

Office of the City Manager

March 17, 2016

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Subject: Strategy to address pending Housing Element referrals

On May 26, 2015, the City Council forwarded a referral to the Planning Commission which asked for consideration of 17 revisions to the 2015 – 2023 Housing Element (HE). Please see **Attachment 1** for the complete referral. An update to the Housing Element was adopted by the Council on April 28, 2015, and the new referral requested that the additional potential revisions be considered in a future HE update.

On November 18, 2015, the Planning Commission considered an approach for addressing the HE referrals. The Commission observed that most of the policies which the HE referral listed were also slated for separate Commission consideration, within the context of pending Zoning Amendment referrals. **Attachment 2** to this memo presents the entire Planning Commission report. Examples of policies referenced in both the May 26 HE referral as well as in separate Zoning Amendment referrals include:

- Limiting the impacts of Short Term Rentals on existing housing stock
- Limiting demolition of rent-controlled units
- Legalizing unpermitted Accessory Dwelling Units (ADUs)
- Setting the Affordable Housing Fee for new and replacement units.
- Strengthening the Rental Housing Safety Program
- Creating family-friendly housing and additional student housing
- Adopting anti-displacement regulations

The policy directions from the HE referral may eventually be selected by the Planning Commission and Council after thorough consideration. The discussion of these broader principals (HE Referral) would benefit from seeing the interaction between the policy direction and its outcome in Zoning Ordinance language (Zoning Amendment Referrals). Such an approach would draw together the specific zoning amendment referral with that portion of the HE referral which best applies. Accordingly, on November 18, 2015 the Planning Commission approved a policy approach to the HE referrals which will bring proposed policy revisions to Council on a stand-alone basis, in the context of Zoning amendments needed to effectuate any policy changes. For example, a Planning Commission recommendation for a draft ordinance regarding

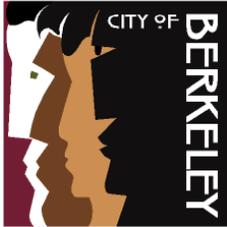
Short-Term Rentals will be presented to the Council in the near future. The Commission found the references within the May 26 HE referral to potential STR policies to be instructive in directing its review and ultimately its recommendation to the Council.

Land Use Planning staff and the Planning Commission concur that this kind of interactive approach, in which policies suggested for consideration in the May 26 HE referral are brought forward to Council with responses to stand-alone Zoning Amendment referrals, is the most resource efficient approach to addressing referrals on the Commission's workplan, and ultimately strengthens the recommendations which are brought forward for Council consideration.

Attachments:

1. Council Referral, May 26, 2015
2. Planning Commission staff report, November 18, 2015 (without attachments)

cc: Gil Dong, Interim Deputy City Manager
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager
Ann-Marie Hogan, City Auditor
Eric Angstadt, Planning and Development Director
Carol Johnson, Land Use Planning Manager



Jesse Arreguín
City Councilmember, District 4

CONSENT CALENDAR
May 26, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Referral to City Manager: Amendments to Berkeley Housing Element 2015-2023

RECOMMENDATION:

Refer to the City Manager the attached amendments to the 2015-2023 Berkeley Housing Element for review and to include in a future update to the Housing Element.

BACKGROUND:

On April 28, 2015 the City Council voted unanimously to adopt the 2015-2023 Housing Element. However, Planning staff has stated that subsequent amendments will likely be made to the Housing Element this year to reflect policy changes (i.e. local Density Bonus and changes in the Affordable Housing Mitigation Fee) and staff can consider additional amendments and include them in the next set of revisions, if they are referred by the City Council to the City Manager.

During Planning Commission public hearings on the draft Housing Element, numerous comments were made orally and in writing suggesting amendments to address critical housing issues including: impact of Short Term Rentals on the rental housing stock; the demolition of rent-controlled units; legalizing unpermitted accessory units; setting the Affordable Housing Fee at an appropriate level to generate additional revenue to the Housing Trust Fund; strengthening the Rental Housing Safety Program; creating family-friendly housing and additional student housing; and adopting anti-displacement policies.

