



Housing Advisory Commission

## HOUSING ADVISORY COMMISSION

# AGENDA

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### Regular Meeting

Thursday, July 11, 2019  
7:00 pm

### South Berkeley Senior Center

2939 Ellis Street  
Secretary Mike Uberti  
*HAC@cityofberkeley.info*

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### All agenda items are for discussion and possible action.

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**Public comment policy:** Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comments to 3 minutes or less.

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1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the June 6, 2019 Regular Meeting Minutes (Attachment 1)
5. **Discussion and Possible Action to Approve the Substantial Amendment to the City of Berkeley's PY2018 (FY2019) and PY2019 (FY2020) Annual Action Plans to Maximize Emergency Solutions Grant (ESG) Funding for Shelter and Street Outreach** – Kristen Lee, HHCS (Attachment 2)
6. **Discussion and Possible Action to Approve the Community Housing Development Organization (CHDO) Operating Funds NOFA Recommendations** – Commissioner Wright, Housing Trust Fund Subcommittee (Attachment 3)
7. **Discussion and Possible Action to Appoint Subcommittees** – All/Staff
  - a. **Housing Trust Fund Subcommittee**
8. **Discussion and Possible Action to Adopt a Work Plan for FY 2019/2020** – All (Attachments 4-6)
9. **Discussion and Possible Action to Adopt Recommendations to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance** – Commissioner Tregub (Attachments 7 & 8)
10. **Discussion and Possible Action to Adopt a Draft Social Housing Program** – Commissioner Lord (Attachment 9)
11. **Update on Council Items (Future Dates Subject to Change)** – All/Staff

- a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (6/11) (Attachment 10)
- b. Recommendations for Educator and Educational Staff Housing (6/25) (Attachment 11)
- c. Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing (7/9)  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/07\\_Jul/Documents/2019-07-09\\_Item\\_20\\_Housing\\_for\\_a\\_Diverse\\_Equitable.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-09_Item_20_Housing_for_a_Diverse_Equitable.aspx)
- d. 1281 University Avenue Request for Proposals
- e. Spring 2019 Bi-Annual Report

## 12. Announcements/Information Items

- a. Reminder: August Recess
- b. Wolfe, Financing Adeline Corridor Specific Plan Improvements (Attachment 12)

## 13. Future Items

## 14. Adjourn

### Attachments

1. Draft June 6, 2019 Regular Meeting Minutes
2. Kristen Lee, HHCS, Substantial Amendment to the City of Berkeley's PY2018 (FY2019) and PY2019 (FY2020) Annual Action Plans to Maximize Emergency Solutions Grant (ESG) Funding for Shelter and Street Outreach
3. Jenny Wyant, HHCS, CHDO Operating Funding NOFA
4. Lord, Commission Work Plan
5. Mendonca, Work Plan Suggestions from Mari Mendonca to Share at July 11, 2019 Meeting
6. Wolfe, Work Plan Suggestions from Marian Wolfe to Share at July 11, 2019 Meeting
7. Tregub, Recommendation to Modify Certain Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance (Clean Version)
8. Tregub, Recommendation to Modify Certain Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance (Edited with Track Changes Version)
9. Lord, A Draft Social Housing Plan
10. June 11, 2019 Annotated Agenda Excerpt - Code Enforcement Actions and Leonard Powell Fact Finding
11. June 25, 2019 Annotated Agenda Excerpt - Educator and Educational Staff Housing
12. Wolfe, Financing Adeline Corridor Specific Plan Improvements

### Correspondence

13. Christine Schwartz, City of Berkeley Housing Advisory Commission Meeting June 6, 2019
14. Carol Denney, Smokefree Efforts

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. Please refrain from wearing scented products to this meeting.

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Health, Housing & Community Services Department located at 2180 Milvia Street, 2<sup>nd</sup> Floor during regular business hours. Agenda packets and minutes are posted online at:  
[https://www.cityofberkeley.info/Housing\\_Advisory\\_Commission/](https://www.cityofberkeley.info/Housing_Advisory_Commission/)

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**HOUSING ADVISORY COMMISSION**  
**Regular Meeting**  
**Thursday, June 6, 2019**

Housing Advisory Commission

**Time: 7:10 pm**

**South Berkeley Senior Center**  
**2939 Ellis Street – Berkeley**  
**Acting Secretary – Mike Uberti, (510) 981-5114**

# **DRAFT MINUTES**

## **1. Roll Call**

Present: Xavier Johnson, Mari Mendonca, Darrell Owens, Maryann Sargent, Leah Simon-Weisberg, and Marian Wolfe.

Absent: Thomas Lord (excused), Alex Sharenko (unexcused) and Amir Wright (excused).

Commissioners in attendance: 6 of 7

Staff Present: Alisa Shen, Mike Uberti and Jenny Wyant

Members of the public in attendance: 12

Public Speakers: 11

## **2. Agenda Approval**

Action: M/S/C (Johnson/Wolfe) to move Agenda Item #5 after Agenda Item #6, to remove Agenda Item #9, and to approve the agenda.

Vote: Ayes: Johnson, Mendonca, Owens, Sargent, Simon-Weisberg, and Wolfe. Noes: None. Abstain: None. Absent: Thomas Lord (excused), Alex Sharenko (unexcused) and Amir Wright (excused).

## **3. Public Comment**

There was one speaker during public comment.

## **4. Approval of the May 2, 2019 Regular Meeting Minutes**

Action: M/S/C (Simon-Weisberg/Sargent) to approve the minutes.

Vote: Ayes: Johnson, Owens, Sargent, Simon-Weisberg, and Wolfe. Noes: None.

Abstain: Mendonca. Absent: Thomas Lord (excused), Alex Sharenko (unexcused) and Amir Wright (excused).

## **5. Presentation and Discussion on Community Preference Policies for Affordable Housing**

Public Speakers: 5

## **6. Acknowledgement of Commissioner Igor Tregub's Service on the Housing Advisory Commission**

## **7. Presentation and Discussion on the Adeline Corridor Specific Plan**

Public Speakers: 6

Action: M/S/C (Johnson/Sargent) to extend the meeting 40 minutes to 9:40pm

Vote: Ayes: Johnson, Mendonca, Owens, Sargent, Simon-Weisberg, and Wolfe. Noes: None. Abstain: None. Absent: Thomas Lord (excused), Alex Sharenko (unexcused) and Amir Wright (excused).

Action: M/S/C (Owens/Johnson) to extend the meeting 35 minutes to 10:15pm.

Vote: Ayes: Johnson, Mendonca, Owens, Sargent, Simon-Weisberg, and Wolfe. Noes: None. Abstain: None. Absent: Thomas Lord (excused), Alex Sharenko (unexcused) and Amir Wright (excused).

## **8. Discussion and Possible Action to Adopt a Work Plan for FY 2019/2020**

## **9. Discussion and Possible Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**

## **10. Update on Council Items**

Public Speakers: 1

## **11. Announcements/Information Items**

## **12. Future Items**

## **13. Adjourn**

Action: M/S/C (Simon-Weisberg/Johnson) to adjourn the meeting at 10:15pm.

Vote: Ayes: Johnson, Mendonca, Owens, Sargent, Simon-Weisberg, and Wolfe. Noes: None. Abstain: None. Absent: Thomas Lord (excused), Alex Sharenko (unexcused) and Amir Wright (excused).

Approved on July 11, 2019

\_\_\_\_\_, Mike Uberti, Secretary



Health Housing and  
Community Services Department  
**Housing & Community Services Division**

## MEMORANDUM

**To:** Housing Advisory Commission

**From:** Kristen Lee, Manager, Housing and Community Services Division

**Date:** June 21, 2019

**Subject:** **Substantial Amendment to the City of Berkeley's PY2018 (FY2019) and PY2019 (FY2020) Annual Action Plans to Maximize Emergency Solutions Grant (ESG) Funding for Shelter and Street Outreach**

### **Recommendation**

Staff is requesting that the Housing Advisory Commission support the staff recommendation that Council approve Substantial Amendments to the HUD Program Year (PY)2018 and PY2019 Annual Action Plans to allocate the maximum allowable amount of ESG funds to shelter and street outreach, and away from rapid rehousing.

### ***Expenditure Limits***

Emergency Solutions Grant (ESG) funds are subject to regulations in 24 CFR §576 that implement changes to the ESG program passed in the 2009 HEARTH Act. These regulations stipulate that ESG may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid rehousing assistance, and Homeless Management Information System (HMIS) costs. However, expenditure limits are placed on the street outreach and emergency shelter components, such that the total amount of a recipient's grant that can be used for these activities cannot exceed the greater of:

1. 60 percent of the recipient's fiscal year grant; or
2. The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

The regulations also restrict administrative activities to 7.5% of the total grant award.

*A Vibrant and Healthy Berkeley for All*

The City of Berkeley currently allocates \$6,676 annually to HMIS, and after withholding the 7.5% administrative allowance, allocates the remainder of the grant to rapid rehousing (RRH). In PY18 (FY19), this was \$196,343 and in PY19 (FY20) it is slated to increase to \$203,667. ESG funds must be spent within two years of award or they are subject to recapture by HUD.

