housing Fee will be subject to the following fee based on the Gross Floor Area of residential use, rather than the number of dwelling units. The fee will be applied to the applicable percentage of the project, as set forth in Section 415.5 of the Planning Code:

**Affordable Housing Fee:** \$199.50 per square foot of Gross Floor Area of residential use, applied to the applicable percentage of the project:

- **Small Projects** (fewer than 25 dwelling units): 20% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Rental:** 30% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Ownership:** 33% of the project's Gross Floor Area of residential use

**Note:** The impact fee register in place at the time of payment shall be applied. However, a project for which a Site Permit has been issued prior to January 1, 2019 shall remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. Additionally, projects with an Environmental Evaluation Application that was accepted prior to January 1, 2013 pursuant to Planning Code Section 415.3(b) shall also remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. [The impact fee register may be found here.](#)

This change is pursuant to amendments to Section 415.5 that were adopted by the Board of Supervisors in July, 2017 (Board File No. 161351). Specifically, the Code requires that the Fee reflect MOHCD's actual cost to subsidize the construction of affordable housing units over the past three years, and directed the Controller to develop a new methodology for calculating, indexing, and applying the Fee, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC). In May, 2018 the Controller and TAC determined that the Fee should be applied on a per gross square foot basis to ensure that MOHCD's cost to construct the required amount of off-site affordable housing is appropriately and equitably captured from all projects, regardless of the size and number of units distributed within the project. The Controller directed MOHCD, in consultation with the Planning Department, to convert MOHCD's per unit cost to a per-square-foot fee, based on the average residential Gross Floor Area of projects that have paid the Fee in the past three years. The Fee amount indicated above has been calculated accordingly.

Pursuant to Section 415.5 and the specific direction of the Controller and TAC, MOHCD shall update the amount of the Affordable Housing Fee each year on January 1, using the MOHCD average cost to construct an affordable unit in projects that were financed in the previous three years and the Planning Department's average residential Gross Floor Area of projects that have elected to pay the Fee and have been entitled in the same time period. Each year this analysis will be updated to include new projects from the most recent year, and drop older projects that no longer fall into the three year period of analysis. The updated Fee amount will be included in the Citywide Impact Fee Register that is posted December 1 and effective on January 1.



Lori Droste  
Berkeley City Council District 8

Consent Calendar

April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Lori Droste

Subject: Relinquishment of Council Office Budget Funds: “Post-Memory: A Decade of Art and Activism in Berkeley,” an art exhibit in honor of Zachary Cruz

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per sponsoring Councilmember, with funds relinquished from the discretionary Council Office Budgets of Councilmember Droste and any other Councilmembers who would like to contribute. Funds would go to cover the costs of the art exhibit “Post-Memory: A Decade of Art and Activism in Berkeley” at UC Berkeley.

2019 marks the ten year anniversary of the death of Zachary Cruz who died from road violence on Berkeley streets. The art exhibit will honor Zachary and raise awareness about road safety and Vision Zero in Berkeley. Additional details about the exhibit are attached.

Donations will go to A to Z Families for Safe Streets, c/o Los Angeles Walks, 830 Traction Ave 3rd Floor, Los Angeles, CA 90013.

FINANCIAL IMPLICATIONS

No General Fund impact. Funds are available from the Councilmembers’ office budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

Councilmember Lori Droste      510-981-7180

Attachments:

- 1: Resolution
2. Letter from Frank Cruz

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

DONATIONS IN SUPPORT OF "POST MEMORY: A DECADE OF ART AND ACTIVISM  
IN BERKELEY"

WHEREAS 2019 marks the ten year anniversary of the death of Zachary Cruz; and

WHEREAS, Councilmember Droste has surplus funds in her office expenditure account (budget code 010-0282- 410); and

WHEREAS, the art exhibit will raise awareness regarding pedestrian safety and Vision Zero in Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Councilmembers from their Council Office Budget up to \$250 per office shall be granted to the A to Z Families for Safe Streets and the production of "Post-Memory: A Decade of Art and Activism in Berkeley."



**DRIVE LIKE YOUR KID DIED HERE**

 **OursDid.org**

EMAIL: [INFO@ZMCFUNDATION.ORG](mailto:INFO@ZMCFUNDATION.ORG)

[FACEBOOK.COM/OURSDID](https://FACEBOOK.COM/OURSDID)

TWITTER & INSTAGRAM @OURSDID

To: The Berkeley City Council

From: Frank Eugene Cruz, OursDid.org

Re: Request for financial support for “Post-Memory: A Decade of Art and Activism in Berkeley”; a pedestrian safety art show opening April 13, 2019 at the Doe Library, UC Berkeley

Dear Council Members,

As you may recall, [OursDid.org](http://OursDid.org) advocated for formal support from the council for Vision Zero last year through our “Drive Like Your Kid Died Here” campaign at Zachary’s Corner and at City Hall. Since then, I’ve worked with Council Member Lori Droste (District 8) on the process of turning the your political commitment to Vision Zero into policy and best practices. In January, I met with CM Droste, the City Manager, administrators, and other road safety activists to begin this important process, which will help save lives in our East Bay community. Thank you for your commitment, individually and as elected officials, to making Berkeley roads safe and accessible for everyone and for your commitment to make real change on this life or death issue.

Two-thousand-nineteen is the 10-year anniversary of my son, Zachary Michael Cruz’ death to road violence in Berkeley. In light of this somber milestone, OursDid.org is recommitting to our goal of raising awareness for road violence victims and their families. In addition, we are specifically focusing on educating and directly engaging the Berkeley community on the launch of Vision Zero and asking for their buy-in. If there’s one thing I learned at last November’s Vision Zero Cities national conference in New York, it’s that community buy-in is paramount to a successful transition to Vision Zero in communities where road violence against pedestrians and cyclists has become the norm. To advance this goal, OursDid.org is partnering with the Office of the Chancellor at Cal to put on an art show on campus tentatively titled “Post Memory: A Decade of Art and Activism in Berkeley.” The explicit purpose of this exhibit is to both tell Zachary’s Berkeley story, but more importantly to raise awareness for road safety and #VisionZeroBerkeleyNOW.

I see this art show as more than a celebration of Zachary’s life. I see it as an important educational and public awareness project for Vision Zero in Berkeley. Currently, the University is offering space for the exhibit (the Doe Memorial Library) and reception (the Morrison Reading Room at Doe) but hasn’t budgeted funds for the project. As such, I’m asking **all stakeholders** (campus, city government, pedestrian safety advocacy groups, and the business community) to contribute financially to help bring the important message (#VisionZeroBerkeleyNOW) to the community. Can you help us by making a financial contribution? I believe “Post-Memory” will help advance our common goal of creating safe, walkable communities by raising awareness for pedestrian safety and supporting the city’s explicit goal of implementing Vision Zero this year.

So that you might clearly understand our vision for “Post Memory,” as well as our request for financial support, I’m including the following materials:

- A narrative description of the “Post Memory” exhibit
- A working list of the items to be included in the art show which includes;
- Projected costs for production (printing, framing, etc.) of each item
- A selection of artwork from the exhibit

Please let me know if you can make a financial contribution in support of this important project. It would be an honor to include your names, districts, and/or the city logo on our marketing materials which will be distributed by the UC Berkeley Office of Public Relations and on the exhibit brochure for the show. If so, please make your tax-deductible contribution payable to **A to Z Families for Safe Streets**. Thank you for your consideration and your outstanding work on pedestrian and cyclist safety in our community! Please don’t hesitate to call or text if I can answer any questions about this project: (805) 216-7352.

Yours in solidarity,

Frank Eugene Cruz

Zachary’s Dad &

Founder & Creative Director  
“Drive Like Your Kid Died Here”  
<http://oursdid.org>  
<http://facebook.com/oursdid>  
<http://twitter.com/oursdid> &

Founder & Director  
The Zachary Michael Cruz Foundation  
A Pedestrian Safety & Educational Philanthropy Nonprofit Organization  
<http://zmcfoundation.org>  
<http://facebook.com/zmcfoundation>  
<http://twitter.com/zmcfoundation>

## Post-Memory: A Decade of Art and Activism in Berkeley

A Pedestrian Safety Art Show, Opening April 13, 2019 at the Doe Library, UC Berkeley

### Exhibit Description

In 1992, feminist critic Marianne Hirsch developed a new theoretical concept she called “post-memory.” Hirsch describes post-memory as...

the relationship that later generations or distant contemporary witnesses bear to the personal, collective, and cultural trauma of others—to experiences they “remember” or know only by means of stories, images, and behaviors.

This theoretical concept is legible in the aesthetic and activist response to the sudden and public death of a 5-year old child named Zachary Michael Cruz in a Berkeley crosswalk on 27 February 2009.

*Post-Memory: A Decade of Art and Activism in Berkeley* tells the story of this young child’s brief life through snapshots and Zachary’s own kid artwork. In a very real way, these photos and works of art constitute the base of post-memory for Zachary’s family and friends.

The exhibit also highlights subsequent responses to the events of February twenty-seventh by those closest to Zachary, as well as by members of the community at large. These “stories and images” register the personal and collective trauma that Zachary’s sudden and violent death on a public street near the University produced in his family and beyond.

These works, many by artists who have no living memory of Zachary, were produced by artists between the ages of 3 and 55 years old after the Berkeley boy’s death. The art from this period of post-memory (2009-2019) takes the form of origami, mixed-media, illustration, photography, poetry, and music. These creative responses mark one example of a community spontaneously producing post-memory of a trauma some would only ever “remember” or know” secondhand through images and stories.

The conclusion of the exhibit focuses on the artifacts of activism—“behaviors” in Hirsch’s syntax—which remain Zachary Michael Cruz’ true legacy in Berkeley. This section includes community activism, official city documents, and political victories, as well as a new call for change: #VisionZeroNOW in Berkeley.

#### 1. Exhibit Description

- a. Request: Wall print applique <https://imagertransfers.com/pricing.php>
- b. Size: 11” x 14”
- c. Estimated cost: \$195

### Description of Exhibit Items

#### Zachary Michael Cruz

2. “Untitled (Father’s Day Present for Dad)” by Zachary Michael Cruz (oil on canvas, 2005)
  - a. Size: 13 <sup>13</sup>/<sub>16</sub>” x 16 <sup>3</sup>/<sub>4</sub>”

- b. Request: NA
- c. Estimated cost: NA
- 3. **“Yellow Submarine”** by Zachary Michael Cruz (reproduction of pastel on paper, 2008)
  - a. Size: 12” x 12”
  - b. Request: Framing and printing
  - c. Estimated cost: \$100
- 4. **“Friend in Me”** by Zachary Michael Cruz and Jodie Cruz (gocco screenprint on paper, 2008-2010)
  - a. Size: 16” x 22”
  - b. Request: Framing
  - c. Estimated cost: \$100
- 5. **“Stick Family”** by Zachary Michael Cruz (marker on paper, 2008)
  - a. Size: 16 <sup>3</sup>/<sub>4</sub>” x 20 <sup>5</sup>/<sub>8</sub>”
  - b. Request: NA
  - c. Estimated cost: NA
- 6. **“Medium Format Cluster”** (3 pieces) by Zachary Cruz and Jeremy Wallace; Chris Dixon (photography, 2008)
  - a. Size: 5.85” x 17.55”
  - b. Request: Framing and printing
  - c. Estimated cost: \$100
- 7. **“Space Ship”** (2 pieces) by Zachary Cruz and Frank Eugene Cruz (wood, nails, and paint, 2006)
  - a. Size: NA (three dimensional); snapshot photo, 4” x 6”
  - b. Request: Stand/shelf for object; framing and printing
  - c. Estimated cost: \$20

### Family & Community

- 8. **“Le Conte Cluster”** (2 pieces, 1 frame) by Ophelia and the 5<sup>th</sup> Grade Class of Le Conte Elementary (photographic reproduction of mixed media/diorama/oragami, 2009)
  - a. “Ophelia’s Memory Box”
    - i. Size: 8” x 6”
    - ii. Note: A dozen origami cranes in blue and gold dangle down from the ceiling above this section
  - b. “A Thousand Cranes”
    - i. Size: 8” x 6”
  - c. Request: Framing and printing
  - d. Estimated cost: \$100
- 9. **“For Your Mother”** by Frank Eugene Cruz (poem, 2009)
  - a. Request: Wall print applique <https://imagertransfers.com/pricing.php>
  - b. Size: 11” x 14”
  - c. Estimated cost: \$195
- 10. **“Baseball is a Game about Living with Loss Cluster”** by Chris Dixon (photography, 2011) (2 pieces, 1 frame)
  - a. “Baseball is a Game about Living with Loss (No. 1)”
    - i. Size: 12” x 18”
  - b. “Baseball is a Game about Living with Loss (No. 2)”
    - i. Size 12” x 18”

- c. Request: Framing
- d. Estimated cost: \$100
- 11. **“Bottle’s Almost Empty”** by Ralph Stollenwerk (screen print ink on paper, 2014)
  - a. Size: 19” x 25”
  - b. Request: NA
  - c. Estimated cost: \$0
- 12. **“Ofrenda LP”** by Frank Cruz & the New Deal, Brian Espinosa (music on vinyl/album artwork, 2014)
  - a. Size: 12” x 18”
  - b. Request: Framing
  - c. Estimated cost: \$100
- 13. **“Zachary’s Headphones”** by Santiago Portilla (photograph, 2010)
  - a. Size: 12” x 18”
  - b. Request: Framing and printing
  - c. Estimated cost: \$100
- 14. **“Berkeley Double Exposure”** by Brian Espinosa, Jodie Cruz, and Chris Dixon (digital art/photography, 2006-2014)
  - a. Size: 12” x 20”
  - b. Request: Framing and printing
  - c. Estimated cost: \$100
- 15. **“Untitled”** by Miles Cruz (pen on paper, 2012)
  - a. Size: 8.5” x 11”
  - b. Request: Framing
- 16. **“Zachary’s Butterfly”** by Beverly Shelton (watercolor on paper, 2010)
  - a. Size: 9” x 12”
  - b. Request: Framing
  - c. Estimated cost: \$80
- 17. **“Drive Like Your Brother Died Here”** by Miles Cruz (marker on paper, 2018)
  - a. Size: 12” x 18”
  - b. Request: Framing
  - c. Estimated cost: \$80

### The Art of Activism/Vision Zero

- 18. **“Zachary’s Corner”** by Anonymous (corrugated metal, 2010)
  - a. Size: Replica street sign <https://www.tapconet.com/hawkins-traffic>
  - b. Request: Cost of street sign production
  - c. Estimated cost:
- 19. **“Derby & Warring”** by Frank Eugene Cruz (photograph, 2009)
  - a. Size: 5.5” x 5.5”
  - b. Request: Framing and Printing
  - c. Estimated cost: \$50
- 20. **“City of Berkeley Proclamation”** by Mayor Tom Bates and the Berkeley City Council (ink on paper, 2011)
  - a. Size: 8.25” x 11”
  - b. Request: NA
  - c. Estimated Cost: \$0

21. **“The Zachary Cruz Scholars at Cal”** by ZMC Foundation/Centers for Educational Equity, Excellence & Education at UC Berkeley (wall print applique, 2011-2019)
  - a. List of names, majors, and graduation year of the Zachary Cruz Memorial Scholarship recipients from 2011-present
    - o *Ethan Hill, BA (Rhetoric/Political Science), Class of 2020*
    - o *Robert L. Reyes III (English), Class of 2020*
  - b. Size: 11” x 14”
  - c. Request: Wall print applique <https://imagertransfers.com/pricing.php>
  - d. Estimated cost: \$195
22. **“Zachary Michael Cruz Foundation Cluster”** (3 items, 1 frame) by Brian Espinosa, Jodie Cruz (graphic design/photography, 2008-2010)
  - a. Size: 12” x 12”
  - b. Request: Framing and printing
  - c. Estimated cost: \$100
23. **“ZMCF Benefit Concert Poster”** by Brian Espinosa (graphic design, 2011)
  - a. Size: 11” x 17”
  - b. Request: Framing
  - c. Estimated cost: \$80
24. **“Drive Like Your Brother Died Here, Derby & Warring”** by Chris Dixon (photography, 2018)
  - a. Size: 12” x 18”
  - b. Request: Framing and printing
  - c. Estimated cost: \$100
25. **“Streets Have Stories Cluster”** (3 pieces, 1 frame) by Lauren Holland, Anonymous (journalism/newsprint/photography, 2018)
  - a. Size: 12” x 21” (x 2) (journalism/newsprint pieces)
  - b. Size: 12” x 18 (photograph)
  - c. Request: Framing and printing of photograph
  - d. Estimated Cost: \$100

### Signs of Protest

Note: Imagine these picket signs, attached to wooden stakes, rising up from the top of the ledge. The pieces of activist art hang below. The signs are high up, as if hoisted in the air in homage to Berkeley’s campus activist tradition.

26. **“Drive Like Your Cal Bear Died Here Yard Sign”** by OursDid.org and Brian Espinosa (graphic design/screen print on corrugated plastic, 2018)
  - a. Size: 18” x 24”
  - b. Request: NA
  - c. Estimated Cost: \$0
27. **“Ours Did Picket Sign #1”** by OursDid.org (graphic design/ink on paper, 2018)
  - a. Size: 12” x 18”
  - b. Request: NA
  - c. Estimated Cost: \$0
28. **“Ours Did Sign Picket Sign #2”** by OursDid.org (graphic design/ink on paper, 2018)
  - a. Request: NA
  - b. Estimated Cost: \$0

29. **“Crash Not Accident Picket Sign”** by Transportation Alternatives and Families for Safe Streets NYC (graphic design/ink on paper, 2018)
  - a. Size: 12” x 18”
  - b. Request: NA
  - c. Estimated Cost: \$0
30. **“#VisionZeroNOW Picket Sign”** by OursDid.org (graphic design/ink on paper, 2019)
  - a. Request: NA
  - b. Estimated Cost: \$0

“Post-Memory”: Selected Exhibit Items



“Untitled (Father’s Day Present for Dad)” by Zachary Michael Cruz (oil on canvas, 2005)





**“Yellow Submarine”** by Zachary Michael Cruz (pastel on paper, 2008)



“A Thousand Cranes” by the 5<sup>th</sup> Grade Class of Le Conte Elementary (paper/origami, 2009)





“Bottle’s Almost Empty” by Ralph Stollenwerk (screen print ink on paper, 2014)



“Derby & Warring” by Frank Eugene Cruz (digital photography, 2010)



**“Streets Have Stories”** by Janice Lau (digital photography, 2018)





**“Mine Did”** by Christopher Dixon (digital photography, 2018)



Lori Droste  
Councilmember, District 8

## REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** March 26, 2019 (continued from February 26, 2019)

**Item Number:** 22

**Item Description:** **Missing Middle Housing Report**

**Submitted by:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

This item has been revised to include [friendly amendments](#) from Mayor Jesse Arreguín, Councilmember Sophie Hahn and Councilmember Kate Harrison ([in blue underlined](#)) to include best practices research, analysis of hillside neighborhoods, pressures on neighborhoods with historic redlining, considering additional design and green elements, historic preservation, and administrative and public processes. Other considerations by the authors to address affordability and displacement are noted *in red italics*.



Lori Droste  
Councilmember, District 8

**ACTION CALENDAR**

March 26, 2019

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle Housing Report

**RECOMMENDATION**

Refer to the City Manager to prepare a report to the Council of examining methods, including potential revisions to the zoning code, that may foster a broader range housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

The report should examine how other cities that have prepared for and implemented these changes particularly Minneapolis, Seattle, Chicago, and Portland, did so, including mitigating potential side effects, particularly on displacement and increases in rental prices in the surrounding area.

The report(s) should include, but is (are) not limited to

1. Identifying where missing middle housing may be optimal
2. Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable,



saving and lightly modifying an older structure as part of internally dividing it into more than one unit<sup>1</sup>

3. Evaluating Berkeley's residential areas –including Berkeley hillsides– while also considering fire and disaster preparedness service needs
4. Considering design elements and form-based zoning, which addresses the appropriate form, scale and massing of buildings as they relate to one another, as a potential strategy<sup>2</sup>
5. Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units
6. Creating incentives for building more than one unit on larger than average lots
7. Providing suggestions to
  - a. protect existing housing stock, particularly affordable and rent-controlled stock
  - b. protect tenant and vulnerable low-income individuals
  - c. control demolition
  - d. ensure no net loss provisions, and
  - e. increase affordability with provisions that align with our land value recapture policy objectives
8. Evaluating whether changes –or lack of changes– would
  - a. place particular economic or gentrifying pressure on low-income neighborhoods with historic redlining or contribute to
  - b. Contribute to further exclusion and/or exacerbate racial and economic segregation in Berkeley.
9. Evaluating methods for promoting first time home ownership of these units (e.g. Open Doors Initiative) and/or providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed
10. Incorporating green features and evaluating environmental impacts of missing middle housing
11. Considering historic preservation efforts and preventing impacts to designated historic resources
12. Examining how different cities effectuated these changes (e.g. changes to their General Plan, zoning changes, etc.), and
13. Evaluating the public process used in the course of considering these changes

Given the range of requests included in this referral, it is expected that responding to the referral will require a combination of field research, consultation with design

---

<sup>1</sup> City of Portland, <https://www.portlandoregon.gov/bps/article/711691>.

<sup>2</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>

professionals and other cities and agencies, and community outreach and engagement. Council requests that staff initiate this work as soon as possible.

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>3</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since December 2013.<sup>4</sup> The escalating rents coincided with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>5</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>6</sup>

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to

---

<sup>3</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>4</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>5</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

<sup>6</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>7</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>8</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>9</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>10</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>11</sup> This means that many City of Berkeley employees couldn’t afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn’t be able to afford a home. Neither would a fire captain (making \$142,000) with a stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn’t buy a house.<sup>12</sup>

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact

---

<sup>7</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>8</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.” <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>9</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>10</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards\\_Income\\_Limits\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards_Income_Limits_and_Utility_Allowance.aspx)

<sup>11</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>12</sup> City of Berkeley Human Resources, “Job Descriptions” <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

their ability to retain their BUSD positions.<sup>13</sup> Since individual K-12 teacher salaries average ~\$75,962,<sup>14</sup> the majority of teachers are not classified as low-income (<\$62,750), according to Housing and Urban Development guidelines. As a result, many cannot qualify for affordable housing units.

Since middle income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, most have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

### *Families*

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>15</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>16</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>17</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>18</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>19</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area's extreme housing affordability crisis. According to the 2017 point-in-time count, Berkeley had approximately 972 individuals experiencing homelessness on any

---

<sup>13</sup> Berkeley Unified School District, “Recommendation for District-Owned Rental Housing for Employees”, <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

<sup>14</sup> Education Data Partnership, “Teacher Salaries” <http://www.ed-data.org/district/Alameda/Berkeley-Unified>

<sup>15</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>16</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>17</sup> D'Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>18</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>19</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region's greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

given night.<sup>20</sup> In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.<sup>21</sup> Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>22</sup> In 2015, the non-partisan California's Legislative Analyst Office published a report addressing the state's high housing costs. Their report revealed that growth control policies increased home prices by 3-5%.<sup>23</sup> In the 1,000 Person Plan to Address Homelessness, Berkeley's Health, Housing and Community Services staff also recommend that Council prioritizes "implementing changes to Berkeley's Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness."

## BACKGROUND

### Missing Middle

*What is missing middle housing?*

Missing middle housing is a term used to describe:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>24</sup> and/or
2. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working people.<sup>25</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>26</sup>

<sup>20</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspxn](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspxn)

<sup>21</sup> United States Interagency Council on Homelessness "The Evidence behind Approaches that Drive an End to Homelessness" December 2017, [https://www.usich.gov/resources/uploads/asset\\_library/evidence-behind-approaches-that-end-homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf)

<sup>22</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. [https://urbanpolicy.berkeley.edu/pdf/grs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/grs_restat01pb.pdf)

<sup>23</sup> California's High Housing Costs, Causes and Consequences, Legislative Analyst Office, March 17, 2015. <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

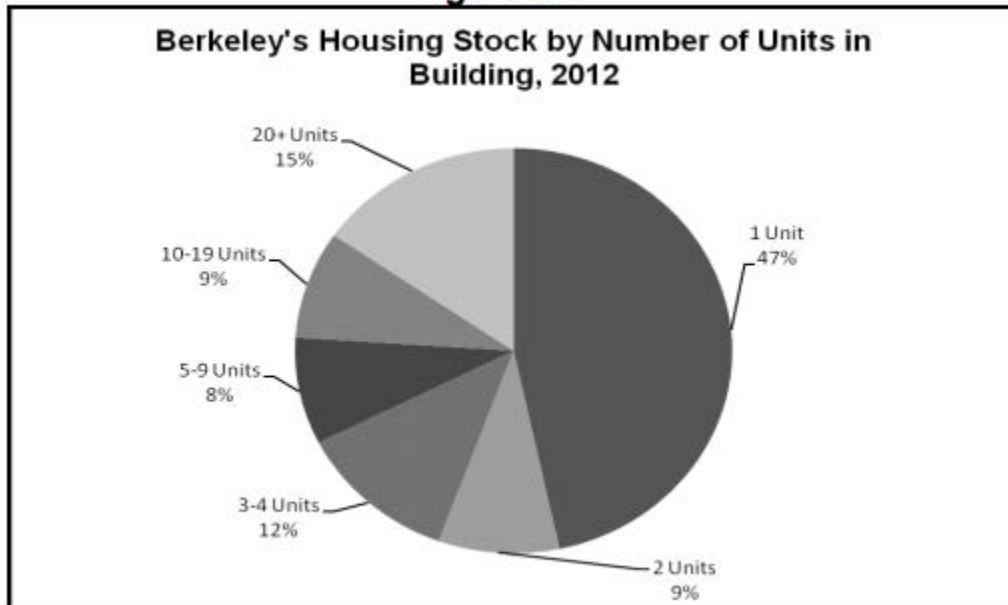
<sup>24</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>

<sup>25</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>26</sup> City of Berkeley 2015 -2023 Housing Element. [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)

and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.

**Figure 2-4:**



*Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024*

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single family homes. Missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

The current housing market has led to “barbell” housing delivery. That is, new units tend to high-priced (market rate or luxury) or highly subsidized (affordable). Consequently, the majority of the population can't access new units because of the dearth of funding, scarcity of land, and high construction costs impose challenges on viability. One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the



bulk per-unit development rate.”<sup>27</sup> Additionally, many types of missing middle housing are not permitted in areas zoned R1 (single family only), R1A (limited two family), and R2 (restricted two family). Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>28</sup>

### **History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning**

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes, etc exist in areas now zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>29</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company’s use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>30</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>31</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>32</sup>

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

---

<sup>27</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>28</sup> Ibid.

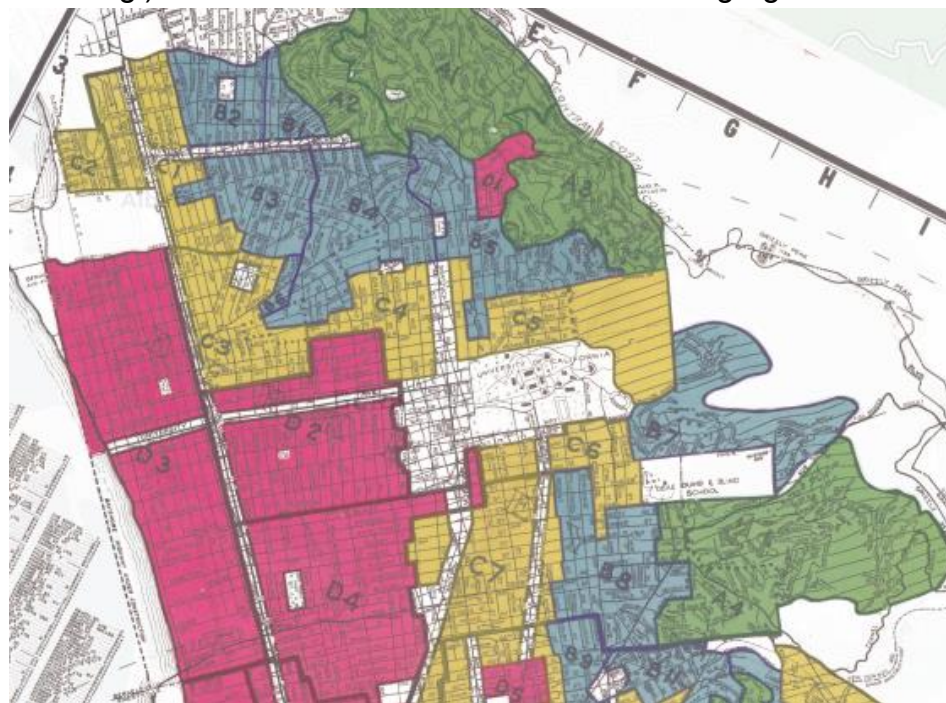
<sup>29</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>30</sup> Claremont Park Company Indenture, 1910

<sup>31</sup> Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

<sup>32</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

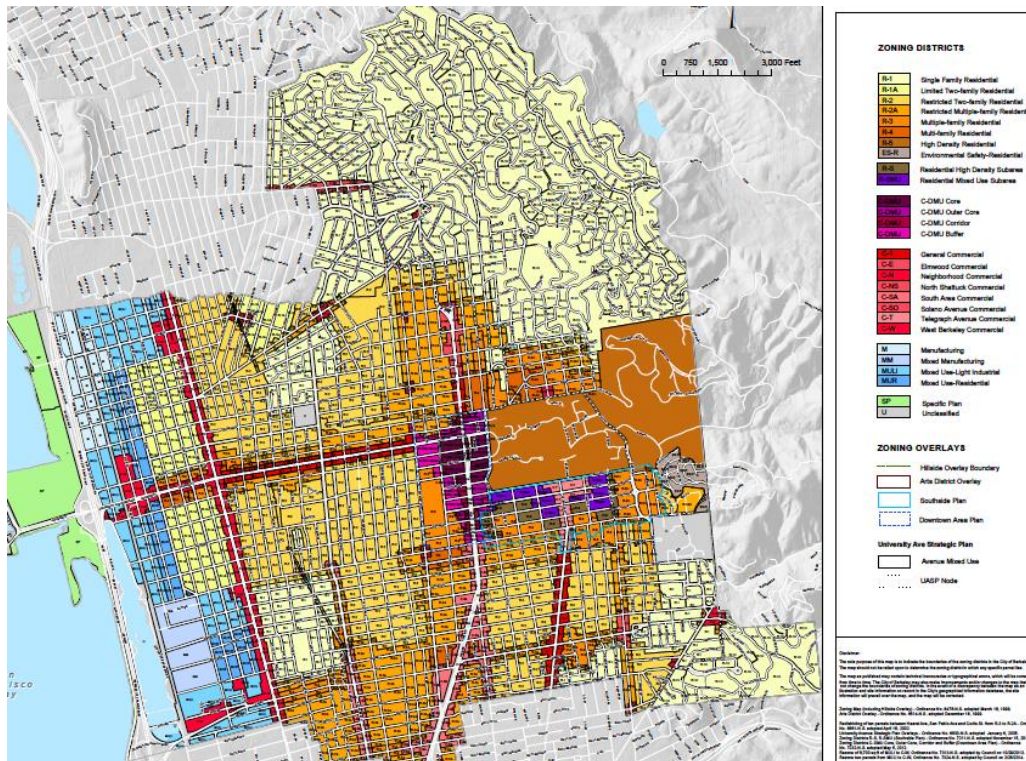
In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.<sup>33</sup>



---

<sup>33</sup> NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.<sup>34</sup>

Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable areas to single-family homes (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>35</sup> While Berkeley has created

<sup>34</sup> Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” American Panorama, ed. Robert K. Nelson and Edward L. Ayers, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>

<sup>35</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that “the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today’s exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley’s early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.”<sup>36</sup>

### **Historic Redlining**

Redlining was a practice (still mirrored today, in some respects) whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence “redlining.” The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relative large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the

---

<sup>36</sup> Karen Chapple’s February 25, 2019 letter to Berkeley City Council in support of this proposal. See Attachments.

same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of multi-family zoning versus exclusionary zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in involuntary displacement or the loss of rent-controlled or naturally-affordable housing units.

