



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
REGULAR MEETING**

**BERKELEY CITY COUNCIL SPECIAL MEETING**

**Thursday, July 18, 2019  
10:30 AM**

2180 Milvia Street, 1st Floor – Cypress Room

Committee Members:

Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Lori Droste

**AGENDA**

**Roll Call**

**Public Comment on Non-Agenda Matters**

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

- 1. Minutes from June 13, 2019 - Special Meeting**
- 2. Minutes from June 20, 2019**

**Committee Action Items**

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.*

*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.*

## Committee Action Items

- 3. 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**  
**Referred: April 8, 2019**  
**Due: October 7, 2019**  
**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
- 4. Prioritizing Affordable Housing for Homeless**  
**From: Mayor Arreguin**  
**Referred: April 15, 2019**  
**Due: October 7, 2019**  
**Recommendation:** Refer to the Housing Advisory Commission to develop an ordinance to set aside 20% of affordable housing units for individuals experiencing homelessness, with preference given to BUSD students.  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, 981-7100
- 5. Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender** *(Item contains revised materials.)*  
**From: Councilmembers Harrison, Hahn, and Davila**  
**Referred: June 10, 2019**  
**Due: November 25, 2019**  
**Recommendation:** Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.  
**Financial Implications:** None  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 6. Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance**  
**From: Mayor Arreguin, Councilmember Davila, Councilmember Harrison, Councilmember Robinson**  
**Referred: July 8, 2019**  
**Due: December 24, 2019**  
**Recommendation:** Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.  
**Financial Implications:** Unknown  
Contact: Jesse Arreguin, Mayor, 981-7100

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- **None**

## Items for Future Agendas

- **Discussion of items to be added to future agendas**

## Adjournment

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*This is a meeting of the Berkeley City Council Land Use, Housing & Economic Development Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Land Use, Housing & Economic Development Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Land Use, Housing & Economic Development Committee meeting.*

*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to 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 July 11, 2019.

A handwritten signature in black ink that reads "Mark Numainville".

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 LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
SPECIAL MEETING MINUTES**

**BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES**

**Thursday, June 13, 2019  
10:30 AM**

2180 Milvia Street, 6th Floor- Redwood Room

Committee Members:

Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Lori Droste

**Roll Call:** 10:32 a.m.

**Present:** Droste, Hahn, Arreguin

**Public Comment on Non-Agenda Matters:** No speakers.

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes for Approval - May 16, 2019**

**Action:** M/S/C (Droste/Hahn) to approve minutes as presented.

**Vote:** All Ayes.

**Committee Action Items**

*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.*

2. **Open Doors Initiative: First Time Homebuyer Program**  
**From: Councilmembers Bartlett and Robinson, and Mayor Arreguin**  
**Referred: February 11, 2019**  
**Due: July 1, 2019**

**Recommendation:** That the City Council direct the Planning Commission to design a regulatory mechanism (Open Doors Initiative) to incentivize the creation of affordable starter homes for Berkeley city employees and persons of moderate income. Also recommend that the City Council direct Housing and Economic Development to analyze the financial barriers to access for low-income homeowners, and to develop a financial program of low-interest loans tied to outreach and education to ensure low-income homeowners can participate and benefit from this program. The Open Doors Initiative is intended to provide assistance to homeowners in R1 and R1A zones to renovate their properties and become multi-family condominiums (the “Missing Middle”). To qualify for zoning approval, families must agree to deed restrictions which limit the sale of the newly-created condominiums to Employees of the City of Berkeley and/or first time moderate income first time home buyers.

Increasing the supply of one bedroom and studio condominiums also allow community members, previously shut out of the middle class, the opportunity to own a home while simultaneously enabling older homeowners to downsize and efficiently utilize their equity. The deed restrictions provided a path to homeownership for moderate income persons; first responders to be on hand in the event of a crisis; and for workers to avoid long commutes by owning homes in the city they serve. The Open Doors initiative serves the policy goals of economic inclusion, community resilience, and environmental sustainability.

**Financial Implications:** To be determined by an impact study.  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**Action:** No speakers. M/S/C (Hahn/Droste) to recommend that the report submitted be referred to the City Council with a Qualified Positive Recommendation such that the Recommendation section be revised as follows: That the City Council refer the City Manager and Housing Advisory Committee to explore mechanisms to support homeownership by City of Berkeley First-Responders and other critical safety staff and further refer to City Manager to prepare a report detailing available first-time homeownership and low-income homeowner programs that might be available for implementation in the City of Berkeley.

**Vote:** All Ayes.

**3. Referral: Fee on New Non-Residential Development to Contribute to the Revolving Loan Fund**

**From: Councilmember Robinson**

**Referred: March 18, 2019**

**Due: September 22, 2019**

**Recommendation:** Refer to the City Manager to develop a new fee on non-residential development to contribute to the City of Berkeley's Revolving Loan Fund (RLF) for small business financing.

**Financial Implications:** See report

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

**Action:** No Speakers. Item was withdrawn by Author, Councilmember Robinson.

**4. Berkeley Qualified Opportunity Fund**

**From: Councilmember Bartlett**

**Referred: March 19, 2019**

**Due: September 23, 2019**

**Recommendation:** On March 19, 2019 City Council referred this item to the Land Use, Housing, and Economic Development Committee with the request to consider the following items:

- Refer to the Budget Process to conduct an equity assessment and community process to discuss opportunity zones, particularly in South Berkeley.
- Engage the Office of Economic Development in the community process.
- Set up standards that reflect the City's goals for the opportunity zones.
- Set priorities for public projects that the City would like to have completed in the opportunity zones.

**Financial Implications:** See report.

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**Action:** 1 Speaker. Continued to June 20, 2019.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

**5. 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**

**Referred: April 8, 2019**

**Due: October 7, 2019**

**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

**6. Prioritizing Affordable Housing for Homeless**

**From: Mayor Arreguin**

**Referred: April 15, 2019**

**Due: October 7, 2019**

**Recommendation:** Refer to the Housing Advisory Commission to develop an ordinance to set aside 20% of affordable housing units for individuals experiencing homelessness, with preference given to BUSD students.

**Financial Implications:** Staff time

Contact: Jesse Arreguin, Mayor, 981-7100

**Items for Future Agendas**

- **Discussion of items to be added to future agendas**

**Adjournment**

**Action:** M/S/C (Droste/Hahn) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 12:04 p.m.

**Communications**

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

I hereby certify that this is the true and correct record of the Land Use, Housing and Economic Development Committee meeting of June 13, 2019.

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Deon Sailes, Assistant City Clerk

**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
REGULAR MEETING MINUTES**

**BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES**

**Thursday, June 20, 2019**

**10:30 AM**

2180 Milvia Street, 1st Floor – Cypress Room

Committee Members:

Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Lori Droste

**Roll Call:** 10:34 a.m.

**Present:** Hahn, Arreguin

**Absent:** Droste

**Public Comment on Non-Agenda Matters:** One speaker.

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**None.**

**Committee Action Items**

*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.*

**1. Berkeley Qualified Opportunity Fund**

**From: Councilmember Bartlett**

**Referred: March 19, 2019**

**Due: September 23, 2019**

**Recommendation:** That the City Council direct the City Manager to enter into a limited partnership agreement with an outside vendor investment company to create, market, and administer a qualified Opportunity Fund. The Fund will be governed by a Berkeley Opportunity Governance Body. The Berkeley Opportunity Governance Body will be privately managed, autonomous, and consist of an Investment Board, Advisory Board, and a Community Investment Board. Berkeley Opportunity Governance Body will leverage the Qualified Opportunity Fund to promote inclusive economic development, affordable housing, arts & culture, and sustainability. The Governance Body will prioritize projects that foster an equitable community such as: job creation, financial inclusion, arts & culture, and sustainable innovation. The Governance Body will work with the City to align technical expertise with municipal support.

**Financial Implications:** See report.

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

**Action:** No speakers. Item was withdrawn by Author, Councilmember Bartlett.

**2. 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**

**Referred: April 8, 2019**

**Due: October 7, 2019**

**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

**Action:** 2 speakers. Questions asked and discussion held. Item continued to the next meeting, July 18, 2019.

**3. Prioritizing Affordable Housing for Homeless**

**From: Mayor Arreguin**

**Referred: April 15, 2019**

**Due: October 7, 2019**

**Recommendation:** Refer to the Housing Advisory Commission to develop an ordinance to set aside 20% of affordable housing units for individuals experiencing homelessness, with preference given to BUSD students.