The regulations governing use of ESG for temporary rental assistance (24 CFR §576.104 and 24 CFR §576.403) are restrictive and include compliance with HUD Fair Market Rent (FMR, which is the maximum allowable rent under the program), unit habitability standards, and utility allowances. These must be thoroughly documented to demonstrate compliance in the event of an audit. In a 2018 Information Report to the Council, City staff noted the challenges associated with using rapid rehousing for single adults—namely, asking rents that exceed FMRs (and clients' ability to pay).<sup>1</sup> These challenges are evidenced by unspent ESG rapid rehousing funds: last year, for example, the Berkeley Food and Housing Project returned \$214,298 in unspent ESG RRH funds (Council authorized their addition to the BACS STAIR Center contract instead on March 12, 2019<sup>2</sup>). To amplify matters, HUD recently lowered the FMR for Berkeley on April 15<sup>th</sup>, 2019 from a maximum of \$2,040 to a maximum of \$1,876 for a one-bedroom apartment. Staff believe that this drop in rent ceilings will make the use of ESG for RRH even more challenging in the years to come.

To address this, staff recommend reallocating Berkeley's ESG award away from RRH and towards the Emergency Shelter and Street Outreach components. This would allow existing programs funded by ESG (STAIR and the Coordinated Entry contract) to continue using it for critical program needs. The City would continue to allocate General Fund for other activities including RRH for clients who could benefit from it. Staff recently identified flexible funding as a successful best practice in serving people experiencing homelessness<sup>3</sup>, but ESG regulations do not allow the flexibility that general fund does.

To stay within the expenditure limits identified in the regulations, RRH funding cannot be eliminated altogether, but it can be minimized. To accomplish this, staff propose the amendment detailed below. This re-arrangement of braided funding creates no immediate fiscal impacts to the City, but it would have the effect of strategically influencing other uses of funds in the future, and it helps minimize the likelihood of ongoing unspent ESG funding.

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<sup>1</sup> See: [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/04\\_Apr/Documents/2018-04-24\\_Item\\_39\\_Rapid\\_Rehousing\\_What\\_it\\_Can.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/2018-04-24_Item_39_Rapid_Rehousing_What_it_Can.aspx)

<sup>2</sup> See: [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/03\\_Mar/Documents/2019-03-12\\_Item\\_07\\_Contract\\_No\\_10904\\_Amendment.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/03_Mar/Documents/2019-03-12_Item_07_Contract_No_10904_Amendment.aspx)

<sup>3</sup> See: [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/10\\_Oct/Documents/2018-10-09\\_WS\\_Item\\_01\\_An\\_Evaluation\\_of\\_the\\_Pathways.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-09_WS_Item_01_An_Evaluation_of_the_Pathways.aspx)

<b>REVENUES</b>	<b>Awarded PY18 (FY19)</b>	<b>Proposed PY18 (FY19)</b>	<b>Awarded PY19 (FY20)</b>	<b>Proposed PY19 (FY20)</b>
ESG Award	\$219,480		\$227,398	
<b>EXPENDITURES</b>				
Rapid Rehousing	\$196,343	\$64,655	\$203,667	\$67,228
Street Outreach/ Emergency Shelter		\$131,688		\$136,439
Homeless Management Information System	\$6,676	\$6,676	\$6,676	\$6,676
Administration (7.5%)	\$16,461	\$16,461	\$17,055	\$17,055
<b>Total</b>	<b>\$219,480</b>	<b>\$219,480</b>	<b>\$227,398</b>	<b>\$227,398</b>

These recommendations must be approved by the HAC as well as by Council for staff to submit Substantial Amendments to the Annual Action Plans to HUD.

**BACKGROUND**

The City of Berkeley receives an annual allocation of federal funding through the federal Department of Housing and Urban Development (HUD). Council allocates this federal funding to specific projects each year in April and authorizes the submission of an Annual Action Plan to HUD which outlines how funds will be spent.

HUD regulations require that the City of Berkeley follow a Citizen Participation Process in allocating federal funding, which requires that the city enlist input from the general public when developing the spending plan and when any major changes to the spending plan are proposed. Major changes to the spending require the submission of a “Substantial Amendment” to the Annual Action Plan. These changes must be accompanied by a public hearing.

**Link to amended Annual Action Plans:**

<https://www.cityofberkeley.info/ContentDisplay.aspx?id=12160>



## MEMORANDUM

**To:** Housing Advisory Commission (HAC)

**From:** Jenny Wyant, Community Development Project Coordinator

**Date:** July 1, 2019

**Subject:** CHDO Operating Funding NOFA

### Recommendation

On June 28, 2019, the HAC's HTF Subcommittee met to discuss the results of the FY 2020 Community Housing Development Organization (CHDO) Notice of Funding Availability (NOFA) for Operating Funds, and voted to recommend that the HAC recommend that Council approve the following funding allocations:

- Resources for Community Development at \$28,115
- Satellite Affordable Housing Associates at \$28,115
- With HOME CHDO funds allocated to the CHDO most likely to have a HOME-eligible project within the next two years, and the general funds allocated to the other CHDO

(M/S/C: Johnson/Wright)

### Previous HAC Action

At its April 4, 2019 meeting, the HAC recommended that the City Manager implement a competitive process for the allocation of CHDO funding for operating support, with priority given to lower capacity CHDOs that would most benefit from the funding. The HAC indicated that when feasible, CHDO level funding should be allocated to all qualifying CHDO organizations. If, in the competitive process, it is determined that no CHDO is eligible for the HOME CHDO operating support, the subcommittee and HAC will have the option to recommend that the HOME CHDO operating set-aside be reallocated to the Housing Trust Fund program.

### Current Situation and Its Effects

The City of Berkeley issued a Notice of Funding Availability for qualified CHDOs to compete for FY2020 operating funds, and received applications from each of the City's three qualified CHDOs: Bay Area Community Land Trust, Resources for Community Development, and Satellite Affordable Housing Associates.

The City has \$56,230 to allocate through this NOFA; half is HOME program funding, and half is from the City's General Fund. The HOME funding is only available to a

CHDO that is expected to have a HOME-funded project within the next two years. Since all three CHDOs have either existing contracts, funding reservations, or pending funding requests in excess of the City's \$50,000 contract approval threshold, any funding recommendations made through this NOFA would require Council approval.

**Applications Received:**

Staff provided a Low-Medium-High rating for each applicant in each of the NOFA scoring categories.

Bay Area Community Land Trust (BACLT)

*Proposed Amount and Use of CHDO Operating Funds: High  
Demonstrated Need – Small CHDO Priority: High*

BACLT was incorporated in 2006, created its first housing cooperative in 2013, and now has three low-income cooperatives in Berkeley providing housing for 19 households. BACLT's 2018 revenues of \$50,500 are a combination of City support and income from the organization's technical assistance and training program, asset management and ground lease fees, and developer fees.

BACLT requested \$20,000 in General Funds for operating support. The funds would be used to increase the hours of one of BACLT's two part-time employees, in an effort to meet the organization's current workload and expand its capacity to develop new projects. BACLT would leverage the City's CHDO funds with \$6,000 it has received in small grants, and is pursuing additional foundation support for capacity building.

In 2018, the City awarded \$50,000 to BACLT for capacity building, as a one-time set-aside from funds allocated to the Small Sites Program. Between the capacity building grant and an additional \$5,000 in City funding to support BACLT's technical assistance program, City funds comprise nearly half of the organization's 2019 budget of \$120,000. In his proposed budget for FY2020 and FY2021, Mayor Arreguin recommended using U1 revenues to provide \$100,000 to BACLT annually for capacity building support, in addition to the CHDO operating funds requested in this process.

BACLT is only eligible for General Funds at this time, since it does not have a HOME-eligible project. Staff reviewed BACLT's capacity to take on a HOME-funded project, and determined that while BACLT qualifies as a CHDO, it does not yet meet the HOME program's general requirements for financial capacity. BACLT was recently awarded project financing through the City's Small Sites Program, and the developer fee generated from that project and another new project BACLT acquired in Oakland may help increase the organization's financial capacity, and may make them eligible for HOME funding in the future. Staff will reassess BACLT's eligibility for HOME funds, but at this time do not expect BACLT to have a HOME-eligible project within the next two years.

Resources for Community Development

*Proposed Amount and Use of CHDO Operating Funds: High  
Demonstrated Need – Small CHDO Priority: Low*

RCD was incorporated in 1984, and has been recognized as a CHDO in Berkeley for at least 15 years. Its most recent CHDO-funded project was Rumford Plaza, a 43-unit renovation project that helped preserve long-term affordability. In FY 2018, RCD generated \$7.1 million in support and revenue, largely from developer fees and rental income. The City does not provide direct support for RCD operations, outside of the CHDO process.

RCD requested \$28,115 to provide staff support during predevelopment for 2001 Ashby Avenue, which RCD will leverage with a \$65,000 grant from Enterprise Community Partners.

Staff expect that 2001 Ashby will be a HOME-eligible project, based on the proposed affordability levels. 2001 Ashby is in predevelopment, and the current design includes approximately 85 apartments affordable to households earning between 30% and 80% of area median income (AMI), with most units at or below 60% AMI. The project will also include commercial space, including space for the neighborhood-serving social services agency Healthy Black Families. The Housing Advisory Commission recommended RCD for a \$368,000 predevelopment loan for 2001 Ashby, which was approved by Council in April 2019. RCD has indicated that the project will require approximately \$18 million in additional City financing. The project schedule estimates construction start in early 2021. If RCD is unable to obtain the project entitlements and financing within the proposed timeline, the project may not be ready to close financing and start construction within two years.