### **TENANT AND ANTI-DISPLACEMENT STRATEGIES**

The types of zoning modifications that may result from the requested report could significantly increase Berkeley's housing stock with units that are more affordable to low- and middle-income residents. However, staff's report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low-income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn't result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding the date of application).

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report on fostering a variety of housing types to inform future policy decisions, as opposed to zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

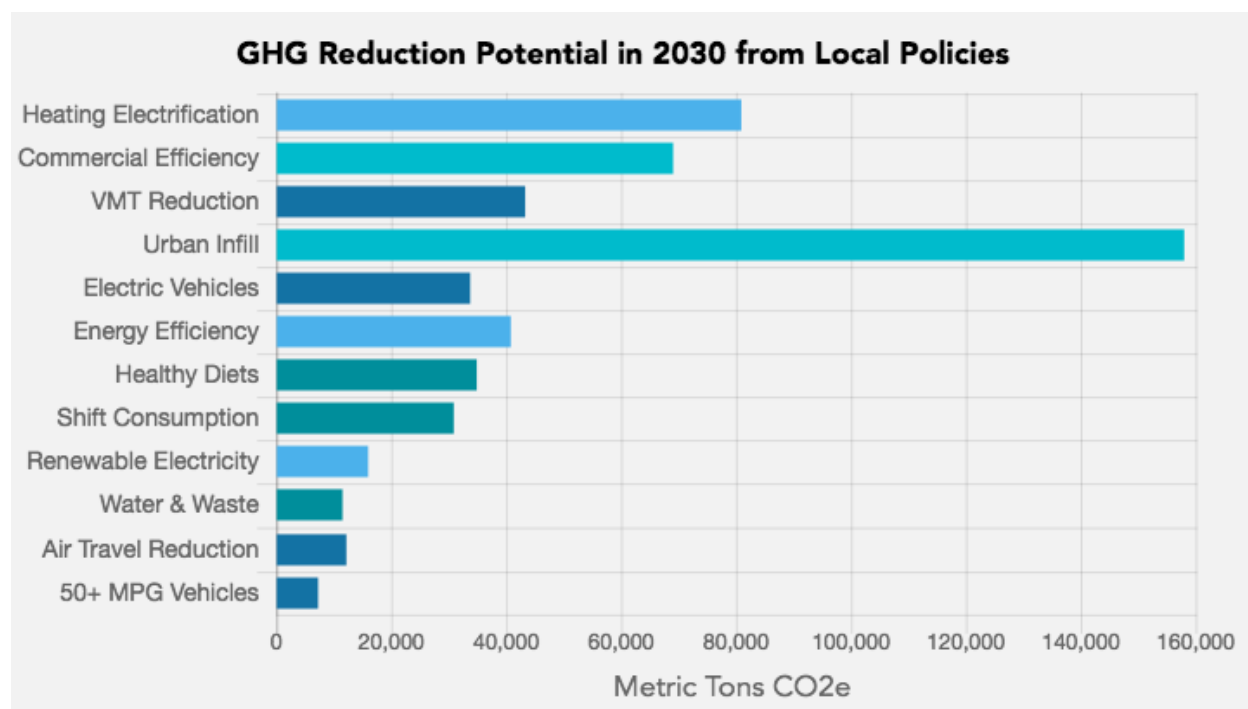
Not applicable as this item requests an analytical report.

### **FINANCIAL IMPLICATIONS**

Costs for consultants to provide a missing middle scan or an in-depth analysis range from \$25,000-\$65,000. Staff should consider adding components of this Council referral to the city's density standard study in order to accelerate the referral response, as long as it doesn't displace or delay the density standard project.

## ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>37</sup> The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



### CONTACT PERSON(S):

Lori Droste, 510-981-7180

### ATTACHMENTS/LINKS:

Minneapolis Plan:

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

<sup>37</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. *Urban Planning* (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

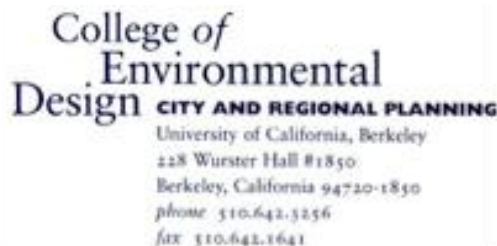
understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*





February 25, 2019

Honorable Mayor and City Council members:

I am writing to convey my strong support for the "Missing Middle Report" on your 2/26 Council meeting.

As the Council item co-authored by Councilmembers Droste, Bartlett, Kesarwani, and Robinson points out, Berkeley's housing crisis today is a legacy of its past racist and exclusionary practices. I commend their effort to push Berkeley to confront its history in order to build a more inclusive future.

Our research at the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC) and today's patterns of residential displacement and exclusion.<sup>1</sup> Overall, 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the HOLC, and 75% of today's exclusionary areas in the East Bay were rated as "best" (green) or "still desirable" (blue) by HOLC. Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.

Should Berkeley elect to proceed to study the potential for zoning reform, it will be in good company. As the item authors note, Minneapolis and Seattle are already experimenting with ways to open up single-family zones, and Berkeley should be leading the charge as well.<sup>2</sup> Zoning reform has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.

I urge you to vote yes on Item 22 to request a Missing Middle report. Please do not hesitate to call on me if any research on zoning impacts or alternatives is needed.

Sincerely,

A handwritten signature in blue ink that reads "Karen Chapple".

Karen Chapple  
Professor, City and Regional Planning  
Carmel P. Friesen Chair in Urban Studies  
Faculty Director, The Urban Displacement Project

<sup>1</sup> See <http://www.urbandisplacement.org/redlining>

<sup>2</sup> Interestingly, leading the charge in Minneapolis is City Council President Lisa Bender, a graduate of UC-Berkeley's Department of City and Regional Planning.





Lori Droste  
Councilmember, District 8

## ACTION CALENDAR

March 26, 2019

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle *Housing* Report

### **RECOMMENDATION**

Refer to the City Manager to ~~bring back to Council~~ prepare a report to the Council of examining methods, including potential revisions to the zoning code, ~~to~~ that may foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

The report should examine how other cities that have prepared for and implemented these changes particularly Minneapolis, Seattle, Chicago, and Portland, did so, including mitigating potential side effects, particularly on displacement and increases in rental prices in the surrounding area and providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed.

The report(s) should include, but is (are) not limited to, examining how other cities approached and recommending alternatives to:

1. Identifying where missing middle housing is *may be* optimal/could be permitted and the increase in density
2. Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable,

saving and lightly modifying an older structure as part of internally dividing it into more than one unit<sup>38</sup>

3. ~~Excluding very high fire severity zones as defined by Cal Fire and/or City of Berkeley. *Evaluating Berkeley's residential areas –including Berkeley hillsides– while also unique geological features, such as hillsides and high fire severity zones, and considering fire and disaster preparedness service needs*~~
4. Considering design elements *and* form-based zoning, which addresses the appropriate form, scale and massing of buildings as they relate to one another, as a potential strategy<sup>39</sup>
5. Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units
6. Creating incentives for building more than one unit on larger than average lots
7. Providing suggestions to
  - a. protect existing housing stock, *particularly affordable and rent-controlled stock*
  - b. ~~*protect*~~ provide for Considering provision of tenant and vulnerable low-income *individuals* homeowner protections,
  - c. *control* demolition controls, and
  - d. *ensure* no net loss provisions, and
  - e. increase affordability *with* provisions that align with our land value recapture policy objectives ~~to maximize affordability in Berkeley.~~
8. Evaluating whether changes –or lack of changes– would
  - a. place particular *economic or gentrifying* pressure on low-income neighborhoods with historic redlining
  - b. *Contribute to further exclusion and/or exacerbate racial and economic segregation in Berkeley.*
9. Evaluating methods for promoting first time home ownership of these units (e.g. *Open Doors Initiative*) and/or providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed
10. Incorporating green features *and evaluating environmental impacts of missing middle housing*
11. *Considering historic preservation efforts and preventing impacts to designated historic resources*
12. Examining how different cities effectuated these changes (e.g. changes to their General Plan, zoning changes, etc.), *and*
13. Evaluating the public process used in the course of considering these changes

<sup>38</sup> City of Portland, <https://www.portlandoregon.gov/bps/article/711691>.

<sup>39</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>

*Given the range of requests included in this referral, it is expected that responding to the referral will require a combination of field research, consultation with design professionals and other cities and agencies, and community outreach and engagement. Council requests that staff initiate this work as soon as possible.*

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>40</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since December 2013.<sup>41</sup> The escalating rents coincided with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>42</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>43</sup>

---

<sup>40</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>41</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>42</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

<sup>43</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>44</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>45</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>46</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>47</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>48</sup> This means that many City of Berkeley employees couldn’t afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn’t be able to afford a home. Neither would a fire captain (making \$142,000) with a stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn’t buy a house.<sup>49</sup>

*Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD)*

<sup>44</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>45</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.” <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>46</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>47</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards\\_Income\\_Limits\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards_Income_Limits_and_Utility_Allowance.aspx)

<sup>48</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>49</sup> City of Berkeley Human Resources, “Job Descriptions” <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

*survey, 69% of teachers or staff who rent believe that high housing costs will impact their ability to retain their BUSD positions.<sup>50</sup> Since individual K-12 teacher salaries average ~\$75,962,<sup>51</sup> the majority of teachers are not classified as low-income (<\$62,750), according to Housing and Urban Development guidelines. As a result, many cannot qualify for affordable housing units.*

*Since middle income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, most have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.*

### *Families*

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>52</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>53</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>54</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>55</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>56</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2017 point-in-time

<sup>50</sup> **Berkeley Unified School District, “Recommendation for District-Owned Rental Housing for Employees”**, <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

<sup>51</sup> *Education Data Partnership, “Teacher Salaries”* <http://www.ed-data.org/district/Alameda/Berkeley-Unified>

<sup>52</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>53</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>54</sup> D'Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>55</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>56</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

count, Berkeley had approximately 972 individuals experiencing homelessness on any given night.<sup>57</sup> In order to *act in accordance with best practices research on alleviating homelessness and* help homeless individuals get housed, the City needs to create more homes.<sup>58</sup> Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>59</sup> *In 2015, the non-partisan California's Legislative Analyst Office published a report addressing the state's high housing costs. Their report revealed that growth control policies increased home prices by 3-5%.<sup>60</sup> In the 1,000 Person Plan to Address Homelessness, Berkeley's Health, Housing and Community Services staff also recommend that Council prioritizes "implementing changes to Berkeley's Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness."*

## BACKGROUND

### Missing Middle

*What is missing middle housing?*

Missing middle housing is a term used to describe:

3. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>61</sup> and/or
4. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working

<sup>57</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspxn](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspxn)

<sup>58</sup> United States Interagency Council on Homelessness "The Evidence behind Approaches that Drive an End to Homelessness" December 2017, [https://www.usich.gov/resources/uploads/asset\\_library/evidence-behind-approaches-that-end-homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf)

<sup>59</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. [https://urbanpolicy.berkeley.edu/pdf/grs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/grs_restat01pb.pdf)

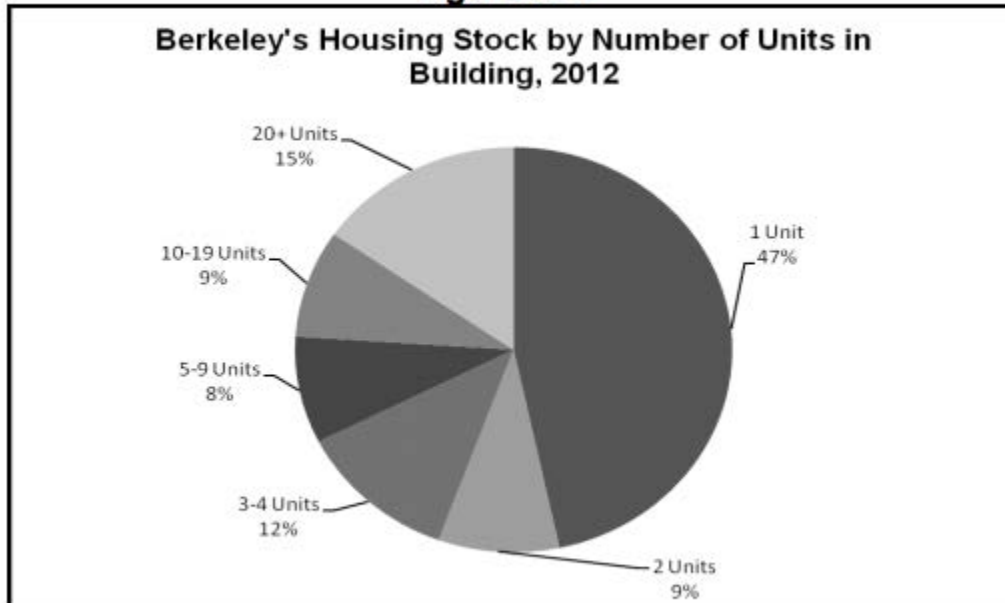
<sup>60</sup> *California's High Housing Costs, Causes and Consequences*, Legislative Analyst Office, March 17, 2015. <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

<sup>61</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>



people.<sup>62</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>63</sup> and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.

**Figure 2-4:**



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single family homes. Missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

*The current housing market has led to “barbell” housing delivery. That is, new units tend to high-priced (market rate or luxury) or highly subsidized (affordable). Consequently, the majority of the population can’t access new units because of the dearth of funding, scarcity of land, and high construction costs impose challenges on viability.* One study found that individuals trying to create missing middle housing cannot compete

<sup>62</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>63</sup> City of Berkeley 2015 -2023 Housing Element.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)

financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”<sup>64</sup> Additionally, *many types of* missing middle housing *are* not permitted in areas zoned R1 (single family family only), *R1A (limited two family)*, and *R2 (restricted two family)*. Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>65</sup>

### **History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning**

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes, etc exist in areas now zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>66</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company’s use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>67</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>68</sup> and restrict

---

<sup>64</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>65</sup> Ibid.

<sup>66</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>67</sup> Claremont Park Company Indenture, 1910

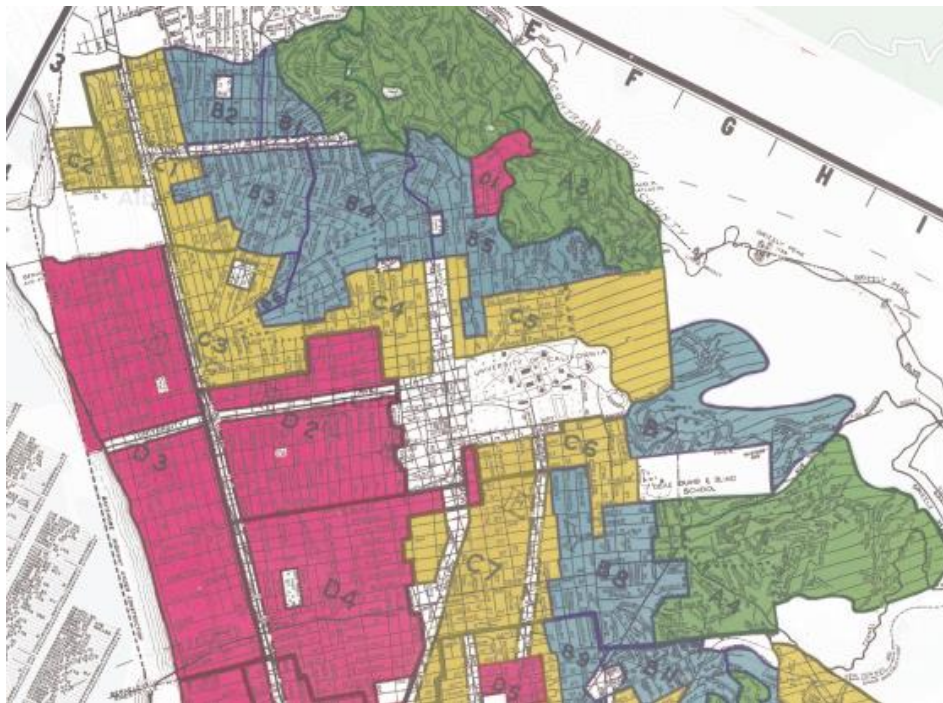
<sup>68</sup> Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>



Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>69</sup>

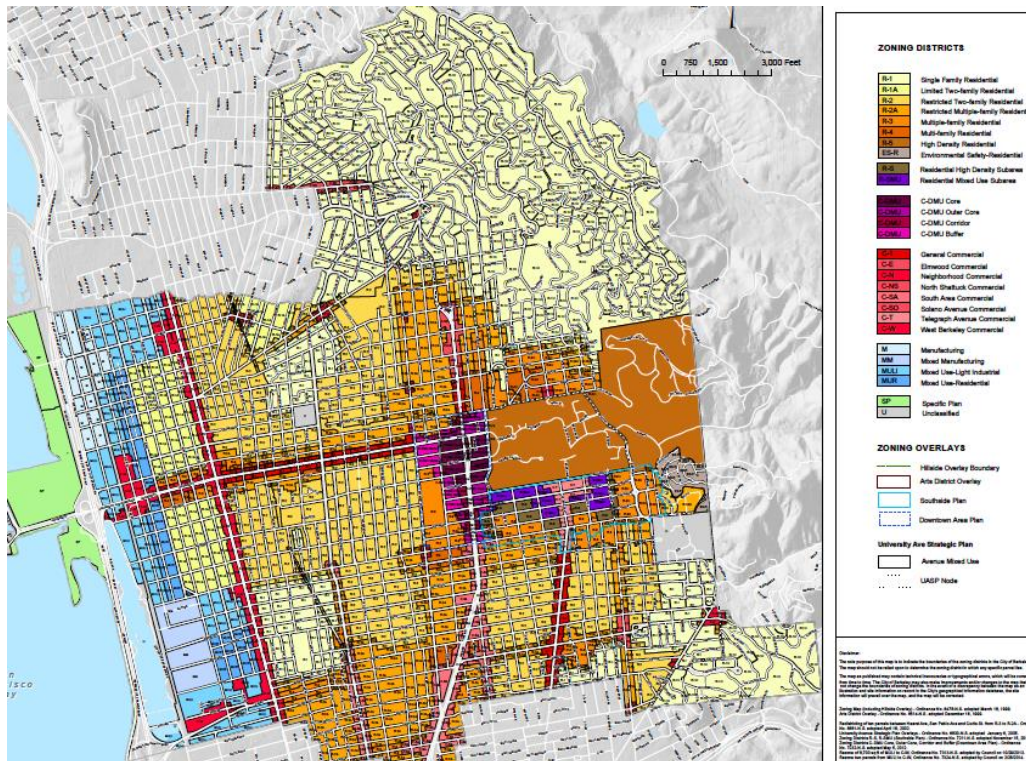
After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.<sup>70</sup>



<sup>69</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

<sup>70</sup> NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)



The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.<sup>71</sup>

Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable areas to single-family homes (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>72</sup> While Berkeley has created

<sup>71</sup> Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” American Panorama, ed. Robert K. Nelson and Edward L. Ayers,

<https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>

<sup>72</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

*University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that “the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today’s exclusionary areas in the East Bay...Thus, this historic legacy, compounded by Berkeley’s early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.”<sup>73</sup>*

### **Historic Redlining**

*Redlining was a practice (still mirrored today, in some respects) whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence “redlining.” The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.*

*Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.*

*One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relative large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the*

---

<sup>73</sup> Karen Chapple’s February 25, 2019 letter to Berkeley City Council in support of this proposal. See Attachments.



*same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.*

*Ironically, because these patterns of multi-family zoning versus exclusionary zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in involuntary displacement or the loss of rent-controlled or naturally-affordable housing units.*

### **TENANT AND ANTI-DISPLACEMENT STRATEGIES**

The types of zoning modifications that may result from the requested report could, ~~as discussed above,~~ significantly increase Berkeley's housing stock with units that are more affordable to low- and middle-income residents. However, staff's report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low-income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn't result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding *the* date of application).

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report on *fostering a variety of housing types* ~~potential zoning changes~~ to inform future policy decisions, as opposed to ~~immediate~~ zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

Not applicable as this item requests an analytical report.

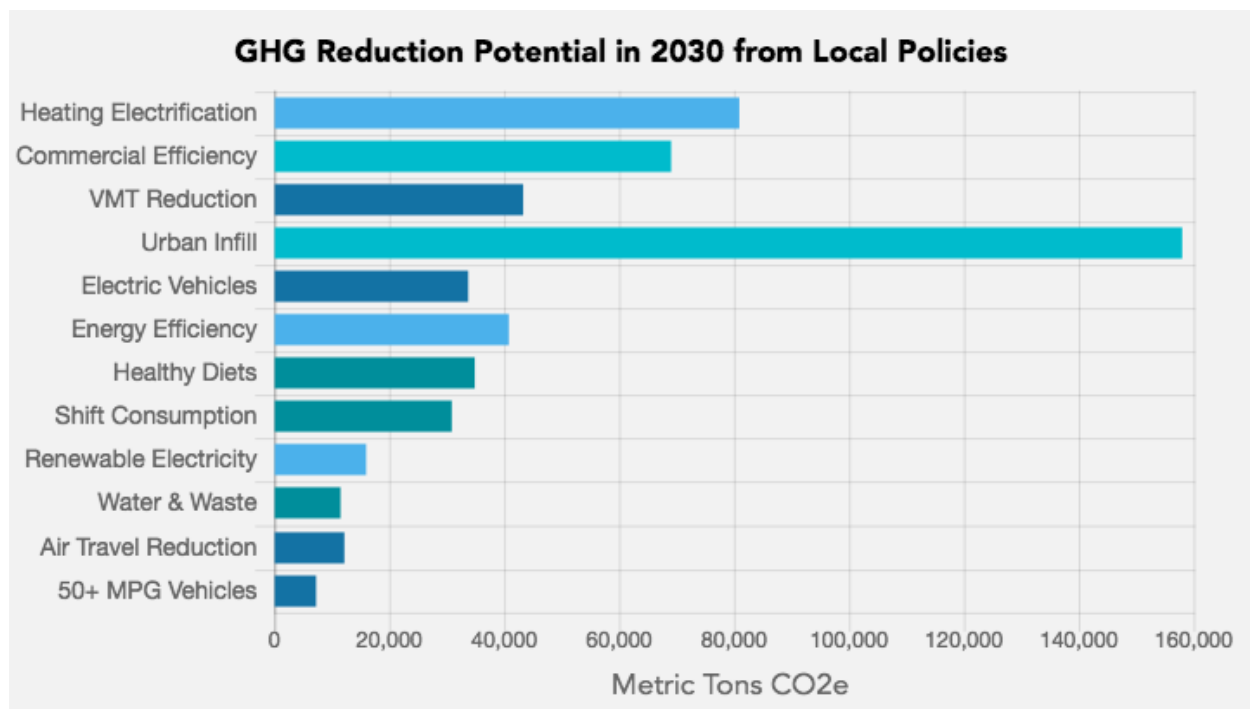
### **FINANCIAL IMPLICATIONS**

~~Staffing or consulting costs to analyze zoning code and produce the report.~~ *Costs for consultants to provide a missing middle scan or an in-depth analysis range from \$25,000-\$65,000. Staff should consider adding components of this Council referral to*

*the city's density standard study in order to accelerate the referral response, as long as it doesn't displace or delay the density standard project.*

## ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>74</sup> The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



### CONTACT PERSON(S):

Lori Droste, 510-981-7180

### ATTACHMENTS/*LINKS*:

Minneapolis Plan:

<sup>74</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. *Urban Planning* (ISSN: 2183-7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

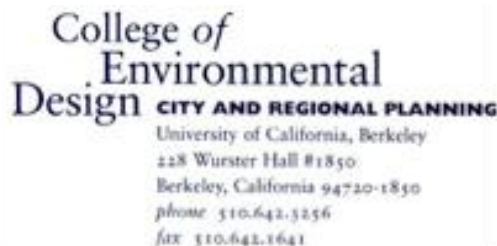
understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*





February 25, 2019

Honorable Mayor and City Council members:

I am writing to convey my strong support for the "Missing Middle Report" on your 2/26 Council meeting.

As the Council item co-authored by Councilmembers Droste, Bartlett, Kesarwani, and Robinson points out, Berkeley's housing crisis today is a legacy of its past racist and exclusionary practices. I commend their effort to push Berkeley to confront its history in order to build a more inclusive future.

Our research at the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC) and today's patterns of residential displacement and exclusion.<sup>1</sup> Overall, 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the HOLC, and 75% of today's exclusionary areas in the East Bay were rated as "best" (green) or "still desirable" (blue) by HOLC. Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.

Should Berkeley elect to proceed to study the potential for zoning reform, it will be in good company. As the item authors note, Minneapolis and Seattle are already experimenting with ways to open up single-family zones, and Berkeley should be leading the charge as well.<sup>2</sup> Zoning reform has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.

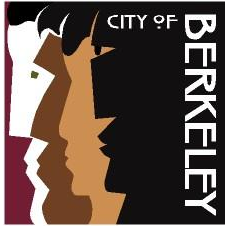
I urge you to vote yes on Item 22 to request a Missing Middle report. Please do not hesitate to call on me if any research on zoning impacts or alternatives is needed.

Sincerely,

Karen Chapple  
Professor, City and Regional Planning  
Carmel P. Friesen Chair in Urban Studies  
Faculty Director, The Urban Displacement Project

<sup>1</sup> See <http://www.urbandisplacement.org/redlining>

<sup>2</sup> Interestingly, leading the charge in Minneapolis is City Council President Lisa Bender, a graduate of UC-Berkeley's Department of City and Regional Planning.



Kate Harrison  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:**       **March 26, 2019**

**Item Number:**       **22**

**Item Description:**   **Missing Middle Report**

**Submitted by:**       **Councilmembers Kate Harrison and Sophie Hahn and Mayor Jesse Arreguin**

In the report on Missing Middle housing, we ask that the City Manager consider 1) the process by which other cities considered these type of changes and 2) for those that moved forward, how these changes were effectuated. Cities such as Houston, Chicago, Portland, and Minneapolis, among others, have undergone this process in a variety of ways and to varying degrees of success. Berkeley should learn from these cities to guarantee that any Missing Middle housing is built with equity as a key consideration.

The report warrants further examination of how fire impacts our zoning needs. Ingress and egress are critical issues citywide as fire has the potential to spread throughout the City extremely quickly in Berkeley,<sup>1</sup> especially as climate change makes fires stronger and faster. We ask that the report look at how other cities incorporated these concerns and disaster preparedness in all areas of their cities.

No zoning changes should exacerbate gentrification or displacement; it is especially important that the effects of past redlining not be compounded. Automatically excluding all high-fire zones will result in eliminating 70% of the R-1 and R-1A zoning<sup>2</sup> that could be considered for upzoning and result in increased pressure on the areas of the historic redline and in low-income areas. Much of the proposed rezoning aligns with the historic redline; if not done carefully, rezoning can lead to displacement through demolished housing stock and rising rents. San Francisco has recognized that it is losing affordable housing more quickly than it is constructing it. Berkeley is in an affordable housing crisis and must retain the affordable housing we already have.

<sup>1</sup> <https://www.berkeleyside.com/2018/05/21/wildfire-story>

<sup>2</sup> The fire zones make up approximately 50% of the square mileage of all R1, R1-A, and R2 zoned areas.  
2180 Milvia Street, Berkeley, CA 94704   Tel: 510.981.7140   TDD: 510.981.6903  
E-Mail: [kharrison@CityofBerkeley.info](mailto:kharrison@CityofBerkeley.info)

When considering changes to the zoning code, we must also consider the Costa-Hawkins Rental Housing Act's<sup>3</sup> exemption of new units from rent control. Even if current tenants guaranteed a first right to lease at prior rents, these units will lose affordability over time. Existing tenants are likely to leave during the construction period with new tenants facing exorbitant market-rate rental prices. For example, in Chicago,<sup>4</sup> the *particular lots* that were upzoned experienced increases in housing prices and early indications are that no net new housing was produced.<sup>5</sup> Much of the particular lots that were affected in Chicago and would be impacted here are in historically black and brown neighborhoods.

We are also facing a crisis in homeownership. As Councilmember Bartlett examines in his Open Doors Initiative, Berkeley's stock of starter homes is dwindling every year. Missing Middle housing is well-suited for these starter homes, provided that there is sufficient assurance that the housing will be owner-occupied. We ask that the study examine how home ownership rates changed upon implementing Missing Middle in other cities, and whether Berkeley can provide loan or other assistance to guarantee that families are able to own new housing.

### **Recommendation:**

Refer to the City Manager to ~~bring back to~~ prepare a report to the Council ~~a report of examining methods that may~~ foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services. The report should examine how other cities that have prepared for and implemented these changes particularly Minneapolis, Chicago, and Portland, did so including mitigating potential side effects, particularly on displacement and increases in rental prices in the surrounding area and providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed.

The rReport should include, but is not limited to, examining how other cities approached and recommending alternatives to:

- Identifying where Missing Middle housing is optimal/~~should could~~ be permitted and the increase in density.
- Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating programs such that homes ~~that~~ are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.
- Excluding very high fire severity zones as defined by the Cal Fire and/or City of Berkeley. Incorporating unique geological features, such as hillsides and high fire severity zones, and considering fire and disaster preparedness service needs.

<sup>3</sup>[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&division=3.&title=5.&part=4.&chapter=2.7.&article](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=5.&part=4.&chapter=2.7.&article)

<sup>4</sup> <https://www.citylab.com/life/2019/01/zoning-reform-house-costs-urban-development-gentrification/581677/>

<sup>5</sup> "Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction", Yonah Freemark, Urban Affairs Review, 2019. Department of Urban Studies and Planning, Massachusetts Institute of Technology, Cambridge, MA.

