

**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, FEBRUARY 11, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: February 4, 2019**
2. **Review and Approve Draft Agendas:**
 - a. 2/26/19 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory Of**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

- None

Adjournment – Next Meeting Monday, February 25, 2019

Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.

Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting. After the deadline for submission, residents must provide 10 copies of written communications to the City Clerk at the time of the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

* * *

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 7, 2019.

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

Mark Numainville, City Clerk

**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING MINUTES**

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, FEBRUARY 4, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

Roll Call: 2:31 p.m. All present.

Public Comment: 3 speakers.

Review of Agendas

1. Approval of Minutes: January 14, 2019

Action: M/S/C (Arreguin/Wengraf) to approve the Minutes of January 14, 2019.

Vote: All Ayes.

2. Review and Approve Draft Agendas:

a. 2/19/19 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Arreguin/Harrison) to place Item 23 on the Action Calendar of the February 19, 2019 agenda with the amendments to the recommendation and ordinance introduced by the author.

Vote: All Ayes.

Action: M/S/C (Harrison/Wengraf) to approve the agenda of the February 19, 2019 meeting with the changes noted below.

- *Item 3 Janitorial Services (City Manager) – moved to be the first item on the Action Calendar*
- *Item 6 MOU with WETA (City Manager) – item moved to February 26, 2019*
- *Item 13 AB 161 (Harrison) – Councilmembers Robinson and Davila added as co-sponsors*
- *Item 15 Cannabis Ordinance (City Manager) – item moved to March 12, 2019*
- *Item 21 Cannabis Events Referral (Arreguin) – item moved to February 19 Consent Calendar*

Policy Committee Track Items

- *Item 22 Homelessness Emergency (Arreguin) – item moved to February 19 Consent Calendar*
- *Item 23 Ordinance Amendment (Harrison) – see action above; Councilmember Hahn added as a co-sponsor*
- *Item 24 Missing Middle Initiative (Droste) – item removed from the agenda by the author*

Vote: All Ayes.

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
 - No item selected
4. **Adjournments In Memory Of – None**

Scheduling

5. **Council Worksessions Schedule**
 - Removed proposed July 30 Worksession from schedule
6. **Council Referrals to Agenda Committee for Scheduling**
 - Received and filed
7. **Land Use Calendar**
 - Received and filed

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

8. **Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions**

From: Councilmember Davila and Councilmember Bartlett

Referred: January 29, 2019

Due: May 29, 2019

Recommendation: Adopt a resolution denouncing and opposing, in words and actions, white nationalist and neo-Nazi groups including their actions in the City of Berkeley.

Financial Implications: None

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

Action: Councilmember Harrison and Mayor Arreguin added as co-sponsors. M/S/C (Arreguin/Wengraf) to request edits to the report and one edit in the resolution; if Councilmember Davila accepts the edits the item will go on Consent on the 2/26/19 agenda with a Positive Recommendation; if Councilmember Davila does not accept the edits, the item will go on the Action Calendar on 2/26/19 with a Qualified Positive Recommendation.

Vote: All Ayes.

Referred Items for Review

9. Guidelines for Developing and Writing Council Agenda Items

Referred: January 29, 2019

Due: May 29, 2019

Referred to the Agenda and Rules Committee to consider amendments to the Guidelines related to opportunity costs and amendments to the Rules of Procedure related to automatic referrals of ordinances to policy committees.

Action: The City Manager introduced an Operational Impacts analysis for use in staff reports. M/S/C (Arreguin/Wengraf) to adopt as a practice that the Agenda & Rules Committee will refer all proposed ordinances submitted by Councilmembers and the Mayor to a policy committee unless the changes proposed are non-substantive in nature.

Vote: All Ayes.

Adjournment

Action: M/S/C (Harrison/Wengraf) to adjourn the meeting.

Vote: All Ayes.

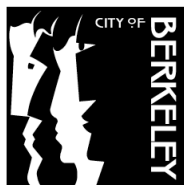
Adjourned at 3:34 p.m.

Next Meeting Monday, February 11, 2019



Mark Numainville, City Clerk

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, February 26, 2019
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.*

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

1. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of January 15, 2019 (special), January 22, 2019 (regular), January 29 (regular), and January 31, 2019 (special closed and special).

Financial Implications: None

Contact: Mark Numainville, City Clerk, 981-6900

2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 26, 2019

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.

