



Housing Advisory Commission

HOUSING ADVISORY COMMISSION

AGENDA

Special Meeting

Thursday, December 7, 2017
6:30 pm

South Berkeley Senior Center

2939 Ellis Street
Secretary Amy Davidson
HAC@cityofberkeley.info

All agenda items are for discussion and possible action.

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.

1. Roll Call
2. Agenda Approval
3. Public Comment

4. **Brown Act Training for Commissioners** – *Rachel Chatman*
Commissioners' Manual:
https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Final%20Formatted%20Manual%205.06.08.pdf

5. **Public Hearing on Community Needs and Review of Accomplishments of Projects Funded with Community Development Block Grant, Emergency Solutions Grant, and HOME Funds in FY 2017** – *Kristen Lee (Attachment 1)*

6. Approval of the November 2, 2017 Regular Meeting Minutes (*Attachment 2*)
7. **Adopt 2018 Meeting Calendar** – *All/Staff (Attachment 3)*
8. **Discussion and Possible Action of Subcommittee Assignments and Appointments** – *All/Staff (Attachments 4 and 5)*
9. **Discussion and Possible Action on Recommendations on the Use of Measure U1 Funds from the U1 Subcommittee** – *Marian Wolfe and Thomas Lord (Attachments 6 and 7)*
10. **Discussion and Possible Action on Recommendations for Berkeley Way Project** – *Igor Tregub (Attachment 8)*
11. **Discussion and Possible Action on Recommendations on Supply of Rent Controlled Units Following Disaster and Possible Areas of Collaboration with Disaster and Fire Commission** – *Igor Tregub (Attachment 9)*

12. Subcommittee Updates

- a. Homeless (*Attachment 10*)
- b. Low-Income Housing
- c. Smoke-Free Housing Subcommittee (*Attachment 11*)
- d. Density Bonus

13. Update on Council Items – All/Staff

- a. Disposition of the Kenney Cottage from City-Owned Lot in the 1200 Block of University to Make Way for Creating Needed Housing (11/14/2017)
https://www.cityofberkeley.info/Clerk/City_Council/2017/11_Nov/Documents/2017-11-14_Item_13_Disposition_of_the_Kenney_Cottage.aspx
- b. Implementation Plan for Affordable Housing Action Plan Referrals (11/28/2017) (*Attachment 12*)
- c. Ministerial Approval of Zoning-Compliant Affordable Housing (12/5/2017 continued from 11/28/2017)
https://www.cityofberkeley.info/Clerk/City_Council/2017/11_Nov/Documents/2017-11-28_Item_26_Ministerial_Approval_-_Rev.aspx
- d. Strengthening Provisions of Significant Community Benefits in the Downtown (12/5/2017)
https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-05_Item_25_Strengthening_Provisions.aspx

14. Announcements/Information Items

15. Future Items

- a. Home Share Program (*January*)
- b. Commission Chair and Vice Chair Elections (*February*)
- c. Work Plan Process (*April*)
- d. Tiny Homes
- e. Future Items – *Thomas Lord (Attachment 13)*
- f. Affordable Housing Mitigation Fee Requirements

16. Adjourn

Attachments

1. Public Hearing on Community Needs
2. Draft November 2, 2017 Regular Meeting Minutes
3. Draft 2018 Meeting Calendar
4. Subcommittees' Rosters and Assignments
5. Thomas Lord, Discussion of HAC Subcommittee Structure
6. Marian Wolfe, U1 Subcommittee Recommendations
7. Thomas Lord, Amendments or Motions Re U1 Subcommittee
8. Igor Tregub, Berkeley Way Staff Update and Reaffirmation of Priority Accorded to On-Site Housing over Parking on the Project
9. Igor Tregub, Recommendations to the Berkeley City Council on Supply of Rent Controlled Units Following Disaster; Possible Areas of Collaboration with Disaster and Fire Commission

10. Marian Wolfe and Xavier Johnson, Assessment of Recent Issues Raised by Homeless Commission
11. Thomas Lord, Housing-Related Smoking Regulations
12. City Council Affordable Housing Action Plan Referrals adopted 11/28/17
13. Thomas Lord, Future Items

Information Items

14. Thomas Lord, Discussion of Full HAC Brown Act Compliance
15. Thomas Lord, On the Scale of U1 Revenues
16. Thomas Lord, On U1 Targeting by RHNA Categories
17. Thomas Lord, Against the U1 Subcommittee Bond Proposal
18. Thomas Lord, HTF Process and U1 Revenues

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, 2nd Floor during regular business hours. Agenda packets and minutes are posted online at:

https://www.cityofberkeley.info/Housing_Advisory_Commission/

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Secretary of the commission. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary for further information.



PUBLIC HEARING ON COMMUNITY NEEDS

Thursday, December 7, 2017, 7:00 p.m.
South Berkeley Senior Center
2939 Ellis Street (at Ashby)

Come Share Your Ideas on Needed Services and Housing

The purpose of this Public Hearing is to hear from Berkeley residents what services and housing are needed for low-income people in their community. The information from this Public Hearing will be used to help the City of Berkeley prioritize the types of services and housing needed to meet community needs. The information will also be included in the Community Action Plan for the City of Berkeley Community Action Agency and the Annual Action Plan for funding from the federal department of Housing and Urban Development.

Written comments should be mailed or delivered directly to Jennifer Vasquez, Heath, Housing & Community Services Department, 2180 Milvia Street, Berkeley, CA 94704. For more information call the City of Berkeley Housing Department at 981-5400. FAX: (510) 981-5450. TDD: (510) 981-6903.

Accommodations Provided Upon Request. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Providing at least three working days' notice will help to ensure availability at the meeting.

Una audiencia pública para tratar las Necesidades de la Comunidad se llevará a cabo el **jueves, 7 de diciembre de 2017 a las 7:00 p.m., en el centro comunitario para personas de la tercera edad (South Berkeley Senior Center), que está ubicado en la Calle Ellis 2939.** El propósito de esta audiencia es escuchar directamente de los habitantes de Berkeley cuales son los servicios y programas de vivienda que necesita la comunidad de bajos recursos económicos. La información adquirida en esta audiencia será utilizada para que la municipalidad pueda priorizar los tipos de servicios y vivienda que la comunidad necesita. Esta información también será incluida en los informes que agencias estatales y federales exigen que la ciudad de Berkeley presente para continuar recibiendo financiamiento de las mismas. Si usted necesita asistencia o desea presentar sus comentarios u opiniones en español, puede comunicarse con Roxana Andrade al 510.981.5402 o al correo electrónico randrade@cityofberkeley.info.

以下各委員會將在：二零一七年十二月七日，星期四，晚上七時，舉行公聽會
公聽會地點：南柏克萊耆英中心 2939 Ellis Street

公聽會目的為聆聽柏克萊市民對低收入人士的服務需求。以便于房屋委員會，公園及娛樂委員會，公眾福利及社區活動委員會，和露宿者服務委員會決定應優先考慮那一種服務和房屋建設以迎合社區的需求。該等資料將被列入柏克萊社區服務計劃書，呈交州政府和聯邦政府，以便繼續取得經費。

如需要中文協助，請聯絡房屋部鄭女士：電話 981-4928

電郵 mcheng@ci.berkeley.ca.us

**City of Berkeley –
Consolidated Annual Performance and Evaluation Report (CAPER)
Summary of Accomplishments
(July 1, 2016-June 30, 2017)**

Program Year (PY) 2016 is the second year of the five year strategic plan. In PY 2016, the City of Berkeley received \$2,476,078 in Community Development Block Grant (CDBG), \$588,201 in HOME, and \$220,578 in Emergency Solutions Grant funds. An additional \$787,753 in program income and \$250,000 in prior years' carryover added to the CDBG resources available. An additional \$20,000 in HOME program income was also available. The City used its adopted Public Participation Plan to encourage community input into funding priorities and proposed funding allocations for a variety of housing, homeless, and community development activities. In PY 2016, the City continued to invest a significant amount of City General Funds into related priorities. Major highlights executed in PY16 in the four goal areas include:

Affordable Housing Supply and Quality: The City is on track to meet its affordable housing goals outlined in the five-year Strategic Plan. Resources for Community Development completed the City-funded rehabilitation of William Byron Rumford Senior Plaza, a 43-unit property. Harper Crossing was almost completed with lease up scheduled for September 2017. The City committed \$835,000 in local predevelopment funding to Berkeley Way, a development proposed to combine affordable housing, permanent supportive housing, and a temporary housing for the homeless. Additionally, Grayson Street Apartments, a proposed project on a site acquired with CDBG, obtained necessary funding and is poised to go into construction in early PY2017. It will provide 23 new construction affordable units.