**Financial Implications:** Staff time

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** No speakers. Item continued to the next meeting, July 18, 2019.

### Unscheduled Items

*These items were not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

**4. Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender**

**Referred: June 11, 2019**

**Due: November 27, 2019**

**From: Councilmembers Harrison, Hahn, and Davila**

**Recommendation:** Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.

**Financial Implications:** None

Contact: Kate Harrison, Councilmember, District 4, 981-7140

### Adjournment

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

**Vote:** Ayes: Hahn, Arreguin; Noes: None; Abstain: None; Absent: Droste

Adjourned at 11:08 a.m.

I hereby certify that this is the true and correct record of the Land Use, Housing and Economic Development Committee meeting of June 20, 2019.

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Deon Sailes, Assistant City Clerk



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

**San Mateo County Second Unit Amnesty Program**  
**Attachment: Program Scope and Description**

1. Program Overview

The Second Unit Amnesty Program (“program”) will provide inspection, rehabilitation guidance, rehabilitation assistance, and registration of program completion for certain second units built without required permits. The goal of the program is to improve as many unpermitted second units as possible to basic standards of habitability, without displacing residents or removing units from the housing stock.

Key components of the program include:

- a. A 24-month amnesty period during which applicants may participate in the program and improve their units without incurring fines, penalties, or code enforcement action that typically results from unpermitted construction.
- b. The opportunity for applicants to explore the feasibility of meeting program requirements, in the initial application stages, without facing code enforcement action.
- c. County assistance in identifying necessary improvements and estimating the cost of such improvements, and in assessing the overall feasibility of rehabilitation for potential applicants.
- d. Other incentives for participation, including suspension of otherwise-applicable Planning and Building regulations and standards, and reductions in typical Planning and Building fees.
- e. Other potential financial assistance for eligible second units from Housing Department funding.
- f. Registration of units that successfully complete the program. The Planning and Building Department (“Department”) will issue a Second Unit Registration Record to such units, memorializing completion of the program and affirming the suspension of code enforcement related to issues identified and addressed through the program.

The program will provide multiple possible paths to program completion:

- a. If units can be feasibly brought into full compliance with all current standards, these units will be legalized and issued certificates of occupancy.
- b. If units can be brought into compliance with the standards in effect at the time they were built, such units will be considered “grandfathered” and inspected pursuant to the standards in effect at that time (except that such units will be required to meet those current standards that the Community Development Director (“Director”) determines are necessary to ensure health and safety).
- c. If units cannot feasibly achieve compliance with current standards or the standards in effect at the time they were built, the Director will have discretion to suspend application of certain Planning regulations and Building Code standards to the extent that the Director determines that such adjustments are consistent with appropriately maintaining health and life safety.

Second units that are renovated to meet these reduced compliance standards will receive a Second Unit Registration Record, which will provide a proof of final inspection and program completion. This record will include an inventory of the issues identified and improvements made within the parameters of the program. This record will assure participants that the Planning and Building Department will not pursue subsequent code enforcement action for issues identified or improvements made in relation to the program. However, issues arising after issuance of the Second Unit Registration Record, or issues related to other areas of the property, will not be exempt from potential code enforcement action.

- d. Unit inspections, and assistance with program guidance for applicants, will be performed by an external consulting firm retained for this purpose (“Amnesty Inspector”), rather than County inspectors. This approach is intended to separate the program from the County’s normal inspection and code enforcement processes, to reassure potential program participants that they will not face code enforcement action based on participation in the program, and to avoid potential conflicts for County inspectors.

Because the total number of unpermitted second units and the condition of those units is unknown, staff is unable to precisely identify the number and nature of units that may be included in the program, the nature of repairs required, and the specific incentives that may be most effective in encouraging participation. Therefore, staff proposes vesting the Director with a degree of flexibility in administering and making adjustments to the program as it proceeds.

2. Program Details

- a. Pilot Program. In advance of full program launch, the Planning and Building Department and the Housing Department will recruit 4 or 5 participants for a focused trial of the program. Program participation will be incentivized with a small cash grant (around \$1,000), which can be used however the applicants wish. The pilot program is intended to mirror, as closely as possible, the anticipated process and experience of full program participants, but with the applicants' understanding that they are participating in a test, and may experience unanticipated difficulties, delays, and challenges. The pilot will run for approximately five months, from May 2018 to September 2018.
- b. Program Term. The amnesty eligibility "window" or program term, following the pilot phase, will be 24 months. The program is intended to formally commence in September 2018.
- c. One-Year Check-In. While the Department will adjust and improve the program throughout its duration, the Department will also provide the Board of Supervisors a comprehensive report on progress approximately twelve months after the program begins. At that point, the Board of Supervisors could direct the Department to continue the program with no changes, make substantive changes, or terminate the program, depending on the outcomes of the first year.

If participants apply to the program prior to the end of the program term, they will be eligible to participate until completion of the Amnesty process (i.e., applications pending at the time of program termination will be processed to completion). This means that inspection, rehabilitation, and registration of units may continue for some time after the end of the eligibility window.

- d. Coastal Zone Applicability. Staff proposes to exclude units in the County's Coastal Zone from participation during the first year of the program, due to the complexity and ambiguity of issues related to potential Coastal Commission review or approval, Coastal Development Permit requirements, and other complications typical of development or redevelopment in the Coastal Zone. Depending on the outcomes of the first year of the program, the Board of Supervisors may direct staff to include the Coastal Zone during the second year.

- e. Unit Eligibility. Any second dwelling unit created without some or all necessary approvals will potentially be eligible for inclusion in the program, subject to the following conditions:
- One Unit Only. Only one unpermitted unit per property will be eligible for the program.
  - Residential Zoning. Units must be located in an “R” (Residential) Zoning District (R-1, R-2, R-3, R-E, R-H, etc.). Units in other zoning districts will not be eligible. As currently proposed, units in the Coastal Zone will not be eligible during the first 12 months of the program, regardless of zoning district, but may be eligible during the second year.
  - In-Service Date of Units. To be eligible for the program, units must have been built before January 1, 2017 and occupied prior to adoption of the authorizing ordinance.
  - Proof of Residential Use. Applicants must demonstrate, to the satisfaction of the Director, that the unit has at some point been used as a residence. Possible methods of proof include, but are not limited to:
    - o Utility bills or other bills and/or records, in the name of a tenant or resident other than the primary homeowner(s).
    - o Written lease agreements with current or former occupants.
    - o If the unit is currently occupied, current residents of the unpermitted unit may provide an affidavit attesting to residency.
    - o If the unit is not currently occupied, the owner of the unpermitted unit may provide an affidavit attesting to prior residential use, along with a supplemental affidavit confirming prior residential use from a third party, such as a neighbor or former resident.
    - o Other evidence demonstrating residential use, to the satisfaction of the Director.
- f. Compliance Standards. As described above, there are multiple paths to program completion, either in the form of full legalization, or issuance of a Second Unit Registration Record. Safety and compliance standards for units that cannot be fully legalized will be based on San Mateo County’s adopted Building Code and other standards, with modifications.

All units will be required to comply with the Fire Code and Environmental Health Code without modification (including standards for and proof of

availability of water, wastewater, plumbing, and septic service, and required fireproofing and defensible space clearance, among others). Building regulations related to seismic safety, ingress and egress, and ventilation will also apply without modification.

The Director will have the discretion to determine the Planning standards and/or Building Code standards that may be suspended or modified.

Examples of the type of Planning and Building standards that the Director may modify or suspend include:

- Zoning Regulations (such as unit placement, size, design, setbacks, height, and other standards).
- Energy efficiency standards.
- Insulation and heating requirements (to allow alternative means of meeting these standards).
- Window size requirements.
- Ceiling height requirements.
- Outlet placement requirements.
- Lighting fixture requirements.
- Other standards that can be modified without impacting the safety of the unit.

Upon the Director's determination of Planning and Building standards that may be modified or suspended for a given unit, the Planning and Building Department will identify the program standards applicable to the unit in a written form provided to the applicant, and will implement the standards throughout the application and inspection process.

