



Councilmember Ben Bartlett

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CONSENT CALENDAR

June 11, 2019

To: Policy Committee: Land Use, Housing & Economic Development Committee, and Honorable Mayor & Members of the City Council
From: Councilmember Ben Bartlett, Mayor Jesse Arreguin, and Councilmember Kate Harrison
Subject: Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay

SUBJECT

Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay

RECOMMENDATION

Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.

CURRENT SITUATION

The IRS, working with individual states, designated certain low-income Census tracts as Opportunity Zones as part of the Tax Cuts and Jobs Act of 2017. Investors can defer taxes on capital gains by investing those gains in property in these zones. Investments in Opportunity Zones excuse a percentage of those capital gains from taxes, and property appreciation is untaxed if the property is held longer than 10 years. Opportunity Zones offer a powerful investment vehicle for the wealthy. There are no stipulations protecting neighborhoods from gentrification and displacement caused by rapid, top-down investment from members outside their community. Berkeley's residents living in Opportunity Zones, specifically around the Adeline Corridor and West Berkeley, are currently vulnerable to gentrification and displacement caused by unmitigated, top-down speculation.

BACKGROUND

The Tax Cuts and Jobs Act of 2017 created a vehicle for investors to defer taxes on capital gains while investing in economically-distressed communities. When an individual sells their investment and generates capital gains, that person can invest any portion of those gains into a qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Opportunity Funds must invest in property in distressed communities designated as qualified Opportunity Zones by the IRS¹. Investors can defer taxes on capital gains by investing in an Opportunity Fund until the investment in the Opportunity Fund is sold, or on

¹ <https://www.congress.gov/bill/115th-congress/house-bill/1>

December 31, 2026, whichever occurs first. Investments in qualified Opportunity Funds held longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds². The above structure incentivizes investors to buy properties in Opportunity Zones and either refurbish or replace them with structures to maximize post-acquisition gain.

Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until 52nd Street (often referred to as the “Adeline Corridor”), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way³.

Berkeley’s Opportunity Zones, specifically in the Adeline Corridor and West Berkeley, are in areas vulnerable to, or currently undergoing, gentrification. The National Community Reinvestment Coalition (NCRC) compared Census data from 2010 with 2000 to determine Census tracts vulnerable to gentrification, including those currently gentrifying. Census tract 4240.01, the neighborhood between Sacramento Street, Ashby Avenue, Adeline Street, and Alcatraz Street in South Berkeley was deemed gentrifying. Between 2000 and 2010 the African American population decreased by roughly one third, from 1,821 to 1,264. In Census tract 4232 in West Berkeley, the African American population nearly halved, from 1,025 in 2000 to 687 in 2010. Both Census tracts contain Opportunity Zones. Furthermore, the neighborhoods surrounding these Opportunity Zones share similar demographic shifts. Census tract 4234, north of the Adeline Opportunity Zone, saw its African American population decline almost a third from 2000 to 2010. Census tract 4005, to the East, experienced the same phenomenon over the same period. This pattern applies to almost every neighborhood surrounding West Berkeley’s Opportunity Zone, as well⁴. UC Berkeley Urban Displacement Project has similarly captured these startling trends. It currently lists tracts 4240.01 and 4234, the Adeline Corridor Opportunity Zone and neighborhood to its north, as experiencing “ongoing gentrification/displacement”. It does not have sufficient data for West Berkeley’s Opportunity Zone tract⁵.

Many of the neighborhoods in and around Berkeley’s Opportunity Zones are either vulnerable to gentrification and displacement, or currently experiencing them. With new, powerful investment incentives from Tax Cuts and Jobs Act of 2017, these neighborhoods are perhaps more vulnerable than they have ever been to top-down negligence and gentrification from profit-driven outside investors.

ACTIONS/ALTERNATIVES CONSIDERED

Councilmember Bartlett is proposing a municipal Opportunity Fund as well. The municipal Opportunity Fund will be a powerful tool to direct investment in a way that protects Berkeley’s residents, instead of expediting the ongoing gentrification. A zoning overlay, multiple overlays, or any other recommendation which protects Berkeley residents, is necessary as an immediate

² <https://fundrise.com/education/blog-posts/what-are-opportunity-zones-and-how-do-they-work>

³ <https://opzones.ca.gov/oz-map/>

⁴ <http://maps.ncrc.org/gentrificationreport/index.html>

⁵ <https://www.urbandisplacement.org/map/sf>

protection to Berkeley residents and is meant to work with the Municipal Opportunity Fund to ensure a robust investment mechanism that develops Berkeley while benefiting both existing and new residents.

RATIONALE FOR RECOMMENDATION

Berkeley residents living in census tracts designated as Opportunity Zones are vulnerable to possible adverse effects from investment in zoned projects. As the Tax Cuts and Jobs Act of 2017 created powerful incentives for investment into Opportunity Zone census tracts, an influx of wealthy investor funds will flow into projects in Berkeley. Those investments will build structures and property that yield the greatest return for investors, not necessarily Berkeley residents. By creating a zoning overlay or similar mechanism to protect those census tracts, Berkeley residents will be protected from displacement.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects. A zoning overlay, or similar recommendations, can specify projects in Opportunity Zones to be more environmentally friendly than current policies require.

FISCAL IMPACTS

To be determined. Pending recommendations by the Planning Commission. Depending on the Planning Commission's recommendations, staff time and cost to the City will vary.

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