Homeowner Housing Rehab (Single Family Rehabilitation - SFR): The City's Single Family Rehabilitation program comprised of the City's Senior and/or Disabled Home Loan Program (SDRLP), Center for Independent Living, Community Energy Services Corporation and Rebuilding Together completed significant health and safety repairs for 122 unduplicated households. Additionally, the SDRLP increased the amount of two loans with senior homeowners for health and safety improvements that will be completed in PY17.

Improve Public Facilities: Five community facility improvement projects were completed resulting in ADA, health and safety and energy efficiency improvements at facilities that serve low-income adults, seniors and families. Two other projects neared completion resulting in health and safety and ADA upgrades for low-income seniors and children.

Public Services: The City funded homeless, employment and fair housing services in PY16. These services combined served 2030 primarily literally homeless people living in Berkeley. The City also allocated CDBG funds to two anti-poverty programs to increase low-income people in Berkeley's access to education and employment. These programs served 66 people in PY16.

To Access the full CAPER go to: https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/FinalCAPERwAttachments.pdf



HOUSING ADVISORY COMMISSION
Regular Meeting
Thursday, November 2, 2017

Housing Advisory Commission

Time: 7:03 pm

South Berkeley Senior Center
2939 Ellis Street – Berkeley
Secretary – Amy Davidson, (510) 981-5406

APPROVED MINUTES

1. Roll Call

Present: Luis Amezcua, Xavier Johnson, Rashi Kesarwani (7:21 pm), Matthew Lewis (7:05 pm), Thomas Lord, Darrell Owens, Igor Tregub, Marian Wolfe, and Amir Wright.

Absent: None.

Commissioners in attendance: 9 of 9

Staff Present: Amy Davidson and Mike Uberti

Members of the public in attendance: 3

Public Speakers: 1

2. Agenda Approval

Action: M/S/C (Amezcua/ Wright) to approve the agenda.

Vote: Ayes: Amezcua, Johnson, Lewis, Lord, Owens, Tregub, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Kesarwani (unexcused).

3. Public Comment

One member of the public spoke.

4. Approval of October 5, 2017 Meeting Minutes

Action: M/S/C (Wolfe/Amezcua) to approve minutes.

Vote: Ayes: Amezcua, Johnson, Lewis, Lord, Owens, Tregub, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Kesarwani (unexcused).

5. Appointment Review 9/22/2017 Brown Act Violation Cure and Correct Demand Letter from Thomas Lord and Proposed Actions in Response

- a. Demand 1 – Rescind the current work plan and replace it with one that strictly follows the format preferred by City Council
 - i. Proposed response action: Emphasize need for formal adjournment even in a less formal meeting structure to ensure the public has an opportunity to fully participate; ensure any discussions that occurred between the work session and the regular meeting are made public now
 - ii. Proposed response action: prior to generating next work plan, review the City Council format and discuss changing to that format

- b. Demand 2 – Rescind subcommittees
 - i. Proposed response action: Schedule a Special Meeting on December 7, 2017 for a Brown Act training regarding the role, purpose and function of subcommittees then revisit subcommittees at a later date
- c. Demand 3 – Meeting process guidelines
 - i. Proposed response action: Schedule check in on the meeting process guidelines in March 2018 to ensure the concerns raised regarding misuse and discouraging full discussion have not come to fruition

Commissioner Lord recused himself as he submitted Brown Act Violation Cure and Correct Demand Letter being discussed.

Action: M/S/C (Amezcuca/Johnson) to adopt the proposed response actions under Demand 1 with amendment to send existing work plan to the City Council.

Vote: Ayes: Amezcuca, Johnson, Kesarwani, Lewis, Tregub, Wolfe, and Wright. Noes: None. Abstain: Owens. Absent: None. Recused: Lord.

The Chair invited Commissioners who attended the June 2017 work plan meeting to disclose any comments they recalled making in side conversations after the special meeting concluded and before the regular meeting began so that this information could be included in the public record. Most Commissioners stated they could not recall having side conversations, and none reported information for the record.

Action: M/S/C (Amezcuca/Johnson) to adopt the proposed response actions under Demand 2 with amendment to revisit subcommittees at the December 7, 2017 meeting.

Vote: Ayes: Amezcuca, Johnson, Kesarwani, Lewis, Tregub, Wolfe, and Wright. Noes: None. Abstain: Owens. Absent: None. Recused: Lord.

Action: M/S/C (Amezcuca/Johnson) to adopt the proposed response actions under Demand 3.

Vote: Ayes: Amezcuca, Johnson, Kesarwani, Lewis, Tregub, Wolfe, and Wright. Noes: None. Abstain: Owens. Absent: None. Recused: Lord.

6. Discussion and Possible Action on Recommendations on the Use of Measure U1 Funds from the U1 Subcommittee

7. Discussion and Possible Action on Recommendations for the “Smoking Prohibited in Multi-Unit Residences” Ordinance (BMC 12.70.035) and Practices from the Smoke-Free Housing Subcommittee

Action: M/S/C (Lord/ Kesarwani) to send recommendations to the Community Health Commission and invite their feedback to send a final recommendation to the City Council.

Vote: Ayes: Amezcuca, Johnson, Kesarwani, Lewis, Owens, Tregub, and Wright. Noes: Wolfe. Abstain: None. Absent: None.

Action: M/S/C (Lord/Johnson) to extend meeting 30 minutes.

Vote: Ayes: Amezcua, Johnson, Kesarwani, Lewis, Lord, Owens, Tregub, and Wolfe.
Noes: None. Abstain: None. Absent: Wright.

Action: M/S/C (Lord/Tregub) to extend meeting 30 minutes.

Vote: Ayes: Amezcua, Johnson, Kesarwani, Lewis, Lord, Owens, Tregub, Wolfe, and Wright. Noes: None. Abstain: None. Absent: None.

8. Subcommittee Updates

9. Update on Council Items

10. Announcements/Information Items

11. Future Items

12. Adjourn

Action: M/S/C (Amezcua/Johnson) to adjourn the meeting at 9:50 pm.

Vote: Ayes: Amezcua, Johnson, Kesarwani, Lewis, Lord, Owens, Tregub, Wolfe, and Wright. Noes: None. Abstain: None. Absent: None.

Approved on December 7, 2017

_____, Amy Davidson, Secretary

2018 Housing Advisory Commission Meeting Dates South Berkeley Senior Center

Month	Meeting Day and Date	Time
January 2018	Wednesday	7:00 pm
	January 10	
February 2018	Thursday	7:00 pm
	February 1	
March 2018	Thursday	7:00 pm
	March 1	
April 2018	Thursday	7:00 pm
	April 5	
May 2018	Thursday	7:00 pm
	May 3	
June 2018	Thursday	7:00 pm
	June 7	

Month	Meeting Day and Date	Time
July 2018	Thursday	7:00 pm
	July 12	
August 2018	Recess	
September 2018	Thursday	7:00 pm
	September 6	
October 2018	Thursday	7:00 pm
	October 4	
November 2018	Thursday	7:00 pm
	November 1	
December 2018	Recess	

**HAC Subcommittee Appointments
December 7, 2017**

Name	Appointed by	Current Subcommittee Appointments
Rashi Kesarwani	Maio/ District 1	CDBG Measure U1
Thomas Lord	Davila/ District 2	CDBG Moderate Income Housing Smoke-Free Housing
Igor Tregub	Bartlett/ District 3	Density Bonus HTF Low Income Measure U1 (Alternate) Moderate Income Housing
Luis Amezcua	Harrison/ District 4	Density Bonus HTF Measure U1 Student Housing
Xavier Johnson	Hahn/ District 5	Homelessness HTF Low Income Smoke-Free Housing
Marian Wolfe	Wengraf/ District 6	Density Bonus Homelessness Low Income Measure U1
Amir Wright	Worthington/ District 7	Student Housing
Darrell Owens	Droste/ District 8	
Matthew Lewis	Arreguin/ Mayor	Density Bonus HTF Low Income Measure U1 Student Housing