- Considering form-based zoning as a potential strategy.
- Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units.
- Creating incentives for building more than one unit on larger than average lots.
- [Evaluating whether changes would place particular pressure on neighborhoods with historic redlining \(see attached PowerPoint\); -provide suggestions to protect existing housing stock, provide for tenant protections, demolition controls and; no net loss provisions and increase affordability.](#)
- Considering provisions that align with our land value recapture policy objectives to maximize affordability in Berkeley.
- [Evaluating methods for promoting first time home ownership of these units.](#)
- [Incorporating design elements, including green features, and impacts on historic preservation.](#)
- [Examining how different cities effectuated these changes \(e.g., changes to their General Plan, zoning changes, etc.\)](#)
- [Evaluating the public process used in the course of considering these changes.](#)

## ATTACHMENTS

1: Impacts of Limiting Missing Middle Powerpoint





# Impacts of Limiting Missing Middle

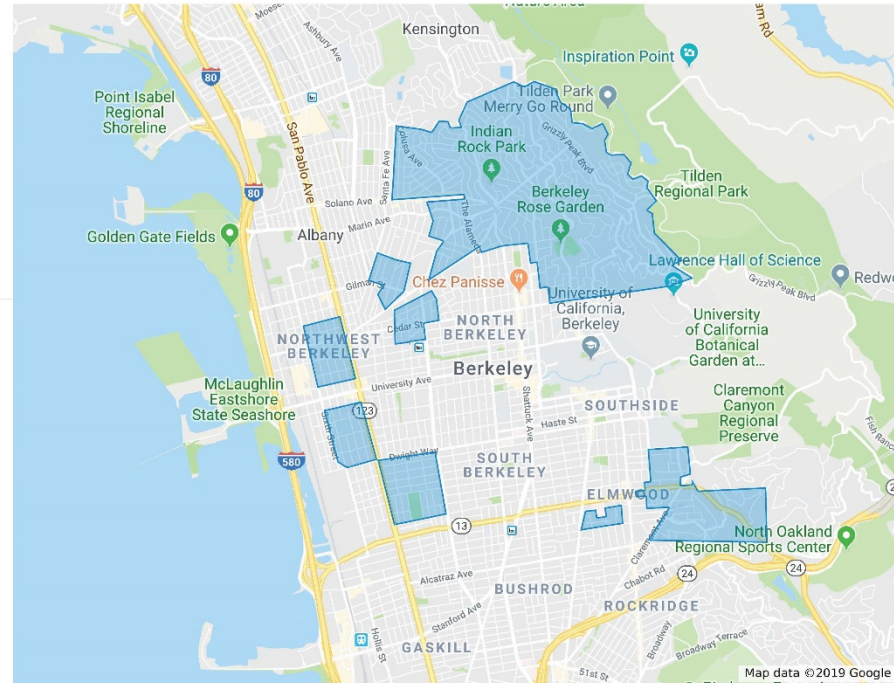


# R-1 and R-1A Zoning in Berkeley

## Untitled map

### Zoning R-1

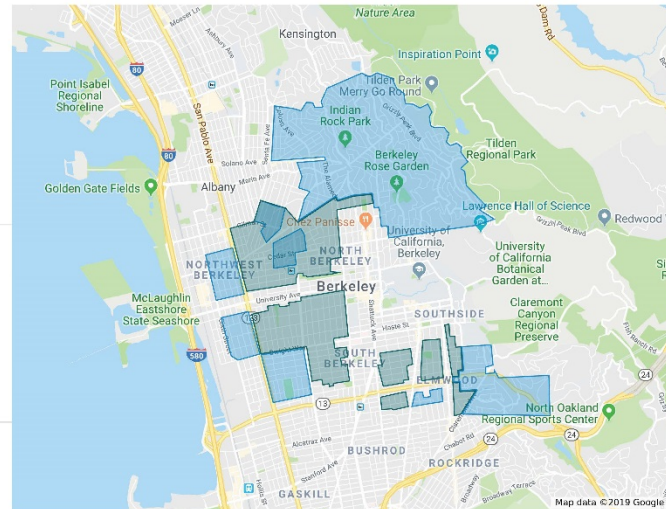
-  D2 square one
-  D2 Square two
-  D1 square one
-  D1 square two
-  D1 square 3
-  D5 and D6
-  D8 square one
-  D8 two



# Adding in R-2

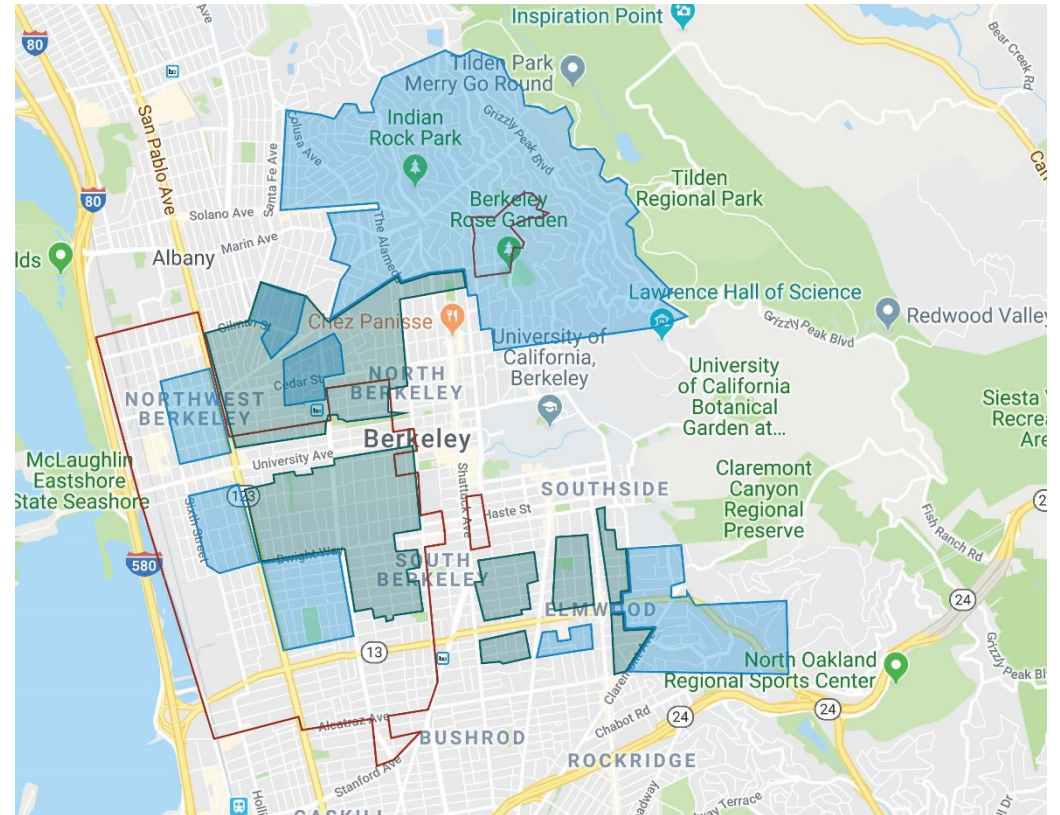
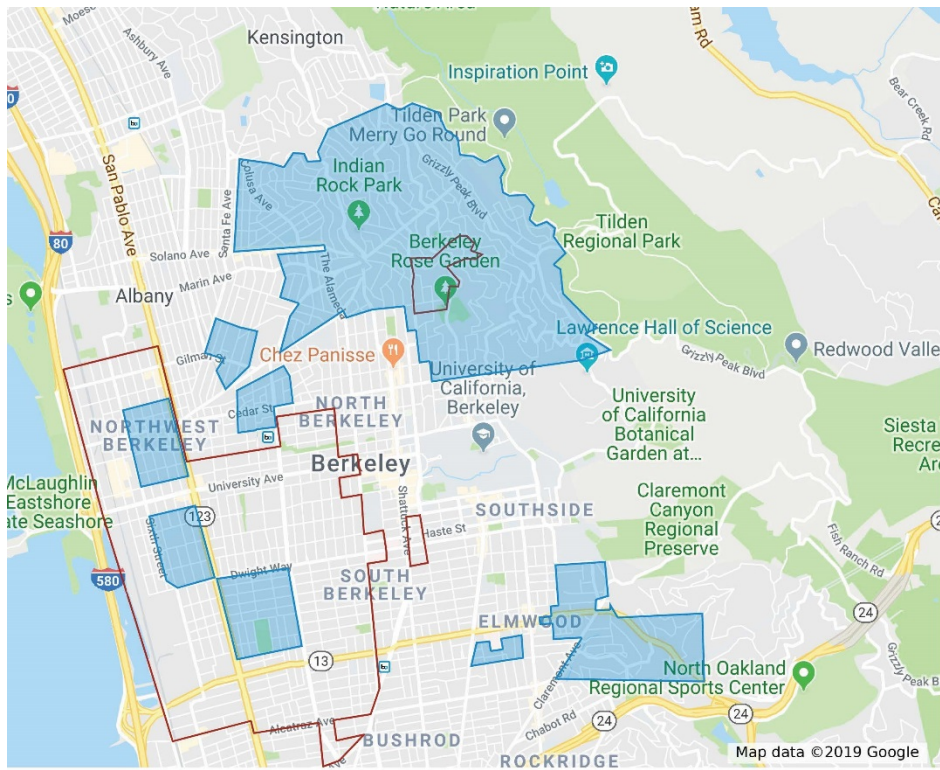
Untitled map

- Zoning R-1
  - D2 square one
  - D2 Square two
  - D1 square one
  - D1 square two
  - D1 square 3
  - D8 square one
  - D8 two
  - D5 and D6
- Zoning R-2
  - D1-5
  - D3 4 and 5
  - D3
  - D7
  - D8 Square 1
  - D8 square 2
  - D8 square 3



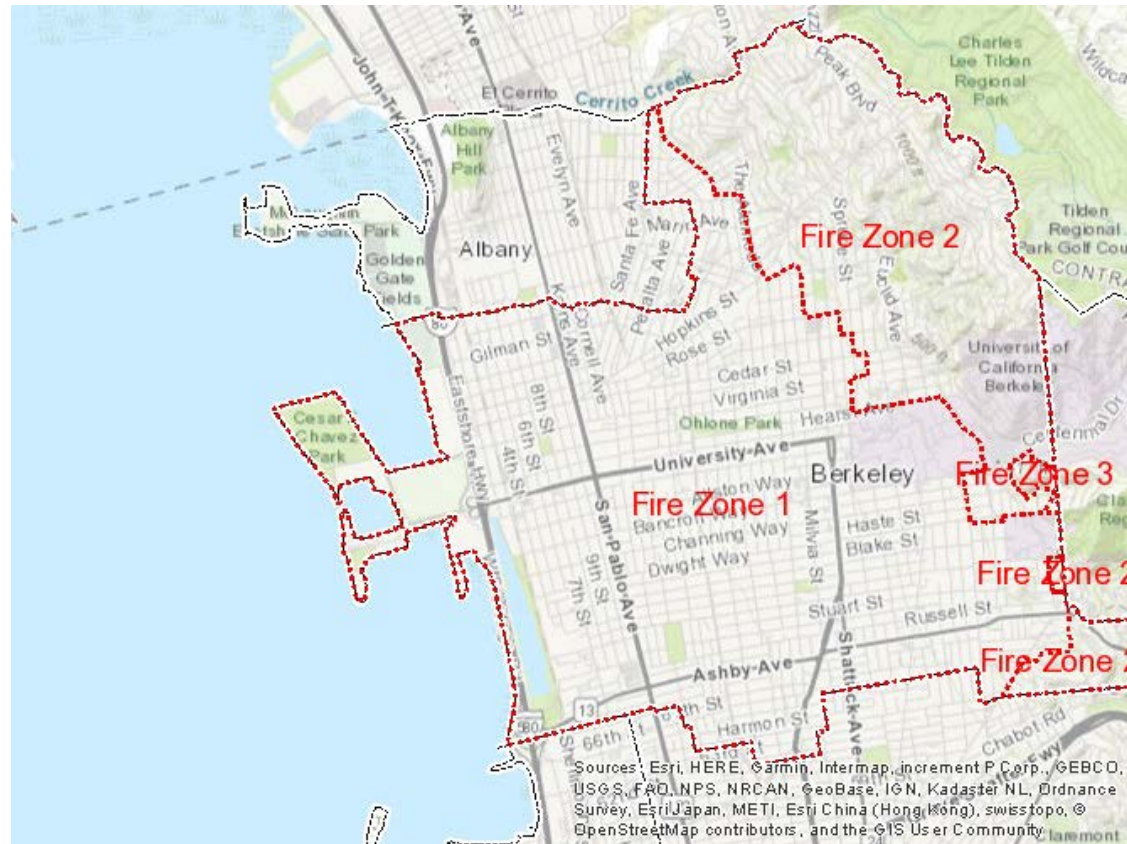


# Historic Redlining

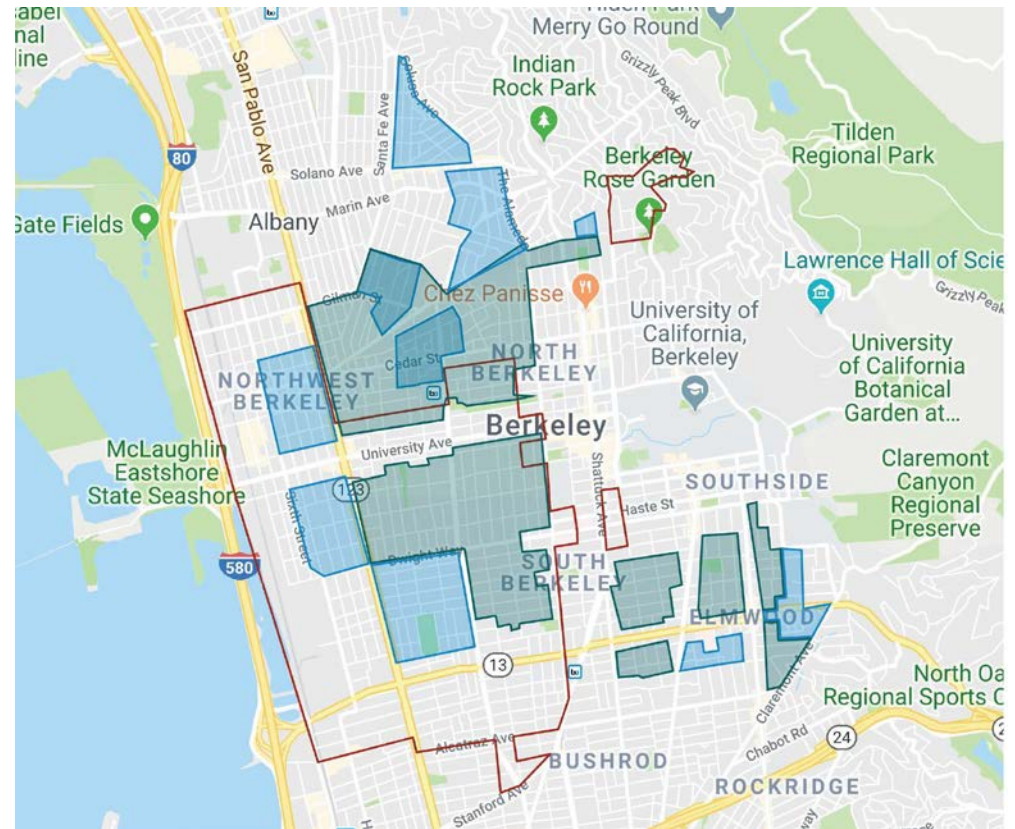
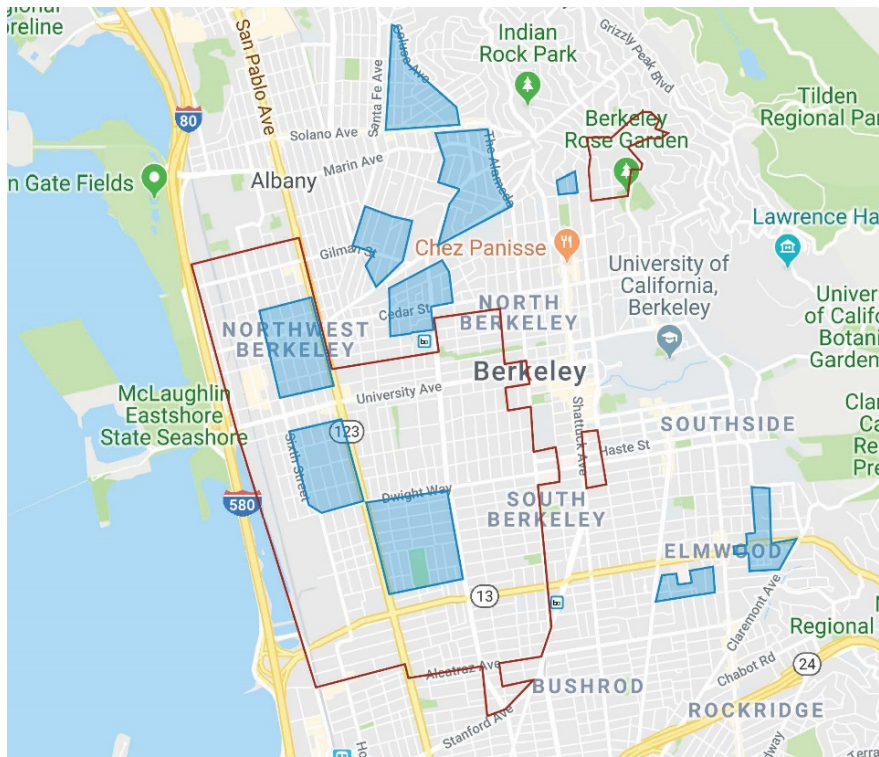




# Fire Zones



# R1, R1-A, and R2 Excluding Fire Zones





# Why Does Redlining Matter?

- ▶ Potential of rising rents
  - ▶ <https://www.citylab.com/life/2019/01/zoning-reform-house-costs-urban-development-gentrification/581677/>
  - ▶ In Chicago, the particular lots that were upzoned experienced increases in housing prices. Many of the particular lots that would be upzoned in Berkeley are in historic communities of color that already see the effects of gentrification
- ▶ Potential demolition of existing housing stock
  - ▶ Existing stock should not be demolished in a housing crisis
  - ▶ Under Costa-Hawkins, rent-controlled duplexes demolished and replaced with triplexes or fourplexes will be exempt from rent control and lose affordability over time

# Additional Considerations to the Report

- ▶ Incorporating considerations of extreme climate and geological features, such as high fire zones
- ▶ Evaluate how changes may put specific pressures on communities already affected by redlining and discriminatory zoning practices
- ▶ Examine demolition rates in cities that incorporated these changes
- ▶ Examine rent increases or decreases in cities that incorporated these changes
- ▶ Examine home ownership price increases or decreases in cities that incorporated these changes
- ▶ Consider how these changes may affect historic preservation efforts



Lori Droste  
Councilmember, District 8

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 26, 2019

**Item Number:** 21

**Item Description:** **Missing Middle Report**

**Submitted by:** Councilmember Lori Droste, Councilmember Ben Bartlett,  
Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

This item has been revised to include considerations for scaling of floor to area ratios, land value recapture.



Lori Droste  
Councilmember, District 8

**ACTION CALENDAR**  
February 26, 2019

**To:** Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle Report

**RECOMMENDATION**

Refer to the City Manager to bring back to Council a report of potential revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

Report should include, but is not limited to:

- Identifying where missing middle housing is optimal
- Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.<sup>1</sup>
- Excluding very high fire severity zones as defined by Cal Fire and/or City of Berkeley.

---

<sup>1</sup> City of Portland, <https://www.portlandoregon.gov/bps/article/711691>.

- Considering form-based zoning, which addresses the appropriate form, scale and massing of buildings as they relate to one another, as a potential strategy<sup>2</sup>,
- Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units
- Creating incentives for building more than one unit on larger than average lots,
- Considering provision of tenant and vulnerable low-income homeowner protections, demolition controls, and no net loss provisions
- Considering provisions that align with our land value recapture policy objectives to maximize affordability in Berkeley.

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>3</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since since December 2013.<sup>4</sup> The escalating rents coincide with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>5</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden

---

<sup>2</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>

<sup>3</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>4</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>5</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>6</sup>

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>7</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>8</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>9</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>10</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>11</sup> This means that many City of Berkeley employees couldn’t afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn’t be able to afford a home. Neither would a fire captain (making \$142,000) with a

---

<sup>6</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project.

[http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

<sup>7</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>8</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.”

<https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>9</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>10</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards,\\_Income\\_Limits,\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards,_Income_Limits,_and_Utility_Allowance.aspx)

<sup>11</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>



stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn't buy a house.<sup>12</sup>

### *Families*

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>13</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>14</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>15</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>16</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>17</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area's extreme housing affordability crisis. According to the 2017 point-in-time count, Berkeley had approximately 972 individuals experiencing homelessness on any given night.<sup>18</sup> In order to help homeless individuals get housed, the City needs to create more homes. Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>19</sup>

---

<sup>12</sup> City of Berkeley Human Resources, “Job Descriptions” accessed 2.4.2019

<http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

<sup>13</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>14</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>15</sup> D'Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>16</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>17</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region's greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

<sup>18</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspxn](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspxn)

<sup>19</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the

## BACKGROUND

### Missing Middle

*What is missing middle housing?*

Missing middle housing is a term used to describe:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>20</sup> and/or
2. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working people.<sup>21</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>22</sup> and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.

---

President and Fellows of Harvard College and the Massachusetts Institute of Technology.  
[https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)

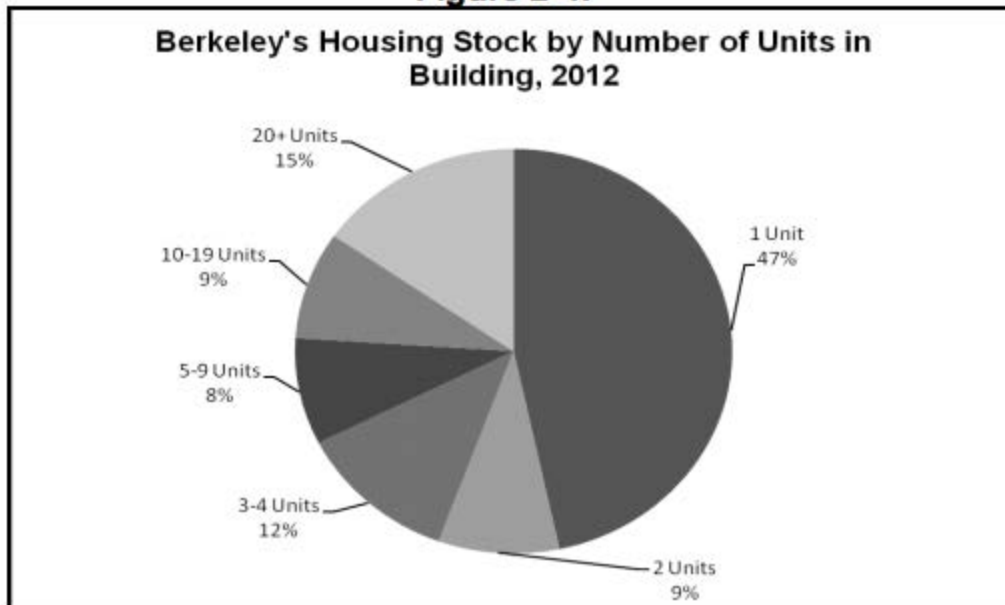
<sup>20</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>

<sup>21</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>22</sup> City of Berkeley 2015 -2023 Housing Element.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)

Figure 2-4:



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single family homes. Missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”<sup>23</sup> Additionally, missing middle housing is not permitted in areas zoned R1 (single family family only). Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>24</sup>

<sup>23</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>24</sup> Ibid.

## History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes, etc exist in areas now zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>25</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company's use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void..."<sup>26</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"<sup>27</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>28</sup>

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red)

---

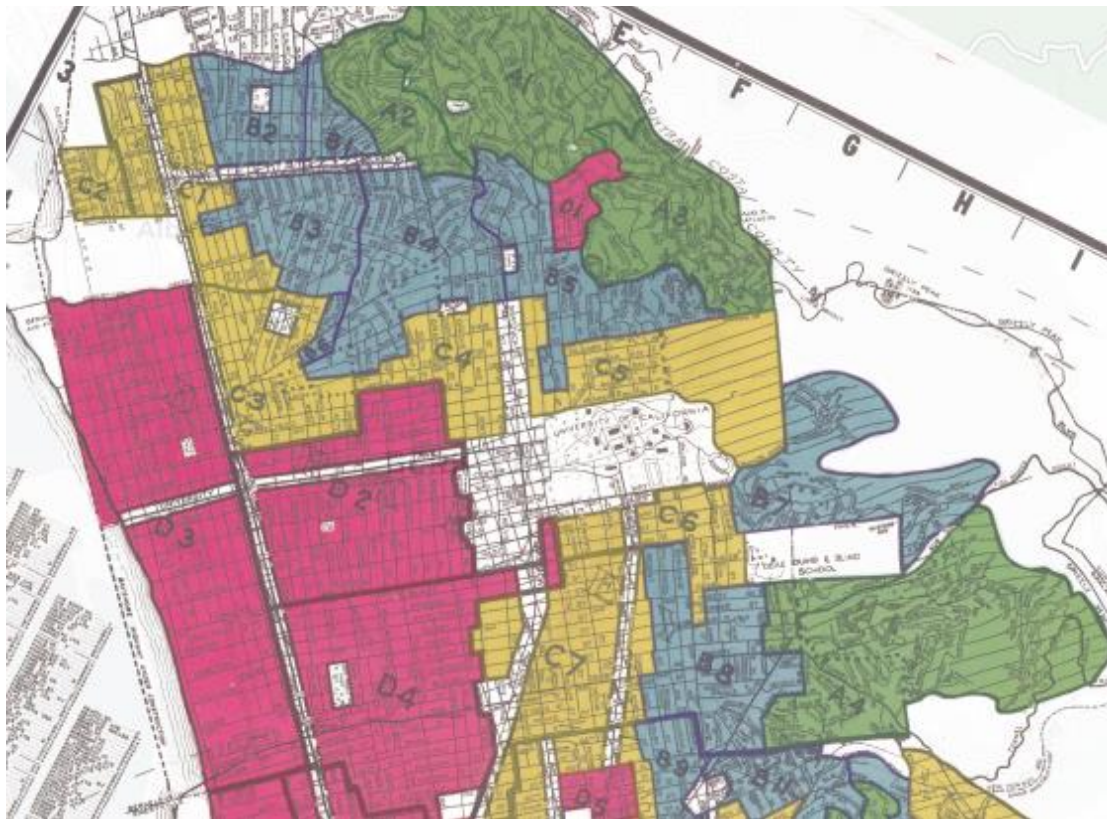
<sup>25</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>26</sup> Claremont Park Company Indenture, 1910

<sup>27</sup> Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

<sup>28</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

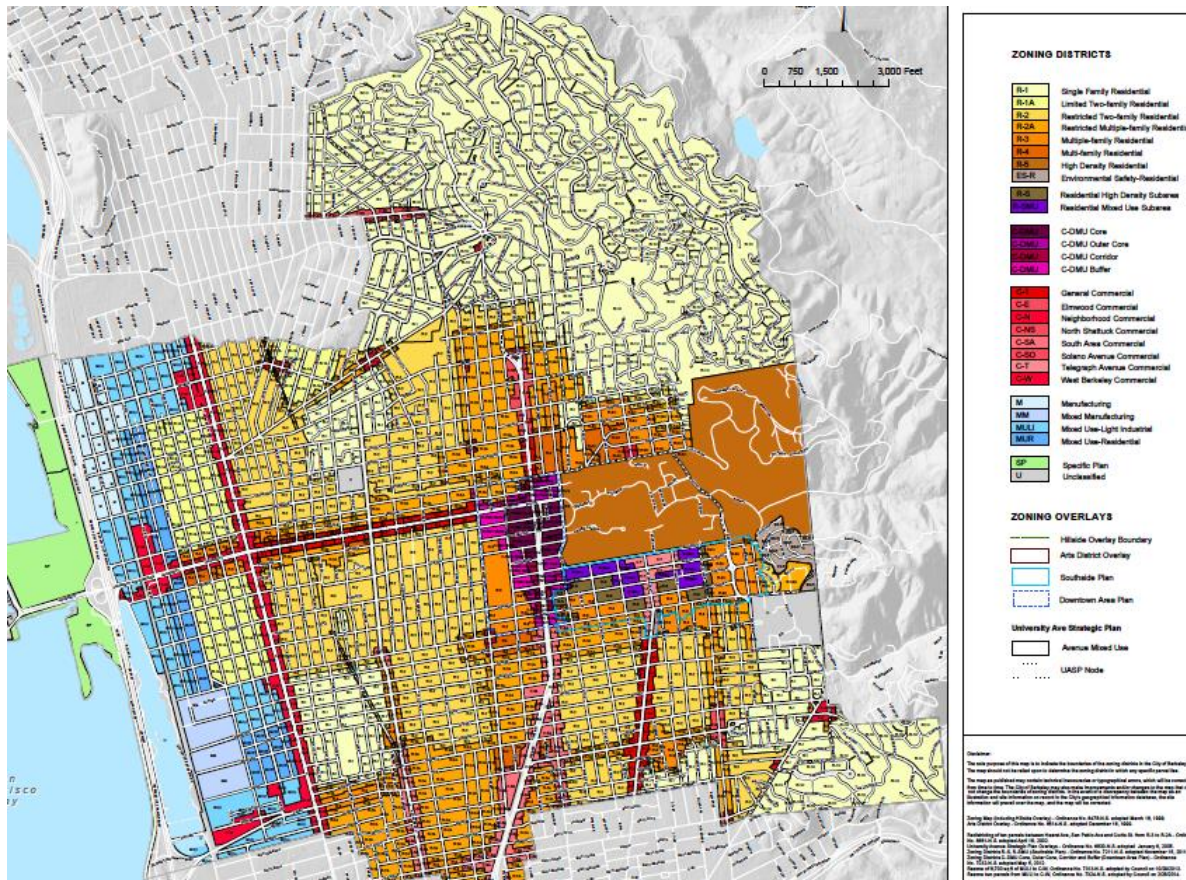
neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.<sup>29</sup>



Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany.  
<https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&advview=full> in Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," *American Panorama*, ed. Robert K. Nelson and Edward L. Ayers, accessed January 24, 2019.

<sup>29</sup> NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





[The images above compare a HOLC-era map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.]

Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable areas to single-family homes (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is

more prevalent than gentrification in the Bay Area.<sup>30</sup> While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

### **TENANT AND ANTI-DISPLACEMENT STRATEGIES**

The types of zoning modifications that may result from the requested report could, as discussed above, significantly increase Berkeley’s housing stock with units that are more affordable to low- and middle-income residents. However, staff’s report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low-income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn’t result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding date of application).

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report on potential zoning changes to inform future policy decisions, as opposed to immediate zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

Not applicable as this item requests an analytical report.