Financial Implications: Measure T1 Fund - \$568,759

Contact: Henry Oyekanmi, Finance, 981-7300

Consent Calendar

- 3. Dorothy Day House License Agreements: Veterans Memorial Building and Old City Hall**
From: City Manager
Recommendation: Adopt two Ordinances authorizing the City Manager or her designee to execute license agreements and any amendments thereto with Dorothy Day House to provide services at the Veterans' Memorial Building at 1931 Center Street and the Old City Hall at 2134 Martin Luther King Jr. Way.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 4. Receipt of and Contract Authorization for Kaiser Permanente's Northern California Community Benefit Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept \$150,000 in grant funds from the Kaiser Permanente Northern California Community Benefit Program (Grant Number 20663336) to support the Pathways STAIR Center, and to enter into a grant agreement (CMS # EC183) and any necessary grant agreement amendments for this award.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 5. Contract: Building Opportunities for Self-Sufficiency for Representative Payee Services**
From: City Manager
Recommendation: Authorize the City Manager or her designee to enter into a contract and any amendments up to not to exceed (NTE) \$75,000 through March 31, 2020 with vendor Building Opportunities for Self-Sufficiency for representative payee services.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 6. Amendment of Provider Participation Agreement with Department of Health Care Services for Targeted Case Management**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit amendments to the Provider Participation Agreement with the State of California Department of Health Care Services, to accept the grant awards, and execute any resultant revenue agreements and amendments to conduct Targeted Case Management (TCM) services in Aging Services and Public Health Divisions within the Health, Housing & Community Services Department.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400

Consent Calendar

- 7. Contract No. 8,749 Amendment with Official Payments Corporation (OPC)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Official Payments Corporation (OPC) (contract no. 8,749) approving online credit card payment processing transaction fees of 2.5%, borne by the City, for transactions in the Recreation Division's online registration system, for an amount not to exceed \$90,000 for the projected period commencing on or about March 1, 2019 through November 30, 2022.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 8. Contract No. 9114F Amendment – Stockton Tri Industries, Inc. to Clean, Paint, and Repair Refuse and Recycling Debris Bins**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9114F with Stockton Tri Industries, Inc. to increase the contract amount by \$40,000 for a total contract amount not to exceed \$200,000 to clean, paint, and repair refuse and recycling debris bins through contract expiration of June 30, 2019.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300
- 9. Contract: D'Arcy & Harty Construction Inc. for Sanitary Sewer Rehabilitation and Replacement at Euclid Avenue and Regal Road Backline**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Sanitary Sewer Rehabilitation and Replacement- Euclid Avenue and Regal Road Backline project; accepting the bid of the lowest responsive and responsible bidder, D'Arcy & Harty Construction Inc. (D'Arcy & Harty); and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$812,026, which includes a 10% contingency in the amount of \$73,821.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

Consent Calendar

10. **Contract: Mosto Construction for Sanitary Sewer Rehabilitation and Replacement - Urgent Sewer Repair Project FY 2019**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Urgent Sewer Repair Project FY 2019 with sites located throughout the City; accepting the bid of the lowest responsive and responsible bidder, Mosto Construction; and, authorizing City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$398,808.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

Council Consent Items

11. **Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions** (*Reviewed by the Agenda and Rules Committee*)
From: Councilmembers Davila, Bartlett, Harrison and Mayor Arreguin
Recommendation: Adopt a resolution denouncing and opposing white nationalist and neo-Nazi groups including their actions.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, 981-7120
12. **Support AB 5 and Write Letter of Support to CA Assemblymember Lorena Gonzalez**
From: Councilmember Bartlett
Recommendation: That the Mayor of Berkeley and Members of the City Council support CA State Assembly Bill 5 (AB 5) by sending a letter of support to Author Assemblymember Lorena Gonzalez. Assembly Bill 5 codifies and clarifies the application of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903, which established the 3-part “ABC” test to defend the labor rights of misclassified workers and ensure they receive the compensation they deserve.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
13. **Support for AB 177 (Election Day Holiday)**
From: Councilmember Robinson
Recommendation: Send a letter to Senator Skinner, Assemblymember Wicks, and Assemblymember Low supporting AB 177, which would add any day a statewide general election is held to the list of state holidays.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

14. Proposed Location for the Apothecarium Cannabis Retailer

From: City Manager

Recommendation: Conduct a public hearing to consider information pertaining to Apothecarium's proposed location at 2312 Telegraph Avenue, and upon conclusion, adopt a Resolution either to approve or to deny the proposed location.