Satellite Affordable Housing Associates

*Proposed Amount and Use of CHDO Operating Funds: High  
Demonstrated Need – Small CHDO Priority: Low*

SAHA was incorporated in 2012, the result of a merger of two longstanding affordable housing developers. SAHA and its predecessors have maintained their CHDO status for nearly 20 years, and completed several CHDO-funded projects in Berkeley. Grayson Apartments, a 23-unit new construction development that will serve people with disabilities, youth aging out of the foster care system, and people with HIV/AIDS, is SAHA's current CHDO project, and completion is expected in late summer or early fall. The majority of SAHA's FY 2018 \$17.6 million in support and revenue came from grants and contributions, developer fees, and property management fees, and includes approximately \$8 million in pass-through funds that were reallocated to specific projects. The City does not provide direct support for SAHA operations, outside of the CHDO process.

SAHA requested \$28,115 to support project management staff time on two HOME-eligible projects currently in predevelopment: 1601 Oxford (35 units for seniors) and

2527 San Pablo (63 units plus commercial space). SAHA plans to leverage an additional \$120,000 from non-City sources, including developer fees generated from projects currently under construction.

1601 Oxford has completed the entitlement process, and has a \$6 million funding reservation from the City. At its June 11, 2019 meeting, Council indicated that the City funding would be a combination of Measure O and Housing Trust Funds. SAHA is in the process of securing its final financing commitments, and expects to start construction as early as December 2019. 2527 San Pablo is also entitled, with the potential to be under construction within two years. The Housing Advisory Commission supported SAHA's request for \$500,000 in City predevelopment funds for 2527 San Pablo, though Council has not made a funding reservation at this time. Of the projects identified through this NOFA, 1601 Oxford is the only project that has its full City funding reservation, and is most likely to meet the HOME requirement of starting within two years.

### **Background**

Federal HOME program regulations define a CHDO as an organization that meets certain capacity criteria, meets specified board composition criteria, and has certain policies in place. To be "certified" as a CHDO, eligible organizations must provide related documentation to the City for review and approval. BACLT, RCD, and SAHA will all be recertified as CHDOs through this NOFA process.

Federal regulations require jurisdictions to commit 15% of their HOME funds to a certified-CHDO-sponsored project every year or forfeit the funds. A sponsor whose project is awarded HOME funds must remain a CHDO for the HUD compliance period, which lasts up to 20 years. With dwindling HOME funds and increased HOME requirements, the City has not been able to fund more than one HOME project per year, effectively limiting the use of HOME funds to CHDOs.

Jurisdictions have the option of providing 5% of its HOME funds to CHDOs as operating support, if the CHDO will be working on a HOME-funded project in the next 24 months. Years ago, the City had two qualified CHDOs (RCD and SAHA), and received enough funds to provide \$30,000 in HOME funds to each organization annually. As HOME funds were reduced at the federal level, the City began providing the HOME funds to one organization, and a matching amount of General Funds to the other. The Council approves allocating the General Funds in the community agency budget item.

Initially the CHDO operating funds supported the growth of RCD and SAHA, and now the City funds encourage both to look for new development opportunities in Berkeley and to continue asset management for existing Berkeley properties. Both organizations continue to participate actively on housing issues and provide input as needed to staff, in addition to completing the annual CHDO documentation process. BACLT sought CHDO status in part to have access to the CHDO operating support funds, in an effort to grow the organization and increase its capacity to take on new development projects in Berkeley.

Housing Advisory Commission

July 11, 2019

To: Housing Advisory Commission  
From: Commissioner Thomas Lord  
Subject: **Commission Work Plan**

*Note: I apologize to the Commission and public that some of my work on the Commission has been delayed. A recommendation for improving the smoke-free housing ordinance and implementation is a clear example of something that has taken longer than intended - longer than it should have, ideally. A bit over a month ago I was in a bike accident and suffered a fairly serious shoulder injury. I am only recently at the point of trying to recover range of motion and strength. Hopefully that will go well and I'll be in relatively better condition when we reconvene in the fall.*

I will bring the following work plan items to the meeting in the format recommended by Council:

- smoke-free housing ordinance recommendations
- social housing
- housing summit (related to social housing)
- consideration of housing and the climate emergency
- Council's referral regarding gentrification and racial equity issues
- our code enforcement oversight role
- "for the good of order" - meta-concerns about our Commission processes

**Work Plan Suggestions from Mari Mendonca to Share at July 11, 2019 Meeting**

1. **Program Activity** - Develop a program/structure for supporting low income homeowners and landlords to navigate/find funding that will facilitate the implementation of actual construction/repairs needed for them to keep their properties safe, livable affordable and up to code.
2. **Resources needed** - Meet with staff and the Inspections office to see how they deal with this process currently. Consider procedural changes to accomplish improvements in processes for low income homeowners.
3. **Intended results** - Development of a program in which low income homeowners receive support in navigating and obtaining financial, repair/construction resources as opposed to being threatened by the consequences of enforcement tactics.

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1. **Program Activity** - Reviewing agency applications for City funding
  2. **Resources needed** - Staff assistance to guarantee that members of the commission carefully review applications and conduct site visits to the agencies whose applications are being considered. Applicants must be invited to address the HAC concerning their needs/requests and their accomplishments.
  3. **Intended results** - To guarantee that funding decisions are based on community needs and the actual performance of agencies being reviewed.

**Work Plan Suggestions from Marian Wolfe to Share at July 11, 2019 Meeting**

1. **Program Activity** - Fall U1 Report that the Vice Chair and Chair will draft and bring to the full HAC for review.

2. **Resources needed**

Staff time to provide information on actual U1 General Fund expenditures and commitments of funds for 2019.

3. **Intended Results, include the following:**

- Output – Report on expenditures and commitments of U1 General Funds and provision of recommendations of how the City can should establish and fund programs to increase the supply of affordable housing and protect Berkeley residents from homelessness.
- Outcome – Second 2019 Bi-Annual Report for the November meeting

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1. **Program Activity** – Develop additional strategies using local funds to expand the supply of permanent affordable housing with funding proposals to provide to the City Council.

2. **Resources needed** – Based on volunteer work and fact-finding, most of the work will not require additional resources. The only exception could be staff assistance in estimating potential costs for each strategy (based on realistic goals).

3. **Intended Results**

- Output – Suggested new programs (including scale of the programs) for the City Council to consider using local affordable housing funds (e.g., use of local funds for BUSD housing development).

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1. **Program Activity** – Review 2018 Work Plan to see if there are useful activities to add to the 2019 Work Plan

2. **Resources needed** – HAC members to bring in their recommendations. The only assistance needed from staff could be in estimating potential costs for each strategy (based on realistic goals).

3. **Intended Results**

- Additional work plan items to add to the 2019 Work Plan in this new format adopted for the 2019 Work Plan.

To: Members of the Housing Advisory Commission  
From: Commissioner Igor Tregub  
Subject: Recommendation to Modify Certain Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

### RECOMMENDATION

The Berkeley City Council should modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Making the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn”; ;
- 2) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., two separate complaints from different individuals within a six-month period, sworn statement under penalty of perjury);and
- 3) Referring to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

### FISCAL IMPACTS OF RECOMMENDATION

Unknown direct costs. Staff time would be needed to implement these recommendations and to administer a possibly increased volume of complaints should the process of filing a complaint become less onerous. However, savings in staff time would potentially be realized as a result of implementing the efficiencies being proposed.

### CURRENT SITUATION AND ITS EFFECTS

Ordinance No. 7,321-N.S., The Berkeley Smoke-Free Multi-Unit Housing Ordinance was adopted in early 2014 and, as of May 1, 2014, prohibits smoking in 100% of multi-unit housing with two or more units. This also includes common areas such as private decks, balconies, and porches of units.<sup>1</sup> Enforcement of the ordinance is complaint-based and modeled after the “Events” section of the Community Noise Ordinance<sup>2</sup> and Barking Dog Ordinance, in that the standard for enforcement is “two non-anonymous citizen noise complaints.” In the case of the Smoke-Free Housing Ordinance, the City

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<sup>1</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2009/1n2Dec/2009-12-08\\_Item\\_01\\_Ordinance\\_7122.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2009/1n2Dec/2009-12-08_Item_01_Ordinance_7122.pdf)



must “[receive] at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of [the Ordinance] by the same person provided notice...” in order for the complaints to be sustained. Further, both of these notices must be received within “a six month period following issuance of a [first] notice” to the resident allegedly in violation of the Ordinance.<sup>3</sup> The existing complaint form appears to only be available in English on the City website<sup>4</sup> and includes the following information that a complainant is required to acknowledge:

- “1. I am a resident in a multi-unit residence within the City of Berkeley;
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4. If an administrative citation is issued, and the recipient(s) appeals, I will be called to testify at an administrative appeal hearing. I agree to make myself available to testify, and understand that if I fail to testify, the citation may be dismissed”<sup>5</sup>

As part of the declaration, the complainant must also attest to the following statement: “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”<sup>6</sup>

## BACKGROUND

Over the prior twenty months, the Berkeley Housing Advisory Commission (HAC) received and heard several concerns from members of the public about the difficulty they encountered in an attempt to bring the City of Berkeley to enforce its Smoke-Free Multi-Unit Housing Ordinance. The HAC recommended to the City Council that a Berkeley Considers survey be conducted, an action that was adopted and completed. The survey results point to similar challenges, primarily associated with:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
- 2) The real or perceived onerous nature of filling out and submitting the present complaint form in the manner required by the City;

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<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/TobaccoFreeMultiUnitOrdinance.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/TobaccoFreeMultiUnitOrdinance.pdf)

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- 3) The undesirable nature of pursuing action under the Ordinance against a neighboring property owner or tenant, particularly since the complaint is required to be non-anonymous; and
- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

At its March 2019 meeting, the HAC convened a Smoke-Free Housing Ordinance Subcommittee (Commissioners Lord and Tregub), which met in April 2019. Members of the subcommittee reached consensus on several recommendations to the HAC, which were discussed at the April 2019 HAC meeting. Additional feedback was solicited from HAC members at that meeting. Though there appears to be disagreement between the two members of the subcommittee as to whether it was necessary for the subcommittee to meet a second time and as to the timing of bringing forward these recommendations to the HAC for possible action, the recommendations themselves broadly reflect the substantive consensus achieved at the April subcommittee meeting and feedback from other HAC members and members of the public. At the request of the author, the HAC tabled discussion of this item at its May and June meetings to allow additional time to refer this proposal to eviction defense non-profits. Based on discussions with one of them, the author agreed to remove two elements - empowering inspectors to integrate proactive inspections Ordinance enforcement at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program) and exploring the legality of allowing anonymous complaints to be processed - from the proposal.