Notes on ad hoc subcommittees:

Subcommittee	Assignment	End date
CDBG	Advise the HAC on the current CDBG funding cycle	Upon completion of current CDBG funding cycle
Density Bonus	<ul style="list-style-type: none"> • Obtain an understanding of existing state and local density bonus policies • Research how these policies impact Berkeley • Make recommendations on the subject matter to the Housing Advisory Commission 	June 30, 2018
Homeless	Coordinate with the Homeless Commission on matters of mutual interest	June 30, 2018
Housing Trust Fund	Advise the HAC on Housing Trust Fund related matters	June 30, 2018
Low Income Housing*	<ul style="list-style-type: none"> • Explore and make recommendations on the low income housing strategies identified in the HAC's FY2018 work plan 	June 30, 2018
Measure U1	<ul style="list-style-type: none"> • Develop recommended guidelines for the use of U1 funds; • Provide advice for the HAC for Council on anti-displacement programs and affordable housing to be funded with U1; and • Possibly discuss specific projects, avoiding overlap with other subcommittees of the HAC. 	June 30, 2018
Moderate Income Housing*	<ul style="list-style-type: none"> • Explore and make recommendations on the moderate income housing strategies identified in the HAC's FY2018 work plan 	June 30, 2018
Smoke-Free Housing	<ul style="list-style-type: none"> • Consider updates to the City's Smoke-Free Housing Ordinance and existing implementation of the ordinance • Propose revisions to these to improve the accessibility and effectiveness of the ordinance • Propose methods for obtaining public input into the needs of the ordinance. 	December 7, 2018

Student Housing	<ul style="list-style-type: none"> • Explore and make recommendations on student housing strategies identified in the HAC's FY2018 work plan • Explore: <ul style="list-style-type: none"> ○ Master tenancies ○ Site selection ○ How the university finances its housing (e.g. UPP's vs revenue bonds) and privatization of UC Berkeley housing system in general ○ Pressuring the university to force developers to meet the affordability requirements of the city (e.g. mitigation fee/in-lieu units) ○ Developing a separate affordability definition applicable to inclusionary housing to be used in areas near campus so students can live in them 	June 30, 2018
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* 2017-2018 Work Plan priority "Lack of Funding" was referred to the subcommittees marked with an asterisk(*). Specific strategies referred were:

- Explore other forms of taxation/revenues.
- Look at acquiring tax-default properties.
- Increase the commercial linkage fee.
- Allocate a portion of the short term rental tax.
- Use of Federal transportation funds.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **discussion of HAC subcommittee structure**

Contents

1	Summary and Recommendation	1
2	Why I think our current subcommittees are, for the most part, standing subcommittees	2
3	Unambiguously conforming with the Brown Act can lead to better work	5
4	Sorting out City and State rules	6

1 Summary and Recommendation

I thought it would be helpful to clarify why I regard several HAC subcommittees as (improper) standing subcommittees. I have done so below.

I also wanted to convey the following recommendation in writing:

- **Existing, active subcommittees should finish their already chartered business as usual.**
- **Those subcommittees should refrain from returning to the Commission to request referrals of new work pertaining only to the same general subject matter.**

(This will help to ensure that the subcommittees do not act a standing subcommittees.)

- **Beginning in 2018, the HAC should adopt the practice that when the full commission finds there to be new work to be done in a subcommittee, that a new ad-hoc subcommittee be formed for that specific work.**

(This will help the HAC to operate efficiently and above-board. In my view it will improve the quality of our work by giving more commissioners a chance to participate in various subject areas at the subcommittee level.)

2 Why I think our current subcommittees are, for the most part, standing subcommittees

I am not aware of any court cases which examine the Brown Act's definition of a standing subcommittee.

In 1996, however, the Attorney General of the State of California (then, Daniel E. Lungren), published an opinion on the matter, co-authored by then Deputy Attorney General Maxine P. Cutler. (Opinion No. 95-614)

The opinion confronts a case somewhat similar to the situation at the HAC:

A public water district in Central California is governed by a seven member board of directors. The board has established a subcommittee of three members to advise the board on administrative matters as needed. The subcommittee has been in existence for several years and generally meets monthly, but it does not have a fixed meeting schedule and operates under the following rule:

“The Administrative Committee shall consist of the three Directors appointed by the Chair and approved by the Board. *This committee shall not exercise continuing subject matter jurisdiction.* Its purpose shall be to advise the Board on administrative matters as appropriate. The Board of Directors shall not fix the meeting schedule of this committee. The committee may meet on the call of the chair or as decided by the members.

Action taken by the Administrative Committee shall be subject to final Board approval.” (Italics added.)

To determine whether or not this Administrative Committee was subject to the public meeting requirements of the Brown Act, The Attorney General opinion inquired into whether or not the committee was, in fact, a standing subcommittee.

The opinion gives particular attention to California Government Code § 54952(b):

“(b) However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that *standing committees of a legislative body, irrespective of their composition, which have continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies* for purposes of this chapter.” (Italics added.)

None of the HAC’s contended subcommittees have a “fixed a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.” Therefore, as in the case considered by the Attorney General, the question hinges on whether not the subcommittees have a “continuing subject matter jurisdiction”.

In analyzing how a court might construct the Brown Act, the Attorney General also noted some common definitions:

We note that a “standing committee” is commonly defined as “a committee to consider subjects of a particular class arising during a stated period; specif[ically] a permanent committee of a legislative body.” (Webster’s Third New Internat. Dict. (1971) p. 2224.) “Permanent” may be commonly defined as “to endure, remain.” (*Id.*, at p. 1683.)

As for the phrase “continuing subject matter jurisdiction,” we find that “continuing” means “needing no renewal” (Webster’s, *supra*, at p. 493), “subject matter” means “matter presented for consideration” (*id.*, at p. 2276), and “jurisdiction” means “power, right, or authority to hear . . . a cause” (*id.*, at p. 1227).

Let us apply an analogous analysis of, for example, the HAC's the low income housing subcommittee and the student housing subcommittee.

I note that:

1. Both of these HAC subcommittees were formed to "consider subjects of a particular class" - the housing needs of low income households and the housing needs of students, respectively.

Recorded discussion in multiple HAC meetings makes it very clear that the intention is that these subcommittees are not concerned with any specific task, but rather that they should explore a general subject matter.

2. Both of these HAC subcommittees are formed to consider questions in their subject area "arising during a stated period".

We know that these subcommittees are "continuing", in the sense of "needing no renewal", because *no matter what they accomplish prior to the end of their term, they may continue to exist, meet, and consider questions in their general subject areas..*

Acting (I believe) from confusion, the HAC has attempted to satisfy Brown Act requirements by:

1. Limiting the term of these subcommittees to June of 2018.
2. Asking the subcommittees to report back to the full HAC new questions they have taken up.

Neither of those requirements seem responsive to the Brown Act requirements.

1. A standing subcommittee, per Webster, is one that will "consider subjects of a particular class arising during a stated period". In the case of these subcommittees, the "stated period" ends June, 2018.
2. Asking these subcommittees to report new questions back to the full HAC does not change their essential nature as the subcommittees charged with a general subject matter.

I don't think there is any question, really. These are *plainly* standing subcommittees.

3 Unambiguously conforming with the Brown Act can lead to better work

As constituted, the subcommittees have broken up the HAC into non-interacting “teams”, each of which more or less owns a particular subject matter.

This presents two major problems, from my perspective:

First problem: Because the Commission has decided to severely limit discussion and debate at its meetings, meaningful work on the subcommittee subject areas will happen *only* at the subcommittees. Consequently, only the members of each subject-area subcommittee will have any meaningful opportunity to contribute to HAC actions in those subect areas.

Better conformance with the Brown Act definition of an ad hoc subcommittee would help. For example, questions relating to low income households or student needs could be taken up by a succession of ad hoc subcommittees, or even multiple concurrent subcommittees, with more opportunity for all commission members to participate.

Second problem: As a practical matter, the existing structure of standing subcommittees practically precludes work on cross-cutting approaches. For example, in an information item attached to this report I have pointed out an approach to social housing financing that applies at once to *all* household income categories and to student housing.

The existing standing subcommittee structure actively consumes all available commission labor and affords no real opportunity for such cross-cutting analyses and approaches.