- g. Fee Modifications/Waivers. Units participating in the program will be exempt from fees and penalties for unpermitted construction. At the discretion of the Director, applicants may also be eligible for reductions or waivers from normally applicable Planning and Building fees. All other standard fees will apply, including fees from the Environmental Health Division, the Department of Public Works, and any non-San Mateo County entities, such as water and sewer service providers.
- h. Code Enforcement/Inspection Limitations. The purpose of the program is to ensure the habitability of the second unit only. Inspections will not address or pursue other issues that might be identified on the property or in the

primary unit of an applicant, with the exception of issues that pose an immediate danger to life safety of the occupants or the surrounding community. The primary unit and surrounding property will not be inspected, except to the extent that such inspections are necessary to adequately evaluate the second unit. Information identified during the initial pre-application phases will also not be used for code enforcement purposes.

- i. Inspections. There will be a minimum of two inspections by the Amnesty Inspector for each participating second unit:
  - The first inspection will be an initial feasibility assessment, before the applicant formally commits to the program. This inspection will help identify those improvements that would be required to successfully complete the program. The Amnesty Inspector will provide a document that will help the applicant estimate necessary work and costs.
  - After the unit is renovated, the Amnesty Inspector will complete at least one additional inspection, to ensure that required work has been satisfactorily completed. At this point, a Second Unit Registration Record may be issued.
- j. Planning/Zoning Compliance; Second Unit Regulations Apply. The primary objective of the program is to achieve an appropriate level of habitability of the units; however, units will still be reviewed for compliance with Zoning Regulations. The County's revised regulations for second units (Chapter 22.5 of the County Zoning Regulations) will apply to all participating unpermitted second units in any "R" (residential) Zoning District.
- k. No Public Noticing or Hearings. Consistent with the approval process for new second units in the Second Unit Ordinance, the Planning and Building Department will not hold public hearings or provide public notice of any application for inspection, improvement, and registration of second units through the program.
- l. Application Tracking. Applications will be tracked as a new "Second Unit Registration" permit type in the Planning and Building Department permit system. Other normally required permits will be issued and tracked in the usual manner.
- m. Application Process.
  1. Self-Assessment. Applicants will be required to complete a unit self-assessment, using a tool provided by the Planning and Building Department, to help determine the potential work and cost required, feasibility of the improvements, and eligibility for the program.

2. Pre-Application Review. Applicants will be required to confer in person with the Planning and Building Department to further determine eligibility for the program, and refine the assessment of necessary work and cost. Applicants will be required to provide their completed self-assessment, as well as all information regarding the unit and the property required to effectively assess its eligibility.
3. Pre-Application Inspection. The Amnesty Inspector will inspect the unit and create a detailed assessment of work required to achieve compliance with applicable standards. The applicant will be provided with this guidance, which they may use to obtain cost estimates for the required work.

Steps 1, 2, and 3 are pre-application stages. During these stages, applicants may withdraw from the program without penalty, and information collected to that point will not be used for code enforcement purposes. However, if applicants choose to proceed to formal application (Step 4), they must commit to all necessary improvements, and may not withdraw without facing penalties for unpermitted construction, and normal requirements to fully upgrade, remove, or convert the unit. The pre-application stage is the last chance to withdraw from the program without penalty.

4. Formal Application. At this stage the applicant must formally apply for the program, complete all application materials, and pay any required application fee. Formal application commits applicants to the program, and they may not subsequently withdraw without penalty. After application, permitting and inspection will follow the typical path for a normal project, subject to the program standards determined by the Director, and with all inspections completed by the Amnesty Inspector. The Department will also establish a timeline for completion of improvements, and the applicant must adhere to the timeline or be subject to resumption of code enforcement activities.
5. Final Inspections. After improvements are complete, the Amnesty Inspector will conduct one or more inspections of the unit, to determine if the work has been satisfactorily completed.
6. Issuance of Second Unit Registration Record. Once the unit has been inspected and determined to be in compliance with program standards, a Second Unit Registration Record will be issued, memorializing the improvements and assuring that the Department will not pursue subsequent code enforcement actions related to issues identified or work completed within the purview of the program.
7. Program Outreach and Publicity. The Planning and Building Department and the Housing Department will create and distribute

materials publicizing and describing the program. Initial distribution will be to those areas of the unincorporated County that have been identified as most likely to have the largest numbers of unpermitted units, with possible expansion to broader areas as the program proceeds.

8. Materials and Resources; Policies and Procedures. The Planning and Building Department, in collaboration with the Housing Department, the County Manager's Office, the County Counsel's Office, and Baird & Driskell (consultants), will create and promulgate all necessary materials to implement the program, including self-assessment tools, application forms, program guidance documents, inspection forms, explanatory materials, forms and affidavits certifying eligibility, internal guidance documents, and all other necessary materials.
9. Management. The program will be managed by the Planning and Building Department, in collaboration with the Housing Department.
10. Staffing. Staffing needs are estimated at:
  - a. One part-time contract inspector (Amnesty Inspector) and program administrator, hired and managed by the Planning and Building Department.
  - b. One loan program administrator, hired and managed by the Housing Department, from funds already approved and allocated.
  - c. Existing Planning, Building, and Housing staff time to implement and manage the program: assumed to be no more than 1 FTE.
11. Program Reporting. The Planning and Building Department will report to the Board of Supervisors periodically, in writing, on the progress of the program, and will provide a comprehensive assessment at the 12-month check-in point.
12. Existing Notices of Violation. For second units eligible for the program that have existing notices of violation, the Director will have the discretion to temporarily suspend or wholly rescind the notice(s) of violation, and to waive any outstanding fines or liens that may be levied on the property related to such violations.
13. Rehabilitation Loans. The program will be administered in coordination with a Rehabilitation Loan Program provided by the Housing Department for eligible applicants, from an initial \$500,000 fund already dedicated and approved for this purpose.

**ORDINANCE NO. .**  
**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,**  
**STATE OF CALIFORNIA**

\* \* \* \* \*

**AN ORDINANCE ADOPTING THE SECOND UNIT AMNESTY PROGRAM TO INSPECT, REHABILITE, AND IMPROVE THE SAFETY AND HABITABILITY OF UNPERMITTED SECOND UNITS IN UNINCORPORATED SAN MATEO COUNTY**

**SECTION 1. RECITALS.** The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

**WHEREAS**, San Mateo County and the greater Bay Area are experiencing an extreme shortage of available housing units, with unaffordable housing costs for occupants at all income levels; and

**WHEREAS**, in California Government Code Section 65852.150, the Legislature declared that second units are “an essential component of California’s housing supply” because they “provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods” and that “homeowners who create [second] units benefit from added income, and an increased sense of security;” and

**WHEREAS**, San Mateo County recently revised its Second Unit Ordinance to facilitate and incentivize the production of second units; and

**WHEREAS**, as the County Board of Supervisors affirmed, in the adoption of that ordinance, that second units are an important and beneficial source of housing that plays an important role in addressing the County’s housing needs; and

**WHEREAS**, the County’s Second Unit Ordinance allows the creation of second units on parcels within the unincorporated County that contain, or will contain, a primary dwelling unit; and

**WHEREAS**, many such second units are created through the normal permitting and approval process; and

**WHEREAS**, a number of second units in the County have been created without obtaining required Planning, Building, and other permits and approvals; and

**WHEREAS**, those second units, while unpermitted, provide a source of housing for occupants in need of housing, often at a cost that is more affordable than other housing options; and

**WHEREAS**, while such second units help to address the housing needs, they may also present conditions that are inadequate with respect to safety or habitability; and

**WHEREAS**, such unpermitted units may also present safety risks to adjacent structures and properties; and

**WHEREAS**, bringing such second units into full compliance with all current planning, zoning, and building regulations may be infeasible in some cases due to cost, regulatory restrictions, or other constraints; and

**WHEREAS**, absent other measures, addressing such units that cannot be brought up to full compliance with all current regulations would require such units to be removed or converted to non-residential use; and

**WHEREAS**, demolition or conversion of these units would result in displacement of occupants and loss of housing units, thereby exacerbating the County's housing shortage; and