Financial Implications: See report

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

Action Calendar – Old Business

15. **Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission** *(Continued from January 29, 2019. Item contains revised material).*

From: Councilmembers Worthington, Davila, Harrison, and Bartlett

Recommendation: That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action Calendar – Policy Committee Track Items

16. **Retirement of Council Ad Hoc Subcommittees**

From: Mayor Arreguin

Recommendation: Adopt a Resolution:

1. Officially retiring the Ad Hoc Subcommittee on Community Benefits, Ad Hoc Subcommittee on Urban Shield, Ad Hoc Subcommittee on Small Business, Ad Hoc Subcommittee on Automatic Door Openers effective immediately, and;
2. Retiring the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week, and Ad Hoc Subcommittee on Climate Emergency effective March 31, 2019, and requesting that these Ad Hoc Subcommittees complete their business before that time and make a recommendation to the City Council.

Financial Implications: None

Contact: Jesse Arreguin, Mayor, 981-7100

17. **Excused Absence for Councilmember Ben Bartlett**

From: Mayor Arreguin

Recommendation: Excuse Councilmember Ben Bartlett from the November 27, 2018 Council meeting as a result of illness.

Financial Implications: None

Contact: Jesse Arreguin, Mayor, 981-7100

Action Calendar – Policy Committee Track Items

18. Establishment of Traffic Circle Policy Task Force

From: Mayor Arreguin

Recommendation: Establish a Traffic Circle Policy Task Force comprised of representatives from neighborhoods currently maintaining traffic circles. Members will be appointed by the Mayor and chosen from geographically diverse parts of the city, including one representative from Berkeley Partners for Parks. Staff participating will be appointed by the City Manager.

The charge of this Task Force is to: 1. Evaluate the City's current traffic circle vegetation policy for consideration by the City Council and Traffic Engineer; 2. Find a solution, through active participation and engagement with the community, that respects: -Environmental Policy; -Habitat; -Safety and Performance Standards; - Existing and future liability issues that address sight lines; and 3. Deliver a policy to City Council for adoption prior to August 9, 2019. 4. Conduct a community-led process to update that policy to ensure pedestrian/bicycle/vehicle safety and community efforts to beautify traffic circles.

Task Force activities may include, but are not limited to: -Recommend appropriate characteristics and parameters for allowed plantings based on input from the community and city staff; -Recommend a policy that ensures lines of sight and other important safety considerations; -Work with City staff to conduct a survey of current traffic circles and their vegetation; -Conduct a survey of neighborhood associations, neighborhood captains, community and community groups such as Berkeley Partners for Parks to determine which traffic circles are being maintained by community members; -Examine the City of Oakland's 'Adopt a Spot' initiative to encourage community involvement in the maintenance of public spaces by loaning tools, supplies, and technical assistance to committed members of the community; - Host a presentation from City staff to better understand concerns with the current traffic circle policy and any safety concerns that should be taken into consideration; - Recommend a clear set of guidelines/criteria to allow for community maintenance of traffic circles, with input from city staff; -Outline the appropriate community outreach strategy and process to share the updated policy for managing vegetation in traffic circles; -Recommend a replanting strategy, with emphasis on drought-resistant plants.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, 981-7100

19. Ensuring the Sustainability of the Berkeley Flea Market

From: Councilmember Bartlett

Recommendation: Referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market, to sustain and enhance its ability to serve both merchant participants and the community at large.

Financial Implications: See report

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

Action Calendar – Policy Committee Track Items

20. Open Doors Initiative

From: Councilmember Bartlett

Recommendation: That the City Council direct the Planning Commission to design a regulatory mechanism (Open Doors Initiative) to incentivize the creation of affordable starter homes for Berkeley city employees and persons of moderate income. The Open Doors Initiative is intended to provide assistance to homeowners in R1 and R1A zones to renovate their properties and become multi-family condominiums. To qualify for zoning approval, families must agree to deed restrictions which limit the sale of the newly-created condominiums to Employees of the City of Berkeley and/or first time moderate income first time home buyers -- the 'Missing Middle'. Increasing the supply of one bedroom and studio condominiums also allow community members, previously shut out of the middle class, the opportunity to own a home while simultaneously enabling older homeowners to downsize and efficiently utilize their equity. The deed restrictions provide a path to homeownership for moderate income persons; first responders to be on hand in the event of a crisis; and for workers to avoid long commutes by owning homes in the city they serve. The Open Doors Initiative serves the policy goals of economic inclusion, community resilience, and environmental sustainability.