Better conformance with the Brown Act definition of an ad hoc subcommittee might help us accomplish something beyond rubber stamping a repetition of historic housing policies.

4 Sorting out City and State rules

Two jurisdictions relate to our subcommittees: The State has jurisdiction, in particular regarding our conformance with the Brown Act. The City has jurisdiction, in particular regarding our conformance with City rules for citizen commissions.

To sort this out a bit:

1. It is the City, not the State, that prohibits us from forming standing subcommittees. Our Commission is itself a legislative body, but it lacks the power to establish subordinate legislative bodies.

I believe, as argued above, we as a Commission have violated this City rule.

2. It is the right of this Commission to form ad hoc subcommittees. I would argue it is the inalienable right of this Commission.

The City (in effect) asserts its policing power, however, by imposing a regulation on our ad hoc subcommittees. The regulation is a requirement that our ad hoc subcommittees hold their meetings in public, with public notice, and with the opportunity for public comment.

To the extent our subcommittees faithfully adhere to that regulation, they reduce their risk of violating the Brown Act even if a court finds them to be standing subcommittees.

3. To the extent that a HAC subcommittee:
 - a) is found to be a standing subcommittee
 - b) has not adequately conformed to Brown Act noticing and meeting requirements

such a subcommittee has violated the Brown Act.



[Commission Name]

[CONSENT OR ACTION]
CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission
Subject: Housing Advisory Commission's U1 Recommendations

RECOMMENDATIONS

Place a Version of U1 on a Future Ballot in Order to Use Revenues for a Bond Measure

If the City were to place a version of U1 back on the 2018 ballot with the stipulation that it requires a two-thirds vote, and if this new measure passed with the support of at least two-thirds of Berkeley voters, then the funds from U1 could be earmarked for a bond issuance. Calculating the potential revenues from such a bond is a technical question. The amount will vary based on interest rates, market expectations, and the costs of issuing bonds. However, based on an interest rate of 3.5% payable twice a year for 20 years, it would be possible to sell approximately \$28.6 million in bonds. (This is a present value calculation, using number of periods, payment for each period, and interest rate.)

Targeting of U1 Funds

The City should consider establishing a household income targeting goal regarding U1 expenditures and housing affordability. To set this goal, the City could consider the use of progress made towards meeting the City's Housing Element RHNA numbers. At present, the most under-served income groups are households with extremely low-incomes, low-incomes, and moderate-incomes.

In addition, the Housing Advisory Commission (HAC) recommends allocating funds based on the priorities identified in the 2017 Work Plan submitted to the City Council. The HAC will be specifying more specific recommendations for funding based on this Work Plan.

A final issue is how income groups are defined for purposes of allocating U1 funds. In general, affordable housing programs use Alameda County incomes defined by household size to determine program eligibility. While it can be argued that very low-income should be defined with a higher income threshold in Berkeley than in some

other areas of Alameda County (considering differentials in the cost of living), there really are few other options, particularly if the City and its partners use U1 funds to leverage other funding from state and federal sources.

Recommendations for Allocation of U1 Funds

- Allocate 15% for anti-displacement activities. These activities could include eviction defense and housing counseling, funding the housing retention program, and additional funds for a flexible housing subsidies pool.
- Remainder of funds for permanent affordable housing (up to 120% AMI) - either for new construction or acquisition/rehabilitation or funding to prevent affordable housing from conversion to market rate.
- Co-operative housing with “means testing” for residents. This assistance could cover both student and non-student co-ops.
- Do not allocate all U1 revenues in a given fiscal year to a single project.

Administrative Recommendations

- City to determine what percentage of U1 funds to be allocated for administration of U1 funds.
- If possible, use the Housing Trust Fund process to allocate funds, so that U1 allocations do not require a new administrative process.
- Track U1 deposits and expenditures – as promised in the ballot measure.
 - City needs to establish a way to track U1 Funds and expenditures.
 - City should prepare an annual report for the HAC and public that reports on revenues and expenditures related to U1 funds.

FISCAL IMPACTS OF RECOMMENDATION

Since U1 funds represent an increase in tax revenues to the City, there should not be any long term fiscal impacts of this recommendation.

CURRENT SITUATION AND ITS EFFECTS

Although U1 funds have not yet been collected, the City Manager's office has suggested ways in which these revenues could be expended. The HAC

recommendation serves as guidance to the City Manager and City Council regarding expenditures from this revenue source.

BACKGROUND

U1 was passed by three-quarters of the electorate in November 2018. The ballot language for U1 was as follows: "Shall an ordinance permanently increasing the gross receipts tax on owners of five or more residential rental units be increased from 1.081% to 2.880%, prohibiting landlords from passing the tax on to sitting tenants, and directing the Housing Advisory Commission to make recommendations on funding and programs to increase affordable housing and protect Berkeley residents from homelessness, be adopted?"

Since the measure was placed on the ballot and required only a simple majority vote to pass, the funds from U1 cannot be deposited into a special account for affordable housing, but are deposited into the City's General Fund. Because of this situation, these funds cannot be used to fund a bond measure.

ENVIRONMENTAL SUSTAINABILITY

Recommendations regarding the use of U1 does not impact the environment directly.

RATIONALE FOR RECOMMENDATION

The ballot language for the U1 Measure specified that the HAC should provide recommendations on funding and programs to increase affordable housing and protect Berkeley residents from homelessness.

ALTERNATIVE ACTIONS CONSIDERED

The HAC and a U1 Subcommittee convened by the HAC has discussed these recommendations at several meetings. It has been determined that these recommendations are broad enough to accommodate a range of future housing proposals that will be considered by City Commissions and the City Council.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report." Any time a companion report is submitted, both the commission report AND the companion report are Action reports.

CONTACT PERSON

[Name], [Title], [Department],

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **amendments or motions re U1 subcommittee**

Contents

1	Recommendation	1
2	Alternatives	1
3	Background	3

1 Recommendation

In consideration of the complexity of the topic and the shortness of time, I propose that discussion of the recommendations of the U1 subcommittee be re-scheduled to January.

2 Alternatives

If the Commission would rather tackle this tonight, I would like to see any recommendation to City Council include these elements:

- **The Housing Advisory Commission recommends that the City appropriate general funds in the amounts of \$1.5M in 2018 and \$3M in 2019 for programs (to be determined) which “increase affordable housing and protect Berkeley residents from homelessness”.**

(This asks Council to plan to spend General Funds for U1 purposes in rough proportion to projected U1 revenues.)

- **The HAC reiterates its position that money appropriated in that way should *not* be used pay for the purchase of the real properties at 1001 University Avenue, 1007 University Avenue, 1011 University Avenue, and 1925 Ninth Street.**

The long-term possibility of possibly developing housing on these sites is too remote to advance the purposes expressed in Measure U1.

(This reiterates what seems to be the strongly unanimous position of the HAC.)

- **The HAC intends to make expenditure recommendations for the \$1.5M appropriated in 2018, and the \$3.0M appropriated in 2019. These may include either or both direct expenditures on specific programs, and transfers of some of the funds to the Housing Trust Fund.**

(This captures the subcommittee recommendation to “use the HTF process” and it leaves open the door to alternatives.)

- **The HAC asks for an annual report of the amount of revenue connected as a result of the passage of measure U1.**

(The tax raised by U1 is collected annually, at the beginning of the calendar year. By the end of the first quarter, it should be a simple matter for the City Manager to report how much revenue U1 produced.)

- **The HAC intends to finalize its first U1 housing policy report (see BMC 19.44.020(B)(10)) at its May 2018 meeting.**

*(Scheduling this for May has two benefits: A May reporting date leaves open the statutory option to make **biannual** reports under this section. Additionally, establishing a reporting date in May means that, in 2019, a report from the HAC will arrive in a timely way for the 2020-2021 budget process.)*

- **At this time, the HAC does not recommend holding an election to recast U1 as a special tax, or to pursue a bond issue on the basis of U1 revenues. We did not identify any specific,**

immediate justification incurring the electoral or borrowing costs.

(Both election and borrowing are expensive and the Commission has, indeed, not identified any reason to do so at this time.)