Quoting the February 18, 2015 staff report to the Planning Commission (emphasis **bolded**):

*“The Housing Element is a State-mandated policy document that identifies existing policies, programs, **and opportunities for improvement in housing production and availability at all levels of affordability.**”*

*The Housing Element is a policy level document, not a regulatory one (i.e. it does not include ordinances). As such, it is not intended to bind the City to a particular set of rules governing or protecting certain rights. **The Housing Element opens opportunities to improve on existing programs, expand to new programs, and***

allow for legislative change that supports the policy goals of the City. It is the basis from which regulatory ideas, new programs, and discussions come.”

Our community is facing an affordable housing crisis. Rents and home prices continue to skyrocket and there are a number of challenges we face in the area of housing. Since the Housing Element is the main housing policy document for the city, and “*it opens opportunities to improve on existing programs, expand to new programs, and allow for legislative change that supports the policy goals of the City*” it is important that the document reflect the existing challenges our community faces in preserving and expanding housing at all income levels and for all populations, and include policies to preserve, improve and expand our supply of housing, with particular emphasis on low-income populations.

Failure to amend our Housing Element to reflect these realities and to propose policy solutions is a missed opportunity.

FINANCIAL IMPLICATIONS:

Minimal; staff time involved with reviewing the proposed amendments and developing policy language to include in a future update to the Housing Element.

CONTACT PERSON:

Jesse Arreguin, City Councilmember, District 4 (510) 981-7140

Attachments:

1. Proposed amendments to 2015-2023 Housing Element
2. Original language of sections of Housing Element proposed to be amended

Proposed Amendments to 2015-2023 Berkeley Housing Element

1- Introduction , Section B "Regulatory Framework"

Add the following "Required Component" as a key protection for vulnerable populations, especially limited income, disabled, and senior populations.

11. Ensure rent control and/or other tenant protections for all tenants, including vulnerable populations.

Page 81-82, 5 - Objectives, Policies and Actions

A. Objectives

1. All Berkeley residents should have access to decent housing at a range of prices and rents in pleasant neighborhoods that meet standards of quality. Berkeley residents should have access to quality housing at a range of prices and rents. Housing is least affordable for people at the lowest income levels, and City resources should focus on this area of need.

2. ~~Maintenance of Existing Housing~~ Housing Maintenance, Improvement and Demolition Control

Existing Housing should be maintained, and improved, and fully utilized. Enforce code requirements to ensure that existing housing meets health and safety standards. Enforce existing laws to ensure that existing units are not illegally removed from the housing market. Preserve rent-controlled units from demolition unless existing tenants are protected and each demolished unit is mitigated by replacement with a permanently affordable units, or through payment of in-lieu fees. Improvements that will prepare buildings for a major seismic event should be encouraged.

5. Relationships with Other Institutions

The University of California and other institutions should take responsibility for the housing demand they generate which creates additional pressure on the private housing market in Berkeley. By doing so, they would help avoid causing or increasing housing problems for other Berkeley residents. The City should continue working with the Berkeley Housing Authority and the University of California to address affordable housing needs.

6. Fair and Accessible Housing

~~The City should continue to enforce fair housing laws and encourage housing that is universally accessible.~~ Fair and accessible housing is the law. All residents should have equal access to housing opportunities, to necessary accommodations in their housing, to adequate financing and insurance, and to purchase, sell, rent, and lease property. The City should also encourage housing that is universally accessible.

7. Public Participation

Berkeley should continue to improve the role of neighborhood residents and community organizations in housing and community development decision-making. This includes thorough and timely notification to all interested parties.

B. Policies and Actions

Page 82, H-1 Extremely Low, Very Low, Low and Moderate Income Housing
Increase the number of housing units affordable to Berkeley residents with lower income levels. *(Also see Land Use Policies LU-18 and LU-25)*

Actions:

- A. Continue to support and implement programs to encourage below-market-rate housing with incentives for affordable housing development including, but not limited to, density bonuses (under state law and local density bonuses), fee deferrals, property tax waivers, and below-market-rate development loans.

- E. Maintain and publicize a consolidated list of below-market-rate units within the City to serve as a resource for lower-income households. Consider contracting with a qualified non-profit agency to receive and screen applicants for below-market-rate units and maintain a waiting list of eligible households for non-profit developers to select prospective tenants from.