**WHEREAS**, this Board seeks to have the Planning and Building Department, the Housing Department, the County Counsel's Office, and the County Manager's Office collaborate to implement a "Second Unit Amnesty Program" ("program"), to allow applicants to remediate health and safety conditions in these unpermitted second units while relaxing certain existing permitting standards and processes, and without imposing the normally applicable fees and other penalties for unpermitted construction; and

**WHEREAS**, offering a process for safety and habitability improvements that provides an alternative to the otherwise-applicable permitting and legalization process, and that also avoids code enforcement action that might result in the removal or conversion of these unpermitted second units, can help improve the safety and habitability of such units while maintaining the units as part of the County's needed housing stock; and

**WHEREAS**, the program contemplates only rehabilitation, repair, and improvement of existing structures, and thus is categorically exempt from the California Environmental Quality Act ("CEQA") per Public Resources Code Section 21084 and CEQA Guidelines Section 15301, "Existing Facilities;"

**NOW, THEREFORE**, the Board of Supervisors of the County of San Mateo ordains as follows:

**SECTION 2. ACTION.** The Board of Supervisors authorizes and directs the Planning and Building Department and the Housing Department to proceed with the "Second Unit Amnesty Program" ("program") in the manner set forth in the Program Scope and Description attached to this Ordinance.

- The Board of Supervisors authorizes and directs the Planning and Building Department and the Housing Department, working in conjunction with the County Counsel's Office and the County Manager's Office, to implement the program in the manner set forth in this Ordinance, and authorizes the Planning and Building Department, in collaboration with the Housing Department, the County Counsel's Office, and the County Manager's Office, to make minor modifications to the program as deemed necessary to efficiently and effectively implement the program.
- The Board of Supervisors authorizes the Planning and Building Department to adopt such policies and undertake actions necessary to implement the program and achieve the program objectives.
- The Board of Supervisors authorizes the Community Development Director ("Director") to suspend and/or dismiss any code enforcement action imposed on those units that apply for and successfully complete the program.
- The Board of Supervisors authorizes the Director to waive all fees and penalties related to unpermitted construction for those units participating in the program.
- The Board of Supervisors authorizes the Director to waive, to the extent deemed appropriate, any and all fees set forth in the Planning Service Fee Schedule and Building Fee Schedule, to facilitate registration of unpermitted second units.
- The Board of Supervisors authorizes the Director to apply the County's Second Unit Ordinance (Zoning Regulations Chapter 22.5), to any unpermitted second unit in any "R" (residential) Zoning District, and to offer and apply additional exceptions to other Planning and Building regulations and standards beyond those included in the Second Unit Ordinance, at the Director's discretion.
- The Board of Supervisors directs the Planning and Building Department to report to the Board periodically on the progress of the program, and on the modifications to the program that have been deemed necessary by the Director.

**SECTION 3. SEVERABILITY.** If any provision of this Ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be invalidated.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall be effective thirty (30) days from the passage date thereof.

\* \* \* \* \*



Office of the Mayor

CONSENT CALENDAR

April 30, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín

Subject: Prioritizing Affordable Housing for Homeless

RECOMMENDATION

Refer to the Housing Advisory Commission to develop an ordinance to set aside 20% of affordable housing units for individuals experiencing homelessness, with preference given to BUSD students.

BACKGROUND

An estimated 1,000 individuals experience homelessness in Berkeley in any given day, not including people who couch surf or live in vehicles. Over the course of a year, it is estimated up to 2,000 people will experience homelessness in Berkeley. The homeless population has been growing by approximately 10% every two years. In a meeting of the 2x2 Committee (Council + School Board) in October 2017, it was reported that 291 students experience some form of homelessness, ranging from temporary housing with other families (231 students) to completely unsheltered (8).

In April 2017, the City Council voted to have staff develop the 1,000 Person Plan to create a plan to house 1,000 homeless residents by 2028. In the referral response to the 1,000 Person Plan, staff conclude that “the single largest “missing piece” in Berkeley’s efforts to end homelessness is permanently subsidized, affordable housing.” One of the four strategic goals proposed in the response is the need to accelerate the creation of affordable housing, with a focus on alleviating homelessness.

All homeless services providers in Alameda County must adhere to the Housing First policy. Major programs in Berkeley, such as the Hub and STAIR Center, prioritize Housing First by working to achieve permanent housing for the highest-needs clients. While following a Housing First model is essential in the task of ending homelessness, it is meaningless if there is no means of providing the housing. The high cost of housing, even with an extreme level of subsidies, means being able to maintain rent payments is unattainable for many. The average rent of a 2 bedroom unit in Berkeley is three times as much as in Salt Lake City, which is often cited as an ideal example for Housing First policies. The reality is as long as there is a lack of affordable housing in Berkeley and the Bay Area, the challenges of homelessness will continue.

RATIONALE FOR RECOMMENDATION

Prioritizing housing for the homeless is an important step in addressing the homeless crisis. Reducing and ultimately eliminating homelessness of BUSD students is crucial in creating an environment that is conducive for learning.

FINANCIAL IMPLICATIONS

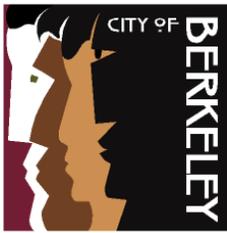
Staff Time

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100



Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
June 25<sup>th</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Hahn, and Davila  
Subject: Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender

RECOMMENDATION

Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with sustainability goals.

BACKGROUND

For many Berkeley residents, particularly those who are denied access to credit or are unable to obtain bank accounts, the ability to purchase goods and services is depends on the ability to pay in cash. According to the 2017 Unbanked and Underbanked Households Survey,<sup>1</sup> 17% of all African American households and 14% of all Latino households in the United States had no bank account. Cash is an accessible medium of exchange in America, and stores not accepting cash payment systematically excludes segments of the population that are largely low-income people of color. Cashless business models may also have significant detrimental impacts on young people who do not meet age requirements for credit cards, for the elderly (many of whom have not transitioned to credit and digital payment modes or have restricted their access to them to avoid credit scams), and for other vulnerable groups such as homeless and immigrant populations.

Recently, San Francisco<sup>2</sup> joined Philadelphia<sup>3</sup> and New Jersey<sup>4</sup> in requiring that all brick-and-mortar businesses in the jurisdiction accept cash. As of today, there are few stores

<sup>1</sup> <https://www.fdic.gov/householdsurvey/>

<sup>2</sup> <https://www.courthousenews.com/%EF%BB%BFsan-francisco-will-require-stores-to-accept-cash/>

<sup>3</sup> <https://6abc.com/politics/bill-looks-to-require-philly-businesses-to-accept-cash/5121309/>

<sup>4</sup> <https://www.wbgo.org/post/bill-would-require-nj-retailers-accept-cash-payments#stream/0>

in Berkeley that do not accept cash, and so now is a good opportunity to guarantee that these discriminatory practices are not permitted in our City.

CONTACT PERSON

Kate Harrison, District 4 510-981-7140

ATTACHMENT:

1: Proposed Ordinance Adding BMC Chapter 9.50

ORDINANCE NO. –N.S.

ADDING A NEW CHAPTER 9.50 TO THE BERKELEY MUNICIPAL CODE  
REQUIRING BRICK-AND-MORTAR BUSINESSES TO ACCEPT CASH

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

Section 1. That Chapter 9.50 of the Berkeley Municipal Code is added to read as follows:

**Chapter 9.50**

**LEGAL RIGHTS FOR LEGAL TENDER**

**Sections:**

**9.50.010 Findings and Purpose**

**9.50.020 Definitions**

**9.50.030 Brick-and-Mortar Businesses Required to Accept Cash**

**9.50.040 Exceptions**

**9.50.050 Enforcement**

**9.50.060 Severability**

#### **9.50.010 Findings and Purpose.**

The Council finds and declares as follows:

- A. The City of Berkeley is duty-bound to provide its community with transactional access to the goods and services provided by Berkeley's businesses. For many City residents, such as those unable to obtain bank accounts, the ability to engage in consumer transactions, including goods and services vital to health and safety, depends on the ability to pay with legal cash tender established by the federal government of United States.
- B. Cashless business models present significant detrimental impacts to vulnerable groups, especially low-income people, as they require financial institution-sponsored payment in credit or debit cards, or other non-cash forms of payment.
- C. Cash payment, in the form of the United States Dollar, has been the official legal tender since the country's founding in 1792 and shall be recognized by brick-and-mortar businesses alongside other forms of legal tender.
- D. It is the intent of the Council to ensure Berkeley's economy is inclusionary and accessible to everyone, including those who lack access to non-cash forms of payment.