- **The Housing Advisory Commission has noted with concern that**
 - a. **New unit construction in Berkeley has made essentially no progress in meeting the RHNA goals for units reserved for moderate income and very low income categories**
 - b. **Nearly none of the available housing on the market in Berkeley is affordable to any household with moderate income or lower (i.e., available housing is unaffordable to the majority of the incumbent residents of the City and surrounds).**
 - c. **These problems are exacerbated for student households which face the additional obstacle of often not qualifying for conventional forms of housing assistance.**

The Housing Advisory Commission intends to centralize these considerations in its future recommendations to Council. We hope that City Council will, likewise, not adopt housing policy without addressing these concerns.

(This expresses the subcommittee's targeting recommendation and it begins to acknowledge the vast scope and nature of the real existing housing crisis.)

3 Background

I have included further rationale for several of the recommendations above in various information items.

HOUSING ADVISORY COMMISSION
12/7/2017

To: Housing Advisory Commission
From: Chairperson Igor Tregub
Subject: Berkeley Way Staff Update and Reaffirmation of Priority Accorded to On-Site Housing over Parking on the Project

RECOMMENDATIONS

- 1) Hear an update from Housing, Health, and Community Development staff about the Berkeley Way Project and
- 2) Following the conclusion of the update, send an Action Item to staff recommending that, to the extent that the cost of providing replacement parking on the project may impact the ability of the project to be fully funded, housing is a higher priority to parking on the site of this project.

BACKGROUND

Berkeley Way has been discussed at the Housing Advisory Commission on several occasions, most recently on June 1, 2017, when it discussed a Council item that was later approved that accords priority to this project in the Housing Trust Fund.¹ The site currently contains a surface-level parking lot owned by the City of Berkeley. The issue of how much replacement parking is feasible has been raised both at the Commission and at other public forums. The site is in a transit-accessible location, one block from the University Avenue and Shattuck Way intersection (with multiple AC Transit stops and the Downtown Berkeley BART station within several blocks of it). In an original affirmation of priority to housing over parking, Commission has previously recommended that, at most, one level of subterranean replacement of parking should be considered² and had expressed concern that loading up the project with parking may render the proposal infeasible.³

¹ https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-13_Item_17_Prioritizing_BRIDGE%E2%80%99s.aspx

² <http://www.berkeleyside.com/wp-content/uploads/2017/06/2016-09-27-Item-28-Proposed-Development.pdf>

³ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwjinpS9odPXAhUHKWMKHc7WBxgQFgg7MAM&url=http%3A%2F%2Fwww.berkeleyside.com%2Fwp-content%2Fuploads%2F2017%2F06%2F2016-09-27-Item-28-Proposed-Development.pdf&usq=AOvVaw1wRp-hmRFbWw0UwD4VrUQO>

HOUSING ADVISORY COMMISSION
12/7/2017

To: Housing Advisory Commission
From: Chairperson Igor Tregub
Subject: Recommendations to the Berkeley City Council on Supply of Rent Controlled Units Following Disaster; Possible Areas of Collaboration with Disaster and Fire Commission

RECOMMENDATIONS

- 1) Send an action item to the Berkeley City Council requesting a referral to applicable city departments and commissions to study whether applicable City of Berkeley ordinances within its purview (i.e., not the Rent Board's) ensure that the inventory of rent-controlled units does not diminish after a disaster (if / once multifamily buildings are rebuilt) and to explore potential language for such ordinances that would meet the aforementioned intent.
- 2) Send an action item to the Berkeley City Council requesting a referral to applicable city departments and commissions to assess the feasibility of revising the Berkeley Demolition Ordinance to allow for tenants to be able to receive the same relocation benefits that are enumerated in the Relocation Ordinance and to explore additional revisions to the Berkeley Demolition Ordinance, such as expanding the criteria for tenants' ability to receive its protections to disasters and fires.
- 3) Additionally, the Housing Advisory Commission is asked to provide feedback on possible areas of collaboration with the Berkeley Disaster and Fire Commission

SUMMARY

I have been in communication with Commissioner Couzin of the Berkeley Disaster and Fire Commission about potential areas of collaboration. The following memo outlines these items.

- Develop an ordinance to require that apartment buildings with three or more residents maintain sufficient water to supply their residents with water for three days in the event of a disaster.
- When the Office of Emergency Services (OES) is setting up emergency caches at multi-unit buildings as part of the Community Resilience Center (CRC) program, input from renters must be integrated into the conversation (for example, when discussing what equipment to store), and access to emergency caches must be given to a minimum of two on-site residents.

- Develop an ordinance to require that in multi-unit apartment buildings with no on-site manager, a minimum of two on-site residents must be given access to the utility shut-off valves.
- Require that the OES offer a certain minimum of CERT trainings per year to apartment-dwellers at their apartment location
- In every disaster-related guideline, outreach, or requirement for property owners (for example, soft-story retrofit requirement), develop outreach materials that speak to renters on how this guideline affects them.
- Ensure that the City of Berkeley's ordinances that are within its purview (i.e., not the Rent Board's) ensure that the inventory of rent-controlled units does not diminish after a disaster (if / once multifamily buildings are rebuilt).
- Explore the feasibility of revising the Berkeley Demolition Ordinance to allow for tenants to be able to receive the same relocation benefits that are enumerated in the Relocation Ordinance. Explore additional revisions to the Berkeley Demolition Ordinance, such as expanding the criteria for tenants' ability to receive its protections to disasters and fires.
- Refine the Berkeley Rental Housing Safety Program (RHSP) and integrate seismic safety considerations into the RHSP checklist.
- Consider phasing in Berkeley's Soft Story Program to include multifamily buildings of four and/or fewer units. Ensure that financing opportunities are available for property owners that are commensurate with this proposal.
- Create an ordinance that requires all rental agreements in Berkeley to allow renters to brace furniture and strap the hot water heater so that it doesn't fall over in an earthquake, and make this effective for existing as well as new rental agreements. [Note: This may be within the Rent Board's purview].

BACKGROUND

Of these items, the recommendations enumerated below are both within the purview of the Housing Advisory Commission and concern subject matter for which our commission would likely have the lead jurisdiction of the two commissions.

- 1) Send an action item to the Berkeley City Council requesting a referral to applicable city departments and commissions to study whether applicable City of Berkeley ordinances within its purview (i.e., not the Rent Board's) ensure that the inventory of rent-controlled units does not diminish after a disaster (if / once multifamily buildings are rebuilt) and to explore potential language for such ordinances that would meet the aforementioned intent.
- 2) Send an action item to the Berkeley City Council requesting a referral to applicable city departments and commissions to assess the feasibility of revising the Berkeley Demolition Ordinance to allow for tenants to be able to receive the same relocation benefits that are enumerated in the Relocation Ordinance and to explore additional revisions to the Berkeley Demolition Ordinance, such as

expanding the criteria for tenants' ability to receive its protections to disasters and fires.

The recent fires in Sonoma, Napa, and Lake Counties – and elsewhere – have prompted renewed interest in the first item. News articles and clips like the one in Footnote 1¹ point to the displacement pressures that tenants could face years after a major disaster should one occur in our city. The question has previously been raised, but not definitively answered, as to whether units in damaged buildings, if rebuilt following a disaster, will retain their rent-controlled status. In one recent case the rebuilt units did remain under rent control and subject to the Good Cause for Eviction Ordinance,² but in a different case that required the remaining building to be rebuilt from the ground up, the units were no longer subject to rent stabilization upon issuance of a new certificate of occupancy.³ An October 2014 decision in *Burien LLC vs. Wiley*, however, suggests that if the previous use of the property was residential and remains residential, it may be subject to rent control, even if a new certificate of occupancy is issued.⁴

The second item is closely related and concerns areas of the Demolition and Relocation Ordinances that were not resolved upon their respective revisions in 2011 and 2009. These issues have made the process of understanding what the relocation payment amount is in the event of a temporary relocation, such as due to a fire that does not fully damage the building but requires rehabilitation.⁵ In the case of a different fire, which largely consumed the building, its former occupants were not entitled to receive any dislocation payments as all, as the Demolition Ordinance prevailed.⁶

The City of Berkeley ought to study these issues in greater length and come up with a comprehensive assessment and recommendations to all of the aforementioned issues.

The Housing Advisory Commission has occasionally collaborated on areas of mutual concern at the Berkeley Disaster and Fire Commission's request (most recently, on the aforementioned pilot for emergency caches stored in multifamily buildings. In addition, the Commission has weighed in on previous drafts of the Relocation and Demolition Ordinances.

