



Councilmember Ben Bartlett

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ACTION CALENDAR
 July 16, 2019

To: Members of the City Council
 From: Councilmember Ben Bartlett, Kate Harrison, Mayor Jesse Arreguin, and
 Councilmember Cheryl Davila
 Subject: Opportunity Zone Priorities and Developing a Project Prospectus

RECOMMENDATION

Refer to the City Manager the priorities listed below for investment in Berkeley's Opportunity Zones for proactive outreach and marketing to investors or Opportunity Funds, and to guide any discussions or negotiations regarding development projects in Opportunity Zones. The priorities are:

- Construction of new Affordable Housing units or acquisition and preservation of affordable housing;
- Preservation of historic buildings;
- Cultural Institutions and Performing Arts Venues;
- Civic Uses (Government Offices, Libraries, Schools, Public Safety)
- Public Open Space and Recreation Facilities;
- Health Care Services;
- Transportation Demand Management features;
- Job training or employment opportunities

The City Manager should further incorporate these guidelines into any relevant formal document relating to projects in Opportunity Zones.

That City staff, working with non-profit organizations OR seeking technical assistance, develop a prospectus marketing community development projects in Berkeley's Opportunity Zones using the guidelines mentioned above, or any other tools to attract equitable investment in Opportunity Zones.

CURRENT SITUATION

Created by the Investing in Opportunity Act in 2017, Opportunity Zones cover census tracts in Downtown Berkeley, South Berkeley, and West Berkeley. These Opportunity Zones provide powerful investment incentives, especially before the end of 2019, while requiring no community benefits. This item therefore seeks to refer to the City Manager to include guidelines which benefit community members in any discussion, negotiation, or promotion of Berkeley's Opportunity Zones. This item also proposes that City staff [work with OR seek technical assistance] to develop a prospectus to attract investments to achieve the stated goals of the guidelines.

BACKGROUND

Opportunity Funds and Opportunity Zones

The Investing in Opportunity Act of 2017 created a vehicle for individuals to invest in their communities while realizing tax savings. When an individual or corporation sells an investment which generates capital gains, that person can invest any portion of those gains into an Opportunity Fund within 180 days. Any capital gains reinvested into an Opportunity Fund will be deferred until the date the investment in the Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Investments in Opportunity Funds held longer than 5 years allows taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allows taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allows taxpayers to exclude the post-acquisition gain on the investment in the Funds. Opportunity Funds must invest in property, either directly or indirectly, in distressed communities designated as Opportunity Zones by the IRS¹.

Gentrification and Displacement in Opportunity Zones

Opportunity Zones in Berkeley include 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 area of land between south of University Avenue and Dwight Way, and 6th Street and San Pablo Avenue².

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 to be undergoing gentrification. 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 decreased by half, 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. African American population in Census tract 4234, north of the Opportunity Zone in the Adeline Corridor, declined 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 the Opportunity Zone in West Berkeley³, which the UC Berkeley’s Urban Displacement Project has similarly captured as well. It currently lists tracts 4240.01 and 4234, the Opportunity Zone in the Adeline Corridor and neighborhood to its north, as experiencing “ongoing gentrification/displacement.”

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

² <https://opzones.ca.gov/oz-map/>

³ <http://maps.ncrc.org/gentrificationreport/index.html>

The Urban Displacement Project does not have sufficient data for the census tract containing the Opportunity Zone in West Berkeley⁴.

Factoring in median home value in these areas completes the story of gentrification and displacement in South Berkeley. For tract 4240.01, the NCRC listed median home value at \$365,432 in 2000 and 587,900 in 2010. For tract 4232 median home value was listed at \$342,176 in 2000 and \$588,000 in 2010⁵. More broadly, Zillow's home value index listed the median Berkeley home at \$674,000 in June 2010; in 2018 the median was over \$1.2 million⁶. Comparing Census data from 2000 and 2010 clearly shows that areas where Opportunity Zones have been placed have experienced a flight of African American community members as property values increased dramatically. The addition of Opportunity Zones to these areas only makes them more vulnerable to continued gentrification and displacement.

At the same time, Opportunity Zones do not require any community benefit or planning into how projects impact the surrounding communities. What's more, the potential scale of Opportunity Zone investment is immense. In late 2017, the Economic Innovation Group conservatively estimated that total U.S. unrealized capital gains could exceed \$6 trillion⁷

It is therefore imperative for City Council to refer to the City Manager to include development priorities which confer real benefits and protections to current community members in any discussion, negotiations, and promotions of Berkeley's Opportunity Zones.

An Opportunity Zone Prospectus

Traditionally, a city prospectus showcases a city's competitive advantage to investors. Prospectuses frequently cite economic growth, proximity to employers/educational institutions/transportation hubs, investment incentives, and other factors to appeal to potential investors. Several cities have already incorporated Opportunity Zones into a prospectus, notably Oakland, and Louisville. Oakland's prospectus mentions priorities for Opportunity Zone projects such as: "Acquisition and rehabilitation of existing affordable housing", and "Investment in businesses and organizations owned or led by people of color and women"⁸. It further lists goals for Opportunity Zone projects including wealth-building, resident retention, and local employment opportunities. Oakland's Opportunity Zones are then marketed separately, with data including area, number of employers, and median age and income. Included in each Zone's section is also the history of that area and Oakland's vision for that space. A separate section promoting the city as a whole cites Oakland's major employers, mass transit infrastructure, population growth, recent developments, housing demand, and municipal programs to assist developers.