#### **9.50.020 Definitions.**

- A. "Brick-and-Mortar Business" means any place of business operating at a fixed, permanent, physical premises. Brick and mortar business does not include any business operating from a vehicle or other mobile space (for example a food truck).
- B. "Cash" means United States currency, in the form of both paper Federal Reserve Notes and metal coins.

#### **9.50.030 Brick-and-Mortar Businesses Required to Accept Cash.**

- A. Except as set forth in 9.50.040, every Brick-and-Mortar Business within the City must accept payment in Cash, if offered, for any transaction involving the purchase of any tangible good and/or service.
- B. Except as set forward in 9.50.040, a Brick-and-Mortar Business may not charge a fee or place any other condition on its acceptance of Cash as required by subsection A.

#### **9.50.040 Exceptions.**

The provisions set forward in this Act shall not apply in cases of:

- A. Suspected counterfeit currency. A Brick-and-Mortar Business may refuse to accept Cash that the business reasonably suspects to be counterfeit.
- B. Large denominations. A Brick-and-Mortar Business may refuse to accept Cash in any denomination larger than a twenty dollar note, but shall otherwise accept any combination of Federal Reserve Notes and metal coins in connection with any transaction.

- C. Single transactions above \$5,000. Where a single transaction involves the purchase of one or more goods and/or services, the total price of which (including tax) exceeds \$5,000, a Brick-and-Mortar Business must accept Cash that is offered as payment for any amount up to \$5,000, but may refuse to accept Cash that is offered as payment for the remainder of the amount due.

**9.50.050 Enforcement.**

- A. The obligation to ensure that a Brick-and-Mortar Business complies with this Chapter 9.50 shall fall only on the business or, in the case that the owners of the business are responsible for a policy or practice causing a violation of this Chapter, on the owner or owners of the business. No employee or independent contractor working at a Brick-and-Mortar Business shall be held liable for any violation of this Chapter.
- B. Each transaction or attempted transaction in which a Brick-and-Mortar Business fails to accept Cash shall constitute a separate violation of this Chapter.
- C. Any violation of this Chapter shall be an infraction or misdemeanor punishable as hereinafter specified:
  - a. For a first violation, an infraction punishable by a fine not exceeding \$100 and not less than \$50.
  - b. For a second violation within a twelve month period, an infraction punishable by a fine not exceeding \$200 and not less than \$100.
  - c. For a third violation within a twelve month period, an infraction punishable by a fine not exceeding \$1,000 and not less than \$500.
- D. In addition to the penalties set forward in subsection (C), the court may order that a violator reimburse the City for all its costs, including attorney's fees incurred in investigating and prosecuting the enforcement action against that violator.

**9.50.060 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. –N.S.

ADDING A NEW CHAPTER 9.50 TO THE BERKELEY MUNICIPAL CODE  
REQUIRING BRICK-AND-MORTAR BUSINESSES TO ACCEPT CASH

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

Section 1. That Chapter 9.50 of the Berkeley Municipal Code is added to read as follows:

**Chapter 9.50**

**LEGAL RIGHTS FOR LEGAL TENDER**

**Sections:**

**9.50.010 Findings and Purpose**

**9.50.020 Definitions**

**9.50.030 Brick-and-Mortar Businesses Required to Accept Cash**

**9.50.040 Exceptions**

**9.50.050 Enforcement**

**9.50.060 Severability**

#### **9.50.010 Findings and Purpose.**

The Council finds and declares as follows:

- A. The City of Berkeley is ~~duty-bound~~ committed to providing its community with transactional access to the goods and services provided by Berkeley's businesses. For many City residents, such as those unable to obtain bank accounts, the ability to engage in consumer transactions, including goods and services vital to health and safety, depends on the ability to pay with legal cash tender established by the federal government of United States.
- B. Cashless business models present significant detrimental impacts to vulnerable groups, especially low-income people, as they require financial institution-sponsored payment in credit or debit cards, or other non-cash forms of payment.
- C. Cash payment, in the form of the United States Dollar, has been the official legal tender since ~~the country's founding in~~ 1792 and shall be recognized by brick-and-mortar businesses alongside other forms of legal tender.
- D. It is the intent of the Council to ensure Berkeley's economy is inclusionary and accessible to everyone, including those who lack access to non-cash forms of payment.

#### **9.50.020 Definitions.**

- A. "Brick-and-Mortar Business" means any place of business operating at a fixed, permanent, physical premises. Brick and mortar business does not include any ~~business operating transactions occurring in from~~ a vehicle or other mobile space (for example a food ~~truck~~ vending facility).
- B. "Cash" means United States currency, in the form of both paper Federal Reserve Notes and metal coins.

#### **9.50.030 Brick-and-Mortar Businesses Required to Accept Cash.**

- A. Except as set forth in 9.50.040, every Brick-and-Mortar Business within the City must accept payment in Cash, if offered, for any transaction involving the purchase of any tangible good and/or service.
- B. Except as set forward in 9.50.040, a Brick-and-Mortar Business may not charge a fee or place any other condition on its acceptance of Cash as required by subsection A.

#### **9.50.040 Exceptions.**

The provisions set forward in this Act shall not apply in cases of:

- A. Suspected counterfeit currency. A Brick-and-Mortar Business may refuse to accept Cash that the business reasonably suspects to be counterfeit.
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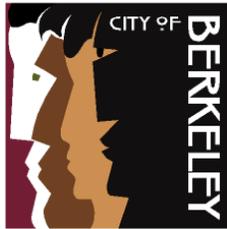
#### **9.50.050 Enforcement.**

- A. The obligation to ensure that a Brick-and-Mortar Business complies with this Chapter 9.50 shall fall only on the business or, in the case that the owners of the business are responsible for a policy or practice causing a violation of this Chapter, on the owner or owners of the business. No employee or independent contractor working at a Brick-and-Mortar Business shall be held liable for any violation of this Chapter.
- B. Each transaction or attempted transaction in which a Brick-and-Mortar Business fails to accept Cash shall constitute a separate violation of this Chapter.
- C. ~~Any violation of this Chapter shall be an infraction or misdemeanor punishable as hereinafter specified:~~ Where prompt compliance is not forthcoming, the City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary as specified below:
  - a. For a first violation, an infraction punishable by a fine not exceeding \$100 and not less than \$50.
  - b. For a second violation within a twelve month period, an infraction punishable by a fine not exceeding \$200 and not less than \$100.
  - c. For a third violation within a twelve month period, an infraction punishable by a fine not exceeding \$1,000 and not less than \$500.

#### **9.50.060 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the Mayor

ACTION CALENDAR

July 23, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Cheryl Davila, Kate Harrison, Rigel Robinson

Subject: Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance

RECOMMENDATION

Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.

BACKGROUND

Structural barriers faced by formerly incarcerated people continue to exist, with the stigma of incarceration blocking housing opportunities for many. A lack of access to stable housing increases the risk of recidivism, furthering the cycle caused by an inequitable criminal justice system. A 2019 survey by UC Berkeley's Goldman School for Public Policy found that a third of formerly incarcerated Alameda County residents had experienced homelessness or housing insecurity, and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record.

Multiple jurisdictions across the country, including regional neighbors such as San Francisco and Richmond, have passed a Fair Chance Ordinance, which prohibits landlords from prohibiting tenancy based on an individual's criminal history. The Berkeley Housing Element calls for the creation and enforcement of fair housing laws.