### **FINANCIAL IMPLICATIONS**

Staffing or consulting costs to analyze zoning code and produce the report.

### **ENVIRONMENTAL SUSTAINABILITY**

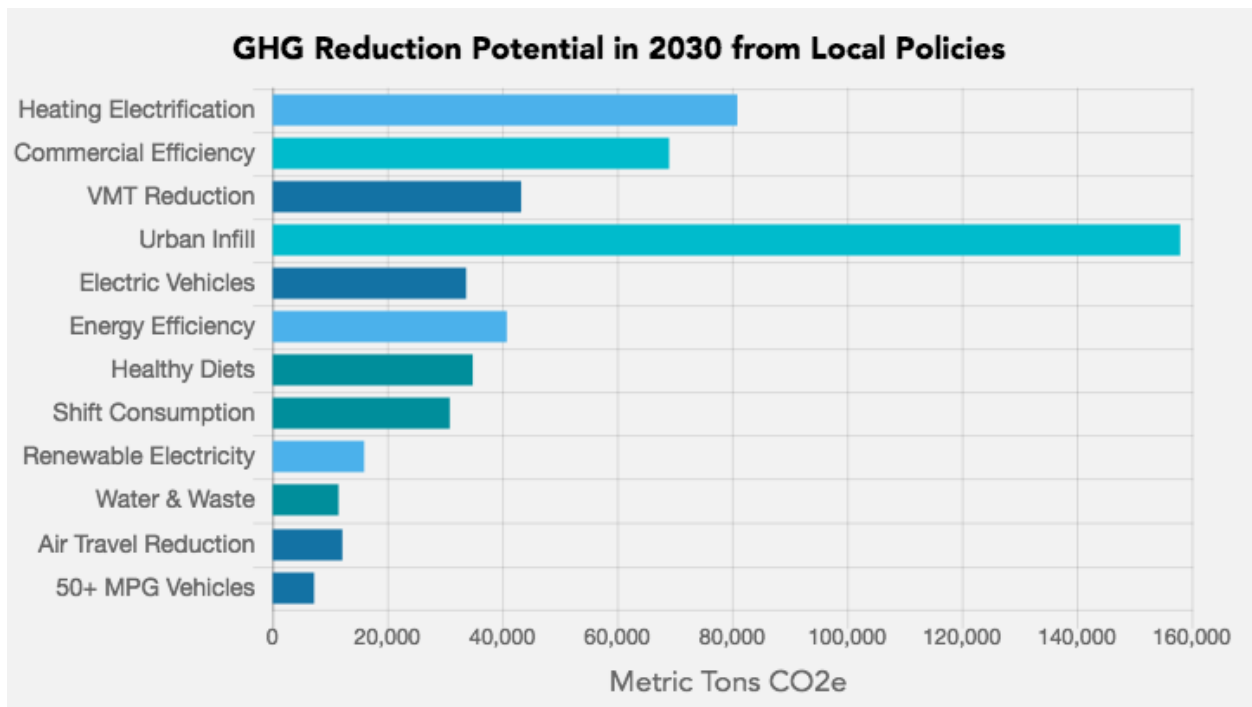
Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>31</sup> The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short,

---

<sup>30</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

<sup>31</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

**ATTACHMENTS:**

Minneapolis Plan:

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>



## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek  
Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*



Lori Droste  
Councilmember, District 8

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** February 26, 2019

**Item Number:** 22

**Item Description:** **Missing Middle Report**

**Submitted by:** Councilmember Lori Droste, Councilmember Ben Bartlett,  
Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

This item has been revised to include considerations for scaling of floor to area ratios, land value recapture.



Lori Droste  
Councilmember, District 8

**ACTION CALENDAR**  
February 26, 2019

**To:** Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle Report

**RECOMMENDATION**

Refer to the City Manager to bring back to Council a report of potential revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

Report should include, but is not limited to:

- Identifying where missing middle housing is optimal/~~should be permitted~~
- Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.<sup>1</sup>
- Excluding very high fire severity zones as defined by ~~the~~ Cal Fire and/or City of Berkeley.

---

<sup>1</sup> City of Portland, <https://www.portlandoregon.gov/bps/article/711691>.

- Considering form-based zoning as a potential strategy<sup>2</sup>,
- Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units
- Creating incentives for building more than one unit on larger than average lots,
- Considering provision of tenant protections, demolition controls, and no net loss provisions
- Considering provisions that align with our land value recapture policy objectives to maximize affordability in Berkeley.

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>3</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since since December 2013.<sup>4</sup> The escalating rents coincide with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>5</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-

---

<sup>2</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>

<sup>3</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>4</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>5</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>6</sup>

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>7</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>8</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>9</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>10</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>11</sup> This means that many City of Berkeley employees couldn’t afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn’t be able to afford a home. Neither would a fire captain (making \$142,000) with a

<sup>6</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project.

[http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

<sup>7</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>8</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.”

<https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>9</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>10</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards,\\_Income\\_Limits,\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards,_Income_Limits,_and_Utility_Allowance.aspx)

<sup>11</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn't buy a house.<sup>12</sup>

### *Families*

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>13</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>14</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>15</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>16</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>17</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area's extreme housing affordability crisis. According to the 2017 point-in-time count, Berkeley had approximately 972 individuals experiencing homelessness on any given night.<sup>18</sup> In order to help homeless individuals get housed, the City needs to create more homes. Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>19</sup>

---

<sup>12</sup> City of Berkeley Human Resources, “Job Descriptions” accessed 2.4.2019

<http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

<sup>13</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>14</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>15</sup> D'Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>16</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>17</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region's greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

<sup>18</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspxn](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspxn)

<sup>19</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the

## BACKGROUND

### Missing Middle

*What is missing middle housing?*

Missing middle housing is a term used to describe:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>20</sup> and/or
2. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working people.<sup>21</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>22</sup> and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.

---

President and Fellows of Harvard College and the Massachusetts Institute of Technology.  
[https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)

<sup>20</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>

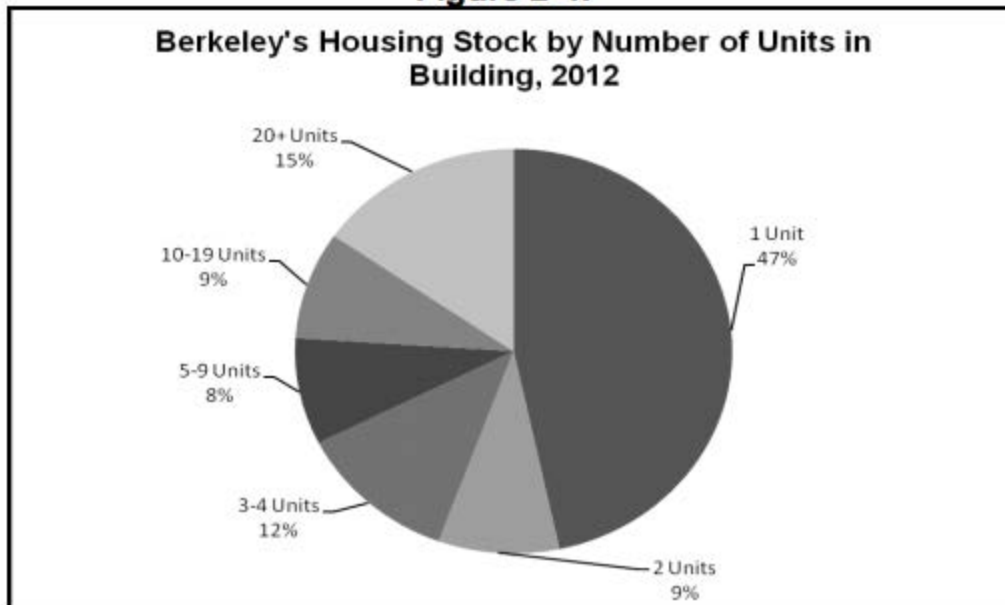
<sup>21</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>22</sup> City of Berkeley 2015 -2023 Housing Element.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)



Figure 2-4:



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single family homes. Missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”<sup>23</sup> Additionally, missing middle housing is not permitted in areas zoned R1 (single family family only). Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>24</sup>

<sup>23</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>24</sup> Ibid.

## History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes, etc exist in areas now zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>25</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company's use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void..."<sup>26</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"<sup>27</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>28</sup>

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red)

---

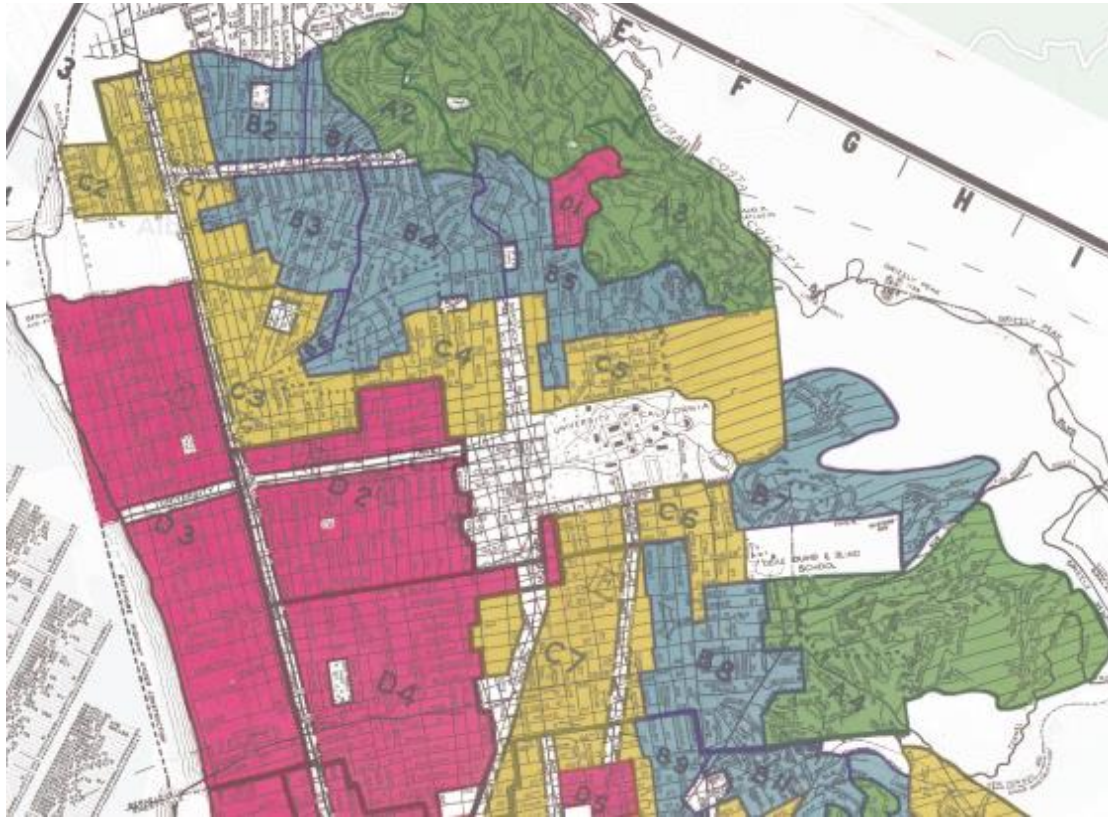
<sup>25</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>26</sup> Claremont Park Company Indenture, 1910

<sup>27</sup> Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

<sup>28</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.<sup>29</sup>



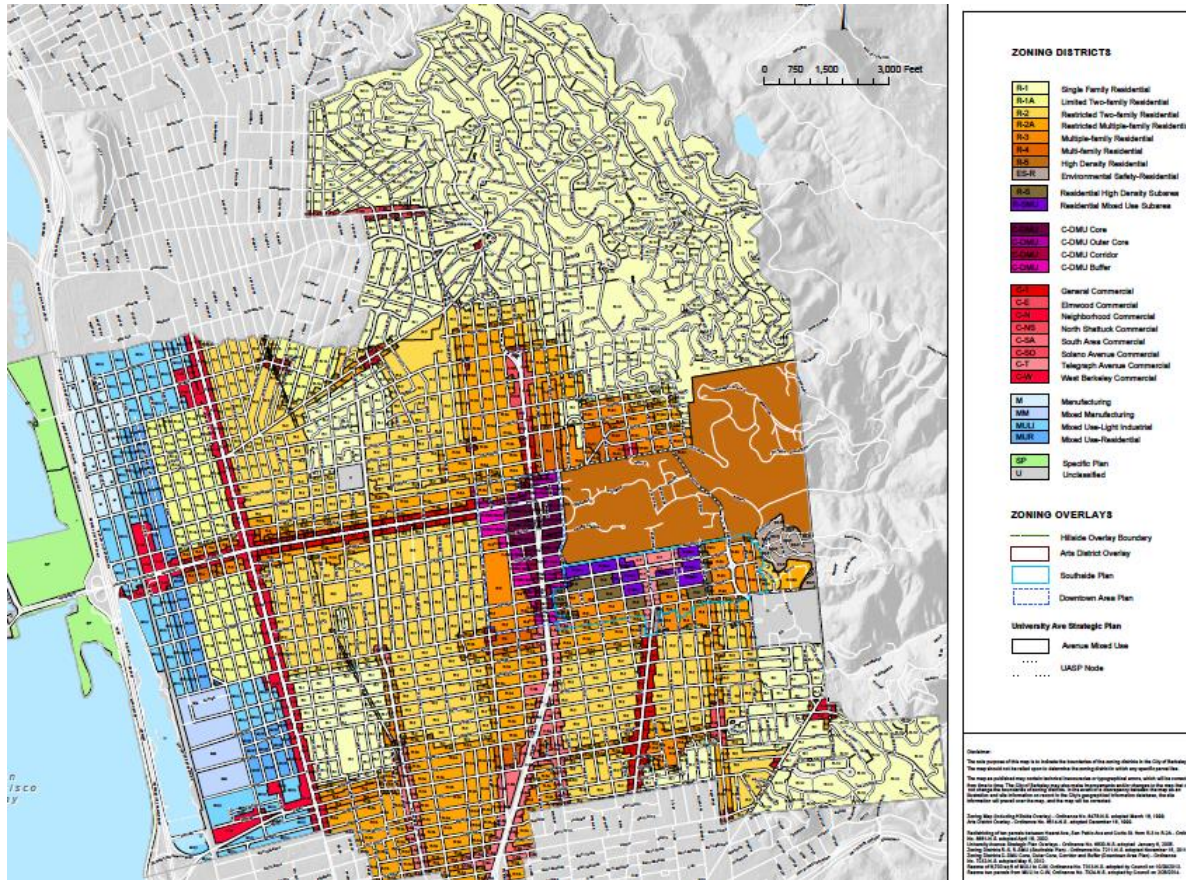
Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany.

[https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-](https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&advview=full)

[ca&advview=full](https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&advview=full) in Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," *American Panorama*, ed. Robert K. Nelson and Edward L. Ayers, accessed January 24, 2019.

<sup>29</sup> NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





[The images above compare a HOLC-era map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.]

Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable areas to single-family homes (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is

more prevalent than gentrification in the Bay Area.<sup>30</sup> While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

### **TENANT AND ANTI-DISPLACEMENT STRATEGIES**

The types of zoning modifications that may result from the requested report could, as discussed above, significantly increase Berkeley’s housing stock with units that are more affordable to low- and middle-income residents. However, staff’s report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low-income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn’t result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding date of application).

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report on potential zoning changes to inform future policy decisions, as opposed to immediate zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

Not applicable as this item requests an analytical report.

### **FINANCIAL IMPLICATIONS**

Staffing or consulting costs to analyze zoning code and produce the report.

### **ENVIRONMENTAL SUSTAINABILITY**

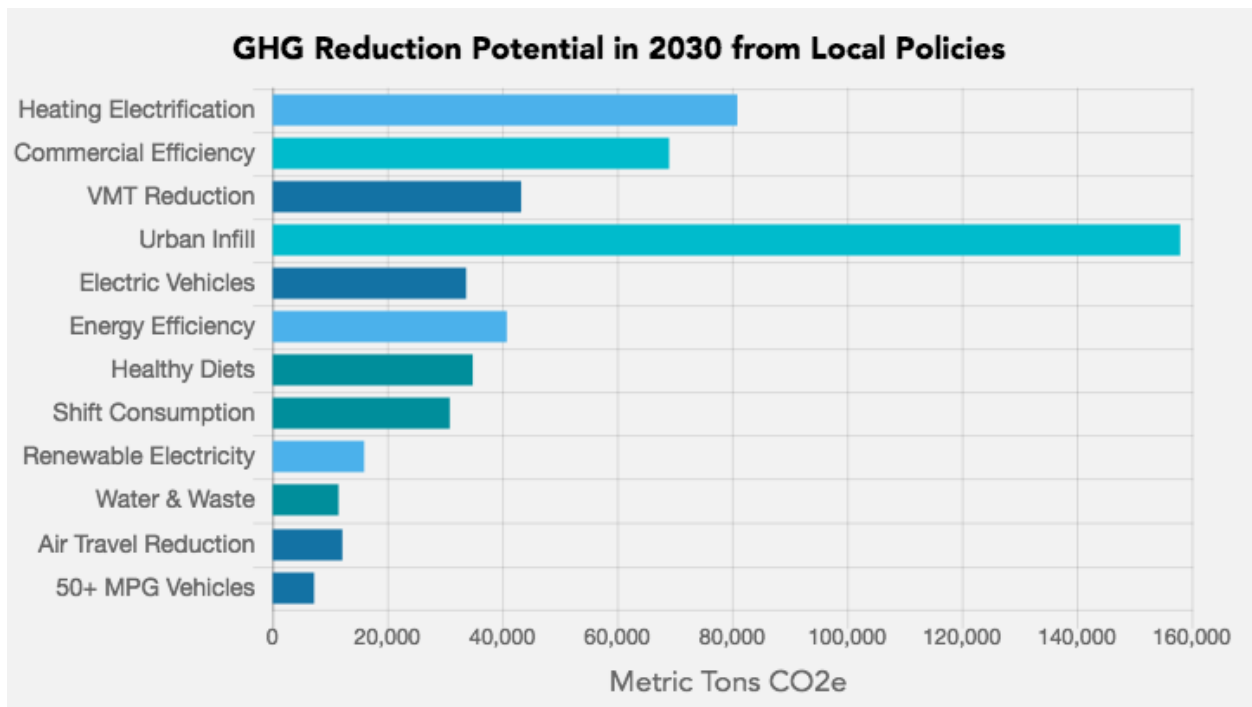
Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>31</sup> The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short,

---

<sup>30</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

<sup>31</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

**ATTACHMENTS:**

Minneapolis Plan:

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*





Lori Droste  
Berkeley City Councilmember, District 8

## **ACTION CALENDAR**

April 23, 2019

*(Continued from March 26, 2019)*

**To:** Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle Report

### RECOMMENDATION

Refer to the City Manager to bring back to Council a report of potential revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

Report should include, but is not limited to:

- Identifying where missing middle housing is optimal/should be permitted
- Allowing the possibility of existing houses/footprints/zoning envelopes to be divided up to 4 units
- Excluding very high fire severity zones as defined by the CalFire and/or the City of Berkeley
- Considering form-based zoning as a potential strategy<sup>1</sup>

---

<sup>1</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>

- Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units
- Creating incentives for building more than one unit on larger than average lots
- Provision of tenant protections, demolition controls, and no net loss provisions

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>2</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since since December 2013.<sup>3</sup> The escalating rents coincide with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>4</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>5</sup>

---

<sup>2</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>3</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>4</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

<sup>5</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>6</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>7</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>8</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>9</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>10</sup> This means that many City of Berkeley employees couldn't afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn't be able to afford a home. Neither would a fire captain (making \$142,000) with a stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn't buy a house.<sup>11</sup>

### *Families*

---

<sup>6</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>7</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.” <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>8</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>9</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards\\_Income\\_Limits\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards_Income_Limits_and_Utility_Allowance.aspx)

<sup>10</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>11</sup> City of Berkeley Human Resources, “Job Descriptions” accessed 2.4.2019 <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>12</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>13</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>14</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>15</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>16</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2017 point-in-time count, Berkeley had approximately 972 individuals experiencing homelessness on any given night.<sup>17</sup> In order to help homeless individuals get housed, the City needs to create more homes. Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>18</sup>

## **BACKGROUND**

### **Missing Middle**

---

<sup>12</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>13</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>14</sup> D’Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>15</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>16</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

<sup>17</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

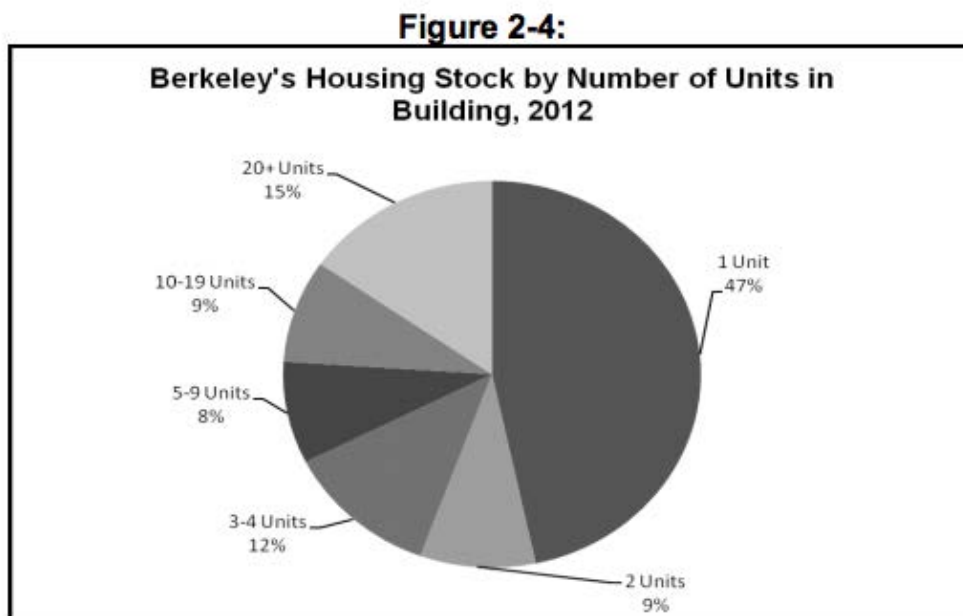
<sup>18</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. [https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)

### What is missing middle housing?

Missing middle housing is a term used to describe:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>19</sup> and/or
2. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working people.<sup>20</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>21</sup> and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three

<sup>19</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>

<sup>20</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>21</sup> City of Berkeley 2015 -2023 Housing Element.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)

stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley before they were banned in districts only allowing single family homes and missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”<sup>22</sup> Additionally, missing middle housing is not permitted in areas zoned R1 (single family family only). Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>23</sup>

### **History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning**

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes, etc exist in areas now zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>24</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company’s use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>25</sup> In

---

<sup>22</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>23</sup> Ibid.

<sup>24</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>25</sup> Claremont Park Company Indenture, 1910

1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>26</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>27</sup>

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called ‘redlining’) and allowed lenders to enforce local segregation standards.<sup>28</sup>

The images below compare a HOLC-era map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.

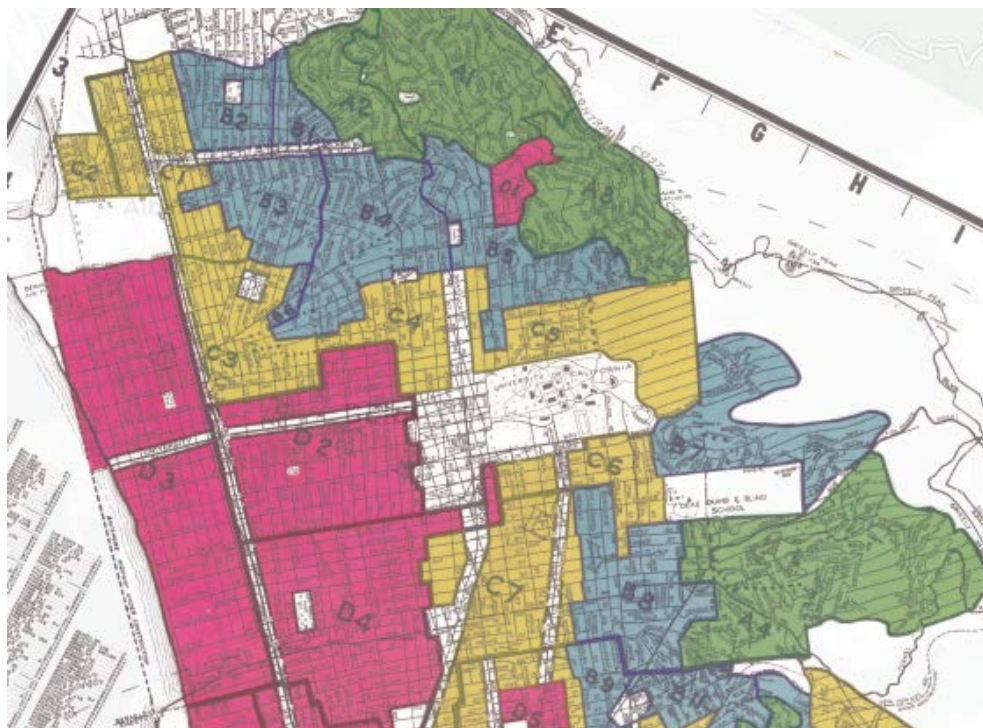
---

<sup>26</sup> Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

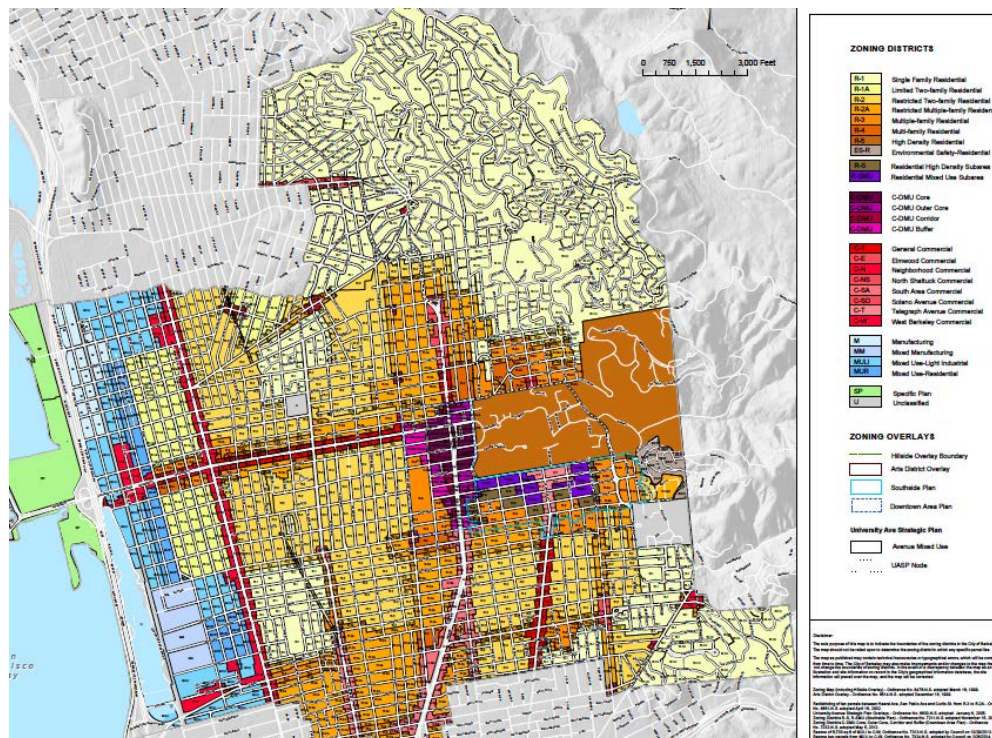
<sup>27</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

<sup>28</sup> NCRC Opening Doors to Economic Opportunity, “HOLC “REDLINING” MAPS: The persistent structure of segregation and economic inequality.” Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany. <sup>29</sup>



<sup>29</sup>Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," *American Panorama*, ed. Robert K. Nelson and Edward L. Ayers, accessed January 24, 2019. <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adviev=full> in



Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable areas to single-family homes (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>30</sup> While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report on potential zoning changes to inform future policy decisions, as opposed to immediate zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

Not applicable as this item requests an analytical report.

### **FINANCIAL IMPLICATIONS**

Staffing or consulting costs to analyze zoning code and produce the report.

### **ENVIRONMENTAL SUSTAINABILITY**

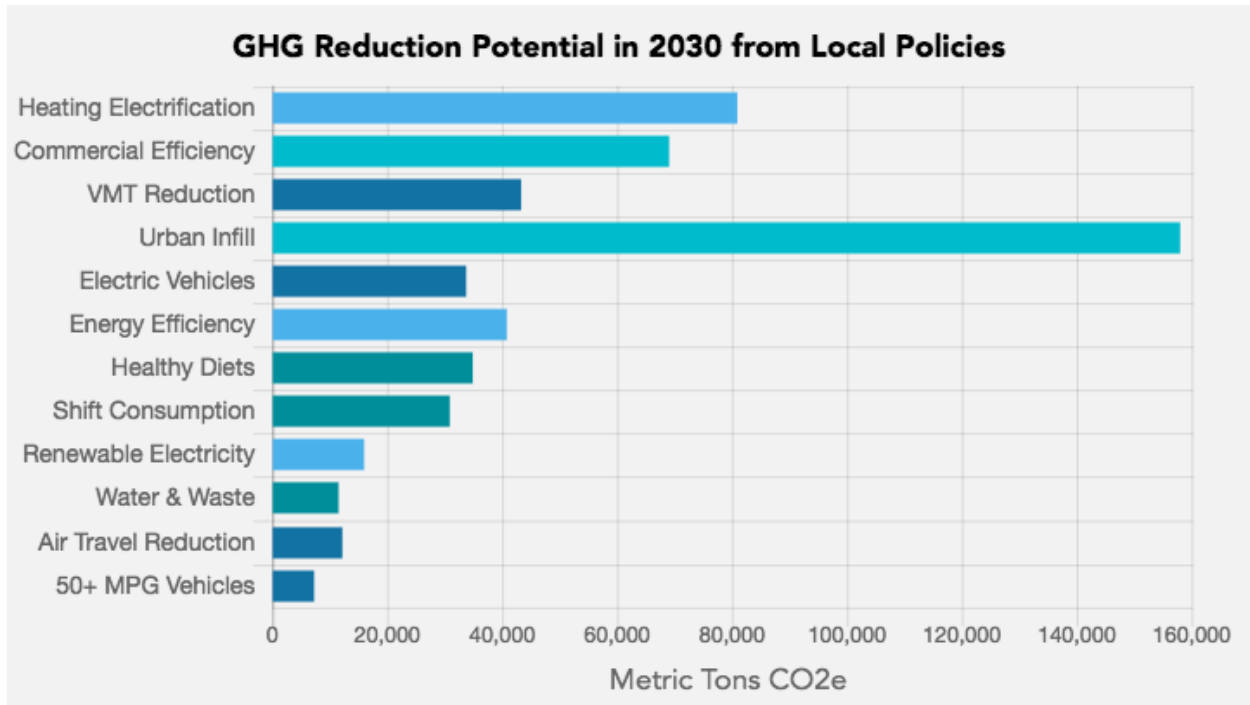
Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>31</sup> The most impactful local policy to

---

<sup>30</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

<sup>31</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

**ATTACHMENTS:**

Minneapolis Plan:

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*



Lori Droste  
Councilmember, District 8

### **Action Calendar**

April 23, 2019

*(Continued from April 2, 2019)*

To: Honorable Mayor and Members of City Council

From: Councilmember Lori Droste, Councilmember Rashi Kesarwani, and Councilmember Ben Bartlett

Subject: Adopt a Spot Initiative

### **Recommendation**

Refer to the Public Works Commission and Parks and Waterfront Commission to develop an Adopt A Spot initiative; specifically outlining potential environmental benefits, program costs, staffing.