¹ <http://www.ktvu.com/news/294351705-video> - "2nd Wave of North Bay Fire Victims – Renters Getting Evicted," dated November 16, 2017, KTVU.

² <http://www.berkeleyside.com/2013/10/31/fire-damaged-berkeley-apartments-to-stay-rent-controlled/>

³ https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2441_Haste.aspx

⁴ <http://caselaw.findlaw.com/ca-court-of-appeal/1681458.html>

⁵ <http://www.berkeleyside.com/2015/12/10/tenants-scramble-to-relocate-after-dwight-way-fire/>

⁶ <http://www.berkeleyside.com/2011/12/07/sequoia-fire-aftermath-cause-rights-future-under-scrutiny/>

December 7, 2017

TO: Housing Advisory Commission
FROM: Marian Wolfe and Xavier Johnson, Homeless Subcommittee
RE: Assessment of Recent Issues Raised by Homeless Commission

Two issues were raised by the members from the Homeless Commission - Berkeley Housing Authority (BHA) and a proposed project at 2527 San Pablo which is now under appeal to the City Council.

Berkeley Housing Authority (BHA)

For the Homeless Commission, there are two issues related to the BHA. The first is a decrease in the number of available certificates due to federal funding losses as well as the higher payment standard used in Berkeley given our higher rents. A second issue are deficits in operating costs that BHA requests the City to cover.

At present, unless additional funding sources are identified, it is unclear what recommendations the HAC can make to fill the operating deficit, or retain the number of vouchers that had been available.

Proposed Project at 2527 San Pablo

Revisions made to the City's Municipal Code state that options to the Affordable Housing Mitigation Fee (**22.20.065**) includes provisions for providing units instead of paying housing mitigation fees. If affordable units are provided, the revised Code stipulates that 40% of the affordable units must be leased to households with Section 8 vouchers and that 40% of affordable units must be reserved for holders of Shelter Plus Care Certificate holders.¹ These changes were passed in summer 2017 and never came to the HAC for discussion.

The relevant section of the municipal code is inserted below and the relevant section of the Code is offset in italic font. It does not appear that the two percentages may overlap, so that there would be a cumulative total of 80% of the affordable units that would need to meet these requirements.

The applicant for the development at 2527 San Pablo does not want to rent the affordable units to Shelter Plus Care recipients but to developmentally disabled tenants. (It does not appear that the applicant is also requesting a waiver from the second requirement at this time, so that 40% of the low-income tenants still need to be Section 8 voucher recipients.) The Homeless Commission is concerned about the potential waiving of the Shelter Plus Care requirement for the affordable units in this project and would like the HAC to take a position against approving this project if it does not dedicate 40% of the low-income units to Shelter Plus Care recipients.

¹ Shelter Plus Care is now included with two other HUD Programs and is referred to as the Continuum of Care (CoC) Program

The ZAB approved the project in the summer. It is on appeal now to the City Council. It does not go back to the ZAB. Generally City Commissions do not get involved with appeals to the City Council.

It is proposed that the HAC subcommittee communicates with the Homeless Commission to say that, at this time, the HAC will not take a position on this specific project, due to the ongoing appeal process, but will examine the Inclusionary Ordinance in early 2018.²

22.20.065 Affordable housing mitigation fee.

From Berkeley Municipal Code 22.20

2. No later than the date the first building permit is issued for a Development project that is subject to the Fee, the applicant may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section [22.20.065.D](#).

Subject to administrative regulations promulgated pursuant to subdivision H, 40% of the Very Low-Income units in Development projects that have not obtained final approval under Title 23 as of September 20, 2016, shall be reserved for holders of Berkeley Housing Authority Section 8 vouchers and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.

² Councilmember Harrison had wanted to make some changes to the Ordinance regarding fees and percentages, and an economic study was needed first to make these changes. So, the Ordinance should cycle back to the HAC in the near term.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **housing-related smoking regulations**

Recommendation

In consideration of the complexity of the topic and the shortness of time, I have taken the liberty of postponing action on the recommendations of Smokefree Housing Subcommittee until January.

I have nevertheless agendaized the topic tonight so that the Commission and Public have the opportunity to comment on the item we considered in November.

Rationale

This postponement simplifies tonight's meeting and is unlikely to materially delay the project of improving the Smokefree Housing ordinance.

At the same time, we did agree in November to take this question up in December.

**City of Berkeley Affordable Housing Action Plan Priorities
Referral Priorities Adopted by City Council 11/28/17**

This list was prepared by the Department of Health, Housing and Community Services on 11/30/2017. It incorporates changes to a draft list that were made by Council during its meeting, as reflected in the Annotated Agenda, to represent the final priorities adopted.

High Priority

1. Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.
4. Examine and eliminate barriers to developing student housing and senior housing.
5. Create specific per acre density standards, including standards for projects that include density bonus units.
6. Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance for multi-unit properties with multiple units used as STRs that are out of compliance with the host ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).
7. Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) eviction, and other forms of displacement as defined by Council.

**City of Berkeley Affordable Housing Action Plan Priorities
Referral Priorities Adopted by City Council 11/28/17**

8. Increase commercial linkage fee by California Construction Cost Index CCCI.
9. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
10. Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
11. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
12. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste); c) waive or reduce permit fees for affordable housing projects (Hahn), including previously adopted streamlining measures from 2017.
13. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
14. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
15. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

Medium Priority

16. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).

**City of Berkeley Affordable Housing Action Plan Priorities
Referral Priorities Adopted by City Council 11/28/17**

17. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
18. Amend Zoning code to allow housing and other non-commercial uses on the ground floor.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: creating a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).
23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **Future Items**

In the short to medium term, I intend to bring items listed below to the HAC. I encourage other members who would like to comment on these even before I agendaize them to submit their comments as information items in future agendas. Likewise, I encourage members of the public who would like speak to these to submit public comment.

- **smokefree housing ordinance changes**

In January I intend to return with hopefully near final language for the council referral we discussed in November.

- **social housing**

In an information item in the December Agenda Packet, I included an item (“on the scale of U1 revenues”) in which I show how, on paper at least, a single year of U1 revenue is enough to make a cash purchase of 9 existing housing units, 4 of which could immediately be preserve at historically low rents. Further, the net income from these properties would support the leverage purchase of an additional 10 units with just a portion of a second year of U1 revenue.

Since it seems to me that 19 units of permanently price controlled housing, of which as many as 14 could immediately be operated well below market rates, would be an extremely effective use of City money for the purpose of increasing the supply of affordable housing.

I will be asking the Commission to begin exploring how to make that theoretical possibility in to a practical reality.

- **UC Berkeley master tenancies**

The University of California has taken de facto possession of multi-unit housing as a master tenant, subleasing some units as group living accom-

modations and others as private apartments. I will ask the Commission discuss and take action on possible legal and policy implications.

- **housing discrimination**

Long-term statistics gathered by the City suggest that housing discrimination, especially as incentivized by Costa-Hawkins, is a significant driver of rapidly rising rents and loss of affordable units.

The City's housing discrimination ordinances are incomplete and provide only a partial, incomplete, and awkward range of options for the City itself to enforce against housing discrimination.

I will ask the Commission to discuss and take action on possible improvements to local anti-discrimination law.

- **people's park**

The University of California is, they say, consulting with the City on the possibility of developing People's Park for housing of various forms.

As we have heard from the public, such development may easily worsen various housing-related crises, in addition to all the other considerations in favor of protecting the Park as such.

I intend to return with an item to continue the discussion we started in October.

- **code enforcement**

*City law (**BMC 19.44.020(B)(5-6)**) directs this commission to "monitor code enforcement procedures to ensure adherence to Council policies", to "make recommendations for changes in such procedures", and to "make recommendations ... regarding code enforcement priorities."*

This Commission does not appear to have taken any action in those regards for many years. At the same time, significant changes have been made to the cities code and enforcement policies.

I plan to return with an item meant to get us, as a Commission, back on track in this area.

- **fulfilling the requirements of BMC 19.44.020 (B)(10)**

The passage of measure U1 added language to BMC 19.44.020 (B)(10) directing this commission to create and publish certain annual or bi-annual reports.

In March of 2017 I proposed to the Commission a methodology for creating those reports. At that time, the Vice Chair requested that discussion of the item be postponed and taken up during the work planning process. During the work planning process, the Vice Chair directed that no such proposals be agendaized, and admitted no discussion on such proposals.