#### ENVIRONMENTAL SUSTAINABILITY

Insofar as the ability of every occupant of multi-family housing to reside in a smoke-free environment has a nexus to environmental sustainability and environmental justice, these recommendations support the City of Berkeley's environmental sustainability goals.

#### RATIONALE FOR RECOMMENDATION

The recommendations above address the primary challenges associated with enforcement that have been previously described. A cursory discussion of the rationale for each recommendation follows below.

- 1) "Making the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, removing language requiring the statements to be "sworn"; and

- 2) “Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., two separate complaints from different individuals within a six-month period, sworn statement under penalty of perjury).”

These recommendation would address the following all four of the aforementioned concerns that the HAC noted from members of the public as well as survey responses:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
- 2) The real or perceived onerous nature of filling out and submitting the present complaint form in the manner required by the City;
- 3) The undesirable nature of pursuing action under the Ordinance against a neighboring property owner or tenant, particularly since the complaint is required to be non-anonymous; and
- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

The current process requires an extremely high bar of evidence and effort for a complainant, and in a situation in which the complainant resides in close quarters with the allegedly offending party, may expose the complainant to possible retaliation (due to the lack of anonymity of the complaint). In addition, while the correctness of a complaint is fundamental to its ability to be processed, using the same language in the complaint form that is seen in a sworn affidavit is likely to intimidate some would-be complainants from undergoing the process of completing and submitting the form. Furthermore, while the Smoke-Free Multi-Unit Housing Ordinance page on the City of Berkeley website currently includes several forms in Spanish as well as English, the complaint form itself is only available in English. No other languages besides English and Spanish were found anywhere on the site.<sup>7</sup> The requirement that only a hard copy can be submitted and that electronic submission mechanisms are not accepted is overly burdensome, in an age where even police reports can be filed online. The provision that three separate complaints (two of them from separate individuals) must be received within the span of six months shifts the burden of policing onto the complainants rather than City, which is charged with enforcing this ordinance. Each of these recommendations addresses these and related concerns above.

- 3) “Referring to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.”

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<sup>7</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

The Smoke-Free Housing Subcommittee and several additional members of the HAC and public felt that, with the recent relaxation of state law around the use of recreational (non-medical) cannabis, it would be worthwhile for these two commissions, both comprised of subject matter experts in their respective fields, to study this question. Only further study rather than any concrete actions is recommended at this time.

#### ALTERNATIVE ACTIONS CONSIDERED

Members of the HAC Smoke-Free Housing Subcommittee briefly discussed but dismissed the notion of making changes to the underlying Berkeley Smoke-Free Multi-Unit Housing Ordinance itself. Based on discussions with the eviction defense community, the author agreed to remove two elements - empowering inspectors to integrate proactive inspections Ordinance enforcement at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program) and exploring the legality of allowing anonymous complaints to be processed – from the proposal. Therefore, though some of the recommended actions, if approved, may trigger the need to provide subtle tweaks to the enforcement, none of the recommendations above alter the fundamental architecture of the Ordinance.

To: Members of the Housing Advisory Commission  
From: Commissioner Igor Tregub  
Subject: Recommendation to Modify Certain Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

### RECOMMENDATION

The Berkeley City Council should modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Making the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn.”; ~~and exploring the legality of allowing anonymous complaints to be processed;~~
- 2) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., two separate complaints from different individuals within a six-month period, sworn statement under penalty of perjury);and
- ~~3) Empowering inspectors to integrate proactive inspections Ordinance enforcement at the same time that they are conducting other city mandated inspections (e.g., the Rental Housing Safety Program); and~~
- 4) Referring to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

### FISCAL IMPACTS OF RECOMMENDATION

Unknown direct costs. Staff time would be needed to implement these recommendations and to administer a possibly increased volume of complaints should the process of filing a complaint become less onerous. However, savings in staff time would potentially be realized as a result of implementing the efficiencies being proposed, ~~particularly as a result of the integration being suggested in Recommendation #3 above.~~

### CURRENT SITUATION AND ITS EFFECTS

Ordinance No. 7,321-N.S., The Berkeley Smoke-Free Multi-Unit Housing Ordinance was adopted in early 2014 and, as of May 1, 2014, prohibits smoking in 100% of multi-unit housing with two or more units. This also includes common areas such as private

decks, balconies, and porches of units.<sup>1</sup> Enforcement of the ordinance is complaint-based and modeled after the “Events” section of the Community Noise Ordinance<sup>2</sup> and Barking Dog Ordinance, in that the standard for enforcement is “two non-anonymous citizen noise complaints.” In the case of the Smoke-Free Housing Ordinance, the City must “[receive] at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of [the Ordinance] by the same person provided notice...” in order for the complaints to be sustained. Further, both of these notices must be received within “a six month period following issuance of a [first] notice” to the resident allegedly in violation of the Ordinance.<sup>3</sup> The existing complaint form appears to only be available in English on the City website<sup>4</sup> and includes the following information that a complainant is required to acknowledge:

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As part of the declaration, the complainant must also attest to the following statement: “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”<sup>6</sup>

## BACKGROUND

Over the prior ~~eighteen~~ twenty months, the Berkeley Housing Advisory Commission (HAC) received and heard several concerns from members of the public about the difficulty they encountered in an attempt to bring the City of Berkeley to enforce its Smoke-Free Multi-Unit Housing Ordinance. The HAC recommended to the City Council

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<sup>1</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

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that a Berkeley Considers survey be conducted, an action that was adopted and completed. The survey results point to similar challenges, primarily associated with:

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At its March 2019 meeting, the HAC convened a Smoke-Free Housing Ordinance Subcommittee (Commissioners Lord and Tregub), which met in April 2019. Members of the sub-committee reached consensus on several recommendations to the HAC, which were discussed at the April 2019 HAC meeting. Additional feedback was solicited from HAC members at that meeting. Though there appears to be disagreement between the two members of the subcommittee as to whether it was necessary for the subcommittee to meet a second time and as to the timing of bringing forward these recommendations to the HAC for possible action, the recommendations themselves broadly reflect the substantive consensus achieved at the April subcommittee meeting and feedback from other HAC members and members of the public. [At the request of the author, the HAC tabled discussion of this item at its May and June meetings to allow additional time to refer this proposal to eviction defense non-profits. Based on discussions with one of them, the author agreed to remove two elements - empowering inspectors to integrate proactive inspections Ordinance enforcement at the same time that they are conducting other city-mandated inspections \(e.g., the Rental Housing Safety Program\) and exploring the legality of allowing anonymous complaints to be processed - from the proposal.](#)

#### ENVIRONMENTAL SUSTAINABILITY

Insofar as the ability of every occupant of multi-family housing to reside in a smoke-free environment has a nexus to environmental sustainability and environmental justice, these recommendations support the City of Berkeley's environmental sustainability goals.

#### RATIONALE FOR RECOMMENDATION

The recommendations above address the primary challenges associated with enforcement that have been previously described. A cursory discussion of the rationale for each recommendation follows below.

- 1) ~~“Making the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, removing language requiring the statements to be “sworn;” and exploring the legality of allowing anonymous complaints to be processed;”~~ and
- 2) “Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., two separate complaints from different individuals within a six-month period, sworn statement under penalty of perjury).”

These recommendation would address the following all four of the aforementioned concerns that the HAC noted from members of the public as well as survey responses:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
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- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

The current process requires an extremely high bar of evidence and effort for a complainant, and in a situation in which the complainant resides in close quarters with the allegedly offending party, may ~~open-expose~~ the complainant ~~up-for-to~~ possible retaliation (due to the lack of anonymity of the complaint). ~~While it is recognized that the non-anonymity requirement is intended to fulfill a particular legal standard, consideration should be given to working with the City Attorney in exploration of what additional pathways for enforcement may be possible.~~ In addition, while the correctness of a complaint is fundamental to its ability to be processed, using the same language in the complaint form that is seen in a sworn affidavit is likely to intimidate some would-be complainants from undergoing the process of completing and submitting the form. Furthermore, while the Smoke-Free Multi-Unit Housing Ordinance page on the City of



Berkeley website currently includes several forms in Spanish as well as English, the complaint form itself is only available in English. No other languages besides English and Spanish were found anywhere on the site.<sup>7</sup> The requirement that only a hard copy can be submitted and that electronic submission mechanisms are not accepted is overly burdensome, in an age where even police reports can be filed online. The provision that three separate complaints (two of them from separate individuals) must be received within the span of six months shifts the burden of policing onto the complainants rather than City, which is charged with enforcing this ordinance. Each of these recommendations addresses these and related concerns above.