### *Rationale:*

- *Adopt a Spot programs enable a network of volunteer residents to assist in city maintenance and clean up efforts which have great impact using minimal City staff/funding.*
- *Vision 2050 will include stormwater and watershed management goals, both of which this program would support.*

### **Background**

The City of Berkeley currently maintains an Adopt A Drain program. An Adopt A Spot program would utilize volunteers to assist with activities including, but not limited to, storm drain maintenance, street beautification, trash cleanup, gardening initiatives, etc.

*The City of Oakland Adopt a Spot Program*

The City of Oakland coordinates hundreds of volunteers to clean, green, maintain, and beautify public spaces (such as parks, libraries, creeks) and infrastructure (such as signs, storm drains, litter containers, utility boxes and poles, street tree wells, and trees). Managed by the Environmental Stewardship Team within the Oakland Public Works Department, this volunteer program has been active throughout the city for over thirty years. The volunteer program supports community cleanups throughout the year, annual city-wide cleanups for Earth Day, Creek to Bay Day, MLK Day of Service, and “Adopt a Spot,” an ongoing volunteer stewardship program that includes a growing list of over 2,000 Oakland “spots.”

Volunteers contribute over 100,000 hours each year, contributing to a wide range of environmental sustainability impacts such as pollution cleanup and prevention; wildlife habitat protection, enhancement, and restoration; and stormwater management. Volunteerism also strengthens communities by connecting people to each other, to their neighborhoods, and to their environment. These benefits enhance Oakland’s economy, safety, and livability,

The City of Oakland Public Works’ *Adopt a Drain* program supports volunteer efforts to keep storm drain inlets clean and clear of trash and debris. Clear and clean inlets keep water flowing and ensure “only rain down the drain,” which is especially helpful during storm events when blocked storm drains can back up and cause flooding. Year-round storm drain maintenance helps intercept trash before it enters the storm drains and connecting creeks and water bodies.

The City of Oakland provides support for Adopt a Drain volunteers through instruction, tools and supplies, assistance with debris pickups, and notification of impending storm events.

Over 1,000 of Oakland’s approximately 12,000 storm drains have been adopted. The more than 800 Adopt a Drain volunteers greatly supplement the capacity of the twenty City staff servicing the storm drain system, with its more than 1,200 storm drains, 370 miles of drain pipe, seven pump stations and 40 miles of creeks. Volunteers can quickly and preemptively provide basic maintenance on drains and can have a far more extensive and immediate reach across the city than staff during storm and flooding emergencies.

Oakland uses a map interface at [www.AdoptaDrainOakland.com](http://www.AdoptaDrainOakland.com) for depicting the City’s storm drain inlets to the public for possible adoption. This easy to use interface has helped spur new volunteer registrations. Social media, word-of-mouth, and timely news

coverage prior to and during storm events has also contributed to volunteer registrations. More information is available at [www.oaklandadoptaspot.org](http://www.oaklandadoptaspot.org).

**Environmental Sustainability**

Helps Berkeley fulfill Watershed and Stormwater Management Plan goals.

**Financial Implications**

Staff time to coordinate volunteers and provide technical assistance.

**Contact**

Councilmember Lori Droste 510-981-7180







Energy Commission

## ACTION CALENDAR

April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Berkeley Energy Commission  
 Submitted by: Ryan Bell, Chairperson, Berkeley Energy Commission  
 Subject: Recommendations for a Fossil Fuel Free Berkeley

### RECOMMENDATION

The Berkeley Energy Commission recommends the City Council refer to the City Manager to implement the recommendations listed below as well as additional measures outlined in the attached report to aggressively reduce greenhouse gas (GHG) emissions in the city and the region.

### FISCAL IMPACTS OF RECOMMENDATION

Unknown.

### CURRENT SITUATION AND ITS EFFECTS

This report responds to the Fossil Free Berkeley and Climate Emergency referrals from the June 12, 2018 Council meeting sponsored by Council member Davila, Mayor Arreguin and Councilmember Harrison. The Energy Commission has prepared a Fossil Fuel Free Berkeley Report including the following recommendations to achieve the goals outlined by council to address the climate emergency and transition Berkeley away from fossil fuels.

### ***Four Fast Track Proposals***

- Opt all East Bay Community Energy accounts to 100% renewable electricity in 2019. This would result in an immediate 10% reduction in GHGs.
- Integrate greenhouse gas (GHG) reduction goals into the objectives and responsibilities of every city department. Amend funding priorities to support this initiative.
- Develop an updated Climate referendum to put before the voters that includes challenging proposals and why they are necessary. A successful referendum campaign would provide the platform for massive public education and support Council decision making.
- Lead a regional effort to change the Utility Users Tax structure in order to assess taxes on natural gas usage separately from electricity usage, followed by a referendum asking voters to approve raising the natural gas usage tax. Funds raised would be dedicated to de-carbonization efforts.

**Summary of Recommendations****Citywide Transportation**

1. Accelerate infrastructure changes to support walking, biking, and small electric and human powered vehicles.
  - a. Build all high priority projects in the city's bicycle, pedestrian, and BeST plans including tier 1 projects in the bike plan by 2025.
  - b. Re-prioritize road and sidewalk capital expenditures to accelerate changes in favor of walking, human powered vehicles, and other low carbon footprint mobility alternatives.
  - c. Add 3 FTE to the Transportation Division to expedite implementation.
2. Explore developing Berkeley shuttle services similar to the Emery Go-Round using EVs.
3. Develop effective communication and education strategies. Continue to expand programs that encourage residents to shift to fossil fuel free modes of transport.
4. Consider free transit passes for youth, restricted vehicle access to certain streets, and additional parking fees. Funds raised would be used to support fossil fuel free transportation programs.

**Residential and Commercial Buildings**

1. Opt all accounts in Berkeley up to 100% renewable EBCE electricity in 2019, with a policy of no added cost for CARE customers and an outreach campaign to enroll all eligible customers in the CARE program. This is the most significant action the city can take to reduce GHGs.
2. Expand BESO and include electrification along with energy efficiency. Consider more triggers that require an energy audit, more detailed energy audits, requiring the seller to complete the audit to the buyer, and requiring implementation of some of audit recommendations.
3. Stop expansion of natural gas infrastructure by prohibiting gas cooktops and dryers in new residences. Place a moratorium on new gas hook ups if possible.
4. Funding options for electrification and energy efficiency upgrades:
  - a. Sales transfer tax rebates, similar to the seismic rebate but tied to implementation of BESO recommendations.
  - b. A new, very low interest revolving loan fund.
  - c. Strategic relaxation of the Planning Code in exchange for electrification and energy efficiency measures.
5. Develop an effective communication and education strategy that reaches the Berkeley community at large. This strategy should include updating the City's permit service center website to reflect the City's prioritization of electrification, and low carbon footprint and low toxic construction. The City's website needs to offer clear guidance reflecting the urgency of the climate crisis.

## Regional Action

1. Lead a regional effort to make changes to the Utility Users Tax structure in order to assess taxes on natural gas usage separately from electricity usage. The City Council adopted a resolution in favor of this change and is awaiting support from other cities in the region to share the fees PGE would charge to modify the billing. Once complete, the City should submit a referendum to voters that would raise the tax on natural gas usage and dedicate the funds to de-carbonization efforts.
2. Encourage the Bay Area Air Quality Management District (BAAQMD) to adopt rules with future effective dates to prohibit sale of gas powered appliances. It has used the authority in the past to prohibit the sale of polluting products like high VOC paints and to restrict installation of wood burning fireplaces.
3. Increase regional and support state efforts to expand availability of low global warming potential refrigerant, heat pump space and water heaters for the retrofit markets.
4. Initiate regional policy consistent with fossil free goals for ride hailing services and the introduction of autonomous vehicles. Support state programs that restrict the use of fossil fuel by ride hailing services and autonomous vehicles. Regulate these services to reduce overall per capita VMT.
5. Explore viability of reducing R-1 zoning to increase housing availability, opportunities for home ownership and improve transit access through increasing densification. Such transit oriented development can provide the density to support expansion of regional transit.

Given statutory limitations on specific authorities held by the City, the Energy Commission is not able to determine a date by which Berkeley could be completely fossil fuel free. However, aiming to be fossil fuel free by 2030 to the fullest extent possible is a compelling goal. Urgency prompts the Commission to recommend aggressively prioritizing options with high early impacts. Lastly, Berkeley will only become a carbon sink if it is also virtually fossil free. The City has little capacity to sequester carbon.

At the January 23, 2019 meeting, the commission took the following action:

Action: Motion/Second (Weems/Patel) to approve the Fossil Fuel Report with amendments and recommend City Council refer to the City Manager to implement the recommendations in the report to aggressively reduce GHG emissions in the city and the region.

Vote: Ayes –Leger, Bell, Patel, Weems, Paulos, Stromberg; Noes – None; Abstain – None; Absent – Luce, Schlachter.

BACKGROUND

The Fossil Free Berkeley and Climate Emergency resolutions asked the Energy Commission to consider actions “to further implement the Climate Action Plan and establish the goal of becoming a Fossil Fuel Free Berkeley” and to consider several actions the city might take as part of this review.

ENVIRONMENTAL SUSTAINABILITY

These recommendations are intended to accelerate citywide reductions in GHGs.

RATIONALE FOR RECOMMENDATION

While making recommendations for all of the actions the Council requested that the commission consider, the main recommendations for reducing GHG emissions focus on transportation and residential and commercial buildings as they are responsible for 98% of Berkeley’s GHG emissions.

ALTERNATIVE ACTIONS CONSIDERED

None considered.

CITY MANAGER

See Companion Report.

CONTACT PERSON

Billi Romain, Energy Commission Secretary

Attachments:

- 1: Berkeley Energy Commission Recommendations for a fossil fuel free Berkeley.

# Fossil Free Berkeley Report

Berkeley Energy Commission January 23, 2019

## Council Referral

On June 12, the Berkeley City Council passed item 30 “Fossil Free Berkeley” which refers “to the Energy Commission and Transportation Commission consideration of the proposed resolution or similar action to further implement the Climate Action Plan and establish the goal of becoming a Fossil Fuel Free Berkeley, and further consider:

Establishing a date by which we are committed to being a Fossil Fuel Free City;

Opposing further transportation of oil, gas, and coal;

Fully implementing Berkeley Deep Green Building, raising the citywide LEED certification requirement above the current LEED Silver, and applying the same requirements to newly constructed city facilities, and major renovations;

Requiring all future City government procurements of vehicles to minimize emissions, and establishing a goal and plan for transitioning the city’s vehicle fleet to all electric vehicles;

Establishing a goal and plan for transitioning to 100% renewable energy for municipal operations and a community wide goal of 100% reductions by 2030;

Formally opposing the recent expansion of offshore drilling by the Trump Administration; and

Calling for region-wide solutions to carbon emissions, including rapid adoption of renewable energy sources, affordable densification of cities and low-emissions public transportation infrastructure.”

On June 12, the Berkeley City Council also passed item 49 “Declaration of a Climate Emergency” which refers “to the Energy Commission to study and report back to Council on a path for Berkeley to become a “Carbon Sink” as quickly as possible, and to propose a deadline for Berkeley to achieve this goal” ideally by 2030.

This Report is the Energy Commission’s response to Council’s June 12 referrals.

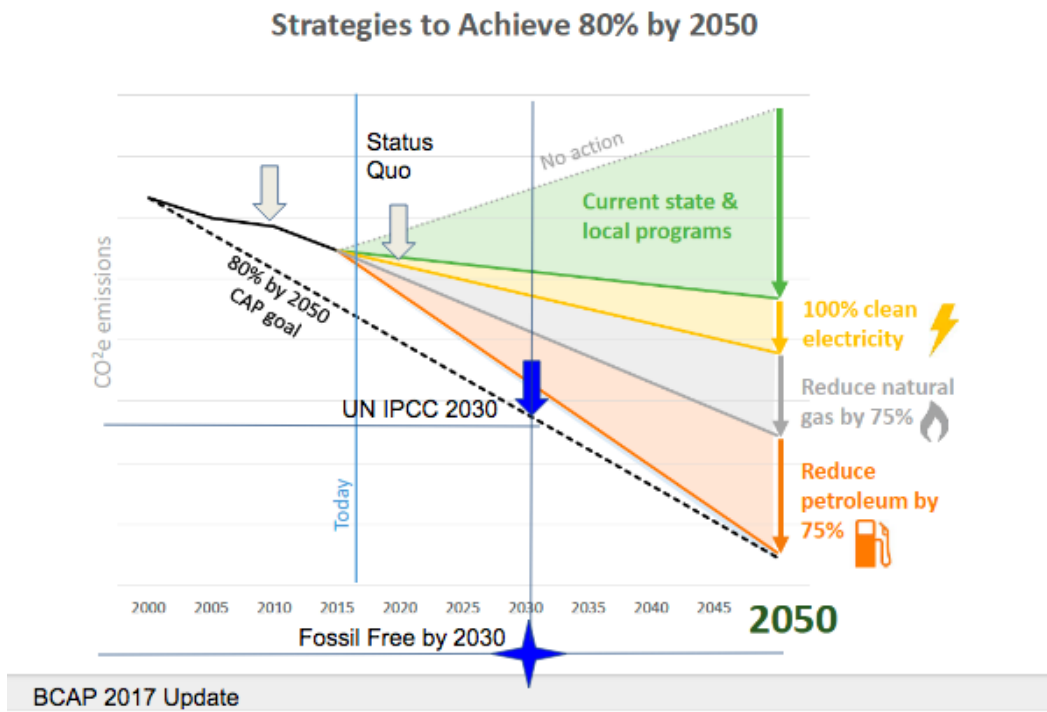
# Executive Summary

The City Council’s Climate Emergency Resolution lists record breaking climate related catastrophes and urges ‘out of the box’ thinking for solutions.

As if intended to support the Council’s climate emergency declaration, the UN IPCC issued a heart rattling Special Report ([IPCC-SR15](#), 10/9/2018) noting global temperatures are rising faster than predicted an myriad of cascading effects are happening sooner, and reiterating a worldwide goal to keep warming to no more than 1.5 °C. It asserts Greenhouse pollution must be reduced 45 percent from 2010 levels by 2030 and 100 percent by 2050.

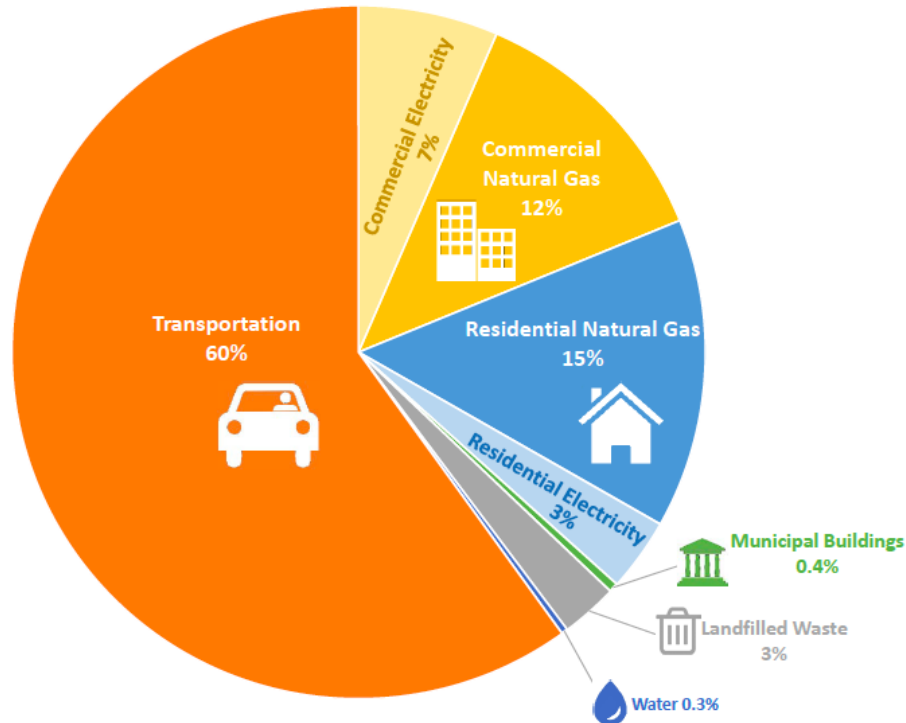
The trajectory of the Berkeley Climate Action Plan’s 2020 emission reduction targets, extended to 2030, is roughly in line with the IPCC-SR15 goal. However, according to the city’s 2018 [Annual Progress Update](#) Berkeley is significantly behind in achieving the Climate Action Plan 2020 reduction goals, let alone extending that trajectory through 2030 as recommended by IPCC-SR15, or doubling down to become 100% fossil free by 2030 as to be considered in the Fossil Fuel Free Berkeley Resolution Council adopted in June.

## IPCC and Fossil Free by 2030 goals superimposed on 2017 CAP update



Clearly in order to meet any of these 2030 goals we need a sea change in commitment. Specifically, we must exert the will to honestly accept and meet the challenge we face. The 2018 CAP Update shows where we need to act:

## 2016 Community Emissions



Given statutory limitations on specific authorities held by the City, the Energy Commission is not able to determine a date by which Berkeley could be completely fossil fuel free. However, aiming to be fossil fuel free by 2030 to the fullest extent possible is a compelling goal. Urgency prompts the Commission to recommend aggressively prioritizing options with high early impacts. Lastly, Berkeley will only become a carbon sink if it is also virtually fossil free. The City has little capacity to sequester carbon.

### **Four Fast Track Proposals**

- Opt all East Bay Community Energy accounts to 100% renewable electricity in 2019. This would result in an immediate 10% reduction in GHGs.
- Integrate greenhouse gas (GHG) reduction goals into the objectives and responsibilities of every city department. Amend funding priorities to support this initiative.
- Develop an updated Climate referendum to put before the voters that doesn't soft pedal very challenging proposals and why they are necessary. A successful referendum campaign would provide the platform for massive public education and

support Council decision making. This referendum would be submitted to the voters in November 2020 and would include binding mandates and specific priorities for emissions reductions.

- Lead a regional effort to make changes to the Utility Users Tax structure in order to assess taxes on natural gas usage separately from electricity usage. Once complete, the City should submit a referendum to voters that would raise the tax on natural gas usage and dedicate the funds to decarbonization efforts.

## **Summary of Recommendations**

### **Citywide Transportation**

1. Accelerate infrastructure changes to support walking, biking, and small electric and human powered vehicles.
  - a. Build all high priority projects in the city's bicycle, pedestrian, and BeST plans including tier 1 projects in the bike plan by 2025.
  - b. Re-prioritize road and sidewalk capital expenditures to accelerate changes in favor of walking, human powered vehicles, and other low carbon footprint mobility alternatives.
  - c. Add 3 FTE to the Transportation Division to expedite implementation.
2. Adopt financial incentives and disincentives to reduce transportation carbon emissions such as: free transit passes for youth, restricted vehicle access to certain streets, and additional parking fees. Funds raised would be used to support fossil fuel free transportation programs.
3. Explore developing Berkeley shuttle services similar to the Emery Go-Round using EVs.
4. Develop effective communication and education strategies. Continue to expand programs that encourage residents to shift to fossil fuel free modes of transport.

### **Residential and Commercial Buildings**

1. Opt all accounts in Berkeley up to 100% renewable EBCE electricity with a policy of no added cost for CARE customers and an outreach campaign to enroll all eligible customers in the CARE program. This is the most significant immediate thing the city can do reduce greenhouse gas emissions. A ton of GHG gases eliminated in 2019 is far more impactful in slowing climate change than a ton eliminated in 2025 or even in 2020 because of the impact of positive feedback loops.
2. Expand BESO and include electrification along with energy efficiency. Consider instituting more triggers that require an energy audit, more detailed energy audits, not allowing the seller to transfer the audit to the buyer, and required implementation of some of the measures recommended in the energy audit.



3. Stop expansion of natural gas infrastructure by prohibiting gas cooktops and dryers in new residences. Place a moratorium on new gas hook ups if possible.
4. Funding options for electrification and energy efficiency upgrades:
  - a. Sales transfer tax rebates, similar to the seismic rebate but tied to implementation of BESO recommendations.
  - b. A new, very low interest revolving loan fund.
  - c. Strategic relaxation of the Planning Code, such as density and/or parking requirements, or accelerated review in exchange for electrification and energy efficiency measures.
5. Develop an effective communication and education strategy that reaches the Berkeley community at large. This strategy should include updating the City's website to reflect the City's prioritization of electrification, and low carbon footprint and low toxic construction. Updated green building information should be easily found on the Permit Service Center home page. The City's website needs to offer clear guidance reflecting the urgency of the climate crisis.

### **Regional Action**

1. Lead a regional effort to make changes to the Utility Users Tax structure in order to assess taxes on natural gas usage separately from electricity usage. The City Council adopted a resolution in favor of this change and is awaiting support from other cities in the region to share the fees PGE would charge to modify the billing. It is time to look aggressively for the necessary funds and initiate the process. Once complete, the City should submit a referendum to voters that would raise the tax on natural gas usage and dedicate the funds to decarbonization efforts.
2. Encourage the Bay Area Air Quality Management District (BAAQMD) to adopt rules with future effective dates to prohibit sale of gas powered appliances. It has used the authority in the past to prohibit the sale of polluting products like high VOC paints and to restrict installation of wood burning fireplaces. Prohibiting sale of gas powered appliances would support electrification.
3. Increase regional and support state efforts to expand availability of low global warming potential refrigerant heat pump space and water heaters for the retrofit markets.
4. Initiate regional policy consistent with fossil free goals for ride hailing services and the introduction of autonomous vehicles. Support state programs that restrict the use of fossil fuel by ride hailing services and autonomous vehicles. Regulate these services to reduce overall per capita VMT.
5. Explore viability of reducing R-1 zoning to increase housing availability, opportunities for home ownership and improve transit access through increasing densification. Such transit oriented development can be adopted throughout the region to reduce development pressure on open spaces, provide more housing near jobs, and provide the density to support expansion of regional transit.

## Analysis

### I. Establishing a date by which we are committed to being a Fossil Fuel Free City

#### Recommendations

1. Consider a new ballot initiative for updating the Climate Action Plan in order to engage Berkeley residents in the comprehensive and ambitious efforts that will be needed.
2. The City should take aggressive, immediate, and sustained action to achieve the goal of a fossil free Berkeley to the fullest extent possible while simultaneously calling for necessary and immediate complementary emergency actions by other local, regional (e.g. MTC/ABAG, BAAQMD, BayREN) state and federal governmental bodies.

#### Discussion

The Energy Commission believes that the Berkeley Residents who initiated “Fossil Free Berkeley” intend it to apply to the entire city, not just municipal operations. Our comments reflect this point of view.

The two Council items 30 and 49 taken together suggest a goal of 2030 for Berkeley to become fossil free. It should be noted that this is far more ambitious than recommendations by the IPCC and recently adopted state laws<sup>1</sup> which taken together would suggest a goal of 50% reduction of greenhouse gas (GHG) emissions by 2030.

In some ways, Berkeley is better positioned than many cities to take the initiative to make accelerated and meaningful reductions in fossil fuel consumption.

- Unlike many other GHG emissions sectors, techniques for eliminating building GHGs--specifically improving energy efficiency, electrifying remaining energy uses, and using renewably generated electricity--are all commercially available, and can improve comfort and safety and offer property owners economic savings over time. Energy efficiency programs have been around for decades and the city’s unique BESO energy audit program helps property owners prioritize efficiency upgrade spending. Because of recent developments in heat pump technologies making electric heat pump space and water heating more than 3 times as efficient as their gas equivalents and the dramatic

---

<sup>1</sup> SB 100 commits state utilities to provide 60% renewable electricity by 2030, and zero carbon electricity by 2045.

AB 3232 charges the California Energy Commission with assessing how to reduce emissions from the state’s building stock by 40 percent below 1990 levels by 2030.

SB 1477 will expand the accessibility of clean heating technologies by promoting them in the market with incentives and training.

Executive Order B-55-18 commits California to economy-wide carbon neutrality by 2045.

increase of renewables on the electricity grid, all electric homes, even without solar panels, can produce substantially less GHGs than natural gas powered ones.

- Berkeley's size, density, mild and dry climate, and mass transit infrastructure make it ideally suited for an accelerated reduction in transportation related GHGs. The recent commercial introduction of vehicle sharing programs and proliferation of small electric vehicles such as electric bikes, scooters, and tricycles solve two of the main long time challenges to rethinking the transportation picture in Berkeley. They dramatically reduce costs of electric transport and offer small scale power assisted options, particularly for hills residents.

According to the 2017 Bicycle Plan a "2015 survey of Berkeley residents showed 90 percent of Berkeley residents already bicycle or would consider bicycling if the right bikeway facility or roadway conditions were available. That is a larger percentage than any other city that has conducted a similar study, including Portland...."

- Finally, residents voted overwhelming in favor of the Berkeley Climate Action plan in 2006 and are likely to support new targeted programs to accelerate reductions in GHGs.

The challenges to accelerating GHG reductions cannot be overstated. They are technological, political and social. And, the more ambitious the reduction goals the greater the challenges. While Berkeley is better set up to meet a goal of 100% reduction by 2030 than many communities, it is still a very difficult task.

- The vast majority of buildings rely on natural gas for operation. Every one of them will need to be shifted from gas to all electric operation. Every fossil fuel operated vehicle on the roads will need to be eliminated. How do we motivate ourselves to electrify our buildings and give up our fossil fuel vehicles?
- As much as a quarter of Berkeley's past GHG reductions are a result of state programs such as the renewable fuels portfolio standard. To push ahead with an accelerated GHG reduction goal, the city will need to rely on local programs.
- There are real technological hurdles that need to be solved before complete electrification of the California or US economy can occur. It is hoped these problems will be solved by 2030 or much sooner. While they do not prohibit Berkeley from being fossil free by 2030 as an isolated entity, they do drive up the cost for some of the needed technologies, particularly in relationship to vehicles and battery storage. In addition, regional and state governments will be reluctant to set goals without confidence that the technologies are in place to meet them, so Berkeley will likely be out of step with others the more aggressively it pursues accelerated GHG reductions.

Finally, the urgency of the climate crisis requires use of the simplest, cheapest and most available tools at hand to achieve high early results. A ton of GHG gases eliminated in 2019 is far more impactful in slowing climate change than a ton eliminated in 2025 or even in 2020. Because of positive feedback loops, the effects of GHG emissions are amplified. For example warmer, dryer forests burn more which releases more CO<sub>2</sub> which contributes to more forest fires. Establishment of new manufacturing facilities and a city scale power company would take decades. It will be far more effective to work with existing programs such as East Bay Community Choice Energy, BESO, and the Berkeley Bicycle Plan.

## **II. Opposing further transportation of oil, gas, and coal**

### **Recommendations**

1. In order to put the brakes on the transport of refinery feedstock and refined products traveling through Berkeley, call for a plan to responsibly wind down all Bay Area refineries as California demand wanes.
2. Consider a ban on the storage and transport of coal within the City

### **Discussion**

It should be noted that the City of Berkeley has already adopted a more specific position in opposition to transport of oil, gas and coal: joining neighboring communities in September in calling for a ban on coal shipments through East Bay Communities.

Unfortunately, the Federal Government has jurisdiction over rail transport limiting the City's options for preventing travel by rail through Berkeley.

Eliminating transport of fossil fuels would require the shutdown of all Bay Area oil refineries, because their products are trucked to and through Berkeley for cars, trucks, planes and trains operating in the Bay Area. It would also mean that all ground vehicles, including trains would have to be converted to run on 100% carbon-free electricity, and air transport be fueled by bio-fuel or by imported fossil fuels.

Regarding the shutdown of local refineries, Communities for a Better Environment has drafted a California Refinery Study and will soon launch a campaign to responsibly wind down all California refineries by 2035, by requiring annual emission reductions of 5% beginning in 2020. Mayors of Benicia and Richmond, home to the Valero and Chevron refineries, are already making public statements in support of winding down Bay Area refineries. As California electrifies its vehicles, we must ensure refineries are not permitted to maintain or increase refining activities such that fossil fuel exports increase and frontline communities remain subject to the health consequences of this dirty, outdated industrial sector.

## **III. Fully implementing Berkeley Deep Green Building plan, raising the citywide LEED certification requirement above the current LEED Silver,**

**and applying the same requirements to newly constructed city facilities, and major renovations****Municipal Buildings Recommendations**

1. Immediately convene a citywide departmental summit including Public Works and Planning and Development to establish a timeline and budget for electrifying all city owned buildings and installing solar plus storage at City buildings wherever possible.
2. Review and re-prioritize all funds currently earmarked for capital improvements to facilitate rapid electrification of municipal buildings.
3. Work with East Bay Community Energy to secure grants for solar with storage.
4. Use the 2 x 2 process to coordinate with BUSD in establishing a fossil fuel free goal and providing BUSD with technical and policy assistance to achieve it.
5. Set higher goals for municipal buildings related to indoor air quality, lowered carbon footprint, and all electric as outlined in Berkeley Deep Green Building and Healthy Building Network's HomeFree Spec guidance.<sup>2</sup> In addition to developing expertise that can be shared with Berkeley residents and property owners, these changes would have health, environmental, and economic benefits. The City can decide the standards which municipal buildings must be built or remodeled to. It is our understanding that currently, there is no requirement beyond meeting minimum state building codes.

**Residential and Commercial Buildings Recommendations**

1. Develop options for expanding the coverage of the current LEED requirements to other areas of the City including mandatory points in certain sections.
2. Strategically relax the Planning Code, such as density and/or parking requirements or accelerated permit review in exchange for electrification and energy efficiency measures.
3. Place moratorium on natural gas cooktops and dryers in new residences or on new gas hook ups if possible.
4. Institute a transfer tax rebate for energy efficiency upgrades and electrification at time of sale.
5. Ensure every plan checker is trained in methods of electrification, and instructed to present that information to property owners at the beginning of the permit application process. In this way, every interaction with property owners becomes an opportunity to educate them on their options for home energy efficiency and

---

<sup>2</sup> <https://homefree.healthybuilding.net/reports>

electrification and their importance. Building owners need to understand the importance of reducing energy consumption and electrification and to switch out fossil fuel appliances for electric whenever possible.