The statutory obligation created by U1 did not disappear and this commission has not agreed upon work plan for meeting that obligation.

I intend to return with a revised version of my original proposal.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **discussion of full HAC Brown Act compliance**

Contents

Having reviewed an audio recording of the November HAC discussion regarding my complaint, I wish to restate some aspects of my position. The City Staff who support this Commission made some helpful suggestions for corrective action. Nevertheless, some significant aspects of my complaint were omitted from their presentation.¹

I wish to make these points clear:

1. It is my position that the June special meeting did not take up the agenda topics, and violated the Brown Act by holding an unagenda meeting on housing policy. Further, that in spite of the recorded minutes, this Commission did in fact take formal action at the special meeting.

I mention this to avoid any confusion that my complaint solely concerned the irregular manner of adjournment. On the contrary, my complaint regards the full content of that meeting.

2. Against objections, the July and September meetings continued the unagenda policy round-table, resulting in taking significant action

¹This is not a complaint about City Staff's handling of this matter. As Amy Davis said at the November meeting:

"I'm not going to go into all the reasons and the information that were in the complaint. I don't want to speak for Thomas. He submitted his information, so you can review that."

– in particular the adoption of a work plan and subsequently the appointment of standing subcommittees.

3. These are, in my view, violations of the Brown Act.
4. Accordingly, the work plan adoption and subcommittee formations should not be considered final actions (in the Brown Act sense of this).
5. That my hope tonight is to find a path forward, not to litigate my allegations.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **On the scale of U1 revenues**

Contents

1	Summary	1
2	Comparison to average vouchers in Berkeley	2
3	Comparison to rents-per-bedroom	2
4	Comparison to unconventional transitional housing	2
5	Comparison to buying apartments	3

1 Summary

Large sums of money (even “only” 6 figures) can be hard to conceptualize.

That is why I find it useful to do “envelope” comparisons, to try to build some intuition about how much money we’re talking about.

For example, let’s consider \$2.4M a year – a large chunk of projected U1 revenues *per year*. \$2.4M is also the amortized City liability of the bond issue we discussed in November.

How much, in the housing world, is \$2.4M?

2 Comparison to average vouchers in Berkeley

In November, for discussion purposes, the Commission used the assumption that the average Section 8 voucher in Berkeley is \$1,400 per month, or \$16,800 per year.

$$142 \text{ vouchers} \approx \$2.4\text{M} \div (\$16,800 / \text{voucher})$$

\$2.4M is easily enough for 100 vouchers plus four full-time employees to manage the program.

3 Comparison to rents-per-bedroom

It's hard to precisely know the average "cost per bedroom" of rentals on the market in Berkeley. I've been using an approximation of \$1,500 per month (\$18,000 per year).

How many bedrooms?

$$133 \text{ rented bedrooms} \approx \$2.4\text{M} \div (\$18,000 / \text{rented bedroom})$$

4 Comparison to unconventional transitional housing

Let's consider a *hypothetical* project to build a high quality tiny-house village near the women's shelter, on the former railroad right of way.

Note! *A project of this sort exists in the early planning stages.¹ The numbers I am putting forward here do **NOT** represent the real project. I do not speak for that project. These numbers are from my own information gathering, trying to get some sense of what the project might cost at today's prices. This example is solely for discussion purposes of the U1 subcommittee's recommendations.*

¹This is does not refer to the YSA tiny homes project that was recently in the news.

The hypothetical project will have:

- \$500,000 site preparation costs (mainly soil remediation)
- \$1,050,000 to build 15 high quality tiny homes suitable for use as transitional housing by homeless women, including women with children (\$70,000 per unit)²
- \$500,000 to build a common building, including a group kitchen, multi-use area, bathing facilities, and so on.

Using an approach like this, the City could support the rapid construction of 15 units of supportive transitional housing, very quickly, using only about \$2M. That's less than *one year* of revenue from Measure U1.

The City's per-unit contribution, *which would cover the entire cost*, would be a mere \$137,000 per housing unit – *less expensive than any other approach the City of Berkeley has considered in a very long time.*

5 Comparison to buying apartments

Two apartment buildings are currently for sale³ (as of this writing):

2134 Woolsey St is a 6 unit rent stabilized building listed for \$1,050,000, Four of the six units are at historic low rents (two at \$645, one at \$657, and one at \$1,008). The other two units rent for \$1374 and \$1550.

A 2017 pro-forma for the property, at this price, shows an annual rental income of \$70,872 and a cap rate of 3.23%.

Even without any increases in rent, in other words, this property would produce for the buyer a net annual income of almost \$34,000. It would do this while continuance to maintain four units at very low rents..

Next, 1675 Arch St is listed at \$1,700,000. This building appears to be rent stabilized although perhaps not accurately listed with the Rent Stabilization Board.

²Each unit would contain at least a micro-kitchen and half-bath. Each unit would be built to a high environmental standard.

³Listings were retrieved from loopnet.com on November 12, 2017.

Three units of 1,080, 808 & 720 sq. ft. produce a rental income of roughly \$102,000 - an average rent of over \$2,800 (suggesting these units are essentially at market rates).

The listing claims a cap rate, at this price, of 5.1%. The 2016 net income was about \$87,000.

The net income on this building could support a 30 year loan at 5% of over \$1.3M. In other words, if in year 1 the City bought this building, in year two it could afford to make a \$2-3M *cash* bid on another apartment building, costing the taxpayers *nothing*.

In short: *for \$2.7M from U1 revenue, the City could ensure that 9 units are permanently price controlled and that it is financially viable to operate at least four of those units at historic low rents. Further, the City could leverage a net income from those properties to buy an additional 10 units or so.*

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **on U1 targeting by RHNA categories**

Contents

1	Summary and Recommendation	1
2	Rationale	2

1 Summary and Recommendation

The U1 subcommittee has asked the Commission to recommend to Council that the City:

“Establish a household income targeting goal regarding U1 expenditures and housing affordability. To set this goal, the City could consider the use of progress made towards meeting our Housing Element RHNA numbers.”

In light of the helpful discussion we had at the November meeting, I suggest this intent be reformulated. For discussion purposes, a draft reformulation might say:

The Housing Advisory Commission has noted with concern that

- a. *New unit construction in Berkeley has made essentially **no progress in meeting the RHNA goals for units reserved for moderate income and very low income categories.***
- b. *Nearly none of the available housing on the market in Berkeley is affordable to any household with moderate income or*

lower (i.e., available housing is unaffordable to the majority of the incumbent residents of the City and surrounds).

- c. *These **problems are exacerbated for student households** which face the additional obstacle of often not qualifying for conventional forms of housing assistance.*

The Housing Advisory Commission intends to centralize these considerations in its future recommendations to Council.

2 Rationale

The reformulation captures (I hope) the targeting concerns expressed by the U1 subcommittee without raising the problematic questions of what “targeting” means exactly, in this context.

The reformulation makes positive statements about what the Commission will do and what City Council should contemplate.

The reformulation leaves open the question of how to reconcile RHNA targets with real existing social need.

The reformulation acknowledges the contradiction between RHNA quotas and social need.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **against the U1 subcommittee bond proposal**

Contents

1 Summary and recommendation	1
2 Background	2
3 Interest payments	3
4 Sinking fund payments	3
5 Conclusion	4

1 Summary and recommendation

The U1 subcommittee has recommended that the City of Berkeley return to the ballot to try to make U1 revenues into a “dedicated source”.¹ If such a measure is successful, the subcommittee recommends a bond issue. For discussion purposes, the subcommittee proposed a \$28.6M bond.

Notably, the subcommittee offered no particular use or projected outcome from such borrowing. The bond appears to be recommended solely so as to have more cash on hand in the short term, in exchange for (considerable) borrowing costs over time.

¹The revenue in question comes from a 1.799% portion of the gross revenue tax on rents from units in buildings with five or more units.

The subcommittee computed the annual cost of such a bond as \$2M. That appears to me to be incorrect, the actual costs (using the subcommittees assumptions about interest rate) appear to be closer to \$2.4M per year (perhaps more). My higher estimate assumes that the City will obtain a low interest rate on its sinking fund reserves.

*In actual practice, the size of the City's debt service relative to outstanding principle is even higher. Interest rates of recently issued City bonds are higher than the subcommittee assumed. Even my \$2.4M per year cost estimate is likely an **underestimate**.*²

Because a bond would be fiscally inefficient, and because no particular purpose for a bond has been identified, this Commission should not recommend a new election on U1, or a bond to City Council.