~~3) “Empowering inspectors to integrate proactive inspections Ordinance enforcement at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program)”~~

~~At its March 2019 meeting, the HAC heard a presentation from City Staff about an effort to elevate the Rental Housing Safety Program (RHSP) from being a solely reactive, complaint-based program to one that couples complaint-based characteristics with proactive inspections. Efficiencies can be gained from coupling proactive RHSP inspections with other applicable inspections that currently are not tied to continuous staff monitoring (e.g., the Smoke-Free Multi-Unit Housing Ordinance, the Elevator Ordinance, etc.).~~

~~4)3) “Referring to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.”~~

The Smoke-Free Housing Subcommittee and several additional members of the HAC and public felt that, with the recent relaxation of state law around the use of recreational (non-medical) cannabis, it would be worthwhile for these two commissions, both comprised of subject matter experts in their respective fields, to study this question. Only further study rather than any concrete actions is recommended at this time.

#### ALTERNATIVE ACTIONS CONSIDERED

Members of the HAC Smoke-Free Housing Subcommittee briefly discussed but dismissed the notion of making changes to the underlying Berkeley Smoke-Free Multi-Unit Housing Ordinance itself. ~~Feedback from some HAC members further reinforced the recognition that the development of the Ordinance was intended to strike a delicate balance between preserving the rights of all Berkeley residents of multi-family housing to live in a smoke-free environment and protecting the rights of existing long-term tenants. Based on discussions with the eviction defense community, the author agreed to remove two elements - empowering inspectors to integrate proactive inspections~~

<sup>7</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

Ordinance enforcement at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program) and exploring the legality of allowing anonymous complaints to be processed – from the proposal. Therefore, though some of the recommended actions, if approved, may trigger the need to provide subtle tweaks to the enforcement, none of the recommendations above alter the fundamental architecture of the Ordinance.

Housing Advisory Commission

July 11, 2019

To: Housing Advisory Commission  
From: Commissioner Thomas Lord  
Subject: **A Draft Social Housing Plan**

Attached is a draft program design for social housing in Berkeley. In contrast to current affordable housing programs, the social housing program described within can achieve far greater depth and breadth of affordability without reliance on state or federal subsidy.

For example, a social housing portfolio with 40% of units affordable at the area median income, and 60% of the units available at a rent of only \$100 / mo., would yield a small, positive net income.

## **Recomendation**

I am asking HAC colleagues to endure reading this first draft description of the program and to bring to our meeting questions, constructive criticisms, and additional ideas.

If there is interest and ambition we could form a short-lived subcommittee to further develop the draft during the July / August break.

# A Social Housing Plan for Berkeley

Thomas Lord



July 11, 2019

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Prepared for presentation to the City of Berkeley Housing Advisory Committee, June 11, 2019. This is a first draft only, circulated early to solicit helpful feedback.

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# 1 Introduction

This report proposes a social housing program for the City of Berkeley.

In this report “social housing” means housing that is:

- owned by a municipal trust
- operated by a non-profit property management coop in which tenants may democratically participate
- affordable at a wide range of household incomes
- self-financing in the long run (though needing subsidy initially)

## 1.1 Why social housing?

Berkeley, like many places, is experiencing ongoing crises of economically forced displacement and unaffordable housing. Whole communities have been scattered, forced from the region. Roadways are clogged, daily, with people who work or study in the region but who must drive from hours away because they can't afford to live here. A vast number of households exist under constant, imminent threat of homelessness. Many people become actually homeless.

The problem is not limited to low income households but touches even “moderate income” households - conventionally defined as those with an income between 80% and 120% of the area median. A majority of current residents, in other words, can not afford current rents.



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A Social Housing Plan for Berkeley

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The social housing program described in this report is not a silver bullet that will end the problem overnight but it *is* a program that will help pay for its own expansion and, in the long run, has the potential to prevent future acute housing crises.

As described later in this report, Berkeley's *existing* and emerging affordable housing strategies help, but the social housing program addresses areas that they can not.

## 2 Overview

Broadly speaking, three concepts characterize the social housing program: the Municipal Land Trust, the Property Management Cooperative, and a rent price and subsidy policy. The bird's eye view:

- The Municipal Land Trust owns the properties and manages most of the money. It establishes a target rate of return for investment in additional social housing and administers a contract with the Property Management Cooperative.
- The Property Management Cooperative manages leases, operates portfolios day to day, establishes the rent price and subsidy policy and supports the democratic participation of residents who choose to participate.
- The rent price and subsidy policy, at the heart of the system, is the key to providing affordable housing. Put simply, a portion of residents who can afford to do so pay rents that exceed operating expenses; that excess revenue subsidizes residents paying lower (sometimes much lower) rents.<sup>1</sup>

The next three *subsections* expand the overview of these three concepts. The three subsequent *sections* discuss each in detail.

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<sup>1</sup>For additional background on this subsidy mechanism, see “Social Housing in the United States” by Peter Gowan and Ryan Cooper (particularly the appendix), published in 2018 by the People’s Policy Project.

## 2.1 The Municipal Housing Trust

Under this program, social social housing is a portfolio of properties owned by a ***Municipal Housing Trust***, established by the City.

Legally, the Trust is an independent agency. Thus the City of Berkeley is spared entering into “the landlord business”. The Trust is similar to a traditional non-profit land trust.

The Trust does differ from traditional land trusts, however:

1. The Municipal Housing Trust owns the housing, not only the land.
2. The City appoints a simple majority of the Trust’s board.
3. In the event the Trust is dissolved, properties revert to the City or the City’s chosen successor agency, subject to restrictions that preserve affordability.

## 2.2 The Community Property Management Cooperative

Although the Municipal Housing Trust has ultimate authority over rent pricing, day to day operations are carried out by a second, separate agency, the Community Property Management Cooperative (“the Coop”, for short).

The Coop is responsible for the renting, maintenance, and general administration of portfolio properties.

Residents democratically govern day to day operations of the Coop, but both the City and the Trust retain emergency powers to intervene in the Coop, if necessary, to protect their interests.

## 2.3 “Cost-plus” rents and subsidy program

Housing owned by the trust is *rented* (not sold) to residents.<sup>2</sup>

Average rent levels are determined on the basis of *operating cost-plus*. This means that the average rent is set at the sum of:

- *operating costs* (including operating, replacement, and tax reserves)
- a *reinvestment fee* to build a fund for major improvements and adding new properties to the portfolio
- a *solidarity rent fee* which is used to reduce the rent of lower income households

Note that this defines an *average* rent. Some residents pay more, others receive a discount as a form of subsidy.

Solidarity rent allows the program to “self subsidize” and serve a broad range of household income levels without reliance on state or federal tenant-based or unit-based subsidies.

In spite of the add-ons to normal operating costs, the program forgoes a significant portion of the maximal profit that may be available if all units were leased at “market rate”.

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<sup>2</sup>The program can be generalized to include limited equity housing as well. For simplicity, this report considers only rental housing.

DRAFT 1

A Social Housing Plan for Berkeley

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## 3 The Municipal Housing Trust in greater depth

### 3.1 Housing trust Legal structure

The Municipal Housing Trust might be *thought of* as a form of public utility - a *housing utility* - operating as a franchise of the City. California law does not support this, however. In California, municipal franchises are limited to purposes enumerated in state law. Those allowable purposes do not include a “housing utility”.

Fortunately, there is precedent for an alternative legal structure that will serve just as well or better: the Trust can be formed as a 501(3)(c) non-profit that exists primarily to lessen the burden to the City of Berkeley of managing the social housing portfolio.<sup>1</sup>

The Trust is an independent agency but in order that the City maintain ultimate control over the portfolio, the Trust is formed as a membership-based non-profit with two classes of members: *charter members* and *resident members*:

#### 3.1.1 Charter member(s)

There is initially only one Charter Member - the City of Berkeley itself<sup>2</sup>.

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<sup>1</sup>For many years the City of San Diego used a similarly constructed non-profit to provide the City’s IT services.

<sup>2</sup>If in the future the City of Berkeley wished to expand the program beyond City limits, it could choose to add other jurisdictions or entities as Charter members.

The City Council, as the sole charter member, appoints a simple majority of board seats. The charter member (City) must approve any proposed changes to the charter and may initiate any such change. Thus, the City controls the Trust's charter and a majority of the board seats.

The City's power is limited in one way: owing to the non-profit status and purposes of the Trust, the City can not undo the dedication of social housing properties to broadly affordable housing.

### **3.1.2 Resident members**

Residents members (all current residents of the portfolio) elect a minority of board members (one fewer the number appointed by Council). Residents thus have non-trivial democratic power in the Trust, but the City is in ultimate control.