6. Expand BESO and shift focus to include electrification along with energy efficiency. To be considered are: instituting more triggers that require an energy audit, more detailed energy audits, not allowing the seller to transfer the audit to the buyer, and required implementation of some of the measures recommended in energy audit.
7. Develop an effective communication and education strategy that reaches the Berkeley community at large. This strategy should include updating the City's website to reflect the City's prioritization of electrification, and low carbon footprint and low toxic construction. Updated green building information should be easily found on the Permit Service Center home page. Many architects, builders and homeowners begin the design process online, making key decisions based on information found online. It is critical the City's website offer clear guidance reflecting the urgency of the climate crisis.
8. Work with PG&E to develop a plan for eventually shutting down natural gas service in Berkeley. Priority should be given to areas most vulnerable to the effects of climate change and earthquakes and those where infrastructure has not yet been upgraded to plastic. Funds that would be spent on upgrading gas infrastructure can instead be used for electrifying buildings and under-grounding electrical lines.
9. Consider the development of a long term funding plan such as a very low interest revolving loan fund to assist property owners to decarbonize their buildings.
10. The City should work with the BAAQMD to adopt rules with future effective dates to prohibit sale of gas powered appliances.
11. Increase regional and support state efforts to expand availability of low global warming potential refrigerant heat pumps space and water heaters for retrofit markets.

## Discussion

The Berkeley Deep Green Building (BDGB) initiative, adopted by the City Council in 2017, outlines best practices for green building including zero net energy and all electric construction, low carbon footprint and low toxicity building materials, and water conservation. City staff has provided a detailed analysis and review of progress in implementation. See the [Energy Commission](#) Agenda from 4-25-18 for copy of this review.

Energy efficiency measures including: low toxic, low carbon footprint insulation, air sealing, and replacing incandescent with LED lights, have long been recognized as important to greenhouse gas reduction. BDGB argues in addition that going all electric is foundational to achieving fossil fuel free goals. Historically energy efficiency standards and incentive programs have been based on the assumption that natural

gas appliances have lower environmental impacts than electric appliances. However, this is no longer the case. The dramatic increase of renewables in supplying electricity and the development of heat pump technologies for space and water heating, which are more than 3 times as efficient as their gas equivalents, have turned this balance around. If the significant fugitive emissions from gas infrastructure and their concomitant climate changing and indoor air quality impacts are added to the equation, the scale definitely tips in favor of all electric buildings.

Natural gas is also a safety issue in Berkeley. The recent gas line explosions around Lawrence Massachusetts are only the most recent in a long line of such incidents. Even though PG&E is working to upgrade existing infrastructure, rising sea levels in West Berkeley and the overdue earthquake on the Hayward fault threaten Berkeley. Electricity infrastructure has its safety issues as well. Money saved on gas infrastructure could be used on improving the safety and reliability of electric power.

One of the stumbling blocks to a fossil free California is energy storage. All electric, energy efficient buildings can be key in addressing this problem by reducing overall energy demand and drawing energy for space and water heating in the middle of the day when it is most abundant and storing it for use in the evening after the sun goes down. As a quarter of all energy used in the home is for water heating, state policymakers and manufacturers are already working on ways to incorporate tanked electric water heaters into energy management programs.

Heat pump space and water heaters are commercially available and can be economical. Recent studies of homes by Rocky Mountain Institute and NRDC<sup>3</sup> have found that all electric construction can be cost effective, especially in new construction where there are significant savings from not installing natural gas plumbing and infrastructure. All electric construction can also be economical in remodels in cases where natural gas equipment is older and needs replacing and where electrification is coupled with solar PV installation.

As the city is largely built out, construction tends to focus on remodels and new construction of high rise apartment buildings. Every effort needs to be made to guide these projects to be all electric. Currently it appears the economics for high rise residential buildings in Berkeley favor electric heating and air conditioning paired with central gas heat for water. Though adding significant cost to construction, some developers will run natural gas to individual units for the perceived increased value of a gas cooktop. It should be noted that building owners who install natural gas heating and appliances now will be left with stranded assets as society is quickly shifting to all electric operation.

---

<sup>3</sup> <https://rmi.org/insight/the-economics-of-electrifying-buildings/>  
<https://www.nrdc.org/experts/pierre-delforge/new-report-heating-next-clean-energy-frontier-ca>

The biggest challenge in Berkeley is electrifying existing buildings -- particularly where no work is anticipated or no permit is obtained for the work. This is a major source of greenhouse gases in our city and across the state. Several state level assistance programs can help property owners with improvements. However they generally fall short of amounts needed and currently rebates are not available for switching gas appliances to electric.

California has been a leader in improving energy efficiency and expanding renewable electricity generation. Several state laws from 2018 will continue that effort:

- SB 100 commits state utilities to provide 60% renewable electricity by 2030, and zero carbon electricity by 2045.
- AB 3232 charges the California Energy Commission with assessing how to reduce emissions from the state's building stock by 40 percent below 1990 levels by 2030.
- SB 1477 will expand the accessibility of clean heating technologies by promoting them in the market with incentives and training.
- Executive Order B-55-18 commits California to economy-wide carbon neutrality by 2045.

While California has been a leader in improving energy efficiency, state laws and regulations have been slow to guide and in some cases act as barriers to the transition to all-electric construction. Many of these barriers are obscure and buried deep in regulatory policy:

- 3 prong test. The 3 prong test is policy established in the early 1990s originally intended to ensure fuel switching did not occur that caused adverse effects on the environment. At the time it generally meant discouraging shifts from natural gas to electric. However the policy assumptions continue to serve the same purpose even as the climate impacts of the two fuels have completely changed places. This policy is the core of why PG&E will not provide energy upgrade rebates when changing gas to electric heat.
- Title 24 assumptions. Title 24 is the shorthand name for the energy efficiency standards of the California Building Code. These are updated every 3 years and currently include several assumptions that favor gas heating and air conditioning over electric.
- Energy rate structure. Retail prices for natural gas do not reflect the GHG emissions of gas compared to electricity, or the grid benefits of flexible electric loads like tanked electric water heaters.

Of these barriers, only the assumptions in title 24 have begun to shift in PG&E territory. The standards that will go into effect in 2020 will no longer penalize use of



heat pump water heaters in low rise residential construction. However many other assumptions within the new standards will continue to support use of natural gas such as the climate benefits of electricity in the TDV and the lack of credit given to tanked electric water heaters for energy storage.

At the regional level, BAAQMD has the authority to regulate air pollution including GHGs. It has used the authority in the past to prohibit the sale of polluting products like high VOC paints. It could prohibit sale of gas powered appliances to support electrification and elimination of GHG emissions.

Working within state level constraints, planning staff have developed and pushed policies that improve the energy efficiency of buildings in Berkeley and encourage a shift to all electric, carbon free operation. Policies they have developed unique to Berkeley include:

- New non-residential construction and additions in the downtown area need to be LEED Gold or equivalent.
- Free advice and consultation on green building design and strategies.
- Building renovation and new construction over 10,000 square feet needs to have an energy analysis and a completed green building checklist.
- Under the BESO program, at time of sale for residences and more frequently for commercial properties, owners must complete an energy audit of the building.

City staff are pursuing many additional efforts:

- Reviewing the BESO program to improve effectiveness. Scope of review to include requiring energy audits sooner for more properties, expanding the triggers that require an audit to include remodeling, more detailed energy audits including electrification, elimination of the option of allowing the buyer to perform the audit, and implementation of some of the upgrades recommended by the energy audits.
- Expanding heat pump water heater availability through collaboration on BayRen's mid-market expansion grant program.
- Pursuing "reach" building codes for the 2020 building codes that give regulatory advantage to all electric construction. The most important priority for this effort is new multi-unit high rise apartment buildings and major remodels.
- Advocating for state level policies that allow building owners to receive energy efficiency rebates when switching fuels.

- Advocating for removal of all biases against electrification within the state building energy codes including Total Daily Value (TDV) and computer modeling assumptions.

Care should be taken that solutions do not create additional problems. Many building materials are coming under increasing scrutiny for their long trail of environmental and health impacts, such as polystyrene and PVC plastics and organo-halogenated materials. Others have such a high global warming footprint, such as certain foam plastic insulations that their use minimizes the GHG reduction benefits of the projects. The refrigerants commonly used in most heat pumps in the U.S.A. also have very high global warm potential. While heat pumps still have dramatic energy saving benefits over other options, phase out of these chemicals under state Air Resources Board programs will improve their GHG benefits.

**IV. Requiring all future City government procurements of vehicles to minimize emissions, and establishing a goal and plan for transitioning the city's vehicle fleet to all electric vehicles**

*See V. for discussion and recommendation concerning 100% renewable energy for municipal vehicles.*

**V. Establishing a goal and plan for transitioning to 100% renewable energy for municipal operations and a community wide goal of 100% reductions by 2030.**

*See III. for discussion and recommendation concerning 100% renewable energy for buildings.*

**Municipal Transportation Recommendations**

1. Assess the city's transportation vehicle needs and develop an aggressive timeline for transitioning to all electric.<sup>4</sup> This assessment would include consideration of: 1) Switching to lower carbon transport options such as electric carts or bicycles where possible and 2) the timing of technology development and commercialization for car batteries.
2. Immediately switch diesel vehicles to run on renewable diesel in the interim until fossil fuel free options are available for the tasks they perform.

---

<sup>4</sup> Ref: San Francisco Ordinance 115-17 Administrative Code Section 4.10-1:

c) By December 31, 2022, all light duty vehicles in the City fleet must be Zero Emission Vehicles in compliance with Environment Code Section 404, unless there is a waiver, exemption, or applicable exception. detailed in Environment Code Chapter 4.

## Citywide Transportation Recommendations

*The Energy Commission would like to coordinate recommendations with the Transportation and Public Works Commissions to accelerate a reduction in fossil fuel vehicles in Berkeley. To begin the process, the Energy Commission makes the following recommendations:*

1. Re-prioritize road and sidewalk capital expenditures to accelerate changes in favor of walking, human powered vehicles, and other low carbon footprint mobility alternatives. The Council should amend funding priorities to reflect the climate emergency.
2. Adopt financial incentives and disincentives to reduce transportation carbon emissions such as: free transit passes for youth, restricted vehicle access to certain streets, and additional parking fees. Funds raised would be used to support fossil fuel free transportation programs.
3. Develop and implement a transit plan in support of the Climate Action Plan. The transit plan could include detailed accountability metrics such as required dates for identified new routes, dates for replacement of fossil fueled busses and shuttles with electric busses and shuttles, and smaller intra-neighborhood subsidiary transit (shuttles). The city should explore developing its own shuttle services similar to the Emery Go-Round using EVs as part of the transit plan.
4. Add 3 FTE to the Transportation Division to expedite implementation of the city's bicycle, pedestrian, and BeST plans.
5. Build all high priority projects in the city's bicycle, pedestrian, and BeST plans including tier 1 projects in the bike plan by 2025.
6. Develop a communication strategy to inform residents of fossil free and lower carbon footprint personal mobility options and the desirability of prioritizing these options.
7. Continue to develop and expand programs that encourage residents to shift to fossil fuel free modes of transport, such as electric bike and scooter sharing, Waterside Workshop, and Safe Routes to School.
8. Work with State authorities to prohibit operation of autonomous vehicles within city limits unless they are electric vehicles.
9. Use the 2x2 process to encourage the BUSD to develop a plan for phasing out fossil fuel vehicles and supporting families to safely get to and from school without cars.
10. Lobby and work collaboratively with public and private transportation providers and the commercial sector to convert all vehicle fleets to electric power.

11. Support state programs that restrict the use of fossil fuel vehicles by ride hailing services such as Uber and Lyft.

## Discussion

One of the greatest challenges we face is how to eliminate emissions from transportation. By far the most promising way to make transportation renewable is with electric vehicles.

The vast majority of fossil fuel powered vehicles operated in the city are owned by individuals and companies and government entities outside of the city simply driving through the city or entering the city for business or pleasure. For the purposes on this report, the fossil fuel free goal will be focused on reducing fossil fueled vehicular traffic on city streets. It should be noted that for Berkeley to be truly fossil free, all ground vehicles, including trains, must be converted to electric power. We recognize the City has no independent way to get Amtrak and freight trains off fossil fuels.

The Commission believes that the goal of 100% emission reduction from vehicles is most likely to happen using batteries. Fuels other than electricity are possible but less likely to be adopted. Biofuels have a limited role because of lack of feedstock availability without associated environmental damage (the food vs. fuel problem).

Electric automobiles are quieter and more economical to operate than gas cars. Although only 2% of new car sales in the United States in 2018 were electric, that represented an 81% increase in sales over 2017. Electric auto sales were about 6% of new cars in California in 2018, and reached 10% in December. Because of their lower operating and maintenance costs, electric cars are competitive in lifetime costs of ownership. Residents of homes without garages (of which there are many in Berkeley), and apartments without charging stations, face a serious challenge to find a place to plug in. We encourage further city action on this.

Another option is hydrogen. To be emission-free the hydrogen has to be produced from renewable electricity or directly from sunlight with a catalyst. The problem is that hydrogen storage is very expensive either as a liquid or as a high pressure gas, both because it is energy intensive and because the container is expensive. Furthermore, the likelihood of leakage is much higher than, say, natural gas and the likelihood of explosive ignition in the presence of oxygen is also much higher than natural gas.

One biofuel that can play a useful role in Berkeley as bridge to electrification is renewable diesel. Renewable diesel though made entirely from vegetable oils is not biodiesel. It is processed to meet the exact performance specifications required for diesel motors. It does not void manufacturer warranties and can be used in any diesel vehicle. The emissions are much cleaner, the carbon footprint is lower and it is cheaper than diesel. While its use should be minimized because of the potential food vs fuel concerns, it can be used immediately in all city diesel vehicles until they can be replaced with fossil fuel free alternatives.

The city already has advocated walking, human powered vehicles, electric vehicles and mass transportation accessibility to all in its 2009 Climate Action Plan. In achieving a fossil fuel free goal, there are important timing issues. Several significant transportation changes are just over the horizon that will dramatically reshape our city street experience including:

- Expanded ride hailing operations such as Uber and Lyft, especially as autonomous vehicle operation is perfected;
- Docked and undocked ride sharing vehicles; and
- Proliferation of varied electric vehicles including electric golf carts, bicycles, tricycles, stand-up scooters, hoverboards, Segways, and wheelchairs.
- Breakthroughs in battery technologies that will dramatically lower the cost and improve performance of electric vehicles.

The city should be careful about engaging in longer term contracts and that decisions be revisited regularly as new technologies mature and the economics change for different transportation modes.

## **VI. Formally opposing the recent expansion of offshore drilling by the Trump Administration**

### **Offshore Drilling Recommendation**

Formally endorse California laws intended to block offshore drilling if it has not done so already.

### **Discussion**

The State legislature has passed and the Governor has signed SB 834 (an act to add Section 6245 to the Public Resources Code, relating to state lands) and SB 1775 (an act to add Section 6245 to the Public Resources Code, relating to state lands). Both Sections are entitled State lands: leasing: oil and gas. These new laws are intended to block the Trump administration's plan to expand offshore oil drilling by prohibiting new leases for new construction of oil and gas-related infrastructure, such as pipelines, within state waters if the federal government authorizes any new offshore oil leases.

## **VII. Calling for region-wide solutions to carbon emissions, including rapid adoption of renewable energy sources, affordable densification of cities and low-emissions public transportation infrastructure**

The Council has rightly included the need for regional coordination to address energy supply, housing and transportation. It's safe to say all Bay Area cities are grappling with these issues in one way or another, with significant disparities among them in both priorities and resources. It will take trust, willingness to move away from a

provincial mentality, leadership from MTC/ABAG and BAAQMD and probably some State action to facilitate deep progress in these areas.

## VII.1. Renewable Energy Sources

### Renewable Energy Sources Recommendations

1. Opt up all Berkeley's municipal, commercial and residential accounts to EBCE's<sup>5</sup> 100% Renewable electricity with a policy of no added cost for CARE customers and an outreach campaign to enroll all eligible customers in the CARE program in 2019.
2. Partner with all cities in CCAs to influence state legislators, the Governor, and CPUC Commissioners to develop guiding legislation, policies, and rules that support the continued existence of CCAs.

### Discussion

It is critical to move toward 100% clean energy generation sources as soon as possible in order to fully realize GHG emission reductions through "fuel switching" from combustion to electricity in all spheres. There is long established worldwide consensus that the path to climate stabilization requires, in this order:

1. Deep reductions in energy demand through conservation and efficiency,
2. Conversion to clean electricity generation, and
3. Massive electrification.

---

<sup>5</sup> A regional approach to increase reliance on renewable energy sources is possible through our new energy provider: East Bay Community Energy (EBCE). EBCE was initiated under a state law passed in 2002 that allowed government jurisdictions to create agencies (called Community Choice Aggregators or CCAs) to purchase power on their residents' behalf as a way to provide energy options to Californians. As a local government agency, EBCE is not for profit and is entirely devoted to the community. Even before EBCE was providing electricity, it was developing a plan to invest locally in energy development. In July 2018, the Board of EBCE adopted a groundbreaking Local Development Business Plan which spells out strategies for local clean energy, energy efficiency, and energy storage projects specifically to help address the environmental, economic, and social justice needs of the East Bay community.

Once established, a CCA is authorized to automatically enroll all accounts in its jurisdiction in the new energy program. Customers have the option of changing the product they are enrolled in or switching back to PG&E. EBCE currently offers three electricity supply products to its residential, commercial and municipal customers:

- Bright Choice - a mix of electricity generated by fossil fuels, renewable sources and large scale hydro, which the State of California does not classify as renewable. It is offered at a slightly lower in price than electricity from PG&E;
- Brilliant 100 - a mix of renewable energy and large hydropower at the same price as PG&E power; and
- Renewable 100 - 100% renewable energy at a slightly higher price.

Both Berkeley (through BESO and other programs) and California (largely through frequent Energy Code updates) have long standing, successful conservation and efficiency requirements. We are national leaders in this and continue to press forward with program improvements and new initiatives. Now that a 100% renewable option is available from EBCE, Berkeley can immediately convert the entire city to clean electricity generation, and turn its focus to the challenge to ‘electrifying everything.’ Shifting accounts to 100% renewable will reduce community-wide GHG emissions by a whopping 10%.<sup>6</sup>

Under the Climate Emergency Resolution, Council has signaled the intention to act boldly. Berkeley has already fallen significantly behind in achieving its 2050 GHG emission reduction goal as set forth in the 2009 Climate Action Plan.<sup>7</sup> Opting all its EBCE customers to the Renewable 100 plan is the single most impactful and timely action the City can take in 2019, both because of immediate emission reductions, and to avoid GHG emissions from future increases in demand due to electrification. It is critical to do this now because by the end of 2020, EBCE will be required to sign long term contracts for 65% of its supply portfolio. Once these long term contracts are signed, it will be more difficult for EBCE to shift the sources of its power mix. For these reasons, the Energy Commission recommends that Berkeley move to 100% renewable electricity in 2019.

While EBCE energy mix options were being established last spring, the Berkeley City Council, as did most EBCE cities, chose to enroll all residential and commercial accounts in Bright Choice. Berkeley enrolled its municipal accounts in Brilliant 100. The City of Albany enrolled all accounts in Brilliant 100, Hayward enrolled its residential accounts in Brilliant 100, and the City of Piedmont enrolled all accounts in Renewable 100. We note that ten jurisdictions in Los Angeles and Ventura counties served by Clean Power Alliance (CPA, a CCA) were enrolled in Green Power, its 100% renewable product, as the default. These ten jurisdictions cover a third of CPA’s one million customers.<sup>8</sup>

CPA, like EBCE, also has a Community Advisory Committee to help prioritize local renewable energy development and job creation, rebates and incentives. For California’s progressive cities and counties, enrollment in 100% renewable energy is a climate action whose time has clearly come. Because 35% of EBCE’s power purchase agreements are not required to be long term and electrification will increase demand, we anticipate ample opportunities for EBCE to make significant investments in local

---

<sup>6</sup> Berkeley Climate Action Plan Annual Progress Update, Office of Energy and Sustainable Development, Planning Department, Slide 5, December 6, 2018

<sup>7</sup> Berkeley Climate Action Plan Annual Progress Update, Office of Energy and Sustainable Development, Planning Department, Slide 14, December 7, 2017

<sup>8</sup> Clean Power Exchange, Alliance will provide clean, competitive energy, January 12, 2019 <https://cleanpowerexchange.org/alliance-will-provide-clean-competitive-energy/>

energy development. As the local development market matures, there will be rolling opportunities to incorporate locally generated power into long term contracts.

There were initial concerns that new EBCE customers would opt out and go back to PG&E. There were also worries that customers would opt out if enrolled in a cleaner mix of energy generation priced at the same or slightly higher cost than PG&E rates. Both of these fears have been shown to be unfounded for the inner East Bay cities of Alameda County. In fact, among all Alameda County cities in EBCE, only the City of Livermore, at 5.56%, has had an opt out rate greater than 2.07%.<sup>9</sup> Piedmont's experience in making Renewable 100 the default level is instructive. As of December 2018, 6.8% of customers opted down to Brilliant 100 or Bright Choice, and only 2.07% opted out and went back to PG&E. The takeaway is that few customers took any action, and of those who did, the overwhelming majority (77.7%) chose to stay in EBCE.

Concerns have also been raised that opting all customers to the 100% Renewable product would harm low-income customers. The Energy Commission recommends that EBCE follow CPA's lead in which "customers in 100 percent renewable energy communities who are enrolled in CARE, FERA or Medical Baseline will get Green Power at no extra charge."<sup>10</sup> We understand that EBCE is reporting strong net revenues which could be allocated to subsidize CARE customers. Alternatively, non-CARE customers could absorb the additional cost. Furthermore, the value of the non-binding nature of the enrollments is that price sensitive customers can opt down. Unlike an increase in property taxes, nonCARE customers who cannot afford to pay any more for power can simply opt down to the lower priced option.

It has recently come to light that Bright Choice power may in fact have a higher carbon content than electricity provided by PG&E.<sup>11</sup> The City Council has the opportunity right now, while the nascent EBCE is locking in long term contracts for power, to opt all accounts to fossil fuel free power to ensure that joining the CCA does in fact reduce citywide GHGs.

The political landscape for CCAs is fraught with heavy opposition from PG&E and its entrenched allies in State government even as they supply electricity that is cleaner and cheaper than their for-profit counterparts.<sup>12</sup> Berkeley needs to partner with all Bay

---

<sup>9</sup> EBCE Enrollment Update, December 5, 2018

<sup>10</sup> Clean Power Exchange, Alliance will provide clean, competitive energy, January 12, 2019 <https://cleanpowerexchange.org/alliance-will-provide-clean-competitive-energy/>

<sup>11</sup> See comments in: <https://www.berkeleyside.com/2018/12/11/why-does-your-december-electricity-bill-look-different>

<sup>12</sup> [A 2016 UCLA study](#) found that CCAs in California offered 25% more renewable energy compared to the investor-owned utility (IOU) in the same area resulting in an estimated reduction of 600,000 metric tons of CO2 in 2016.



Area cities in CCAs to work with our elected representatives to defeat legislative threats and overcome obstacles at the California Public Utilities Commission. Also, the CCA's themselves need to ensure unity and coordinated responses to initiatives aimed at undermining success.

## VII.2. Affordable Densification of Cities

### Affordable Densification Recommendations

1. Work with MTC/ABAG, BART cities and counties to reframe and expand Transit Oriented Development concepts to conform with internationally used approaches that look beyond infill at already heavily used transit hubs, and prioritize infill housing everywhere developed in concert with expanded transportation strategies and expanded services (educational, recreational, commercial and environmental enhancement).
2. Work with Bay Area cities and counties to develop a regional funding mechanism to subsidize low income and affordable housing in all jurisdictions.
2. Explore viability of reducing R-1 zoning to increase housing availability, opportunities for home ownership and improve transit access through increasing densification. In addition, support adoption of such transit oriented development throughout the region to reduce development pressure on open spaces, provide more housing near jobs, and provide the density to support expansion of regional.

### Discussion

In order to provide affordable densification we need massive housing construction, housing subsidies and expanded transit opportunities. The high cost of living in the Bay Area includes the high cost of construction. If we want to reduce vehicle miles traveled (VMT) and the unhealthy stress of long commutes we must find ways to subsidize housing for average people, because at the present time people living on average incomes who do not already own homes cannot afford to live in the Bay Area either as renters or homeowners, forcing many into ever longer vehicular commutes. This is something that needs to be addressed by both the region and the state. There is too much disparity in wealth across the region for the problem to be completely solved by individual cities.

A desire for walkable neighborhoods and transit access has contributed to gentrification in Berkeley and San Francisco. This new gentrification is fueled by the migration of young professionals from the suburbs to these two cities in particular because they both have ample neighborhood scale services. Remarkably, the median price paid per square foot of living space is no longer significantly higher in most R-1 zones where access to transit is often limited.<sup>13</sup> This indicates that the hunger for the amenities of a more urban lifestyle is widespread. It's quite possible that there is an

---

<sup>13</sup> ([https://www.trulia.com/real\\_estate/Berkeley-California/market-trends/](https://www.trulia.com/real_estate/Berkeley-California/market-trends/))

untapped openness to neighborhood-scale services and transit development in existing suburbs too. This possibility needs to be explored. Any such nascent cultural shifts should be identified and reinforced. The suburbs have already absorbed job growth in the form of large business parks. Likewise, rails to trails conversions have acculturated suburban residents to walking and biking where convenient. Managed thoughtfully, initiatives to increase suburban infill housing coupled with increased transit, active transportation options and some small scale services could be welcome developments.

The push for housing densification in the Bay Area has relied on a concept of transit-oriented development (TOD) defined by MTC as [emphases added]:

“the clustering of homes, jobs, shops and services near *rail stations, ferry terminals or bus stops with high-frequency service*”

defined by BART as:

“mixed-use, higher density development *adjacent to frequent transit.*”

and directed by Berkeley’s General Plan to:

“[e]ncourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in *areas with above-average transit service* such as Downtown Berkeley.”

This perspective pre-supposes that densification is not a serious goal beyond existing heavily used transit corridors, or beyond cities that are already dense. Plan Bay Area forecasts the need for 800,000 new housing units by 2040. It seems doubtful that so much new housing can be built only around existing transit lines. Recent state legislation for infill housing fell victim to this kind of limited thinking.

In other parts of the world, TOD includes community scale planning with new transit service in mind, not just placing new homes near existing heavily used transit. We need to expand the mindset of housing development in the Bay Area to one of transit *coordinated* development (TCD). We need suburban infill housing developed in concert with public transit strategies, and educational, recreational and commercial services. Infill housing and transit alone do not address human needs for social, commercial and fitness activities. Enhancement of ecological surroundings is also important. A comprehensive TCD approach would improve the quality of life in many ways, serve as an attractor to development and significantly reduce GHG emissions.

Note that a substantial amount of new housing units in the suburbs will need to be subsidized for the reasons described above. Affordable and workforce housing is critical for every Bay Area city and county. Plan Bay Area has set forth affordable housing goals for the whole region, but so far every city is failing. Taking a comprehensive TCD approach would make such infill projects more relevant and attractive to existing residents.

One action cities such as Berkeley can take is to change zoning restrictions to eliminate R-1 zoning. Berkeley's General Plan institutionalizes R-1 low density housing:

"These areas are generally characterized by single-family homes. Appropriate uses for these areas include: residential, community services, schools, home occupations, recreational uses, and open space and institutional facilities. Building intensity will range from one to 10 dwelling units per net acre, not including secondary units, and the *population density will generally not exceed 22 persons per acre.*"[Emphasis added.]

The recent move to allow Accessory Dwelling Units is too restrictive to increase density to the extent needed on the land that is most available. It also preserves privilege, in failing to foster home ownership for additional residents.

Berkeley's R-1 zoning is visually correlated with the legacy of red-lining. Its perpetuation restricts growth in areas with the most open land that could support densification. There is quite a lot of aging housing stock in the Berkeley that needs significant renovation, including in R-1 zones. Under current policies, large houses in R-1 cannot be subdivided to allow for more occupants. As a result when modernized they grow larger and more luxurious, a sort of "deep gentrification." It's well documented, but rarely acknowledged, that such consumption drives GHG emission increases.

If the zoning was changed and subsidies provided, we could see small scale condo development like is happening in areas with higher density zoning, and much lower average household CO2e emissions because all the infill would be natural gas free as well as house more people. We could also reverse gentrification and truly become a city that prioritizes diversity. Increased density in R-1 areas would facilitate increased transit service and car sharing, and reduce congestion in shopping corridors. The fact is, many people actually spend little free time in their homes and gardens, preferring to recreate elsewhere, and even when self or contractually employed, preferring to go to work spaces and coffee shops with other people. Children in R-1 zones don't generally play in their neighborhoods, but are shuttled daily to many activities, increasing VMT. Densifying housing in R-1 areas could eventually prompt further zoning changes along the more major roads already served by public transit leading to infill services and commercial development there as well such as the two small and well used commercial districts in Kensington. The result could very well be both environmentally preferable and lead to an increase in our city-wide happiness quotient. Human happiness is correlated with low economic disparity. Our zoning ordinances should be reviewed to see how they amplify disparity and/or inhibit community happiness and act as a bias toward creating GHGs.

### **VII.3. Low Emissions Public Transportation Infrastructure**

#### **Public Transportation Recommendations**

*The Energy Commission would like to coordinate recommendations with the Transportation and Public Works Commissions for accelerating a reduction in fossil fuel vehicles in Berkeley. To begin the process, the Energy Commission makes the following recommendations.*

1. Work with AC Transit to convert all public transit to EVs.
2. Work with AC Transit and major employers to expand existing bus service and add all manner of appropriately sized bus and shuttle services, including into the suburbs.
3. Work to create dedicated bus/shuttle-only lanes on all bridges, freeways and major streets.
4. Work to normalize ride sharing.
5. Work with MTC, regional transit providers and the state to augment subsidies such that public transit is affordable for all.
6. Lobby the state to regulate ride hailing services to reduce overall per capita VMT.

### **Discussion**

MTC distributes enormous sums of money and wields huge power over regional transportation decisions but has not seriously addressed how the region can mitigate climate pollutants from transportation. As a start we need to press MTC to set clean transportation goals commensurate with the damage to our climate that dirty transportation has wrought and the urgency to make drastic emission cuts by 2030. The goal setting process must include a planning document showing the path to take, and policy commitment to achieve the goals.

The Bay Area's freeways are already some of the most crowded in the nation. As housing affordability has worsened, more people are commuting farther distances to their Bay Area jobs. According to MTC, time spent in weekly traffic in the Bay Area shot up 80% between 2010 and 2016. All this traffic is increasing transportation emissions, with no end in sight. Clearly there is a need for increased transportation options, and they need to be carbon free. To expand clean public transits as quickly as possible, light rail is not likely to play a large role. EV buses and shuttles can be built and routed in the time frame we need.