- F. Establish a schedule of periodic inspections of inclusionary units to ensure they meet health and safety codes, and monitoring of eligibility of tenant households. Consider establishing an annual monitoring fee to address the costs of monitoring and inspections of below-market-rate units.

- G. Allow increases in density in specific areas of the city solely to promote the production of below market rate housing.

Page 83, Policy H-2 Funding Sources

Aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs. *(Also see Land Use Policy LU-28)*

- C. Continue to charge housing mitigation fees applicable to residential projects and update periodically as the housing market shifts. Housing mitigation fees should be priced so as to effectively mitigate the needs created by new market rate development, and also indexed to building costs or CPI Rent Index. In addition, the on-site affordable housing requirement should be reviewed to determine whether to increase the required percentage of units to reflect market conditions.

Page 84, Policy H-5 Rent Stabilization

Protect tenants from large rent increases, arbitrary evictions, hardship from eviction, and the loss of their homes.

Actions:

- A. Support the Rent Stabilization Program and enforcement of the Rent Stabilization and Eviction for Good Cause Ordinance in order to protect tenants from large rent increases and loss of their homes.

B. Continue to oppose measures that weaken the City's autonomy to stabilize rents and support the repeal of the vacancy decontrols of the 1995 Costa-Hawkins Rental Housing Act. ~~measures that increase the City's autonomy to stabilize rents.~~

C. Support state legislation consistent with the original language of the Ellis Act promoting rental housing conservation.

2. Maintenance of Existing Housing

Policy H-9 Code Requirements and the Rental Housing Safety Program

Enforce code requirements to ensure that existing housing meets health and safety standards.

Actions:

- A. Continue to provide information and outreach to property owners and tenants regarding applicable regulations.
- B. Continue and improve the City's program of periodic inspection of rental units for health and safety code compliance, including cyclical inspections of units or prioritizing inspections for units that have a history of complaints of code violations.
- C. Consider improvements to the Rental Housing Safety Program including permitting anonymous code enforcement complaints, and requiring property owners to submit their completed Schedule A Checklist to the city to verify compliance with mandatory inspection requirements.

New Policy H-12 Short Term Rentals

Establish policies to prevent the conversion of tenant-occupied rental units into short term rentals.

- A. Require Short Term Rentals to pay the city's Transient Occupancy Tax.

Policy H-13 Second Units

Encourage and facilitate addition of second and small "in-law" units on properties with single-family homes, but not in areas with limited parking and vehicular access or that are especially vulnerable to natural disaster. (Also see Disaster Preparedness and Safety Policy S-16)