### **3.1.3 Chartered purposes of the Trust and dissolution**

The chartered purposes of the Municipal Housing Trust are to:

- relieve government of the burden of developing a social housing portfolio, acting as the portfolio's fiduciary in pursuit of City aims
- provide residents with fit, affordable housing in consultation with residents
- develop educational materials informing residents and the public generally about the program

In the event of dissolution of the Trust, properties revert to the City, the City's designee, or a third part non-profit in that order of priority, subject to the constraint that the affordability of units must be preserved indefinitely

## **3.2 Operating the Trust**

The Trust operates day to day with a very small, professional staff. Their duties are to:

- Negotiate and monitor a contract with the Property Management Cooperative.
- Ensure that rents charged by the Coop are consistent with the fiscal and equity policies established by the Trust's Board.
- Receive gross income from the Coop, defined as gross rents net day-to-day operating expenses (which include maintenance of an operating reserve).
- Maintain a property tax reserve, and, consistent with policies set by the board, maintain a replacement reserve, reinvestment reserve (for acquiring or building additional housing). Remaining revenues (if any) are put into an excess income fund.
- In partnership with the Coop, solicit bids and contract for major restorations, repairs, and improvements as needed.
- Provide periodic fiscal reports and general updates to the board.
- Purchase or contract to build additional residences with board approval.
- Provision appropriate legal representation and insurance for the Trust according to policies set by the Board.
- Periodically transfer excess income, if any, to the City of Berkeley.

## **3.3 The Trust's relation to City Council**

The Trust is an independent 501(c)(3) over which the City of Berkeley, acting through City Council, has certain political control. Specifically,

- A simple majority of the board is appointed by Council, the remainder elected by residents of Trust housing.



- Charter changes must be approved by the City of Berkeley and the City of Berkeley can initiate charter changes.

The recommendation of this report is that the City should appoint 9 members of the board, each council member choosing one board member in accordance with Berkeley's Fair Representation Ordinance.

With narrow exceptions, board meetings are open to residents and the public, and include opportunities for public comment.

### **3.4 The Trust's relation to tenants**

Residents of trust housing participate in Trust governance by electing a minority of board members and by publicly participating in board meetings. This gives tenants the opportunity to participate in decision making about (for example):

- major repairs and improvements
- rent level policies within which the Property Management Coop must operate

### **3.5 Rationale for the Trust**

#### **1. Why have a Municipal Housing Trust when local land trusts and coops already exist?**

The Municipal Land Trust system has four key advantages:

- a. Having a single owner of an entire portfolio of land and structures allows for cross-subsidization of rent from higher to lower income residents in a tax efficient way.
- b. Giving the City of Berkeley control over the charter and a simple majority of the board means that the public investment in affordable housing

yields genuinely *public* wealth (in contrast to fully privately owned land and coops).

- c. Having the Trust as a distinct entity spares the City of the burden of entering “the landlord business”.
- d. Consolidation of the portfolio enables economies of scale in property management, and easier access to lines of credit.

2. **Conventional affordable housing developers that leverage HUD funds, tax credits, and state-level funding work great! Why try something new?**

Conventional affordable housing, a product of federal legislation since 1968, has never produced adequate amounts of affordable housing and lately has shown its incapacity to respond to a housing market whose dynamic is to push out a *majority* of current residents.

Conventional subsidy approaches rely on the federal government’s willingness and capacity to provide perpetual returns to capital in the form of tax credits and rental vouchers.

The social housing program designed here can fix neither of those problems overnight but it can help solve immediate problems - serving a broad range of incomes and not relying on fickle HUD policies and funding levels. As it scales, it helps to establish a world in which housing is truly a human right, a useful thing for and by people without simultaneously requiring it to perpetually provide returns to capital.

DRAFT 1

A Social Housing Plan for Berkeley

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## 4 Property Management Coop in greater depth

### 4.1 Management Coop legal structure

While the Trust legally owns the pool of social housing, day to day operations are carried out by a separate organization: the Property Management Coop.

As with the Trust, the Coop is formed as a membership-based non-profit with two classes of member. In contrast to the Trust, housing residents have greater say over the governance of the Coop - although the City of Berkeley still holds a kind of emergency brake.

#### 4.1.1 Resident members

Residents of the social housing system are one class of members of the Coop. They are able to vote for a *simple majority* of board positions.

#### 4.1.2 Charter member(s)

There is initially only one Charter Member - the City of Berkeley itself<sup>1</sup>.

The City Council, as that lone charter member, appoints a minority of board seats.

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<sup>1</sup>If in the future the City of Berkeley wished to expand the program beyond City limits, it could choose to add other jurisdictions or entities as Charter members.

### **4.1.3 Chartered purposes of the Coop and dissolution**

The Coop's chartered purpose is to relieve government of the burden of providing property management services for the social housing portfolio.

In the event of dissolution, the assets of the Coop are transferred to the Trust or its successor, or the City, subject to the constraint that resident rental contracts must be assumed by that successor. The democratic power of tenants over property management must not be diminished by this transfer.

### **4.1.4 Coop member powers and staff**

Day to day operations are managed by a small staff that is overseen and directed by the board. Decisions by a simple majority of board members is sufficient for these purposes.

Major decisions (such as altering the charter) require a super-majority of the board (and thus the approval of at least some Council-appointed board members).

The City, as the lone charter member, is granted limited emergency power to intervene to protect City interests. The Trust also holds the Coop in check by means specified in the contract negotiated between the Trust and Coop.

## **4.2 Day to day operations and staffing**

The Coop operates day to day with a very small, professional staff. Example tasks:

- listing units, qualifying applicants, and leasing units
- managing cash flows and operating reserve
- performing routine monitoring and maintenance tasks as needed, directly, via sub-contracted services, or through resident volunteerism

- conforming with City inspection and reporting requirements
- facilitating and monitoring tenants who self-organize for reasonable self-help purposes or for assisting other tenants for such needs
- supporting tenants who choose to organize building-specific coop councils
- collecting rents, maintaining an operating reserve, and transferring net operating income to the Trust per contract

### **4.3 Relation to the Municipal Housing Trust**

The relation between Trust and Coop is governed by a negotiated contract that determines the financial relation between the two organizations and broadly defines requirements for maintaining the condition of the properties.

### **4.4 Relation to tenants**

The coop is highly accountable to tenants who collectively have the power to elect a simple majority of the board.

The coop also empowers tenants to organize, to perform self-help maintenance and improvement according to coop standards, and to provide mutual aid for such purposes.

### **4.5 Relation to City Council**

The Council controls a minority of board seats - one fewer than the simple majority elected by tenants.

## 4.6 Rationale for the Coop

### 1. Why is property management separated from the Trust?

Having both the Trust and the Coop separates the fiscal management of the properties (the Trust) from the management of their day to day usefulness to tenants (the Coop).

Those two aspects of the housing - a use value for tenants vs. capital for the property owner - are potentially in conflict. For example, the tenants might prefer to skimp on building replacement reserves or saving to expand the portfolio in order to spend lavishly on immediate amenities. Conversely, the property owner might prefer to defer or skimp on routine maintenance in order to acquire more property quickly. There is a natural tension that arises just because the housing is simultaneously capital on the one hand, and a useful home on the other.

Separating the Trust and Coop into two separate agencies manages that tension of competing interests by assigning the two sides to two entities who negotiate a contractual relationship. The City monitors both agencies and (if need be) can step in as the ultimate authority. It is a system of checks and balances.

### 2. Why should tenants have such power over the Coop?

The Coop is (for the most part) under the democratic control of tenants because of a strong alignment between the role of the Coop, and the interests of tenants.

Residents (we presume) want well maintained homes, their choice of improvements when possible, cost efficient property management which helps to keep rents down, and the freedom to contribute to the maintenance and improvement of their homes if they are so inclined.

From that perspective, no other possibility than democratic property management will do.

**3. So is this one of those coops where residents must do assigned chores and participate in endless meetings? That kind of thing?**

No. The Coop structure allows residents of social housing to participate as little or as much as they please. For tenants with other things to do, living in social housing is scarcely different from ordinary rental housing.



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A Social Housing Plan for Berkeley

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## 5 Financial structure, internal subsidies

This section presents a moderately detailed business model for social housing. For simplicity of presentation, some simplifications are made. For example, the model is described in terms of homogeneous “housing units” which are all equal in size and quality, though in real life housing units vary in quality and size.

*(A glossary of terms used here is provided at the end of this section. Digital versions of this document link terms to their definitions.)*

### 5.1 Where the rent goes

#### 5.1.1 The Coop share of rent revenues

Each month the **Property Management Coop** collects rents from the entire portfolio of units. This is the program’s *gross rental revenue*.

The Coop pays its staff to manage rental contracts, perform routine maintenance, and assist tenants. It pays for materials needed for routine maintenance. Additionally, the Coop deposits a portion of rents in an *operating reserve* fund, as needed.

### **5.1.2 The Trust's share of rent revenues**

The Municipal Housing Trust receives the rent revenues, minus the Coop share of rent revenues. This is the program's *gross rental income*.

In addition to the Trust's own office, staff and material expenses, insurance and taxes, the Trust builds a replacement reserve for major maintenance projects and improvements. Remaining funds are divided, by policy, between a *reinvestment reserve* that is used to acquire or build additional units, and an *excess income* fund that is passed to the City. Note that the program would likely be functioning well if it was providing affordable units efficiently *and* growing the *reinvestment reserve* – with an *excess income* at or near 0.

## **5.2 How internal subsidies work (“cost plus” rents)**

The money flow described above assumes only an aggregate *gross rental revenue*, the sum of rents from all units. In effect, there is an *average program rent* per unit.

As with so-called inclusionary housing, internal subsidies occur because tenants of means pay at or above the program average rent, households with insufficient income pay below the average rent.