Financial Implications: See report

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

21. Refer to the City Manager and the Planning Commission to Modify BMC 22.20.065 (the Affordable Housing Mitigation Fee Act) such that Affordable Housing Fees for Rental Developments are Levied Based on a Project's Gross Residential Floor Area

From: Councilmember Robinson

Recommendation: Refer to the City Manager and the Planning Commission to modify BMC 22.20.065 (the Affordable Housing Mitigation Fee Act) such that Affordable Housing Mitigation Fees for rental developments are levied on the basis of a project's gross residential floor area, rather than on its number of housing units.

Financial Implications: See report

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

Action Calendar – Policy Committee Track Items

22. Missing Middle Initiative

From: Councilmember Droste, Councilmember Bartlett, Councilmember Robinson, Councilmember Kesarwani

Recommendation: Refer to the City Manager an analysis and report of potential revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

Analysis should include, but is not limited to: -Identifying where missing middle housing is optimal/should be permitted. -Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into 2-4 units. -Excluding very high fire severity zones as defined by the California Department of Forestry and potentially Berkeley Hazardous Fire Zone 2 as well. -Considering form-based zoning as a potential strategy. -Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units. -Creating incentives for building more than one unit on larger than average lots. -Provision of tenant protections, demolition controls, and no net loss provisions

Financial Implications: See report

Contact: Lori Droste, Councilmember, District 8, 981-7180

Information Reports

23. City Council Short Term Referral Process – Monthly Update

From: City Manager

Contact: Mark Numainville, City Clerk, 981-6900

24. FY 2018 Fourth Quarter Investment Report: Ended June 30, 2018

From: City Manager

Contact: Henry Oyekanmi, Finance, 981-7300

25. FY 2019 First Quarter Investment Report: Ended September 30, 2018

From: City Manager

Contact: Henry Oyekanmi, Finance, 981-7300

26. Referral Response: 1000 Person Plan to Address Homelessness

From: City Manager

Contact: Kelly Wallace, Housing and Community Services, 981-5400

27. goBerkeley Parking Management Program - Recommended Adjustments for April 1, 2019

From: City Manager

Contact: Phillip Harrington, Public Works, 981-6300

Information Reports

28. City Auditor's Quarterly Summary Report on Audit Recommendations

From: Auditor

Contact: Jenny Wong, Auditor, 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council 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 the City Council, 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 City Clerk Department at 2180 Milvia Street. 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 City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department
2180 Milvia Street
Tel: 510-981-6900
TDD: 510-981-6903
Fax: 510-981-6901
Email: clerk@cityofberkeley.info