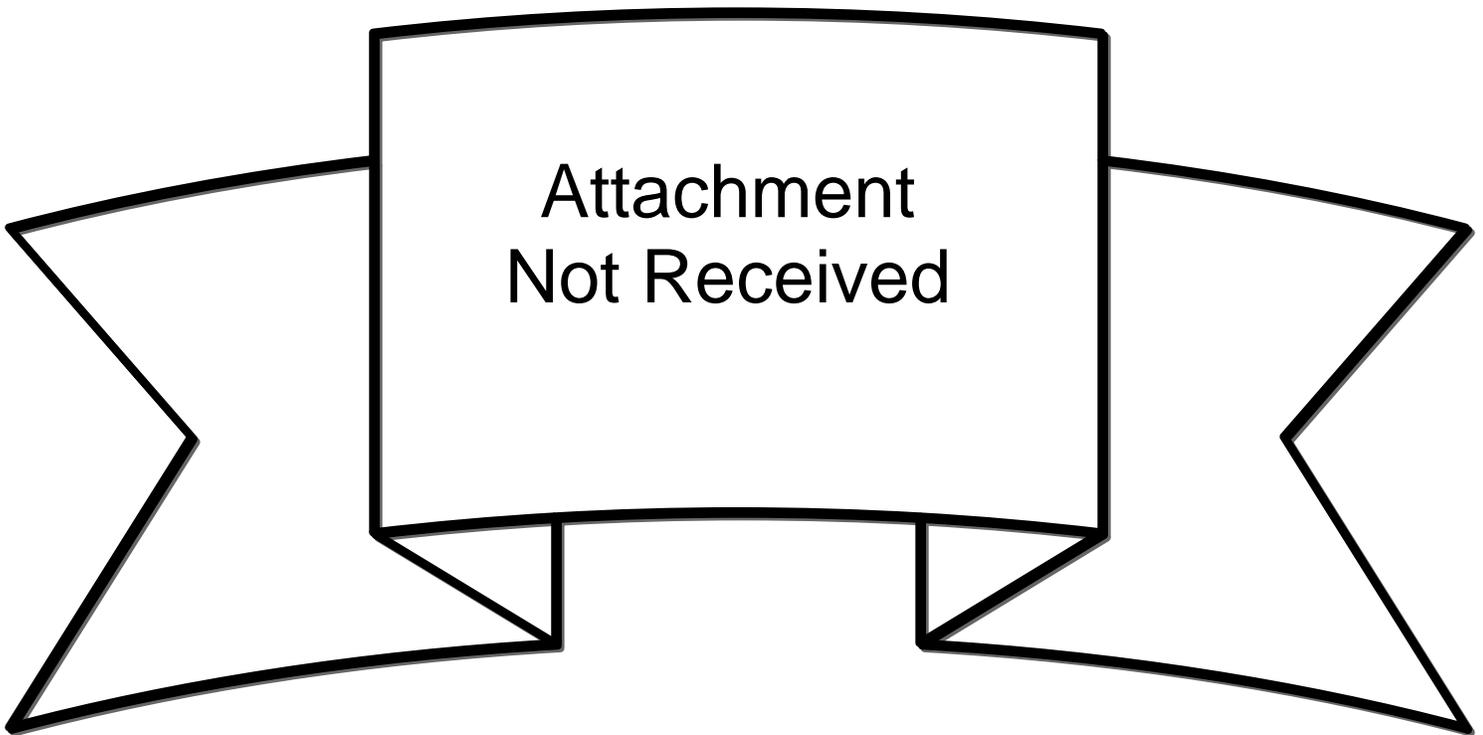
Actions:

- C. Consider establishing policies to legalize existing unpermitted accessory dwelling units, to ensure that existing units meet health and safety requirements, and tenants are covered under existing rent and eviction controls.

Policy H-14 Demolition

Discourage the demolition of housing units unless the structure is hazardous or repair is infeasible, or the project will replace the units demolished with permanently affordable units on a one-for-one basis, or through payment of in-lieu fees. In addition, existing tenants should be protected including the right-of-first refusal of new units at the

property at the rent previously paid and covered by rent and eviction protections. Insure that the replacement project will result in the same or larger number of housing units in conformance with existing zoning regulations.



Attachment 2 to this report has not been received from the submitting office.

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The City of Berkeley, City Council's Web site:
<http://www.cityofberkeley.info/citycouncil/>



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: November 18, 2015

TO: Members of the Planning Commission

FROM: Kelly Cha, Assistant Planner
Alex Amoroso, Principal Planner

SUBJECT: Review of Housing Related Referrals

INTRODUCTION/BACKGROUND

The City Council has provided referrals on a range of housing subjects. The majority of the referrals focus on zoning amendments, which hold policy implications. One referral in particular (Attachment 1) proposes changes to the recently adopted Housing Element (HE) 2015-2023 policies and goals. There is overlap among the zoning amendment referrals with the HE referral suggesting specific policy direction for several of them.

Attachment 2 is a compilation of the housing related referrals, providing dates referred and general content for each. The order and timing of response to the referrals are unclear due to their overlapping nature, the anticipated nexus study results, and the time commitment required for each referral. Recently, the Council has sent two additional referrals on housing matters, which are described below. Staff is analyzing the series of existing and new referrals to assess which might be approached first.

The City has engaged a consultant to provide necessary nexus studies, so that staff, Commissions, and the Council can understand the cost implications of several referrals. In addition, the nexus studies would offer the legal underpinnings for setting costs for replacement of housing units. The initial nexus study provides a cost range for housing units resulting from new development. The second nexus study will focus on the cost of replacing units lost to demolition. Council direction based on the nexus studies results will provide a path for further Commission consideration of several referrals. The Council may take the opportunity to modify some of the referrals in light of their outcomes.