Thus, rents near or above the average rent effectively subsidize tenant households in need.

A critical difference from inclusionary housing is that the goal of social housing is to maximize affordability rather than profit. Thus, the *reinvestment reserve* built by the Trust grows slower than it would in a market rate project, in exchange for significantly greater affordability.

The exact mix of below-average and at-or-above average rents is flexible, and a matter of policy.

For short-hand, this system can be called “cost-plus” because the average rent, determined by policy, is given by the (mostly exogenous) operating costs of providing a unit, plus a *solidarity rent* for cross-subsidy uaw, plus a contribution to the *reinvestment reserve*.

(How far does this approach to internal subsidy go? More on that in a later subsection.)

### 5.3 Cap rate analysis

In conventional real estate financial discussions, *cap rate* (short for “capitalization rate”) is the net operating income of a portfolio divided by the market price of the portfolio. It is a measure of the “returns to capital” realized by property owners. If a property has too low a cap rate its market price is likely too high. If a property has too high a cap rate, its market price is likely too low. Global average return to capital plus risk assessments specific to real estate determine whether a cap rate is “too low” or “too high”. Today, as a mere rule of thumb, a 5-6% cap rate is the Goldilocks range in our region.

The social housing program described here can be viewed through a cap rate lens by regarding two expenditures from rent revenue as the *program net operating income*:

*program net operating income* = *solidarity rent* + *reinvestment reserve*

The program net operating income, in other words, funds internal subsidies for low income tenants, plus program expansion.

The *program cap rate*, therefore, is that *program net operating income* divided by the *capital cost per unit*.

Cap rate analysis is useful for thinking about the tradeoffs between internal subsidies (i.e. *solidarity rent*), the *reinvestment reserve*, and the amount of *forgone profit*.

Note that, in practice, the *program cap rate* is a policy choice under control of the Municipal Trust. A rate that falls below the market's Goldilocks range (e.g. 2.75% rather than 5.5%) represents profit foregone in order to keep the *average program rent* below market prices.

## 5.4 Example rent schedule

To illustrate the power of the business model described above, consider the example scenarios that follow. Both scenarios assume:

*capital cost per unit* = \$500,000

And we assume that the Trust forgoes half the potentially available profit, so that:

*program cap rate* = 2.75%

For this unit, then:

*program net operating income* = \$500,000 \* 0.0275 ≈ \$13,800

Assuming an effective property tax rate of 0.8%:

*assumed taxes* = \$500,000 \* 0.008 ≈ \$4,000

The hard operating expenses of unit must cover Trust and Coop labor and materials, property taxes, insurance, and business costs such as license fees and insurance. The amount is exogenously given and difficult to estimate. Informal research was used to arrive at this estimate:

*assumed hard operating costs* = \$5,000

In per-month terms, for one unit:

*program net operating income* = \$1,150 / mo.

*property taxes* = \$333 / mo.

*hard operating costs* = \$417 / mo.

***average program rent = \$1,900 / mo.***

Note that by the “30% rule”, a rent of \$1,900 / mo. is affordable at the current median household income in Berkeley. A rent of \$1,900 for an average, small, two bedroom unit is also significantly below current market prices.

#### **5.4.1 Scenario 1: maximizing program growth**

In scenario 1, all tenants pay the *average program rent* of \$1,900 per unit. The full *program net operating income* of \$1,150 / mo. accumulates in the *reinvestment reserve*.

Since the *reinvestment reserve* accumulates at 2.75% per year, the program can self-finance a 50% expansion in about 15 years, and double its size in about 30.

#### **5.4.2 Scenario 2: maximizing depth of affordability**

In scenario 2, no *program net operating income* goes to the *reinvestment reserve*, and all of it goes to subsidizing tenants who can't pay rent at all.

So, for example, a portfolio might be divided as:

*# units = 100*

*# of units at \$1,900 per month = 40*

*# of units at \$0 per month = 60*

More realistically, few or no units would need to rent at \$0 per month. More likely, even the most deeply subsidized units would yield a rent of a few hundred dollars. Thus, even a portfolio with 60% of the units made deeply affordable can accumulate *a little* towards reinvestment.

## 5.5 Definitions

Note that some terms that are common in real estate economics are not always used consistently. Thus, the definitions here may be slightly different from what is familiar from another context.

### ***# units***

The total number of units in the Trust portfolio.<sup>1</sup>

### ***average program rent***

The average per-unit rent of the program. Individual unit rents may be below or above this average.

The Trust sets a *target average program rent* by policy.

The *realized average program rent* is what the Coop actually collects:

*average program rent* = *gross rental revenue* ÷ *# units*

### **5.5.1 *capital cost per unit***

The all-in cost of building or acquiring and rehabilitating a rental unit.

### ***Coop expenditures***

The total amount spent by the Property Management Coop. This includes labor and material for routine maintenance, legal expenses, insurance, and contributions to an *operating reserve* fund.

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<sup>1</sup>For brevity, this presentation assumes units of uniform size and quality. The generalization to a heterogeneous portfolio is straightforward.

### ***excess income***

*gross rental income* (aka Trust income) net *Trust expenditures*.

### ***forgone profit***

The difference between the *program net operating income* and the [*net operating income*] that would be typical of a market rate portfolio.

This is reflected in cap rates. The cap rate of a market rate portfolio in the Goldilocks range might be 5.5%. The *program cap rate* for social housing might be set by policy at half that: 2.75%.

### ***gross rental income***

What is left from *gross revenue* after *Management Coop expenditures* are paid. This money is transferred to the Municipal Trust.

*gross rental income* = *gross rental revenue* - *Coop expenditures*

### ***gross rental revenue***

The aggregate amount collected in rent. This is the revenue stream of the Property Management Coop.

*gross rental revenue* = *average program rent* \* *# units*

### ***operating reserve***

A fund maintained by the Coop, used to close short-term gaps between *Coop expenditures* and [*gross rental rental*] net other obligations.



### ***program cap rate***

*program cap rate* = *program net operating income* / *capital cost per unit*

The program cap rate is a measure of the amount tenants pay to fund internal subsidies and program expansion. It is one of the primary policy choices made by the Municipal Trust.

### **5.5.2 *program net operating income***

*program net operating income* = *reinvestment reserve* + *solidarity rent*

The *program net income* is the total amount of revenue available for internal subsidies and program expansion.

### ***reinvestment reserve***

A fund maintained by the Trust and used to expand the program through acquisitions and rehab, or through new development

### ***Trust expenditures***

The Trust divides *gross rental income* into:

- *contributions to a replacement reserve*
- *contributions to a property tax reserve*
- *insurance*
- *labor and materials*
- *contributions to a **reinvestment reserve***
- *excess income*

***solidarity rent***

Rents paid by some units, in excess of operating costs, taxes, and reinvestment reserves.

*Solidarity rents* are used to reduce rents for tenant households with lower incomes.

## Action Calendar

### 45a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

**From: Housing Advisory Commission**

**Recommendation:** Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

**Financial Implications:** Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

## Action Calendar

### 45b. Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants From: Peace and Justice Commission

**Recommendation:** The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

**Financial Implications:** See report

Contact: Bre Slimick, Commission Secretary, 981-7000

## Action Calendar

### 45c. Companion Report: Commission Recommendations Regarding Code Enforcement and Mr. Leonard Powell

**From: City Manager**

**Recommendation:** The City Manager appreciates the concerns identified by the Peace & Justice Commission and Housing Advisory Commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City Manager believes that current City policies, practices and records demonstrate the proper mechanisms are in place to ensure the outcomes each commission wishes and that additional recommendations are not needed. City staff have worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property.

**Financial Implications:** See report

Contact: Paul Buddenhagen, City Manager's Office, 981-7000; Kelly Wallace, Housing and Community Services, 981-5400

**Action:** 21 speakers. M/S/C (Bartlett/Harrison) to:

- 1) Refer Items 45a and 45b to the Health, Life Enrichment, Equity and Community Committee.
- 2) Create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.
- 3) Request an analysis of receivers and conservators by the City.
- 4) Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

### 46. Zoning Ordinance Amendments that apply Inclusionary Housing Regulations to Contiguous Lots under Common Control or Ownership *(Continued from April 30, 2019)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of Zoning Ordinance amendments that modify Inclusionary Housing Requirements (BMC Section 23C.12.020: Applicability of Regulations) to apply to new residential development projects on contiguous lots under common ownership or control.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

**Action:** Item removed from the agenda by the City Manager.

## Consent Calendar

- 34. Contract: Tanko Lighting for Street Light Luminaire Retrofit Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project with Tanko Lighting, Inc. for the City Street Light Luminaire Retrofit Project in an amount not to exceed \$140,875 for the period from July 1, 2019 through December 31, 2020.  
**Financial Implications:** Street Light Assessment District Fund - \$140,875  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 69,009–N.S. Additional request to prioritize replacement at high injury collision network streets and the bicycle boulevards.
- 35. Educator and Educational Staff Housing**  
**From: Housing Advisory Commission**  
**Recommendation:** Amend the Housing Trust Fund Guidelines and other relevant City of Berkeley housing policies to foster workforce housing for educators and educational staff by expanding income eligibility to include up to 120% AMI; and Provide \$150,000 to the Berkeley Unified School District to undertake predevelopment planning for housing to be built in Berkeley that will be available to educators and educational staff working for BUSD; and Work with the District to identify possible financing opportunities for capital development; and Recommend the Berkeley Unified School District balances building as many units as possible with being as family-friendly as possible.  
**Financial Implications:** See report  
Contact: Mike Uberti, Commission Secretary, 981-7400  
**Action:** Approved the following recommendations: Work with the District to identify possible financing opportunities for capital development; and Recommend the Berkeley Unified School District balances building as many units as possible with being as family-friendly as possible.