Given the number of tech workers (living all over the region, including the suburbs) who now take buses to their jobs, it is clear that old ideas about who will use bus transit is completely obsolete.

Like housing, transportation is an equity issue. All driving services, public or private, should be required to provide a living wage to drivers. Likewise, we cannot expand public transportation services without massive investment to assure affordability for all. This is a wealthy region that can afford such investments. Significant wealth generated

in this region is also sent to Sacramento. We need the state to assist in subsidizing the transition to clean, affordable public transit available to all.

**On June 12, the Berkeley City Council also passed item 49 “Declaration of a Climate Emergency” which refers “to the Energy Commission to study and report back to Council on a path for Berkeley to become a “Carbon Sink” as quickly as possible, and to propose a deadline for Berkeley to achieve this goal.”**

### **Carbon Sink Recommendations**

1. Plant more trees.
2. Apply compost (and biochar where possible) to city parks, median strips and generally all planted areas.
3. Support use of low carbon construction materials both in municipal buildings and commercial and residential projects.
4. Support urban farming: for example through recently adopted urban farming policies and also planting suitable edible perennials in public spaces.
5. Support citywide programs, such as the Ecology Center’s farmers market program, that give all residents access to fresh, organic, regionally grown foods.

### **Discussion**

Carbon sequestration is an essential component of comprehensive state, national and global efforts to meet climate change reduction goals. The October 9, 2018 UN IPCC report recommends that at least 1000 gigatons of CO<sub>2</sub> be removed from the atmosphere and sequestered by the end of the century. A wide range of strategies are being looked at to remove and sequester atmospheric carbon. The most promising strategies, biological sequestration, rely on natural processes, including afforestation and carbon farming. The California Air Resources Board is already providing Cap and Trade funds to support and expand these promising approaches to carbon sequestration.

Because of the density of habitation, Berkeley is unlikely to be able to be a carbon sink until annual emissions have been reduced by about 99%. Citywide CO<sub>2</sub> emissions totaled 640,000 metric tons in 2015. With roughly 6 square miles of space not covered with buildings and roads, only a very small fraction of these annual emissions could be offset with biological sequestration.<sup>14</sup>

---

<sup>14</sup> Background for Carbon Sink section:

*Carbon sequestering buildings:* While using rapidly renewable materials such as wood, straw and bamboo can sequester carbon in buildings, the amount is quickly offset by the vastly greater energy intensity of metals, plastics and concrete required in taller buildings and

While not having significant climate benefits, carbon sequestering strategies such as afforestation and application of biochar to the soil can have health and resilience benefits for the city residents improving air quality and local sources of food.

---

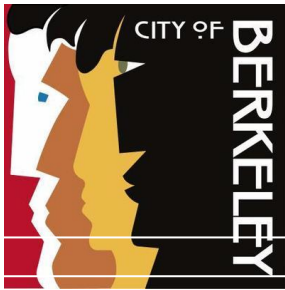
seismically active zones. In Berkeley, the effects of low carbon footprint construction can at best lower the carbon footprint of an individual building, which is important. However, it cannot provide a means to offset carbon emissions in the city generally.

*Biological sequestration in soil:* It is practical to sequester carbon from the atmosphere in two ways, changing farming practices to capture more carbon in soils, and reversing deforestation. (It is also possible to capture CO<sub>2</sub> from the air but because of the low concentration of CO<sub>2</sub> in the air, the cost is prohibitive. Sequestering the captured CO<sub>2</sub> is also expensive, , requiring either mineralization or pressurization in a natural cavern (think Aliso Canyon) which is not present in Berkeley.)

Berkeley is 10.5 square miles. If 40% is impervious surfaces, then approximately 6.3 square miles would be available for carbon sequestration.

( [https://en.wikipedia.org/wiki/Impervious\\_surface#Total\\_impervious\\_area](https://en.wikipedia.org/wiki/Impervious_surface#Total_impervious_area) ) If the City and its residents were to implement ambitious carbon building land management practices, the land could optimistically sequester 2 metric tons of CO<sub>2</sub> per acre annually or about 8000 metric tons of CO<sub>2</sub>. ( Soil Carbon Restoration: Can Biology do the Job? by Jack Kittredge, policy director, NOFA/Mass [www.nofamass.org](http://www.nofamass.org) August 14, 2015) This compares to annual emissions of approximately 640,000 metric tons.

*Purchasing carbon offsets:* Carbon offsets cost between \$5.50 and \$29 per ton of CO<sub>2</sub>. Taking the average, it would cost \$1.1 mill to offset 640,000 metric tons or about \$90 per resident. ( <https://www.whatitcosts.com/carbon-offsets-cost-prices/> ) However, purchasing carbon offsets should be discouraged since it transfers money away from Berkeley without addressing our local objective of becoming fossil free.



City of Berkeley, District 3  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett & Kate Harrison  
Subject: Air Quality Monitoring Program

RECOMMENDATION:

Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

CURRENT SITUATION

Berkeley has had a history of poor air quality, with causes ranging from smoke caused by regional wildfires to air pollution emitted by high amounts of vehicular traffic throughout the Bay Area. While this is harmful to all Berkeley residents in general, it is particularly harmful to those with respiratory issues and without adequate healthcare. By upgrading air quality monitoring in Berkeley, the City can provide more accurate reports to its residents and identify which areas of Berkeley contain the highest levels of air pollutants and address these issues accordingly. The program will also have the benefit of identifying poor air quality areas that coincide with low-income neighborhoods. Since these particular neighborhoods are less likely to have access to affordable and necessary medical services, they will be at much higher risk of health issues caused by air pollutants. Therefore, this program, in conjunction with the Health Innovation Zone, will not only benefit the general population but also serve to provide better, more equitable healthcare to underserved and low-income neighborhoods in Berkeley.

BACKGROUND:

Currently, Berkeley's primary air monitoring station is located in the Berkeley Aquatic Park area. This single station provides daily Air Quality Index (AQI) measurements as well as ozone and fine particulate matter (PM<sub>2.5</sub>) levels<sup>1</sup>. The station can provide only a single aggregate estimate for the entire city of Berkeley once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the

---

<sup>1</sup> <http://www.baaqmd.gov/about-air-quality/current-air-quality/air-monitoring-data?DataViewFormat=daily&DataView=aqi&ParameterId=316>

natural formation of inversion layers in the Bay Area.<sup>2</sup> These factors, along with the layout of the city, tend to place wealthier neighborhoods at higher elevations (such as on tops of hills) and low-income neighborhoods at lower elevations, with air pollutants possibly accumulating at ground level.<sup>3</sup> Neighborhoods near high-traffic roadways are also believed to have higher levels of air pollution due to vehicle emissions.<sup>4</sup> While all people are harmed by the effects of air pollution, those who consistently live in areas with poorer air quality are at a higher risk of developing long-term respiratory and other health-related issues. If these areas also happen to be low-income neighborhoods, then residents here may have more difficulty affording access to the healthcare necessary to treat or prevent the adverse health effects of air pollution.

In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. These smaller, less expensive sensors will complement the Berkeley Aquatic Park station by enhancing it with highly localized data that may reveal the differences in air quality in separate parts of Berkeley. Should these disparities exist, the City of Berkeley will be better equipped and informed to address these and other health-related issues.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, The Bay Area Air Quality Management District maintains an air quality monitoring network consisting of over 30 stations distributed among the nine Bay Area counties. This network measures concentrations of pollutants for which health-based ambient air quality standards have been set by the U.S. Environmental Protection Agency and the California Air Resources Board. The network also measures concentrations of various pollutants designated as Toxic Air Contaminants by the state of California.<sup>5</sup> However, only one of these stations is located within Berkeley. Thus, to upgrade the quality of air monitoring within the city, a network of sensors should be installed throughout the city.

#### ACTIONS/ALTERNATIVES CONSIDERED

This program is modeled after the Breathe London project.

#### OUTREACH OVERVIEW AND RESULTS

---

<sup>2</sup> <http://static.lawrencehallofscience.org/scienceview/scienceview.berkeley.edu/html/view/plume.php>

<sup>3</sup> <https://www.berkeleyside.com/2013/01/04/a-map-details-berkeley-gulf-between-rich-and-poor>

<sup>4</sup> <https://cen.acs.org/environment/pollution/London-starts-worlds-largest-air/97/web/2019/02>

<sup>5</sup> <http://www.baaqmd.gov/about-air-quality/air-quality-measurement/ambient-air-monitoring-network>



This legislation is designed to make it possible for the City of Berkeley to form partnerships with organizations such as technology companies, environmental groups, and healthcare groups to better implement this program. Recommendations were also received from former Councilmember Gordon Wozniak.

#### RATIONALE FOR RECOMMENDATION

Currently, Berkeley's single air monitoring station is located in the Berkeley Aquatic Park area, which provides daily measurements of air pollutant levels for the entire city once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the natural formation of inversion layers in the Bay Area. In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. By identifying poor air quality areas that coincide with low-income neighborhoods, the City can address health-related issues caused by air pollution more easily.

#### IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The program will be financed by the City of Berkeley with support from possible partnerships with interested organizations.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time and costs associated with purchasing, installing, and maintaining equipment.

#### ENVIRONMENTAL SUSTAINABILITY

This program will provide better measurements of air quality and help identify and address environmental issues related to air pollution.

#### OUTCOMES AND EVALUATION

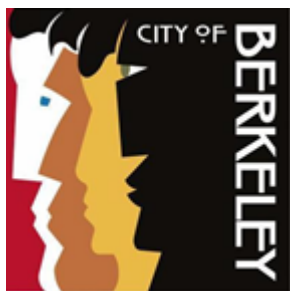
It is expected that the City of Berkeley and Public Health Department will partner with other organizations to create an effective and cost-efficient program to upgrade Berkeley's air quality monitoring system.

#### CONTACT PERSON

Councilmember Ben Bartlett  
Brian Gan

510-981-7130  
brianjgan@gmail.com





Councilmember Ben Bartlett  
City of Berkeley, District 3  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR  
April 23rd, 2019

To: Honorable Mayor and Members of the City Council  
From: Paid Family Leave Subcommittee; Councilmember Bartlett, Hahn, Harrison, and Davila  
**Subject: Berkeley Paid Family Leave Policy**

TITLE

Paid Family Leave Policy in Berkeley to Supplement California Paid Family Leave Program

RECOMMENDATION

That the City Council adopt this policy and refer to the City Manager and City Attorney to amend the proposed ordinance based on the recommendations of the Paid Family Leave (PFL) Subcommittee and to conform to legal and code consistency requirements. Currently, California PFL compensates employees for only 60% to 70% of their regular salary. Berkeley PFL will obligate covered employers to supplement this compensation so that their covered employees can receive up to 100% of their gross weekly salary when taking time off, up to the State maximum weekly benefit amount:

- 1) To bond with a new child entering their life either by birth, adoption, or foster care placement
- 2) To care for an ailing family member including child, parent, sibling, spouse, grandparent, parent-in-law or domestic partner

Berkeley PFL will cover employees of:

- 1) Companies and organizations with more than 150 employees worldwide
- 2) Employers owning five or more owner-controlled franchise businesses worldwide
- 3) City of Berkeley non-benefited employees

These Employees at these will be eligible to utilize Berkeley PFL after 180 days of employment, and any employees utilizing Berkeley PFL will be protected from retaliation by their employer.

Two years after the effective date of the Berkeley PFL ordinance, staff shall prepare a report on the success and/or challenges of implementing Berkeley PFL and considering changes to the ordinance, including the possibility of lowering the threshold of applicability for employers, lowering the number of days before an employee is covered, conformance with new State law, if any, and any other changes staff may recommend.

In addition, the following specific changes are recommended:

Legislative Findings. REMOVE LEGISLATIVE FINDINGS FROM ORDINANCE, unless city attorney feels limited findings or purpose statement is required.

- Definitions: Look at definitions that are generic to BMC and make sure they conform to existing code, or remove them.

- Section .030 (B)(d)(i). In middle of paragraph, “for example” elements, remove from ordinance and include in implementation guidelines.
- .030(B)(d)(ii) “for example...” element, remove from ordinance and include in implementation guidelines.
- 030(B)(4): “unless covered employer...reason,” ADD “or reasons” after reason.
- 030(B)(5): “Unused Vacation Leave” change to “Unused Accrued Leave Benefit” whenever you see the first phrase replace it with the second throughout the document
- 060(D) change reason to “reason or reasons” ...Parallel to 030(B)(4)
- 070(A) strike everything after the 2<sup>nd</sup> sentence.
- 9.90.080

Refer to the City Manager to review in particular implementation and enforcement provisions to ensure conformity with existing implementation and enforcement of similar measures, except that the terms under 9.90.080(A)(1)(a) and (b) and (c) the fines shall remain as stated in the ordinance as proposed. Under A(2) the city may pursue administrative remedies in accordance with Section 1.28. Strike the remainder of 0802

Short term referral to direct City Manager to return within 90 days staffing implications for launch phase and long term administration of Berkeley PFL.

### CURRENT SITUATION

The United States is the only industrialized nation that does not guarantee paid leave for new parents. Currently, California State law only replaces 60% to 70% of income for 6 weeks for parental leave, funded entirely by employee contributions. Numerous studies have linked longer parental leave to greater bonds with newborns, foster children, and adopted children, displaying a multitude of beneficial effects for both the child and the parents<sup>1</sup>.

The United States also has no legislation guaranteeing employees paid leave when taking care of ailing family members. This forces a balancing act on workers of maintaining their financial stability and caring for a family member such as a parent. Under current laws, workers must take sick time, vacation, or unpaid time off to care for a family member, adding stress and uncertainty to their own lives.

### BACKGROUND

Paid Family Leave assists and sometimes enables parents to bond with newborns. There is a multitude of research detailing how longer periods of leave from work lead to better health outcomes for newborns. A report published in the Journal of Delivery Science and Innovation in 2016 reviewed 20 years of data on the association between Paid Family Leave and health outcomes. Among the findings include:

---

<sup>1</sup> [http://libres.uncg.edu/ir/uncg/f/C\\_Ruhm\\_Parental\\_2000.pdf](http://libres.uncg.edu/ir/uncg/f/C_Ruhm_Parental_2000.pdf),  
[https://moneydotcomvip.files.wordpress.com/2015/01/hipfactsheet\\_2011.pdf](https://moneydotcomvip.files.wordpress.com/2015/01/hipfactsheet_2011.pdf)

“The United States has an infant mortality rate at least twice that of Sweden. About 39% of US excess infant mortality when compared to Sweden is due to our high preterm infant mortality rate. Lacking antenatal leave has been associated with a three-fold increase in risk of preterm delivery. Working longer into pregnancy has also been linked to delivery complications. Taking leave before the end of pregnancy has benefits to birthweight approaching the same magnitude as the harms seen in smoking during pregnancy. Examining 18 countries over more than 30 years, Tanaka found a statistically significant correlation between lower birthweight and lack of access to job-protected paid parental leave. Stearns found the treatment effects for even short maternity leaves meant a 12% reduction in LBW deliveries to mothers in the five American states with TDI programs. Rossin, examining the effects of unpaid leave for women believed most likely to take such leave, found a 47% reduction in the likelihood an infant born to one of these women died of an ‘ill-defined’ cause. SIDS, one of several causes of infant mortality in the ‘ill-defined’ category, makes up 21% of American infant mortality alone.”<sup>2</sup>

A 2012 survey by the US Department of Labor found that the main reason employees in the United States do not take unpaid leave under the federal Family Medical Leave Act is that they cannot afford to take it<sup>3</sup>. Further, studies show that low-wage workers in particular would benefit from expanded paid family leave policies. Giving employees the freedom to take leave has important effects on quality of life, especially for new mothers. Babies whose mothers work during the first three months of the baby’s life are less likely to be breastfed, taken to the doctor for well-baby visits, or be up to-date on immunizations<sup>4</sup>. According to a 2015 study, rates of breastfeeding through infancy in California increased by 10%-20% after California developed its Paid Family Leave program, which entitles employees to receive partial wage replacement while on leave<sup>5</sup>.

A Paid Family Leave program will also benefit caretakers and ailing family members. Giving employees the freedom to take leave to care for a sick family member has enormous implications for a large portion of our population. A 2012 survey of employees in the United States showed that 1.6% of all workers faced an unmet need for leave due to a parent’s, spouse’s, or child’s health condition<sup>6</sup>. The National Alliance for Caregiving (NAC) reports that there are at least 43.5 million unpaid family caregivers in the United States and that family caregivers provide an average of 20 hours of care per week. Moreover, caregiving often isn’t limited to a few months, or even a year — in fact, caregiving lasts an average of almost five years and 70% of all caregivers are working while caring for a loved one. Caregiving can cause significant financial, physical and emotional strain. NAC reports nearly 7 in 10 caregivers report having to make work accommodations while they are providing care to a loved one. Of caregivers who take time off to fulfill their responsibilities at home, 48% report losing income<sup>7</sup>. Of caregivers who leave the workforce, half (52%) said they did so because their jobs did not allow the flexibility they needed to work and provide elder care<sup>8</sup>. And caregiving takes more than a financial toll – It is widely documented that caregivers experience high levels of stress, depression, and suffer from higher rates of chronic disease, and diminished immune response. As our population ages and caregiving needs increase, paid leave will be even more critical to helping ensure working people can take care of their loved ones without risking their economic security.

<sup>2</sup> <http://www.nationalpartnership.org/our-work/workplace/paid-leave-resources.html#effect>

<sup>3</sup> <https://www.dol.gov/asp/evaluation/fmla/fmla-2012-technical-report.pdf>

<sup>4</sup> <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>

<sup>5</sup> <https://www.ncbi.nlm.nih.gov/pubmed/24508006>

<sup>6</sup> <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>

<sup>7</sup> [http://familiesandwork.org/site/research/reports/elder\\_care.pdf](http://familiesandwork.org/site/research/reports/elder_care.pdf)

<sup>8</sup> <http://www.familiesandwork.org/downloads/2014-Older-Adult-Caregiver-Study.pdf>

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

Currently, the State of California offers a 6 week Paid Family Leave plan that covers 60% to 70% of an employee's compensation based on their income. This amount is calculated using the highest quarterly earning for the employee during the previous year. An employee is eligible for California PFL only if they have paid more than \$300 to California Disability Insurance in the previous 12 months. California PFL covers the birth of a child or care for a seriously ill family member. California PFL lasts for a maximum of 6 weeks, and allows an employer to require the employee to use vacation or paid time off for 2 weeks before the benefits of California PFL begin.

ACTIONS/ALTERNATIVES CONSIDERED

Paid Family Leave policies from Washington State and San Francisco were both considered.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

The Ad-Hoc Subcommittee on Paid Family Leave has received proposals from the Commission on the Status of Women and the Commission on Labor.

RATIONALE FOR RECOMMENDATION

The goal is to ensure that concern over loss of income does not preclude Berkeley employees from bonding with their new child or taking care of a seriously ill family member. This item complements California's Paid Family Leave law to ensure that qualified employees can receive 100% compensation when taking paid family leave. This will provide Berkeley residents with more time to bond with their children or care for people close to them. We expect this to alleviate a number of social ailments.

FISCAL IMPACTS

Staff or contractor costs for the launch and ongoing administration of the program, for Outreach and education, enforcement, administration and analysis. Cost of covering currently unbenefitted city employees shall also be assessed, balanced against potential improvements in employee retention due to the added benefit.

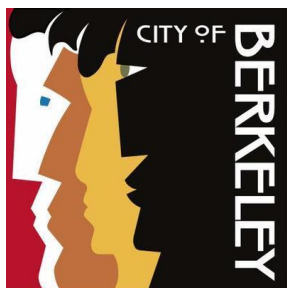
ENVIRONMENTAL SUSTAINABILITY

No negative impact.

CONTACT PERSON

Councilmember Ben Bartlett: 510-981-7130  
Matt Napoli: 510-981-7131

ATTACHMENTS/SUPPORTING MATERIALS



## Councilmember Ben Bartlett

City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

### CONSENT CALENDAR

April 23rd, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett and Mayor Jesse Arreguin  
 Subject: Local Construction Workforce Development Policy

### RECOMMENDATION:

#### Policy Recommendation:

That the City Council refer to the Planning Commission to address the shortage of qualified local construction workers; worker retention, and elevated labor costs through the creation of a construction workforce development policy. This local workforce development policy will encourage housing and nonresidential development applicants to require contractors to utilize apprentices from state-approved, joint labor-management training programs, and to offer employees employer-paid health insurance plans. The policy will help stabilize regional construction markets; and enhance productivity of the construction workforce Berkeley needs to meet its General Plan's build-out goals.

#### Program:

The City should require contractor prequalification for General Plan Area projects of 30,000 square feet or more.

#### Apprenticeship:

Each general contractor and subcontractor (at every tier for the project) will sign a statement stipulating that it participates in a Joint Apprenticeship Program approved by the State of California, Division of Apprenticeship Standards. For each apprenticeable craft a contractor or subcontractor employs on its workforce, the contractor will maintain the ratio of apprentices as required by California Labor Code section 1777.5 which apprentices are enrolled and participating in a Joint Apprenticeship Program approved by the State of California, Division of Apprenticeship Standards.

#### Health Care Coverage

Each general contractor or subcontractor (at every tier for the project) will sign a statement stipulating to and providing documented proof that the contractor pays at least 75 percent of the cost of the premiums for health insurance at the silver level (as set forth by Covered California) for all its construction craft employees and the employees' dependents and that this coverage has been maintained for 180 consecutive days prior to the submission of the pre-qualification documents (a copy of the Declaration of Insurance Coverage showing the dates of continuous coverage or proof that the Contractor contributes to an Employee Benefit Plan shall qualify) OR documentary proof that such medical coverage has been offered to employees within

180 days prior to the submission of pre-qualification documents. Any change in coverage must be immediately provided to the City of Berkeley.

CURRENT SITUATION:

As the City of Berkeley plans to increase production of housing, commercial buildings, and public facilities, the need for a skilled construction workforce is vital. Shortages of skilled construction workers, particularly residential trades workers, threaten to delay or derail development plans.

The shortages are attributable to factors such as reduced utilization of state-approved apprenticeships, fewer young labor force entrants, dwindling contractor offerings of health and retirement plans, and the related trend of lagging construction productivity growth. These realities have been affecting the land use goals of local jurisdictions. For instance, in San Francisco, many entitled projects with thousands of units awaiting construction are stalled due to skilled labor shortages, diminished contractor productivity, and construction costs that spiked.

The creation and utilization of apprenticeship acts to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors. Requiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force.

BACKGROUND:

In the 1960s, the introduction of a requirement to employ apprentices on public works projects dramatically increased the amount of apprentice training. Later, this allowed for higher amounts of apprentices to be employed in the private sector, helping builders produce over 4.1 million housing units between 1970 and 1989.

More than 96 percent of the 21,000 apprentices in the greater San Francisco Bay Area who were active or completed their state-approved programs between 2013 and 2018 were affiliated with joint apprenticeship programs.

According to the State of California's 2014 Affordable Housing Cost Study and Economic Census data specific to California's construction industry, construction labor wages and benefits account for only 15% of total project costs. Meanwhile, since 1992 the industry's basis for profitability has increased 50% more than either construction labor or materials.

Despite this increase in profitability, there is still a disconnect between construction workers to apprenticeship and health insurance plans, resulting in a shrinking supply of labor. This has constrained the construction industry's ability to expand in response to the rising construction needs of California and its many cities.

Thus, it is in the City of Berkeley's economic interest as a land use regulator to support a pipeline of skilled workers to accomplish the construction objectives and policies of



the Berkeley General Plan. More specifically, the policy will promote the following Plan's goals:

- 1) Ensure that Berkeley has an adequate supply of decent housing, living wage jobs, and businesses providing basic goods and services.
- 2) New housing should be developed to expand housing opportunities in Berkeley to meet the needs of all income groups.

To increase the prospects for successful implementation and build-out goals of the Plan, it is advised that the City adopt the aforementioned local construction workforce development policy.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Over 96 percent of the nearly 21,000 apprentices from the greater San Francisco Bay Area who were active or completed their state-approved programs between 2013 and 2018 were affiliated with joint apprenticeship programs.

#### OUTREACH OVERVIEW AND RESULTS

Counsel and recommendations were received from the Building and Construction Trades Council of Alameda County.

#### RATIONALE FOR RECOMMENDATION

The City of Berkeley, along with numerous neighboring cities, school districts, special districts and the state of California plans to increase production of housing, commercial buildings, and/or public facilities. Shortages of skilled construction workers, however, will likely prevent many cities from achieving these goals. Thus, it is vital for the City to enact this policy in order to increase the construction labor supply to adequate levels for Berkeley's goals.

#### IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The Planning Commission will create the policy on local construction workforce development which will be enforced by the City.

#### FISCAL IMPACTS OF RECOMMENDATION

Costs associated with administering the prequalification compliance documentation.

ENVIRONMENTAL SUSTAINABILITY No negative impact.

#### OUTCOMES AND EVALUATION

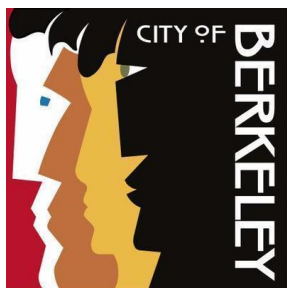
It is expected that the City Council will refer to the Planning Commission to create a policy requiring contractors to utilize apprentices from state-approved, joint labor-management training programs, and to offer employees employer-paid health insurance plans.

#### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang

510-981-7130  
510-981-7131





## Councilmember Ben Bartlett

City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

### ACTION CALENDAR

April 23rd, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett and Mayor Jesse Arreguin  
 Subject: U1 Funds for Predevelopment Costs of Proposed Development at 2001 Ashby Avenue

#### RECOMMENDATION:

Adopt a Resolution allocating \$368,000 of General Funds from Measure U1 tax receipts to Resources for Community Development (RCD) for predevelopment costs at 2001 Ashby Avenue.

#### CURRENT SITUATION:

The Housing Trust Fund guidelines allow project sponsors to apply for predevelopment funding at any time, with all recommendations for greater than \$50,000 going to the City Council for consideration.

RCD is proposing approximately 88 units of Affordable Housing at 2001 Ashby Avenue, the current site of the Cooperative Center Federal Credit Union (CCFCU). The development will include a mix of studio, one-, two- and three-bedroom apartments affordable to households at 20% to 80% of area median income. A number of units would be set-aside for a to-be-determined special needs population perhaps people who are homeless. RCD has been using its own predevelopment working capital and staffing since starting the project in 2017. The predevelopment costs RCD requests assistance which include architecture and engineering expenses, related testing, permits and fees, and a purchase deposit to CCFCU, the current site owner. These represent typical predevelopment costs and are reasonable for a project of this size.

In November 2018 RCD submitted an application to the City requesting \$368,000 in predevelopment funds. On December 10, 2018 the Housing Advisory Commission's Housing Trust Fund Subcommittee voted to recommend RCD's predevelopment loan application for \$368,000 for its proposed development at 2001 Ashby. On January 28, 2019 the Housing Advisory Commission (HAC) recommended that the City Council support RCD's predevelopment loan application. At issue is the availability of affordable housing trust fund dollars due to prior commitments to the Berkeley Way project.

#### BACKGROUND:

CCFCU issued an RFP in April 2017 to select an organization to develop their site at 2001 Ashby and selected Berkeley-based RCD. CCFCU and RCD have entered into a purchase and sale agreement for RCD to acquire the site by November 2019 and build 88 affordable apartments with ground floor commercial space, including space for the

non-profit organization Healthy Black Families. Because CCFCU wishes to sell by fall 2019, RCD is working to gain land use entitlements and complete its due diligence before then.

Measure U1 was passed by voters in November 2016 with the goal of providing \$3 to \$4 Million annually to the Berkeley General Fund. The measure designated the HAC to advise the Council on expenditures to create affordable housing to prevent homelessness. The proposed affordable housing development at 2001 Ashby meets the objectives of Measure U1.

RATIONALE FOR RECOMMENDATION

The City's fund commitment is needed at this time to enable the project to conduct predevelopment activities.

The proposed development for the site includes affordable housing which will benefit the public.

FISCAL IMPACTS OF RECOMMENDATION

RCD has requested \$368,000 from the City for predevelopment activities.

ENVIRONMENTAL SUSTAINABILITY

There are no negative environmental sustainability impacts directly associated with this action, which is for planning, environmental testing, and design activities.

CONTACT PERSON

Councilmember Ben Bartlett

510-981-7130

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

RESERVING \$368,000 IN U1 FUNDS FOR PREDEVELOPMENT COSTS TO RESOURCES FOR COMMUNITY DEVELOPMENT'S PROPOSED DEVELOPMENT OF 2001 ASHBY AVENUE

WHEREAS, the City Council established a Housing Trust Fund Program (HTF) to assist in the development and expansion of housing affordable to low and moderate income persons who either work or reside within the City of Berkeley, and authorized the City Manager to implement the Program; and

WHEREAS, there is a great need for affordable and special needs housing in the City of Berkeley, as stated in the General Plan Housing Element and the City of Berkeley's Consolidated Plan; and

WHEREAS, the Housing Advisory Commission reviewed the proposal and the staff's analysis on January 28, 2019 and agreed with the staff and Housing Trust Fund subcommittee recommendation to fund predevelopment costs at \$368,000.

WHEREAS, Measure U1 designated the Housing Advisory Commission to advise the Council on expenditures to create affordable housing to prevent homelessness.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the following for RCD's development of 2001 Ashby Avenue:

- A reservation of \$368,000 in U1 Funds for predevelopment costs of the proposed project.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements, and any amendments will be kept on file in the Office of the City Clerk.





## Councilmember Ben Bartlett

City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

ACTION CALENDAR  
 April 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Creation of Vehicle Dwellers Governance Body

### **RECOMMENDATION**

Refer to City Manager for policy language to create a Governance Body for permitted vehicle dwellers in Berkeley. This proposal is meant to engender purpose and responsibility among participants. Accordingly, the Governance Body should be self-governing, self-organizing, and self-funding. Governance body will uphold the following conditions:

1. All residents must be registered with Berkeley's Coordinated Entry Program.
2. At all times, vehicles must be registered and fully operable.
3. No illegal substances, weapons, violence, or disruptive behavior will be tolerated either on site or in the immediate neighborhood.
4. Vehicle repairs are not to be performed on-site.
5. No property will be stored outside the vehicle, excluding items exceeding 6 feet in length, and one propane BBQ grill. Personal and immediate areas must remain trash free.
6. A noise curfew will be instituted in agreement with the neighbors.
7. A council including area neighbors and RV dwellers will be established. Participation is mandatory.
8. All residents are expected to pay monthly rent of no more than \$200 per month.

The Governance Body will convene weekly at a set time, and act as the final decision making body and conflict resolution forum. All residents, whether in attendance or not, agree to comply with the Body's decisions.