Libraries:
Main - 2090 Kittredge Street
Claremont Branch – 2940 Benvenue
West Branch – 1125 University
North Branch – 1170 The Alameda
South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

~~~~~



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
February 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila, Ben Bartlett, Kate Harrison and Mayor Jesse Arreguin

Subject: Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions.

RECOMMENDATION

Adopt a resolution denouncing and opposing white nationalist and neo-Nazi groups including their actions.

POLICY COMMITTEE RECOMMENDATION

On February 4, 2019, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Wengraf) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

No general fund impact.

ENVIRONMENTAL SUSTAINABILITY

No ecological impact.

BACKGROUND

According to the Southern Poverty Law Center, “white nationalist groups espouse white supremacist or white separatist ideologies, often focusing on the alleged inferiority of nonwhites. Groups listed in a variety of other categories - Ku Klux Klan, neo-

Confederate, neo-Nazi, racist skinhead, and Christian Identity - could also be fairly described as white nationalist.”<sup>1</sup>

As documented in the November 3, 2018 cover article of the New York Times Magazine, since 9/11, U.S. counter-terrorism policy has focused almost entirely on combating American and foreign-born “jihadists,” failing to recognize the growing threat of far-right extremism. This has contributed to widespread vigilante attacks on, government surveillance and repression of, and sweeping policies that discriminate against Muslim, Arab and South Asian communities. Meanwhile, it has failed to address the growing threat and presence of white nationalists and neo-Nazis across the U.S.<sup>2</sup>

As Janet Reitman’s article documents, according to the data, far-right extremists have killed more people since 9/11 than any other category of domestic terrorism. According to the Anti-Defamation League, “71% of extremist-related deaths between 2008 and 2017 were committed by members of a far-right movement, while Islamic extremists were responsible for 26%.” Meanwhile, “between 2002 and 2017, the U.S. spent \$2.8 trillion on counterterrorism. In that time frame, terrorist attacks by Muslim extremists killed 100 people in the U.S. Between 2008 and 2017, meanwhile, domestic extremists killed 387 people.”<sup>3</sup>

Researchers at the University of Maryland published a report in 2017 showing an increase in attacks by right-wing extremists, from 6% in the 2000s to 35% in the 2010s. Quartz further confirmed that the trend persisted in 2017, when most attacks in the U.S. were committed by right-wing extremists. Out of 65 incidents last year, 37 were explicitly motivated by racist, anti-Muslim, homo/transphobic, anti-Semitic, fascist, anti-government, or xenophobic ideology.<sup>4</sup>

Reitman concludes, “These statistics belie the strident rhetoric around ‘foreign-born’ terrorists that the Trump administration has used to drive its anti-immigration agenda.” Similar conclusions were reached by The Brennan Center for Justice at NYU School of Law. Their report, *Wrong Priorities on Fighting Terrorism*, warns, “Some in the Justice Department are calling for new laws to fight domestic terrorism. But existing laws provide plenty of authority to prevent, investigate, and prosecute attacks. And passing new ones could worsen existing racial and religious disparities in who the government targets. Instead, we need a smarter approach that ensures resources are directed

---

<sup>1</sup> Southern Poverty Law Center: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>.

<sup>2</sup> Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don’t Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

<sup>3</sup> Ibid

<sup>4</sup> Romero, Luiz. US terror attacks are increasingly motivated by right-wing views. *Quartz*. October 24, 2018. <https://qz.com/1435885/data-shows-more-us-terror-attacks-by-right-wing-and-religious-extremists/>.

toward the deadliest terrorist threats. And we need to evaluate those threats based on objective evaluations of potential harm, not political considerations that prioritize some communities over others.”<sup>5</sup>

The report documents the ways in which while right-wing acts of mass violence are on the rise, the government is focused on an ideological war against Muslims and failing to address the rise of white nationalism and neo-Nazi threats despite the documented acts of violence they inspire and hateful goals of their activities. In addition, the report documents the decision of the Trump administration to not add white nationalist and neo-Nazi groups, both domestic and international, to the list of foreign or domestic terrorist organizations.<sup>6</sup> Furthermore, it demonstrates that instead the federal government has consistently targeted social and environmental justice organizations over right-wing groups threatening and enacting mass violence.

As their report shows, in 2010, even the Justice Department criticized the FBI Joint Terrorism Task Force for a number of investigations of animal rights, peace, and social justice advocates for treating trespassing, nonviolent civil disobedience, and vandalism as “acts of terrorism.” Similarly, the report goes on to say, “in the weeks before the deadly Charlottesville, Virginia, “Unite the Right” rally, the FBI’s Domestic Terrorism Analysis Unit warned law enforcement that “Black Identity Extremists” posed a deadly threat, despite the fact that no such movement exists.”