**To:** Housing Advisory Commission (HAC)  
**From:** Marian Wolfe  
**Date:** July 2, 2019  
**RE:** Financing Adeline Corridor Specific Plan Improvements

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At the last HAC meeting (June 6, 2019), staff provided an overview of the Adeline Corridor Draft Specific Plan. One issue not really discussed was how improvements and affordable housing would be funded. This is always an important consideration, and so I decided to look into this issue more. I think that identifying likely funding is important not only for HAC members, but also for anyone who is advocating activities and development for this area.

The best information available at this time that addresses funding of improvements and other developments is the Draft Specific Plan, Chapter 8 (Implementation).<sup>1</sup> This chapter sorts all improvement activities into two time frames (short term - within three years, and on-going - no term specified). Housing-related activities are grouped into both time frames.

Possible funding for general improvements, economic development, and housing in the corridor is listed on four pages of the Specific Plan, starting on page 8-11. These funding sources are briefly described, and a brief discussion of the process to obtain funds is provided. What is not yet included is an actual chart that provides a “cross-walk” between funding sources and recommended improvements and developments in the Adeline Corridor Area. Funding is needed not only for new development, but also for improvements to existing infrastructure. Also, estimates of costs, particularly public costs and subsidies required, should be considered.

All funding sources (except for existing Berkeley resources) are either competitive (at the regional, state, or federal levels), require a vote of Berkeley residents, or require support from current merchants. Existing Berkeley resources that can be considered for the Corridor, such as general funds, revenues from approved measures, or Housing Trust fund revenues, will compete with existing needs already identified within the City of Berkeley.

In my opinion, the principal challenge is the funding of two non-market undertakings presented in the staff presentation. Specifically, these are affordable housing and investment in commercial activities that would help existing neighborhood businesses and/or foster new

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<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Adeline%20SP%20Public\\_8.%20Implementation\\_5.16.19.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20SP%20Public_8.%20Implementation_5.16.19.pdf)

businesses with a primary goal of preventing commercial displacement and limiting gentrification.

Regarding **the construction of affordable housing**, the two basic models prevalent in Berkeley are:<sup>2</sup>

- Construction of developments that are exclusively affordable and which require major subsidies, and
- Inclusionary units required of market rate developers (which require vouchers if deeper affordability is to be attained).

If only affordable housing is built in the Corridor (as some members of the public who addressed the HAC at its June 6, 2019 meeting advocated), then more subsidies will be needed to develop the housing. This could slow the pace of affordable housing development. If there were a mix of market rate developments (with an inclusionary requirement) and affordable developments, then it is possible that the pace of development could be quicker. However, if there is a downturn in the residential building cycle, then it is possible that only the affordable developments could be feasible.

Regarding **economic development**, the main activities identified in the Specific Plan do not directly help existing or new business owners, but instead work to make the area more attractive to customers. A good example of this would be a Business Improvement District (BID) which taxes property or business owners in the area. Revenues from a BID can fund amenities, such as street furniture, landscaping, and can sponsor special events – all intended to attract consumers to the area. BID revenues also provide funds to pay for better upkeep, such as sidewalk cleaning and graffiti removal. However, a BID does not provide low cost financing to a start-up business.

However, one way that private investors could increase funding directly to start-up businesses would be the use of Opportunity Zone funding authorized by the 2017 Tax Law. This program provides federal tax benefits to taxpayers who invest in projects located within one of these zones. The Corridor is located within an Opportunity Zone. Guidance for using the opportunity zone strategy has not yet been issued by the federal government, but this would potentially be one useful source for business development, particularly if private investors can be encouraged to participate. Berkeley staff, Chamber of Commerce, and other interested individuals and

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<sup>2</sup> Another way to expand the supply of affordable housing is to encourage new and nontraditional housing models and types targeted towards lower and middle-income residents. (Page 4-18, Adeline Corridor Specific Plan) However, financing for these models is more complicated and so not included in this brief memo.



entities should monitor this program closely to determine whether it will be useful in helping to foster local business creation.

In conclusion, I encourage the HAC and other relevant commissions to understand the challenges of implementing the Adeline Corridor Specific Plan – not only from a political/policy perspective – but also with a viewpoint that considers financial feasibility. The Draft Plan provides useful background information on both.

**Uberti, Michael**

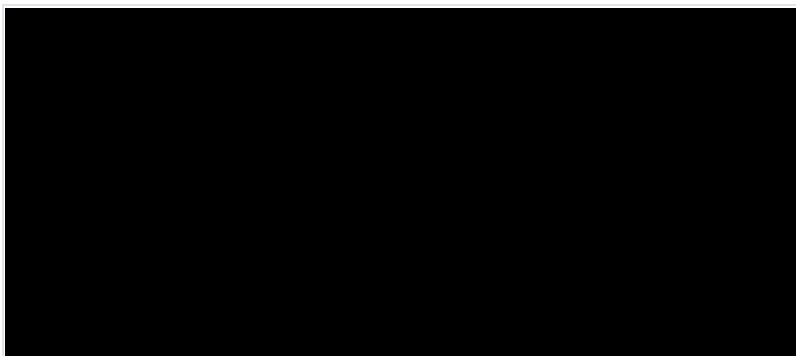
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**From:** C schwartz <cschwartz29@yahoo.com>  
**Sent:** Monday, June 10, 2019 1:45 AM  
**To:** Housing Advisory Commission; Xavier Johnson; Davidson, Amy  
**Subject:** City of Berkeley Housing Advisory Commission Meeting June 6, 2019

Hello,

Please see the above, below.

[City of Berkeley Housing Advisory Commission June 6, 2019 by Christine Schwartz](#)



**City of Berkeley Housing Advisory Commission  
June 6, 2019 by Christine S...**

ion 2180 Milvia Street – 2nd Floor • Berkeley • CA • 94704 •  
Tel. 510.981.5400 • TDD: 510.981.6903 • Fax: 510.98...

Respectfully,  
Christine Schwartz

**Uberti, Michael**

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**From:** Carol Denney <cdenney@igc.org>  
**Sent:** Tuesday, July 02, 2019 12:45 PM  
**To:** Housing Advisory Commission  
**Subject:** smokefree efforts  
**Attachments:** faded nosmoke sign.JPG; Bondonno Letter to Merchants.doc

Dear Housing Advisory Commissioners,

I want to thank you all for your efforts to assist those of us who have yet to benefit from smokefree public health protections.

The proposals I've read are well-meaning, but seem extremely weak. It strikes me as improbable that those still suffering secondhand smoke exposure will reach back into any effort to communicate with the city after five years of ineffective response- --*unless* there is a new and robust signage, outreach, and education effort regarding our updated smokefree restrictions and their public health foundations.

Our street signage is spotty about tobacco, non-existent about vaping products, and completely silent on the state-wide prohibition on public marijuana smoking. The original signage in 2008 is more than ten years old, often faded into what resembles a smoking promotion (see attached), or has long ago been scraped away in a store renovation. New tenants in MUH or in commercial business districts are not informed or enlisted in the smokefree efforts any more than the construction work crews or the street fair vendors, despite the cost-free ease of including smokefree requirements and relevant maps in any work order or contract.

The original outreach letter (see attached) has been recently changed to eliminate the once mandatory signage requirement altogether without visiting any commission or having any transparent process. Council representative Kate Harrison's office can give you a copy of the most recent iteration, which misses the 2008 outreach efforts' point -- that of having all commercial district businesses display consistent signage in any window abutting the commercial district sidewalks.

I worked for years as part of a national network. Anyone familiar with these efforts would agree that clear, consistent signage, outreach, and education is much more important than enforcement such as fines -- without it enforcement doesn't make sense. And especially in multi-unit housing, the crucial element for a smoker is to have clarity about the closest legal place to enjoy a smoke. This element was left out of the original outreach.

As a citizen who cares and a tenant who continues to be exposed, I look forward to working with any or all of you who wish to nurture a more robust effort to see the public health results of the strong, clear policy we embraced in 2008.  
Thank you,

Carol Denney  
1970 San Pablo Avenue #4  
Berkeley, CA 94702



**in this  
Commercial Zone**

City of Berkeley BMC 1270  
Quit Smoking Information: 510-981-5330

A graphic featuring a stylized map of a city street grid. The text "in this Commercial Zone" is centered over the map. Below the map, the text "City of Berkeley BMC 1270" and "Quit Smoking Information: 510-981-5330" is displayed.

5<sup>th</sup> June 2012

Dear Merchant:

Enclosed is tobacco prevention art that was created by Berkeley City College (BCC) students, as part of a campaign to keep downtown Berkeley smoke-free. Please post this sticker or poster on a window facing outdoors, if possible. Berkeley Municipal Code 12.70 prohibits smoking in all commercial zones throughout the city.

This project is part of an endeavor by the BCC Tobacco-Less Club, the City of Berkeley Tobacco Prevention Program, the Berkeley City Council, Alameda County Health Care Services Agency, Community Health Education Institute and the Downtown Berkeley Association, in order to create a healthy, litter-free downtown Berkeley.

Sincerely,

Pauline Bondonno

Community Health Education Institute Program