Matters related specifically to drugs, weapons, violence, and/or criminal activity will result in immediate termination of residents' tenancy. Such matters may be taken up at the discretion of the Governance Body which may uphold, modify, or set aside termination.

In cases of conflict among residents, the following procedures will take place:

1. A complaint is filed by a resident to the Governance Body. The complaint will be heard at the Governance Body meeting.
2. The Governance Body investigates the complaint and makes a determination. If the determination is that the complaint is legitimate, a notice of cease and desist is issued. The recipient of the cease and desist letter will have 72 hours to comply or leave.
3. If the recipient received a cease and desist letter, they may appeal the decision to the Governance Body. The Governance Body will have the ability to meet outside its normal weekly meeting schedule in case of an appeal.
4. If the appeal is upheld, no further action will be taken and the recipient of the cease and desist letter can stay in the community. If the appeal is rejected, the recipient of the cease and desist letter has 24 hours to comply or leave. Governance Body decisions can only be appealed once.

### **CURRENT SITUATION**

Berkeley has an estimated 200 RVs parking in areas in West Berkeley for long periods of time. This has caused local businesses and residents to report health and safety complaints to the City. Berkeley City Council has expressed a desire to find a long-term solution which grants RV owners stability and a ladder to being healthy and housed while ensuring the safety and quality of life for neighbors and prosperity of Berkeley's businesses.

### **BACKGROUND**

As the housing crisis continues, many California residents have transitioned to living in RVs as a cost-saving effort. Berkeley Police Department have counted roughly 200 RVs throughout the city. In April of 2018, Berkeley Police Department distributed warning notices to about 20 RVs parked in the parking lot of DoubleTree Hotel after receiving safety complaints from Marina visitors. In July 2018, Berkeley gave them a week's notice to move relocate. Several dozen RVs moved to West Berkeley, particularly the area near Eighth and Harrison streets, lining several blocks.

In September 2018, City Council directed city staff to look into options for managing RV parking. On March 26, 2019 City Council approved a ban on RVs parking from 2-5 AM, with enforcement suspended until a 14-day permitting system and a three-month permit system for persons with disabilities, families with children, students, and persons with existing connections to Berkeley is in place. Council also directed staff to seek out plots of available land in unincorporated Alameda and Contra Costa Counties, neighboring cities, the Berkeley Unified School District, private lots, and churches that would allow RVs to park for longer periods of time with the condition that RV owners be engaged in city homelessness services and attempt to procure housing. Council voted to approve these elements with the acknowledgement that it would follow up with a more long-term solution to the issue of RV parking.

### **REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS**



Berkeley will begin enforcing a ban on unpermitted parking from 2-5 AM. With a request to the City Manager to create a permitting program as described above. This Item seeks to add to that permitting program.

**ACTIONS/ALTERNATIVES CONSIDERED**

On September 25, 2018, City Council approved a recommendation to “Refer to the City Manager to look into how other cities use permitting to manage RV parking and suggest a permit process that Council can consider to enable RV parking but place some sensible limits.” Additionally, on December 11, 2018 the City Council approved a recommendation to “Refer to the City Manager to establish a recreational vehicle waste discharge facility on City property and equitable administrative fee program, including consideration of method of pump out, cost, locations, and capacity, and refer costs associated with the facility to the FY 2020/21 Budget Process.” In order to understand how other neighboring cities are responding to this regional challenge, City staff gathered information on other cities in the Bay Area (Oakland, San Francisco, Fairfield, Richmond, Albany, Emeryville, Alameda and Antioch) and their policies and laws regarding RV parking. Findings include:

Only Oakland and Alameda have special RV policies. Oakland is building a designated slot for RVs, and Alameda runs a hygiene bus to provide RV dwellers with services.

**IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT** To be determined.

**FISCAL IMPACTS OF RECOMMENDATION** No further impacts to the General Fund. The administration of the Safe Parking Community

**ENVIRONMENTAL SUSTAINABILITY**

Providing longer-term solutions for vehicle dwellers in Berkeley discourages moving fossil fuel-burning vessels such as RVs, thereby positively impacting the environment. Greater stability for RV-dwellers could also reduce garbage and other waste by giving these individuals a more predictable lifestyle, enabling them to consume goods more efficiently and leading to less waste.

**OUTCOMES AND EVALUATION** To be determined.

**CONTACT PERSON**

Councilmember Ben Bartlett:  
Matthew Napoli

510-981-7130  
510-981-7131





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 23<sup>rd</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Resolution in Support of a Public Bank

RECOMMENDATION

Adopt a resolution affirming Berkeley's support for public banking and send that resolution to Governor Newsom, Senator Skinner, and Assemblymember Wicks urging state legislation to enable local agencies to create public banks.

BACKGROUND

Public banks offer a way for governmental agencies such as cities, counties and states, as well as some organizations such as pension funds, to invest their funds in an institution that allows the investing organizations to avoid the high financial costs of dealing with private sector for-profit banks. Because public banks are created in the public interest rather than to maximize profit, public banks also generate income from their investments that can be re-invested in public benefit projects such as affordable housing, public transportation, and social programs. A public bank could decide to have no investment in fossil fuels, weapons, or tobacco in line with the priorities set by the Peace and Justice Commission. It could adhere to principles of economic, racial and environmental justice.

Public banks are run by qualified bankers serving a public mission and these banks partner with and support rather than compete with local banks. The Bank of North Dakota, a public bank which was founded in 1919, successfully weathered the last recession without the bailouts that went to Wall Street banks, and has provided hundreds of millions of dollars to North Dakota's treasury over the years.

Public Bank of the East Bay (PBEB) is an organization founded in August 2016 to advocate for a public bank for Alameda and West Contra Costa Counties. In 2018, the City of Oakland spearheaded a study on the feasibility of an East Bay public bank, using contributions from the City of Berkeley and from Alameda County. The study deemed a public bank feasible, though still not legal under state law. We urge our representatives and governor to support legislation to allow local jurisdictions to create public banks through charter processes.

FISCAL IMPACTS OF RECOMMENDATION

Because public banks invest according to common need, rather than private profit, the dividends from a public bank may reduce pressure on the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Private banks often invest in fossil fuel capital projects such as the Dakota Access Pipeline. Public banking, through fossil fuel divestment, promote environmental sustainability.

CONTACT PERSON

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

ATTACHMENTS

1: Resolution

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

RESOLUTION IN SUPPORT OF A PUBLIC BANK

WHEREAS, a public bank is defined as a financial institution owned by one or more public entities such as a state, city, or county; and

WHEREAS, public banks are created in the public interest rather than to maximize profit, and income from their investments can be re-invested in public benefit programs; and

WHEREAS, a public bank can decide to have no investments in industries that run contrary to Berkeley's values, such as fossil fuels, weapons, or tobacco; and

WHEREAS, a bank owned by the Cities of Oakland, Richmond, and Berkeley and the County of Alameda will allow those jurisdictions to have more local control, transparency, and self-determination, and allow us to invest in public goods such as affordable housing, loans to low-income households, public transit, infrastructure, and renewable energy; and

WHEREAS, public banks are run by qualified bankers serving a public mission and these banks partner with and support local banks and credit unions; and

WHEREAS, the Bank of North Dakota, a public bank founded in 1919, is extremely successful and avoided a foreclosure crisis in 2008 because it did not issue risky mortgages; and

WHEREAS, in September 2018, the Oakland City Council accepted the East Bay Public Bank's Feasibility Study; and

WHEREAS, the State of California's lack of a public-banking charter option imposes an obstacle to efforts to explore a public bank and prevents public banks from becoming operational; and

WHEREAS, Assemblymembers Chiu and Santiago, with the support of the California Public Banking Alliance, have introduced AB 857 in the state legislature creating a uniform regulatory framework for municipal and regional public banks, which would allow for public banking charters under the regulatory oversight of the California Department of Business Oversight;

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports the continued efforts to create and operationalize the East Bay Public Bank; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley urges the California state legislature to enact legislation amending the Government Code to enable local agencies to create public banks regulated by the Department of Business Oversight; and

BE IT FURTHER RESOLVED that copies of this Resolution will be sent to Governor Gavin Newsom, Senator Nancy Skinner, and Assemblymember Buffy Wicks.





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Allocate \$200,000 from the Street and Open Space Improvement Fund for the Design and Construction of a Protected Milvia Bikeway Pilot Project between University Avenue and Allston Way

RECOMMENDATION

Adopt a Resolution allocating \$200,000 from the Street and Open Space Improvement Fund (SOSIF) to design and construct a protected Milvia Bikeway pilot project between University Avenue and Allston Street.

BACKGROUND

The Department of Public Works is currently pursuing a 0.7 mile Milvia Street bikeway project with initial funding from a Measure B sales tax grant from the Alameda County Transportation Commission (Alameda CTC). This bikeway is a priority in the City's Bicycle Plan.<sup>1</sup> The project will make bicycle and pedestrian safety improvements that align with the city's bicycle, pedestrian, climate, and Vision Zero goals. Staff estimate that permanent upgrades for the entire bikeway extending between Hearst Avenue and Blake Street will cost approximately: \$350,000 to design, \$273,000 for consultant costs and a total of \$4,200,000 to build. The earliest the entire bikeway could be completed is in 2022.

This Resolution empowers the Council to accelerate the project by allocating SOSIF funding to the project, for design and construction of a critical pilot portion between University Avenue and Allston Way in the near-term. The intersection at Milvia and University has the highest collision rate for walking and cycling in the City and is tied with Milvia and Dwight for the highest number collisions involving cyclists.<sup>2</sup>

---

<sup>1</sup> Berkeley Bicycle Plan 2017, Berkeley Transportation Division, May 2, 2017, <https://www.cityofberkeley.info/berkeleybikeplan/>; See also, Milvia Street Bikeway Project Public Open House, City of Berkeley, January 30, 2019, [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/18055%20Berkeley%20Milvia%20Public%20Workshop%20Exhibits%202019201%20email.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/18055%20Berkeley%20Milvia%20Public%20Workshop%20Exhibits%202019201%20email.pdf), p. 2.

<sup>2</sup> *Id.*, p. 6.

The SOSIF is a depository for the in-lieu fees paid by developers for the “timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.” The Department reports that the SOSIF fund has a projected gross fund balance of \$1,230,951 in FY 2019 and \$432,592 in FY 2020. Council specified that these fees are to be used for projects in the 2012 Downtown Streets and Open Space Improvement Plan (SOSIP).<sup>3</sup> The Milvia Bikeway is designated as a project in the SOSIP.<sup>4</sup>

Public Works presented the bikeway project in both near and long-term phases spanning 2019-2022. Preliminary conversations (subject to change) with the community, impacted businesses and staff suggest that the City’s *Near-Term Option 2*, featuring one-way protected bicycle lanes in each travel direction and one-way southbound vehicle traffic from University Avenue to Addison Street, and one-way cycle tracks with two-way vehicle traffic between Addison Street and Allston Way may be a feasible near-term option for a Milvia cycle track pilot.<sup>5</sup>

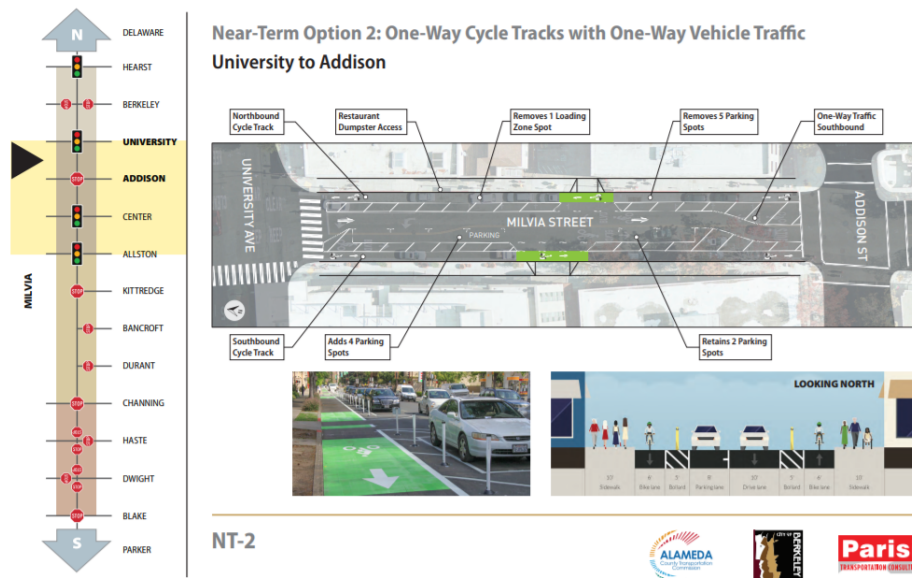


Figure 16

<sup>3</sup> Open Space In-Lieu Fee for New Downtown Buildings, Department of Public Works, June 13, 2017, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/06\\_June/Documents/2017-06-13\\_Item\\_56\\_Open\\_Space\\_In-Lieu\\_Fee.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-13_Item_56_Open_Space_In-Lieu_Fee.aspx).

<sup>4</sup> Streets and Open Space Improvement Plan Chapter 6: Bicycle Networks and Facilities, Department of Planning & Development, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_DAP/Chapter%206%20Bicycle%20Networks%20and%20Facilities.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/Chapter%206%20Bicycle%20Networks%20and%20Facilities.pdf).

<sup>5</sup> “Milvia Street Bikeway Project Public Open House,” p. 6.

<sup>6</sup> *Id.*, p. 10.



Allocate \$200,000 from the Street and Open Space Improvement Fund for the Design and Construction of a Protected Milvia Bikeway Pilot Project between University Avenue and Allston Way

CONSENT CALENDAR  
April 23, 2019

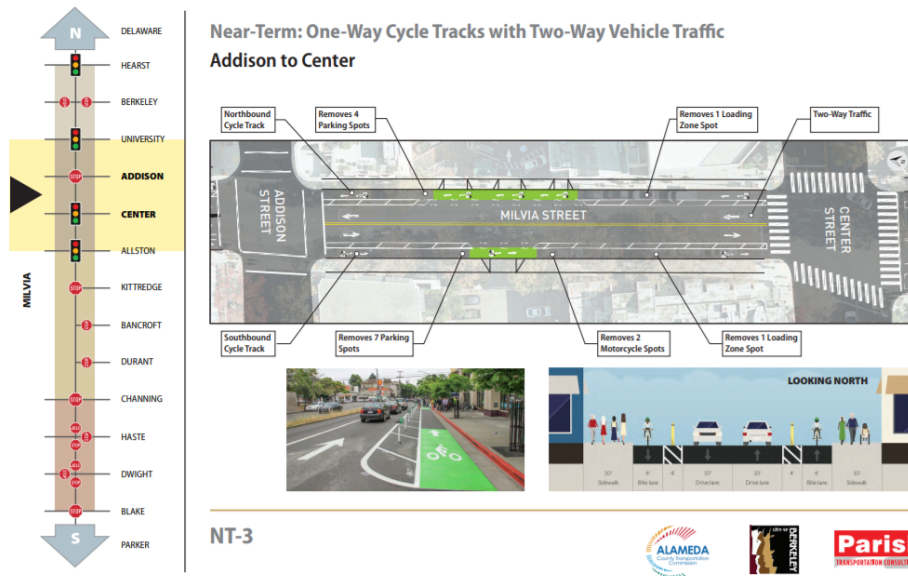


Figure 2<sup>7</sup>

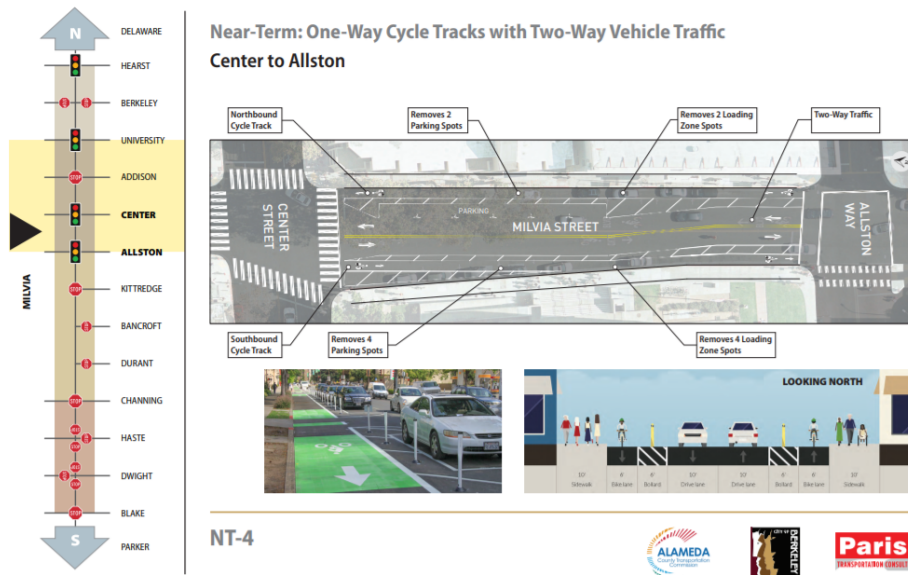


Figure 3<sup>8</sup>

It is in the public interest to allocate SOSIF funds for the near-term bikeway project, which is prominently featured in the 2012 SOSIP and is critical to the City’s health, safety and climate goals.

<sup>7</sup> *Id.*, p. 11.

<sup>8</sup> *Id.*, p. 12.

According to the City's Transportation Division, Berkeley has the highest rate of bicycling to work in the U.S. of cities with greater than 100,000 residents. Berkeley's Downtown area is the heart of Berkeley's culture, economy, government, and education system. The Downtown's Milvia bikeway is the city's primary north-south bikeway, featuring intersections through which 400-500 cyclists pass during daily peak periods.<sup>9</sup>

Since 1971, the City of Berkeley has considered and planned to make Milvia Street safe and attractive for people riding bikes through Downtown. The bikeway was consistently referenced in the City Bicycle Plans (1999 and 2005), Streets and Open Space Plan (2012), and the Downtown Berkeley Area Plan (2012).<sup>10</sup> Unfortunately, today the Milvia bike corridor consists of a combination of rudimentary bike boulevards and bike lanes that fail to adequately protect cyclists.

City bikeway research suggests that that individuals who may otherwise cycle across the Downtown are hesitant to do so because the route is deemed unsafe. The Department of Public Works found that the existing bike lanes and boulevards on Milvia feature the highest number of cycling collisions of any Berkeley bikeway. Furthermore, bicyclists consistently report that Milvia is one of the "most stressful" corridors to navigate and as a result are only suitable for the most "traffic-tolerant" cyclists. The Berkeley Strategic Transportation Plan (2015) and Bicycle Plan (2012) recommend replacing the existing Class III Bicycle Boulevard and Class II bicycle lanes on Milvia with a Class IV cycle track. Some 72% residents surveyed in September 2018 supported such a protected bikeway across Milvia Street.<sup>11</sup>

Beyond the basic health and safety necessity of this infrastructure, the City has a strong environmental interest in building infrastructure that offsets greenhouse gas emitting vehicles with zero carbon and low-carbon modes of transportation. The Energy Commission found in its 2019 Fossil Free report that expanding bicycle transportation infrastructure will be critical to addressing transportation emissions, which is the largest sector of Berkeley's greenhouse gas emissions.<sup>12</sup> Further, transportation emissions in Berkeley have risen in recent years, unlike other emission sectors.<sup>13</sup>

---

<sup>9</sup> Milvia Bikeway Project, Transportation Division, [https://www.cityofberkeley.info/Planning\\_and\\_Development/Downtown\\_Area\\_Plan/Streets\\_and\\_Open\\_Space\\_Improvement\\_Plan.aspx](https://www.cityofberkeley.info/Planning_and_Development/Downtown_Area_Plan/Streets_and_Open_Space_Improvement_Plan.aspx).

<sup>10</sup> "Milvia Street Bikeway Project Public Open House," p. 3-8.

<sup>11</sup> *Id.*

<sup>12</sup> Fossil Free Berkeley Report, Berkeley Energy Commission, January 23, 2019, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Energy/EC2019-1-23\\_Item%205\\_Fossil%20Fuel%20Subcommittee%20Report.pdf.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/EC2019-1-23_Item%205_Fossil%20Fuel%20Subcommittee%20Report.pdf.pdf).

<sup>13</sup> 2018 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 6, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx), p. 20.

Allocate \$200,000 from the Street and Open Space Improvement Fund for the Design and Construction of a Protected Milvia Bikeway Pilot Project between University Avenue and Allston Way

CONSENT CALENDAR  
April 23, 2019

FINANCIAL IMPLICATIONS

This resolution results in an expenditure of \$200,000 in SOSIF fees for the design and construction of a pilot that is designated as a broader SOSIP project. The Department of Public Works projects a \$432,592 gross fund balance for FY 2020.

ENVIRONMENTAL SUSTAINABILITY

Completing the Milvia Bikeway project is directly in line with the Climate Action Plan and subsequent plans as it has the potential to lower greenhouse gas emissions by encouraging residents to use bicycles and other low-carbon methods of transportation.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

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

ALLOCATE \$200,000 FROM THE STREET AND OPEN SPACE IMPROVEMENT FUND FOR THE DESIGN AND CONSTRUCTION OF A MILVIA BIKEWAY PILOT PROJECT BETWEEN UNIVERSITY AVENUE AND ALLSTON WAY

WHEREAS, Berkeley has the highest rate of bicycling to work in the United States among cities with over 100,000 residents, and the Downtown Milvia bike corridor is the City's primary north-south bikeway; and

WHEREAS, Downtown Berkeley is the heart of Berkeley's culture, economy, government, and education system; and

WHEREAS, the City of Berkeley has considered Milvia Bikeway improvements since 1971, including references in the City Bicycle Plans (1999 and 2005), Streets and Open Space Plan (2012), and the Downtown Berkeley Area Plan (2012); and

WHEREAS, according to State data, the existing Milvia Street has the highest number of cycling collisions of any Berkeley bikeway; and

WHEREAS, today, the Milvia Street bikeway consists of a combination of rudimentary bike boulevards and bike lanes that fail to adequately protect cyclists; and

WHEREAS, the Berkeley Strategic Transportation Plan (2015) and Bicycle Plan (2012) recommend replacing the existing Class III Bicycle Boulevard and Class II bicycle lanes on Milvia with a Class IV cycle track; and

WHEREAS, the City has strong health, safety and environmental interest in building protected bikeway infrastructure on Milvia Street; and

WHEREAS, while initial funding for a protected bikeway has been provided by a Measure B sales tax grant from the Alameda County Transportation Commission, the City can leverage additional funding to accelerate the design and construction of a near-term protected bikeway pilot between University Avenue and Allston Way; and

WHEREAS, Streets and Open Space Improvement Fee (SOSIF) funds are available to cover the costs associated with the pilot; and

WHEREAS, the Department of Public Works projects a \$432,592 gross SOSIF fund balance for FY 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby approves allocating \$200,000 in SOSIF funds for the design and construction of a protected Milvia Bikeway pilot project between University Avenue and Allston Way.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Wengraf, Harrison, Hahn, and Mayor Arreguin  
Subject: Referral to City Manager to Return to Council with an Amnesty Program for Legalizing Unpermitted Dwelling Units

RECOMMENDATION

That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.

FINANCIAL IMPLICATIONS

Staff time in Planning, Building and Safety, and Legal Departments

BACKGROUND

Berkeley currently has an inventory of thousands of unpermitted dwelling units that are either being rented illegally or are being kept off the market. Building inspectors are required, under current regulations, to tell owners that these illegally constructed units must be demolished when it is discovered that they were built without permits.

While legal construction should always be the goal, many of the existing unpermitted structures in Berkeley are being put to beneficial use and have existed in the community for years. As long as safety and habitability can be ensured, the continued use of these units is in the public interest, especially given the crisis of available housing and very high housing costs.

Realizing that the state-wide housing crisis has created extraordinary circumstances, and that it is critical to preserve the current housing stock, many California cities have already enacted amnesty programs to address this issue. For example, San Francisco, City of Alameda, Daly City, County of San Mateo, County of Santa Cruz, Los Angeles, West Hollywood all have programs in place that incentivize the legalization of illegally constructed units.

ENVIRONMENTAL SUSTAINABILITY

Preserving dwelling units, rather than demolishing them is consistent with our Climate Action Goals

Referral to City Manager to Return to Council with an Amnesty Program for  
Legalizing Unpermitted Dwelling Units

CONSENT CALENDAR  
April 23, 2019

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

| Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                       |
|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                            |                                                                                                                                                                       |
| May 7                                                                      | <ol style="list-style-type: none"> <li>1. Proposed FY 2020 – FY 2021 Budget</li> <li>2. Zero Waste Rate Review</li> <li>3. Bond Disclosure Training</li> </ol>        |
| June 18                                                                    | <ol style="list-style-type: none"> <li>1. Transfer Station Feasibility Study</li> <li>2. Green Stormwater Infrastructure</li> <li>3. Arts and Culture Plan</li> </ol> |
| Sept. 17                                                                   | <ol style="list-style-type: none"> <li>1. Vision Zero Action Plan</li> <li>2. UC Berkeley Student Housing Plan</li> <li>3. Adeline Corridor Plan</li> </ol>           |
| Oct. 22                                                                    | <ol style="list-style-type: none"> <li>1. Berkeley's 2020 Vision Update</li> <li>2. Census 2020 Update</li> </ol>                                                     |

| Unscheduled Workshops                                                               |
|-------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> </ol> |

| Unscheduled Presentations                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Parks, Recreation, and Waterfront CIP Update (May 1 and May 3 @ Budget Committee)</li> <li>2. Public Works CIP Update (May 1 and May 3 @ Budget Committee)</li> <li>3. AC Mosquito Abatement District (presentation by the District, April 23)</li> <li>4. East Bay Municipal Utility District (presentation by the District, May 28 - tentative)</li> </ol> |

|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> <i>(Referred from the July 24, 2018 agenda)</i><br/> <b>From: Housing Advisory Commission</b><br/> <b>Recommendation:</b> That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley.<br/> <b>Financial Implications:</b> See report<br/> Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p><b>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> <i>(Referred from the July 24, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b> Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley.<br/> <b>Financial Implications:</b> See report<br/> Contact: Dee Williams-Ridley, City Manager, 981-7000</p> |
| 2. | <p><b>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance</b> <i>(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)</i> <b>March 18, 2019 Action:</b> Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.<br/> <b>From: Councilmember Worthington</b><br/> <b>Recommendation:</b> Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S. by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties.<br/> <b>Financial Implications:</b> Minimal<br/> Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>                                                                                                                                                                                                                                                                                                            |
| 3. | <p><b>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street</b> <i>(Referred from the September 25, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b><br/> 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF).<br/> 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.<br/> <b>Financial Implications:</b> See report<br/> Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 4. | <p><b>24. Referral Response: 1000 Person Plan to Address Homelessness</b> <i>(Referred from the March 26, 2019 agenda)</i><br/> <b>From: City Manager</b><br/> Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 5. | <p><b>26. Berkeley Economic Dashboards</b> <i>(Referred from the March 26, 2019 agenda)</i><br/> <b>From: City Manager</b><br/> Contact: Jordan Klein, Economic Development, 981-7530</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |



6. **17. Short-term referral to City Manager and budget referral for creation of a “vehicle dweller program” in Berkeley** *(Referred from the April 2, 2019 agenda.)*

**From: Councilmember Davila**

**Recommendation:** Create a comprehensive program to support those living in their vehicles, including but not limited to RVs, to stay in Berkeley without fear of being criminalized, harassed, displaced, fined or having their vehicles confiscated, and with the support needed to have minimal impact on the neighborhoods in which they reside. The program could include: -Issuing 3-6 month permits for vehicles in running order with an option to renew if no validated complaints have been filed. -Creating a registration process that identifies any additional support needed. -Specifying a consistent, clear and transparent process for investigating complaints to determine validity and issuing warnings. -Distributing permits equally across all parking permit districts and identifying any restrictions on parking (i.e. near schools given bus access, etc.). -Creating an affordable sliding scale permit structure based on size of vehicle, weight, number of wheels, etc. -Providing pump-out services, waste disposal and social services as needed. -Creating a pump-out station for use by RVs within the City of Berkeley. - Creating a program for up to \$3,000 per a vehicle for mechanical and sanitation repairs as well as registration and offering a grace period to get vehicles into compliance for a permit. -Piloting a Safe Parking program modeled after Oakland’s pilot: 4-8 sites with 6-10 vehicles parked at business, school, community or faith-based site parking lots, including support and sanitation services.

Vehicles with permits are exempt from Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120.

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

| <b>CITY CLERK DEPARTMENT</b>                                                        |                              |                               |                                                  |                           |
|-------------------------------------------------------------------------------------|------------------------------|-------------------------------|--------------------------------------------------|---------------------------|
| <b>WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br/>BEFORE THE CITY COUNCIL</b> |                              |                               |                                                  |                           |
| <b>Address</b>                                                                      | <b>Board/<br/>Commission</b> | <b>Appeal Period<br/>Ends</b> | <b>Determination<br/>on Appeal<br/>Submitted</b> | <b>Public<br/>Hearing</b> |
| <b>NOD – Notices of Decision</b>                                                    |                              |                               |                                                  |                           |
| 1991 Marin Ave (add new ADU)                                                        | ZAB                          | 4/8/2019                      |                                                  |                           |
| 3084 Claremont Ave (Souvenir Claremont - outdoor seating)                           | ZAB                          | 4/10/2019                     |                                                  |                           |
| 3212 Adeline St (add service of distilled spirits)                                  | ZAB                          | 4/17/2019                     |                                                  |                           |
| 2518 Durant Ave (add service of distilled spirits)                                  | ZAB                          | 4/17/2019                     |                                                  |                           |
| <b>Public Hearings Scheduled</b>                                                    |                              |                               |                                                  |                           |
| 1722 Walnut St (permit a ninth dwelling unit)                                       | ZAB                          |                               |                                                  | 4/23/2019                 |
| 2700 Tenth St (Pardee Parking Lot)                                                  | ZAB                          |                               |                                                  | 4/30/2019                 |
| 1444 Fifth St (construct four single-family dwellings)                              | ZAB                          |                               |                                                  | 5/14/2019                 |
| <b>Remanded to ZAB or LPC</b>                                                       |                              |                               |                                                  |                           |
| 1155-73 Hearst Ave (develop two parcels)                                            | ZAB                          |                               |                                                  |                           |
| 90-Day Deadline: May 19, 2019                                                       |                              |                               |                                                  |                           |
| 2701 Shattuck Ave (construct 5-story mixed-use building)                            | ZAB                          |                               |                                                  |                           |
| 90-Day Deadline: June 30, 2019                                                      |                              |                               |                                                  |                           |
| <b>Notes</b>                                                                        |                              |                               |                                                  |                           |
|                                                                                     |                              |                               |                                                  |                           |
|                                                                                     |                              |                               |                                                  |                           |
|                                                                                     |                              |                               |                                                  |                           |

Last Updated: 4/3/19