Meanwhile, the Justice Department failed to bring federal charges after a series of violent far right riots around the country, in Sacramento, Anaheim, and Seattle – all before Charlottesville, left anti-racist counter-protesters stabbed, beaten, and shot.<sup>7</sup> In contrast, under Trump, “federal prosecutors aggressively pursued more than 200 felony conspiracy cases against activists and journalists who attended a January 20, 2017, anti-Trump protest, where some in the crowd broke store windows and set a limousine on fire. After two trials of the first dozen activists ended with acquittals and the judge ruled prosecutors illegally withheld evidence from defense attorneys, the Justice Department dropped the remaining cases.”<sup>8</sup>

The report concludes that “there is reason to fear that new laws expanding the Justice Department’s counter-terrorism powers will not make Americans safer from terrorist violence. Instead, they may further entrench existing disparities in communities the

---

<sup>5</sup> German, Michael and Sara Robinson. Wrong Priorities on Fighting Terrorism. *The Brennan Center for Justice*. October 31, 2018. <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

<sup>6</sup> Ibid, page 4.

<sup>7</sup> Ibid, page 2.

<sup>8</sup> Ibid, page 3.

government targets with its most aggressive tactics, with serious implications for Americans' free speech, association, and equal protection rights.

In keeping with our resolution of non-participation with the so-called "Muslim-ban" and threatened registry and support for Berkeley communities, residents, families, students and workers being targeted by both, we need to denounce white nationalist and neo-Nazi groups and actions.

#### CONTACT PERSON

Cheryl Davila, Councilmember District 2                      510.981.7120

#### ATTACHMENTS:

- 1: [U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It.](#) New York Times Magazine, November 3, 2018.
- 2: [US terror attacks are increasingly motivated by right-wing views.](#) Quartz, October 24, 2018.
- 3: [Wrong Priorities on Fighting Terrorism.](#) The Brennan Center for Justice. October 31, 2018.
- 4: [The White Nationalists Are Winning: Fox News anchors and high-profile politicians are now openly pushing the racism of the alt-right. The fringe movement's messages have permeated the mainstream Republican Party.](#) The Atlantic. August 10, 2018.
- 5: [Democrats ask Trump administration for answers on rise of white nationalism in US.](#) CNN Politics. November 27, 2018.
- 6: Southern Poverty Law Center page on white nationalist hate groups: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>
- 7: [The limits of free speech for white supremacists marching at Unite the Right 2, explained: The First Amendment doesn't protect targeted racial slurs that could spark violence.](#) Vox. Aug 12, 2018.
- 8: [How the resurgence of white supremacy in the US sparked a war over free speech.](#) The Guardian. May 31, 2018.
- 9: [Powerful photo essay on the rise of white nationalism - Documenting the Rise of White Nationalism.](#) The New York Times. October 17, 2018.
- 10: Georgetown Institute for Constitutional Advocacy & Protection: Prohibiting Private Armies at Public Rallies: <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>.
- 11: [Tennessee House and Senate Resolution Denouncing White Nationalism and Neo-Nazis.](#)
- 12: [The City of Portland Condemns White Supremacist and Alt-Right Hate Groups \(Resolution\).](#)

RESOLUTION

CITY OF BERKELEY DENOUNCES AND OPPOSES WHITE NATIONALIST AND  
NEO-NAZI GROUPS AND ACTIONS.

WHEREAS, throughout the course of U.S. history, white nationalism has promoted intimidation and violent repression of individuals solely on the basis of their race, ethnicity, religion and immigration status; and

WHEREAS, today, white nationalism has attempted to reinvent itself, self-identifying as the “Alt-Right,” yet their present day rhetoric and terrorism conjure painful memories of our nation’s past; and

WHEREAS, white nationalism and neo-Nazism seek to intensify racial animosities and inequities, further divide people in their shared interests in freedom, justice and humanity and foment hatred, classism, racism, xenophobia, anti-Muslim prejudice, antisemitism and ethnic eradication; and

WHEREAS, across the country there has been a rise in public expressions and violence by self-proclaimed white nationalists and neo-Nazis;<sup>9</sup> and

WHEREAS, 71% of extremist-related deaths between 2008 and 2017 were committed by members of a far-right movement and there has been an increase in attacks by right-wing extremists, from 6% in the 2000s to 35% in the 2010s;<sup>10</sup> and

WHEREAS, out of 65 incidents in 2017, 37 were explicitly motivated by racist, anti-Muslim, homo/transphobic, anti-Semitic, fascist, or xenophobic ideology;<sup>11</sup> and

WHEREAS, while free speech and assembly are bedrock civil liberties, white nationalists and neo-Nazi groups promote agendas that are in irreconcilable conflict with other fundamental rights including liberty and justice for all; and

WHEREAS, the white nationalist and neo-Nazi messages of racial and social intolerance have led to senseless acts of violence that continue to terrorize members of ethnic, racial and religious communities; and

---

<sup>9</sup> Southern Poverty Law Center: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>.