2 Background

The U1 Subcommittee has suggested holding an election to restructure the residential rental business license tax as a special tax. If this is done, 1.799% of gross revenues on rental units in buildings with five units or more would become a dedicated revenue stream for the purpose of issuing a bond.

Specifically, the subcommittee proposed a bond with these terms:

- \$28.6 million bond issue
- coupon rate of 3.5% annually
- biannual coupon redemption schedule
- 20 year maturity

The subcommittee said that such a bond would cost the City \$2 million per year. I said it would really cost at least \$2.4 million per year. Here I will show why I believe the higher figure is the better estimate.

²“*City of Berkeley Fiscal years 2018 & 2019 Proposed Biennial Budget*” p. 43

3 Interest payments

Each year, two interest payments will come due, each for half of the annual interest due. Together, they will add up to 3.5% of \$28.6M.

$$\text{annual interest payment} = \$28.6\text{M} \times .035 = \$1,001,000$$

4 Sinking fund payments

Each year, once per year, the City will need to make a sinking fund payment so that, at the end of 20 years, the sinking fund contains \$28.6M.

An annual deposit of \$1.43M would keep the sinking fund fully funded at all times and represents an upper bound on the City's average annual liability.

In actuality, the City's annual deposits would be discounted because the sinking fund itself will earn interest. There is interest rate risk at play in that future interest rates can not be predicted, especially over a 20 year period. We can, however, look at the short term with some degree of confidence.

Today, the interest that can be expected on reserves is quite low. We know this in at least three ways. First, we know from the proposed City Budget that in recent years, new savings instruments purchased by the City have yields of approximately 0% on shorter-term (more liquid) reserves, and 1% - 1.75% on longer-term returns.³ Second, we know from the purchase of the so-called Premier Cru properties that, as of March 2017, the City planned for special fund reserves to earn 0.68% annually (which is consistent with the interest rates the City is obtaining according to the budget).⁴ Third, so long as a deflationary threat looms, the Federal Funds Rate is likely to remain low (because this is long-standing Fed policy and a Congressional mandate). A low Fed rate means a low long-term Treasury Bond rate.⁵ A tendency towards a deflationary climate as machines and other forms of

³“*City of Berkeley Fiscal years 2018 & 2019 Proposed Biennial Budget*” p. 92

⁴City Council Meeting, March 28, 2017, item 32, supplemental materials 1, page 2, footnote 1.

⁵“Does the central bank control long-term interest rates? A glance at Operation Twist”, Yves Smith, August 16, 2014, www.nakedcapitalism.com

capital displace labor is a long-established empirical and theoretical fact.^{6,7}

Thus, we proceed assuming a low interest rate for the sinking fund (0.68% for envelope calculation purposes).

The formula for computing the sinking fund payment needed, given an interest rate, is shown below. Assume that the rate of interest the sinking fund earns is R , and that there will be N deposits made at that rate. Assume that the total amount of principle needed at the end is P , then the formula is:

$$\textit{sinking fund payment} = (P \times R) / ((1 + R)^N - 1)$$

With our assumptions, the sinking fund payment might be:

$$\textit{sinking fund payment} = \$28.6\text{M} \times 0.0068 / (1.0068^{20} - 1)$$

$$\textit{sinking fund payment} = \sim \$1,340,000$$

The discount rate (\$1.43 million compared to \$1.34 million) is so small and uncertain as to be negligible.

Note that the preceding calculation has ignored other expenses such as underwriter discounts and bond issue fees.

All in all, assuming a sinking fund payment of \$1.4M is reasonable.⁸

5 Conclusion

The City's \$2.4M per year liability means that a 20 year bond issue in the amount of \$28.6M amounts to getting about \$0.59 on the dollar.

In practice, the City will get even less than that because the calculations above ignore factors such as staff time, underwriter discounts, fees, and the expenses associated with placing a measure on the ballot.

⁶“Tendency of the rate of profit to fall” en.wikipedia.org

⁷Larry Summers' page about “secular stagnation” larrysummers.com

⁸The subcommittee argued that the sinking fund payment would be slightly less than \$1M per year, not \$1.4M. To reach that conclusion, they would have assumed the sinking fund would accumulate interest at an implausible 3.5% per year. We might suspect that the subcommittee mistakenly used the interest rate of the *bonds* as the interest rate for the *sinking fund*.

The subcommittee has offered no compelling use for borrowing so much at this time.

Considering all of this, the Housing Advisory Commission should not adopt the election or bond issue portion of the subcommittee recommendations, at least at this time.

Housing Advisory Commission

December 7, 2017

To: Housing Advisory Commission
From: Commissioner Thomas Lord
Subject: **HTF process and U1 revenues**

Contents

1 Summary and recommendation	1
2 Background	2
3 Examine the CDBG allocation process	2
4 Examine the work of the Sugar Sweetened Beverage Panel of Experts	3
5 Don't complicate the HTF, just use it directly!	3
6 Conclusion	4

1 Summary and recommendation

The U1 subcommittee suggested that the City “use the HTF process to allocate [U1] funds”.

I suggest that the Housing Advisory Commission advance that recommendation as follows:

- the HAC will periodically recommend to City Council to make a transfer from the general fund to the HTF – this is the most direct way to “use the HTF process”
- the HAC will itself examine the CDBG allocation process in early 2018

- the HAC will examine the grant-making process used by the Sugar Sweetened Beverages Panel of Experts

These steps will accomplish the aim expressed in “use the HTF process” and will also allow for greater flexibility.

2 Background

The U1 Subcommittee has suggested that the Commission make the following recommendation to City Council:

If possible, use the HTF process to allocate funds, so that U1 allocations do not require a new administrative process.

3 Examine the CDBG allocation process

We assume that General Fund revenues in rough proportion to the revenues produced by Measure U1 are best spent in ways that help to protect from homelessness and promote housing affordability in Berkeley.

With that assumption, there will be (at today’s rents) some figure likely more than \$2 million and less than \$5 million to spend towards these aims.

A comparison might be made to Berkeley’s annual CDBG (Community Development Block Grant) awards from HUD (the federal Department of Housing and Urban Development).

Each year a modest few million in CDBG money comes to Berkeley. It may be allocated within broad parameters, principally in the form of grants, mostly to outside agencies.

In contrast, the HTF ideally accumulates large sums and makes significant low-interest loans. Often the aim is to help fund large development projects.

The City monitors the use of both CDBG funds and HTF funds. There is existing capability and (with additional staff resources) capacity to monitor U1-related expenditures using either model.

I recommend that the Commission take some time in the first quarter of 2018 to examine the CDBG process with an aim to understanding how it can be adapted for other tactical, grant-making purposes that might be appropriate for U1-related revenues.

4 Examine the work of the Sugar Sweetened Beverage Panel of Experts

The tax on sugar sweetened beverages was, like U1, passed as a general revenue tax.

The Sugar Sweetened Beverages Panel of Experts, created by the same ballot measure, has successfully guided the City to fund programs “to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption”.

A quick review of some of their agendas suggests that the Panel has:

- agreed on approaches to studying the problem and measuring their progress against it
- agreed on approaches to improving public health
- successfully put out requests for proposals and (with Council controlling) awarded grants from the general fund towards these aims

Given the legal similarities between the Panel’s situation and our own, perhaps we should examine their experience for ideas about how the public can benefit from revenues added by measure U1.

5 Don’t complicate the HTF, just use it directly!

The subcommittee suggestion to “use the HTF process to allocate funds” is in one way a little puzzling:

The simplest way to “use the HTF process” for some sum of money is to place that sum of money *in the Housing Trust Fund*.

Let us suppose this Commission believes that general funds, roughly in proportion to U1 revenues, should be spent on various housing affordability and homelessness prevention needs.

To the extent the Commission finds no short-term, tactical, CDBG-style use for that revenue, it can simply make an annual recommendation to Council to transfer some amount of general funds to the Housing Trust Fund.

6 Conclusion

This Commission should agree to examine, in early 2018, how CDBG works, and how the Sugar Sweetened Beverage Panel of Experts works.

As U1 revenues appear, if this Commission finds it appropriate, it should consider recommending that some amount of general funds be transferred to the Housing Trust Fund.