In October 2018, the City Council unanimously approved a referral to the City Manager and the 4x4 Committee to establish a Fair Chance Ordinance. The 4x4 Committee discussed this during their meetings in May and June 2019, in consultation with the Alameda County Fair Chance Housing Coalition, the Just Cities/the Dellums Institute for Social Justice, and various stakeholders. The Committee took the following action at its June 3rd meeting:

*M/S/C (Arreguín/Davila) Recommendation to Council to support the proposed Fair Chance Ordinance with the following changes: (1) eliminate the ADU exemption; (2) add an education and training component; (3) rather than having separate standards for "private" vs. "publically subsidized" housing, differentiate between "publically subsidized/inclusionary" housing (including privately owned below market rate units) and "private non-inclusionary" housing; (4) specify the level of detail (in addition to existing state law requirements) that must be provided in written explanations for*

*housing denials; (5) any provision (to the extent allowed by law) requiring certain housing providers that violate the ordinance to offer the next available unit to the applicant should state that the unit must be comparable (in rent, size, condition, amenities/accommodations, etc.) to the unit that was denied, and must be available within a reasonable timeframe. Carried 7-0-0-1. Absent: Tregub.*

The proposed Ordinance would prohibit landlords from advertising or using a policy that automatically excludes people with criminal histories from rental housing; asking about or requiring disclosure of someone's criminal history; or taking adverse action against an applicant or tenant based on his or her criminal history. Exceptions would be made to single-family dwellings where the owner occupies the dwelling, and for federally assisted housing complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history.

FINANCIAL IMPLICATIONS

Unknown

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Ordinance
- 2: Alameda County Fair Chance Housing Coalition Memo



**DRAFT**  
**The Ronald V. Dellums Fair Chance Housing Public Health & Safety Ordinance**  
**June 21, 2019**

**To be inserted in the Berkeley Municipal Code**

**I. Title**

**This Ordinance shall be known as the “Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.”**

**II. Authority**

**This Ordinance is adopted pursuant to the powers vested in the City of Berkeley under the laws and Constitution of the State of California and the City Charter.**

**III. Findings**

- (a) The City of Berkeley is committed to equity, dignity, and public health and safety.
- (b) The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- (c) Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- (d) Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness. Recent surveys reflect the direct correlation between housing barriers for formerly incarcerated people and homelessness. In a 2019 survey conducted by the Goldman School for Public Policy at UC Berkeley of formerly incarcerated Alameda County residents, one third of formerly incarcerated residents surveyed had experienced homelessness or housing insecurity and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record. Another 2019 Goldman Survey of unhoused people residing in East Bay homeless encampments found that 72% of encampment residents surveyed had been formerly incarcerated. In the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents).
- (e) Research and community engagement by the Alameda County Fair Chance Housing Coalition and Just Cities/the Dellums Institute for Social Justice have identified a policy gap in the city’s treatment of housing providers and their consideration of past convictions that has generated unfair and harmful barriers to housing for people with past convictions.

DRAFT

The Ronald V. Dellums Fair Chance Housing Public Health & Safety Ordinance  
June 21, 2019

- (f) Several jurisdictions, including Cook County, Illinois; Urbana, Illinois; Madison, Wisconsin; New York, New York; Richmond, California; San Francisco, California; Newark, New Jersey; and Seattle, Washington have passed policies that restore rights and remove barriers to housing for people with past criminal convictions.
- (g) On or about April 4, 2016, the United States Department of Housing and Urban Development issued the “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” in which it states that “Policies that exclude persons based on criminal history must be tailored to serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”
- (h) It has been documented by service providers providing assistance to formerly incarcerated residents in Alameda County and national researchers that significant first source housing for people coming out of incarceration is publicly subsidized affordable housing. {See Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, *Taking Stock: Housing, Homelessness and Prisoner Re-Entry* (2004); and *Every Door Closed: Barriers Facing Parents With Criminal Records*, CLASP and CLS Report (Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”).}
- (i) Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents. {See Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, *Taking Stock: Housing, Homelessness and Prisoner Re-Entry* (2004); and *Every Door Closed: Barriers Facing Parents With Criminal Records*, CLASP and CLS Report (Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”).}
- (j) The City of Berkeley’s Housing Element advances fair housing goals. The City Council in 2018 adopted a resolution supporting the development of a Fair Chance Housing policy.
- (k) Not having a home can prevent a formerly incarcerated person from getting a job, from visiting with his or her children, and from fulfilling other needs that are fundamental to reintegrating with community after incarceration.
- (l) Mass incarceration is a national crisis and restoring the rights of people affected by mass incarceration is a national priority.

DRAFT

**The Ronald V. Dellums Fair Chance Housing Public Health & Safety Ordinance  
June 21, 2019**

- (m) The United States incarcerates more than twenty-five percent (25%) of the world's prisoners while the country comprises only five percent (5%) of the world's population.
- (n) The City of Berkeley has shown a consistent interest in removing barriers faced by people coming home from incarceration, by adopting policies like the city's "Ban the Box" resolution, which removed barriers to employment.
- (o) According to the City of Berkeley's 2015-2023 Housing Element, there are a total of 25,696 rental housing units.
- (p) The Fair Chance Housing ordinance is rightly named after former Berkeley City Councilmember, Congressperson, Oakland Mayor, and global humanitarian Ronald V. Dellums who passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community organizer. At the age of 31, Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

As Berkeley City Councilmember from 1967 to 1970, Ron Dellums championed progressive values of anti-war, peace, and justice including opposition to the death penalty, development of the People's Park and opposition to the declaration of martial law by then Governor Ronald Reagan, and successfully forcing BART to put train tracks in Berkeley underground.

As Congressperson representing Berkeley and Oakland from 1970 to 1997, Ron Dellums was the first African American to represent the district and one of the first Democratic Socialists in Congress. He was elected to Congress as an anti-Vietnam War activist and a prominent member of President Nixon's infamous "enemies list." Yet, he rose to become Chair of the powerful House Armed Services Committee, while maintaining his integrity, activism, and principles. Decades ahead of the "mainstream," his initially lonely efforts against Apartheid in South Africa, and against the major nuclear war-fighting systems, all eventually became the official positions of the nation. He was a staunch critic of discrimination in the military, a key supporter of gay rights in the military, and consistently challenged the militarization of U.S. foreign policy, while advocating for improving the living conditions of military personnel. Ron Dellums also chaired the House DC Committee where he pushed for meaningful Home Rule and Statehood for the District of Columbia, and also focused on the problems in America's cities. He was equally well known for presenting comprehensive policy proposals including the Dellums Alternative Military Budget and the Congressional Black Caucus Alternative Budget. He authored comprehensive bills to provide free healthcare to all Americans, a national comprehensive housing program, and climate change legislation.

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After leaving Congress, Dellums led the development of his envisioned Marshall Plan for HIV/AIDS resulting in the federal PEPFAR programs which has saved 17 million lives in Sub-Saharan Africa, and the Dellums Commission on Boys and Men of Color, the precursor to President Obama's My Brother's Keeper initiative.

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. Ron Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in \$550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

By naming the Fair Chance Housing Ordinance after Ronald V. Dellums, we seek to inspire community youth to believe in their potential for greatness and government officials to lead with courage, integrity, compassion for the most marginalized, and big vision for justice.

**IV. Definitions**

For the purposes of this Article, the following words and phrases shall mean and include:

- (a) "Adverse Action" shall mean to fail or refuse to rent or lease Housing to an individual; fail or refuse to continue to rent or lease Housing to an individual; fail or refuse to add a household member to an existing lease for Housing; to reduce the amount or term of any tenant subsidy for Housing; to treat an individual differently from other applicants or tenants such as requiring higher security deposit or rent; or to treat an individual as ineligible for a tenant-based rental assistance program, including, but not limited to, the Section 8 tenant-based voucher program (42 U.S.C. Section 1437f).
- (b) "Affordable Housing" shall mean any Housing that (i) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 tenant-based voucher program (42 U.S.C.

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Section 1437f); or (ii) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including, but not limited to, the Inclusionary Housing Ordinance (BMC Chapter 23C.12), the Affordable Housing Mitigation Fee Ordinance (BMC Chapter 22.20), the State Density Bonus law (California Government Code Sections 65915-65918 and BMC Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (BMC 23E.20.080).

Commented [LS1]: Exception for Section 8 landlords with no other public subsidies.

