



[Commission Name]

CONSENT CALENDAR

March 12, 2019

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Communicating and Meeting with Community Stakeholders on Housing Innovations

RECOMMENDATION

Authorize the Housing Advisory Commission to correspond in writing and to confer in public session directly with various affordable housing organizations for the limited purposes and time, and with the disclaimer described below.

Direct the City Manager that the City Attorney shall craft an appropriate disclaimer, as described below. The Commission will include this disclaimer when corresponding or meeting with these agencies.

SUMMARY

The Commission wishes to explore *innovative* ways to expand the Small Sites housing program, to implement a Tenants Option to Purchase ordinance, and to advance region-wide goals – the “three Ps” – to protect tenants, preserve affordable housing, and produce new housing.

We are interested, for example, in looking beyond conventional City loans and grants for new ways to help finance affordable housing projects. We are interested in streamlining the purchase of small sites while addressing the property management issues associated with such streamlining. We wish to identify promising project ownership structures, democratic management structures, and flexible alternatives to conventionally written deed restrictions.

A variety of outside agencies are potentially appropriate discussion partners for this work (see under “Background”, subsection “A tentative list of agencies”, below). As required by the Commissioners’ Manual, we seek authorization to pursue discussion with them. We are additionally asking that the City Attorney provide us with a suitable disclaimer to use in such discussions, to avoid inadvertent legal risk to the City (see under “Background”, subsection “Disclaimer”, below).

FISCAL IMPACTS OF RECOMMENDATION

There is a presumably modest cost associated with asking the City Attorney to prepare a suitable disclaimer for the Commission to use in its communications.

CURRENT SITUATION AND ITS EFFECTS

The Commission has previously received briefings from the Health, Housing, and Community Development staff regarding the Small Sites and Tenants' Option to Purchase programs. These presentations included information about obstacles and limitations encountered in other jurisdictions that have already implemented such programs.

The Commission has received a similar presentation from representatives of the Sustainable Economies Law Center, the East Bay Community Law Center, and the Northern California Land trust.

The rules set forth in the Commissioners Manual sharply limit the Commission's ability to further engage as a body with these and other agencies to continue the conversation. The rules will allow the Commission to move forward with Council authorization.

In June and September of 2018, the Commission adopted a work plan item titled "*Democratized housing innovations summit*", which this referral helps to implement.

The Housing Advisory Commission voted on January 3, 2019 to make this referral to City Council. The action is recorded as follows:

Discussion and Possible Recommendation to Council on the Housing Advisory Commission's Communicating and Meeting with Community Stakeholders on Housing Innovations

Action: M/S/C (Lord/Johnson) to recommend to City Council to authorize the Housing Advisory Commission to:

Communicate directly, in writing, with various affordable housing organizations for the limited purposes and with the disclaimer described below;

- To receive, and place on the record, written replies and replies spoken to the Commission in session;
- To ask the City Manager and City Attorney to craft the disclaimer we describe below and provide a proper version to the Commission;
- To have the option to schedule (in cooperation with the Commission Secretary) up to one (1) additional meeting of the Housing Advisory Commission prior to June 2020, a Special Meeting to which these organizations may be invited to discuss the issues described below; and
- With none of these authorizations extending beyond June 2020 without further review by City Council.

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

## BACKGROUND

### Small Sites

The City of Berkeley has created a pilot "small sites acquisition" program, aimed at helping non-profit organizations and the City itself to acquire, rehabilitate, preserve, or create affordable housing. Berkeley's program places an emphasis on land-trust and cooperatively managed housing.

City staff have researched similar programs in other jurisdictions and have informed the Housing Advisory Commission of some of the practical limitations encountered by similar programs in San Francisco and Washington D.C.

The Housing Advisory Commission is interested in exploring innovative ways to reduce or avoid those limitations.

### Tenants Right to Purchase

At Council's direction, the City is working towards implementing a Tenants' Right to Purchase Ordinance which would give tenants a first option to purchase an apartment building they occupy. Such an option might also be transferable to the City itself. Here again, practical limitations have been encountered in other cities. Here again, the Housing Advisory Commission is interested in innovative ways to reduce or avoid those limitations.

### The Three P's

The Metropolitan Transportation Commission and Association of Bay Area Governments have generated considerable interest and policy momentum around the concepts they call the "three Ps":

- Protecting tenants
- Preserving affordable housing
- Producing housing, including affordable housing

The Housing Advisory Commission sees these broadly defined goals as wholly compatible with Small Sites and Tenants' Option to Purchase policies. We believe there may be an opportunity to advance housing affordability and housing justice consistently with these emerging regional planning concepts.