The purpose of this report is to identify that there is a relationship of the policy/HE referral to the others. Staff asks that the Commission confirm the staff approach of matching the HE policy issues with the zoning amendment referrals is a useful and acceptable method to move forward. Additionally, the report offers suggestions for consolidating the zoning referrals where possible with the HE change referral.

Recent Housing Referrals

In July 2015, the Planning Commission Ad Hoc Subcommittee placed a lower priority on housing referrals. Since that time, the City Council has referred additional housing related matters, including:

- **Green Affordable Housing Package (Attachment 3a)**
The referral, received approved by Council on October 27, 2015, asks for the Planning Commission and Staff to consider proposing solutions and/or an implementation plan using the Council's recommendations to (1) designate units and funding for affordable housing by prioritizing housing over parking spaces in new development, and (2) remove the structural and procedural barriers to create more housing, to encourage affordable housing development.
- **Streamlining Affordable Housing Projects (Attachment 3b)**
This referral suggests another route to encourage and expedite affordable housing development. The referral, received on October 27, 2015, asks the Commission to consider an ordinance that would streamline the permit process for housing projects, which include at least 20 percent of units at 50% Area Median Income (AMI), and with a majority or more affordable units.

DISCUSSION

The list of referrals (Attachment 2) includes a brief description of each referral. This discussion focuses on the interaction between the relationships and the purpose for staff's proposed method to address the policy and zoning implications together.

On May 26, 2015, City Council referred for consideration proposed amendments to the recently adopted 2015-2023 HE. The referral suggests amendments to HE policies and goals particularly on the following issues:

- Impact of Short Term Rentals on the rental housing stock
- Demolition of rent-controlled units
- Legalizing unpermitted accessory units
- Setting the Affordable Housing Fee at an appropriate level to generate additional revenue to the Housing Trust Fund
- Strengthening the Rental Housing Safety Program
- Creating family-friendly housing and additional student housing
- Adopting anti-displacement policies

A number of these issues inter-relate with the zoning amendment referrals noted in the Introduction. For example, one of proposed policies asked to be added to the 2015-2023 HE is on Short-Term Rentals (STR), and the proposed policy reads as follows:

*New Policy H-12 Short Term Rentals
Establish policies to prevent the conversion of tenant-occupied rental units into short term rentals.*

A. Require Short Term Rentals to pay the city's Transient Occupancy Tax.

At the Commission meeting on September 16, 2015, staff introduced this proposed policy language and suggested that it be discussed in the context of the Draft STR Ordinance.

Similarly, another policy related to demolition of existing building is proposed, especially related to housing units:

Policy H-14 Demolition

Discourage the demolition of housing units unless the structure is hazardous or repair is infeasible, or the project will replace the units demolished with permanently affordable units on a one-for-one basis, or through payment of in-lieu fees. In addition, existing tenants should be protected including the right-of-first refusal of new units at the property at the rent previously paid and covered by rent and eviction protections. Insure that the replacement project will result in the same or larger number of housing units in conformance with existing zoning regulations.

The existing demolition ordinance is available in Berkeley Municipal Code Chapter 23C.08 (Demolition and Dwelling Unit Controls). The proposed policy language will be considered by the Commission at the same time as the Revisions to Demolition and Elimination of Dwelling Units Ordinance referral (Attachment 2, ID# 7), which asks for amendments to Demolition Ordinance to include tenant protection language.

There are different paths the Commission may want to consider to address the referrals. One would be to take the HE policy referral and have a discussion of each policy separate of the related zoning ordinance changes. Alternately, the Commission could discuss the proposed HE changes in the context of the zoning change.

The policy changes are sufficiently complex, in many cases, that analysis will require "real world" examples of what might result from a change to the HE policy. Staff believes that combining the zoning referrals with the appropriate HE referral component(s) offers a clearer path to understanding implications of the HE changes.

The relationships of the HE changes to the zoning changes show staff's recommended path to addressing the two parts (HE and zoning) for each change; this pattern provides the policy and practical implications together for discussion.

RECOMMENDATIONS AND NEXT STEPS

Staff asks that the Commission consider and comment on staff's proposed consolidated zoning referrals and appropriate HE policy amendments. The Commission can also provide insight as to any priority referrals, based on the prior discussion.