- (c) "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including, but not limited to, the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider".
- (d) "Applicant" shall mean a person who seeks information about, visits or applies to rent or lease Housing, who applies for a tenant-based rental assistance program, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), who seeks to be added as a household member to an existing lease for Housing or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- (e) "Arrest" shall mean a record from any jurisdiction that does not result in a Conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense.
- (f) "Background Check Report" shall mean any report regarding an Applicant's Criminal History, including, but not limited to, those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or by any consumer reporting or tenant screening agency.
- (g) "Conviction" shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person placed on probation, fined, imprisoned and/or paroled.
- (h) "Criminal History" shall mean information transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains, a government agency or a Background Check Report, regarding: one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, sealed, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or

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processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

- (i) "Housing" shall mean any residential rental housing, building, or unit in the City of Berkeley, with the exception of single family dwellings where the owner occupies the dwelling as his/her principal residence.
- (j) "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including, but not limited to, the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".
- (k) "Inquire" shall mean engage in any direct or indirect action, written or oral, intended to gather information from or about an Applicant for Housing using any mode of communication, including, but not limited to, application forms, interviews, and Background Check Reports.
- (l) "Person" shall mean one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any political or civil subdivision or agency or instrumentality of the City.

**V. Use of Criminal History in Housing Decisions**

- (a) A Housing Provider shall not, at any time or by any means, inquire about, require disclosure of, or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- (b) It shall not be a violation of this Ordinance for a Housing Provider to comply with specific Federal or State laws that apply to the particular transaction at issue and that require the Housing Provider to treat an Applicant as ineligible based on Criminal History, *e.g.* Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Sec. 13663(a) and Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Sec. 982.553)), provided that if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:
  - (1) Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History; and
  - (2) Provided to the Applicant a conditional lease agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria.

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- (c) If and when the Housing Provider requests written consent from the Applicant to obtain a Background Check Report regarding Criminal History as permitted under subsection (V)(b) above, the Housing Provider must also request consent to share the Criminal History record with the Applicant and with the City of Berkeley (only for the purposes of addressing a complaint by an Applicant), and must provide the Applicant offer the Applicant an opportunity to provide evidence of inaccuracy of information in the Criminal History record.

**VI. Requirements for Housing Providers**

- (a) Housing Providers shall state in all solicitations or advertisements for the rental or lease of Housing that the Housing Provider will consider for tenancy any qualified Applicant regardless of the Applicant's Criminal History except in the very limited circumstances required by State or Federal law.
- (b) It shall be unlawful for any Housing Provider to produce or disseminate any advertisement related to Housing that expresses, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by State or Federal law.
- (c) The City shall publish and make available to Housing Providers, in English, Spanish, and Chinese and all languages spoken by more than five percent (5%) of the City's population, a notice suitable for posting that informs Applicants for Housing of their rights under this Ordinance. The notice shall contain the following information:
- (1) A description of the restrictions and requirements of this Act;
  - (2) Instructions for submitting a complaint to the City regarding a violation of this Ordinance; and
  - (3) Information about community resources available to assist an Applicant in connection with a violation of the Ordinance.
- (d) Housing Providers shall post the notice described in subsection (VI)(c) prominently on their application materials, websites and at any locations under their control that are frequently visited by Applicants.
- (e) Housing Providers shall comply with all applicable Federal, State, and Local fair credit reporting and tenant screening laws and regulations regarding the provision of written notices to Applicants, including, but not limited to, the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), the California Consumer Credit Reporting Agencies Act (California Civil Code Section 1785 et seq.), and the California Investigative Consumer Reporting Agencies Act (California Civil Code Section 1786 et seq.).
- (f) In addition to the requirements in subsections (VI)(a)-(e) above, Affordable Housing Providers shall also:

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(1) Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including applicable deadlines as set forth in subsection (VII)(d) below; a list of local legal services providers including contact information; and, if the Adverse Action is based in whole or in part on information in an Applicant's Criminal History, a copy of any Criminal History or Background Check Report obtained by the Affordable Housing Provider.

(2) Submit to the City an annual certificate of compliance with the requirements of this Ordinance in the form provided by the City.

**VII. Implementation and Enforcement by the City**

- (a) The Ordinance will take effect six months from the date of the passage of the Ordinance. In the six-month time period prior to implementation, Housing Providers are required to prepare and provide to all Applicants written policies compliant with this Ordinance that include, at a minimum, a description of the application process and of the City's complaint process.
- (b) The requirements of this Ordinance will apply to all new and existing Housing in the City. The terms of the Ordinance will be incorporated into all new and existing contracts between an Affordable Housing Provider and any entity providing Public Funding or that relate to the City's Below Market-Rate Rental Housing Program.
- (c) Within six months of the Ordinance's passage, the City Manager or designee is required to:
- (1) Promulgate appropriate regulations consistent with this Ordinance.
  - (2) Designate hearing officers and other necessary staffing for administrative review of complaints regarding violations of this Ordinance;
  - (3) Develop the timelines and procedures for complaints regarding violations of this Ordinance that include, at a minimum, the items described in subsection (d) below;
  - (4) Develop notices, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants;
  - (5) conduct outreach and prepare a plan to provide ongoing training about this Ordinance to Housing Providers;
  - (6) Prepare an annual implementation budget and identify funding sources; and
  - (7) Undertake other elements of effective implementation.
- (d) The City's administrative review process shall include, at a minimum, the following:
- (1) Any Applicant subject to an Adverse Action who believes the Adverse Action was based on a violation of this Ordinance shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will

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complete its administrative review of any complaint, including the hearing and issuance of a final decision, within 90 days of submission of the complaint.

(2) During the City's administrative review of a complaint regarding an Adverse Action, the parties shall have the following rights: to have an advocate of their choosing to represent them at the hearing; to present any relevant witnesses and evidence and the evidence will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding; to examine the other party's evidence and to rebut and cross examine any witnesses; to request a translator; to request any reasonable accommodation needed to participate in the hearing process; and to record the hearing.

(3) Where the City determines that a violation of the Ordinance has occurred, the City shall issue a determination and order any appropriate relief under this Ordinance.

- (e) In addition to providing an administrative review process for complaints, the City is required to take appropriate steps to enforce this Ordinance and coordinate enforcement, including by investigating any possible violations of this Ordinance.
- (f) The City Manager or designee shall provide annual public reports to the City Council on the implementation and enforcement of this Ordinance. The annual reports shall include, at a minimum: information from the annual compliance certifications submitted by Affordable Housing Providers; the number of complaints filed with the City regarding violations of this Ordinance and the outcomes of such complaints, the number of notices filed with the City regarding private court action brought under the Ordinance and the outcomes of such court proceedings.

**VIII. Private Right of Action**

- (a) Applicants subject to Adverse Actions in violation of this Ordinance shall have a private right of action to enforce the Ordinance and shall, if they prevail, be entitled to: statutory damages equal to the greater of actual damages or three (3) times the amount of the monthly rent that the Housing Provider charged for the unit in question at the time of the violation; attorney's fees and costs of action; and punitive damages. This private right of action does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- (b) An award of actual damages under this Ordinance may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Ordinance.
- (c) In addition to any other award of damages or grant of injunctive relief, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to The City of

Commented [LS2]: This is from Berkeley's Source of Income ordinance.

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Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of the Ordinance. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Ordinance committed against a person who is disabled within the meaning of California Government Code section 12926, *et seq.*, or aged sixty-five (65) or over.

Commented [LS3]: From Berkeley's TPO

- (d) An attorney who represents an Applicant in litigation against a Housing Provider brought under this Ordinance shall provide notice to the City within ten (10) days of filing court action against the Housing Provider, and inform the City of the outcome of the court action within ten (10) days of any final judgment.

**IX. Remedies**

- (a) Any person who commits an act in violation of this Ordinance may be enjoined therefrom by any court of competent jurisdiction.
- (b) Where the City determines through administrative review of a complaint or otherwise that a violation of the Ordinance has occurred, the City shall, in order to vindicate the public interest, assess against the Person found to have violated the Ordinance a fine payable to The City of Berkeley in the amount of the lesser of \$1,000 or the maximum amount permitted under State and Local law.

Commented [LS4]: The amount of the fine was raised as a concern at the meeting with Rent Board staff. This issue needs input from the City Attorney.