### Example Areas for the Commission to Explore with Outside Organizations

- One problem encountered in Small Sites and Tenants' Right to Purchase programs is the need to act quickly – to lock in a purchase faster than an outside agency or the tenants of a building may be prepared to act.

- *The Commission has explored and would like to further explore the possibility of direct purchases by the City or a City franchise, when fast-tracking a purchase is necessary.*
- *This raises a critical question of property management. In the case of a quick City purchase, who will initially manage the property?*
- Another area of concern is that land-trust and co-op models may be difficult to finance. Acquisitions of this sort often do not qualify for the same kinds of financing assistance available to conventional non-profit developers.
  - *How can City of Berkeley housing policies help gain access to alternative forms of financing, beyond City provided loans and grants?*
- The land-trust and co-op models can suffer limitations of scale. When each property is its own legal entity, opportunities for cross-subsidy and achieving economies of scale are lost.
  - *Is it sensible to try to consolidate ownership of small sites and sites purchased via a tenants' option?*
  - *How can a larger portfolio of such housing be cooperatively managed?*
  - *Are there alternatives to customary AML-tied deed restrictions for preserving affordability while being able to dynamically adjust to needs and operate on self-financing basis?*

#### The Purposes of Communications with External Agencies

In short, we would like to invite various stakeholders to contribute to the Commission's understanding and brainstorming around questions like those above.

In part we hope to learn from these organizations. Perhaps we might even help them to organize and cooperate to advance an innovative program here in Berkeley.

#### A Tentative List of Agencies to Contact

We ask the right to add to this list but we have identified stakeholders with relevant interests:

- BACLT
- BUSD
- Berkeley Federation for Teachers (BFT)
- East Bay Permanent Real Estate Cooperative
- NCLT
- POCSHN (People of Color Sustainable Housing Network)
- RCD
- SAHA
- Sustainable Economies Law Center (SELC)
- UC Berkeley Co-op
- UC Berkeley Grad Student Union

Disclaimer

The Commission suspects but does not know for certain that any communication we make directly should clearly state that:

- We speak only for the Commission.
- We are not announcing any City Program or soliciting bids or proposals.
- We are only seeking voluntarily given advice and consultation.

We believe the City Attorney is the appropriate official to provide us with suitable language for this disclaimer.

ENVIRONMENTAL SUSTAINABILITY

No impact.

RATIONALE FOR RECOMMENDATION

Passage of this recommendation will empower the Commission to better pursue its duties under Berkeley Municipal Code Title 19.44.020(B)(10) as amended by the passage Measure U1 (2016):

*The Housing Advisory Commission shall review and advise the City Council on housing policy, housing programs, and related issues. In particular, the Commission shall make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness. These recommendations may be made annually or biannually, as the Commission deems appropriate in light of the City's budget cycle and other relevant funding cycles. The Commission's recommendations shall be promptly published on the City's web site and transmitted to the City Council. The City Council shall consider, but need not follow, the Commission's recommendations, and shall annually inform the Commission as to the extent to which it has implemented the recommendations.*

The Commission is obligated to seek the City Council's authorization by the rules set forth in the Commissioner's Manual (see "Alternative Actions Considered" for further details).

ALTERNATIVE ACTIONS CONSIDERED

The Commission considered "informally" corresponding with and inviting these organizations to discussions. Concerns were raised, however, that the Commission could not engage in such communication as a *body* without violating the rules set forth in the Commissioners' Manual, which clearly states:

*Unless specifically authorized by the Council, commissions may not represent the City or its policies or positions to outside agencies either on their own behalf or of the City. (Chapter III, Part C, section 2).*

We interpret that to mean that for the Commission to represent *its own agreed upon views and questions* to these agencies, the Council must consent. We seek this consent. In seeking this consent, we are sensitive to the concern that we will not officially state City of Berkeley policy and that we will not be announcing any City programs or funding opportunities.

CITY MANAGER

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

The Housing Advisory Commission does not need Council authorization to host a special meeting but does require authorization to invite additional organizations to participate. Approval of this item will allow the Commission to proceed with its outreach to community organizations, and to move forward with determining the specific schedule, agenda, and participant list for the meeting. If this exceeds regular staff capacity associated with the Commission, staff may return to Council for guidance and approval. Otherwise, the authority granted with approval of this item will allow the Commission to hold the proposed meeting.

CONTACT PERSON

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