⁴ <https://www.urbandisplacement.org/map/sf>

⁵ <http://maps.ncrc.org/gentrificationreport/index.html>

⁶ <https://www.zillow.com/berkeley-ca/home-values/>

⁷ <https://eig.org/news/opportunity-zones-tapping-6-trillion-market>

⁸ https://cao-94612.s3.amazonaws.com/documents/Oakland-Prospectus_ForScreen_6-11-19.pdf

Louisville's prospectus operates similarly. It explains Opportunity Zone tax incentives, details the city's assets, recent development, major employers, municipal development programs, and educational institutions. Similar to Oakland, Louisville's prospectus lists the city's Opportunity Zones and gives a brief overview of each Zone's developmental makeup: industrial, residential, commercial, etc. Louisville's prospectus also lists which types of projects it envisions in each Zone. Projects include business parks, research campuses, mixed-use housing developments, student housing, and retail space⁹.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Passed by the U.S. Congress, the Investing in Opportunity Act created Opportunity Funds and Opportunity Zones. Opportunity Funds invest in Opportunity Zones, which are specially-designated Census tracts that provide several tax breaks for investments made in tract properties.

When an individual sells an investment and generates capital gains, that person can invest any portion of those gains into an 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 communities designated as Opportunity Zones by the IRS¹⁰. 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 Funds¹¹.

Such zones in Berkeley that have been qualified as Opportunity Zones by the California Department of Finance 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 area of land between south of University Avenue and Dwight Way, and 6th Street and San Pablo Avenue¹².

The Investing in Opportunity Act makes no mention of community benefits to be gained from Opportunity Zone investments. While the tax incentives to reinvest capital gains in Opportunity Zones are quite powerful, the legislation does not mention whether resultant projects must actually benefit the community in which the project is located. This item therefore proposes that the City Council refer to the City Manager to include specific priorities for community benefits in any negotiations, discussions, and promotions regarding Berkeley's Opportunity Zones to complement the Investing in Opportunity Act's oversight.

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https://louisvilleky.gov/sites/default/files/louisville_forward/louisville_prospectus_version_13_11.5.2018.pdf

¹⁰ <https://www.congress.gov/bill/115th-congress/house-bill/1>

¹¹ <https://fundrise.com/education/blog-posts/what-are-opportunity-zones-and-how-do-they-work>

¹² <https://opzones.ca.gov/oz-map/>

ACTIONS/ALTERNATIVES CONSIDERED

Councilmember Bartlett has also proposed a zoning overlay to cover Berkeley's Opportunity Zones which could enforce the community benefits listed in this item. Unfortunately, such an overlay must be developed by the Planning Commission and would require staff time to develop ordinance language and a public hearing before adoption. This may take 6 months or more.. Because the most powerful investment incentives that the Opportunity Zones provide require projects to begin by the end of 2019 (to qualify for the 10-year property holding which triggers tax abatement on appreciation of the property), a zoning overlay will not be implemented before the most favorable investment conditions have expired. Therefore, this will not yield the greatest effect in protecting Berkeley community members from potential gentrification and displacement.

Councilmember Bartlett is also in the process of distributing a letter to Berkeley community members in Opportunity Zones informing them on the Investing in Opportunity Act and its implications for their properties. This item would complement those efforts by ensuring that the City Manager include community benefit priorities when discussing or promoting Berkeley's Opportunity Zones to investors.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Community members and neighborhood groups such as the Friends of Adeline have been consulted regarding Berkeley's stance toward Opportunity Zones. These individuals and organizations will be directly affected by the Opportunity Zones, specifically around the Adeline Corridor and Ashby BART station. These external stakeholders have frequently expressed their concerns about displacement from external, top-down investment into Berkeley, as well as their desire to see community benefits from any projects that are approved by the City.

Furthermore, the development of the Adeline Corridor Specific Plan, which covers an area containing a majority of Berkeley's Opportunity Zones, engaged rigorous community outreach. Community members mentioned specific community benefits including affordable housing, supportive social services, green features, and open space to name a few. This item furthers that community input by referring to the City Manager to include these community priorities in development guidelines with potential investors in Berkeley's Opportunity Zones.

RATIONALE FOR RECOMMENDATION

By referring to the City Manager to include community benefit development guidelines in any negotiations and promotions regarding Berkeley's Opportunity Zones, this item attempts to complement an incomplete policy forced on the City of Berkeley by the federal government. This item does not affect how Opportunity Zones or Opportunity Funds function, where they are located, and what tax incentives they offer. Instead, it requires the City Manager to include community benefit priorities listed above in any information provided to investors in negotiations or promotions of Berkeley's Opportunity Zones. The development of a prospectus also does not affect the location

or function of Opportunity Zones. It seeks to promote Berkeley's Opportunity Zones, and perhaps specific projects, to investors to capture the tax incentives provided by Opportunity Zones without further displacing community members.

ENVIRONMENTAL SUSTAINABILITY

By adding these guidelines, the Opportunity Zone could yield positive environmental effects. In effect, the City of Berkeley is enhancing the possibility for Opportunity Zones to be environmentally sustainable.

FISCAL IMPACTS

Unknown. The cost and staff time to require the City Manager to include community benefit development priorities is minimal. Councilmember Bartlett's office understands that Opportunity Zones are an important topic to the community, and finds it necessary that the City include priorities in any discussions, negotiations, and promotions regarding Opportunity Zones. The collaboration with an independent organization to develop a prospectus will require staff time. The extent to which staff time will be required depends on the scope of the prospectus, and the abundance of organizations ready to assist Berkeley staff in the creation of a prospectus.

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ATTACHMENTS AND MATERIALS