**X. Retaliation Prohibited**

- (a) No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.
- (b) No person shall take any Adverse Action against any person because the person has exercised in good faith the rights protected under this Ordinance. Such rights include but are not limited to the right to fair chance housing and regulation of the use of criminal history in housing by this Ordinance; the right to make inquiries about the rights protected under this Ordinance; the right to inform others about their rights under this Ordinance; the right to inform the person's legal counsel or any other person about an alleged violation of this Ordinance; the right to file an oral or written complaint with the City for an alleged violation of this Ordinance; the right to cooperate with the City in its investigations of this Ordinance; the right to testify in a proceeding under or related to this Ordinance; the right to refuse to participate in an activity that would result in a violation of City, State, or Federal law; and the right to oppose any policy, practice, or act that is unlawful under this Ordinance.
- (c) No person shall communicate to a person exercising rights protected in this Ordinance, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Applicant or a member of

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their household to a Federal, State, or Local agency because the Applicant has exercised a right under this Ordinance.

(d) There shall be a rebuttable presumption of retaliation if a Housing Provider or any other person takes an Adverse Action against a person within 90 days of the person's exercise of rights protected in this Section. The Housing Provider may rebut the presumption with clear and convincing evidence that the Adverse Action was taken for a permissible purpose.

(f) The protections afforded under this Ordinance shall apply to any person who mistakenly but in good faith alleges violations of this Ordinance.

(g) A complaint or other communication by any person triggers the protections of this Ordinance regardless of whether or not the complaint or communication is in writing or makes explicit reference to this Ordinance.

**XI. Records to Be Maintained**

(a) Housing Providers must maintain a record for each Applicant that includes any Criminal History obtained regarding the Applicant, and the determination of eligibility following any review by the Housing Provider of such Criminal History.

(b) Housing Providers shall maintain full and complete documentation of their compliance with this Ordinance.

(c) Housing Providers shall

- (1) Permit the City to have access to Housing Provider records for the purpose of making an audit, examination or review of performance data pertaining to this Ordinance; and
- (2) Maintain such records for a period of at least three years.

**XII. Confidentiality**

To the fullest extent permitted by law, any information pertaining to an Applicant's Criminal History obtained in conjunction with the rental, lease, ownership, or sublease process shall remain confidential and shall only be shared with individuals who have a need to know for the purpose of evaluating an Applicant's application for Housing.

**XIII. Severability**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

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**XIV. Effective Date**

This Ordinance becomes effective six (6) months after its final passage and adoption.

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Alameda County  
Fair Chance Housing Coalition

June 20, 2019

**To: City of Berkeley 4x4 Joint Task Force Committee on Housing**

**Fr: The Alameda County Fair Chance Housing Coalition: Policy and Outreach Leaders: Ms. Anita Wills** with Essie Justice Group; **Ms. Sherry** with OCO, Our Beloved Community Action Network; **Taqwaa Bonner** and **Katie Dixon** with All of Us or None; **Coalition Advisors: Tamisha Walker** with the Safe Return Project, and **Deborah Thrope** and **Lisa Sitkin** with the National Housing Law Project. **Coalition Staff: John Jones III & Margaretta Lin** with Just Cities and the Our Beloved Community Action Network

**Re: Updates on Proposed Policy Terms on Fair Chance Housing proposal**

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We remain grateful for your partnership to remove housing barriers faced by formerly incarcerated residents. The discussions we have had with you in Committee and individual meetings have helped us refine what we believe will be the nation's best Fair Chance Housing policy. In addition, we have had invaluable feedback from the Rent Board Executive Director and lawyers, and a former Deputy City Attorney for Oakland. In light of their feedback regarding implementation and enforcement considerations, we have made further refinements to the proposed Fair Chance Housing ordinance.

We look forward to working with Mayor Arreguin and the Berkeley City Attorney's office on any further modification needs to the proposed ordinance.

**COALITION POLICY GOALS:**

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that 1) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and 2) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also helps Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.



**MAIN PROPOSED POLICY TERMS:** the following is a summary of the proposed fair chance housing policy for your consideration.

Housing Provider	Criminal Background Check	Due Process	Reporting to City	Potential Remedies for Violations
<b>Private (Non-Affordable Housing Provider)</b>	No	City Complaint Sue in Court	None	City complaint w/ fine OR City negotiation of next unit. Court action w/ damages or injunctive relief.
<b>Publicly Subsidized, BMR &amp; Not HUD Funded</b>	No	City Complaint Sue in Court	Annual certification of compliance	City complaint w/ fine OR City negotiation of next unit. Court action w/ damages or injunctive relief.
<b>HUD Funded</b>	After conditional offer, can check on 2 crimes per HUD rules	City Complaint Sue in Court	Annual certification of compliance	City complaint w/ fine OR City negotiation of next unit. Court action w/ damages or injunctive relief.

- ❖ **NAMED AFTER RON DELLUMS:** The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights.
- ❖ **PUBLIC POLICY RATIONALE:** California State law may pre-empt local jurisdictions from enacting local housing anti-discrimination laws. However, local jurisdictions are able to enact public health and safety laws. There is substantive and compelling research, data, and lived experience demonstrating the direct public health and safety impacts from restricting the access of formerly incarcerated residents to private and publicly subsidized rental housing. In addition, research and data also shows the direct connection between housing barriers for formerly incarcerated residents and homelessness.

**CRIMINAL BACKGROUND CHECKS:**

- The proposed ordinance for Berkeley prohibits ALL landlords from:
  - (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
  - (b) Asking about or requiring disclosure of someone’s criminal history, or
  - (c) Taking adverse action against an applicant or tenant based on his or her criminal history.
- Landlords also have to include in all advertising and application materials the information that they are not allowed to ask about criminal history or take adverse action on the basis of criminal history except in very limited circumstances.



- **Exceptions:**
  - (a) **Single-family dwellings where the owner occupies the dwelling** are exempt.
  - (b) **Landlords of federally assisted housing** have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or making meth on a federally assisted housing property).

## **IMPLEMENTATION & ENFORCEMENT:**

### **1. Private Rental Housing Application & Complaint Process**

- **Denial:** If an applicant has been denied housing, they are entitled to any notices required by state and federal law and can also request that the landlord provide a reason for the denial.
- **Due Process, Remedies & Enforcement—See below**

### **2. Affordable Housing Rental Housing Application and Appeal/Complaint Process**

- **Definition:** any housing provider receiving direct local, county, state, or federal subsidy, including **private developers with units in Berkeley’s BMR program**. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because Berkeley’s source of income anti-discrimination law potentially makes every landlord a Section 8 landlord.
- **Conditional Offer, Background Check, and Denial:** For federally funded housing providers, after a conditional offer of housing has been provided, the housing provider may conduct a background check if required by federal requirements. The housing provider must provide in writing the grounds for denial of housing and state whether a criminal records background check was conducted and, if so, what the results were of the check.
- **The Viability of Holding Units Open:** Our original proposal required that Affordable Housing providers hold their units open up to 30 days if an applicant files a complaint within 14 days of receiving a denial. However, after important information from Rent Board staff, we realize that it is not possible for someone to file a complaint with the City and to both hold a hearing and have a determination issued within 30 days. Given this reality and the potential impact to other applicants if we required that housing units be held open for 60 or 90 days, the Coalition has decided to remove the



requirement of holding units open. Instead, for complaints filed with the City and a City determination of a violation, we strongly encourage the City to waive the fine and instead negotiate for the next available comparable unit as the fair remedy.

- **Annual Reports:** the housing provider must submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

### **3. Due Process, Remedies and Enforcement for Both Private & Publicly Subsidized Rental Housing**

- **Complaint Process:**
  - The applicant would have the right to file a complaint with the City's Rent Board within **one year** from the date of application for housing.
  - The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.
- Similar to current Berkeley tenant law, **private right of action and attorney's fees** for the prevailing applicant are provided.
- Berkeley's current **civil penalty system** is also integrated into the proposal.
- **Landlord retaliation** is explicitly prohibited.
- Landlords are required to maintain **documentation** of any conviction history that they obtain on applicants for at least three years.
- **Effective date** of the ordinance is 6 months after its adoption.
- The City Manager or their designee would provide an **annual status report** to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

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**CONTACT:** John Jones III, Community + Political Engagement Director, Just Cities, [john@justcities.work](mailto:john@justcities.work); Margaretta Lin, Managing Director, Just Cities, [margaretta@justcities.work](mailto:margaretta@justcities.work)