<sup>10</sup> Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don’t Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

<sup>11</sup> Romero, Luiz. US terror attacks are increasingly motivated by right-wing views. *Quartz*. October 24, 2018. <https://qz.com/1435885/data-shows-more-us-terror-attacks-by-right-wing-and-religious-extremists/>.

WHEREAS, the federal government has failed to address the rising violence of white nationalists and instead focused its effort on a broad, sweeping attack against what is perceived as a foreign terrorist threat abroad and at home, despite the numbers showing double the attacks by the former over attacks by the later;<sup>12,13, 14</sup> and

WHEREAS, recent tragic and terrorizing events in Berkeley, Charlottesville, Sacramento, Anaheim, Portland and Seattle have proven that white nationalists and neo-Nazis remain a very real threat to safety, humanity and racial justice.

NOW, THEREFORE BE IT RESOLVED that the City of Berkeley strongly denounces and opposes the fascist<sup>i</sup> impulses, violent actions, xenophobic biases, and bigoted ideologies that are promoted by white nationalists and neo-Nazis; and

BE IT FURTHER RESOLVED that the City of Berkeley will not tolerate discrimination or hate in any form or manifestation and that we stand united with resolve to promote and continue to secure equality for all people.

---

<sup>i</sup> “The common elements of fascism — extreme nationalism, social Darwinism, the leadership principle, elitism, anti-liberalism, anti-egalitarianism, anti-democracy, intolerance, glorification of [war](#), the supremacy of the state and anti-intellectualism — together form a rather loose doctrine.” Ian Adams, [Political Ideology Today](#).

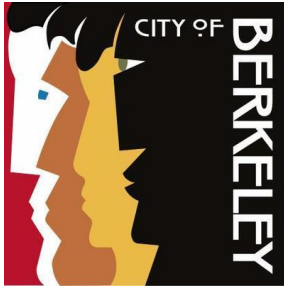
---

<sup>12</sup> Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don’t Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

<sup>13</sup> German, Michael and Sara Robinson. Wrong Priorities on Fighting Terrorism. *The Brennan Center for Justice*. October 31, 2018. <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

<sup>14</sup> [Democrats ask Trump administration for answers on rise of white nationalism in US](#). CNN Politics. November 27, 2018.





Councilmember Ben Bartlett

City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR  
 February 26th, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Support AB 5 and Write Letter of Support to CA Assemblymember Lorena Gonzalez

#### RECOMMENDATION

That the Mayor of Berkeley and Members of the City Council support CA State Assembly Bill 5 (AB 5) by sending a letter of support to Author Assemblymember Lorena Gonzalez. Assembly Bill 5 codifies and clarifies the application of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903*, which established the 3-part “ABC” test to defend the labor rights of misclassified workers and ensure they receive the compensation they deserve.

#### CURRENT SITUATION

When companies misclassify workers to circumvent payroll taxes, Social Security, and disability insurance the marketplace becomes unfair, misclassified workers lose workplace protections, and the state loses needed revenue. The California Supreme Court decision in *Dynamex* established the “ABC” test to clearly define an independent contractor, preventing misclassification. Assembly Bill 5 incorporates the California Supreme Court decision into state law and clarifies its application.

#### BACKGROUND

The losses suffered by misclassified workers results in a myriad of problems that are avoidable by clearly outlining the requisites for classifying workers as independent contractors. This is accomplished by the Court’s ruling which establishes that it is the employer’s duty to classify their workers as independent contractors or employees according to the 3-part “ABC” test. This requires employers to establish each of the following three factors:

- A. that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and*

- B. that the worker performs work that is outside the usual course of the hiring entity's business; *and*
- C. that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903

ACTIONS/ALTERNATIVES CONSIDERED

Writing additional language to City of Berkeley Ordinance to ensure the Minimum Wage and Paid Sick Leave policies are inline with Dynamex's Court Case

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Many labor Unions have signed on, see attachment

RATIONALE FOR RECOMMENDATION

To support legislatures who introduced legislations that ensure that workers, regardless employment and contracting status, are protected

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

N/A; State Enforcement

FISCAL IMPACTS OF RECOMMENDATION

Staff time to review/ edit letter and postage.

ENVIRONMENTAL SUSTAINABILITY

No negative impact.

RATIONALE FOR RECOMMENDATION

To show support for the contracting workers of Berkeley and California

OUTCOMES AND EVALUATION

CONTACT PERSON

Councilmember Ben Bartlett  
Kyle Tang

510-981-7130  
kyle.tang@berkeley.edu

ATTACHMENTS

1. Letter to Assemblymember Lorena Gonzalez
2. List of Labor Unions Supporting the Decision.

Attachment 1:  
February XX, 2019

The Honorable Lorena Gonzalez  
Member of the California State Assembly  
[insert address]

Re: AB 5 (Gonzalez)

Dear Assemblymember Gonzalez:

The Honorable Mayor and Members of the Berkeley City Council are pleased to support AB 5. AB 5 codifies and clarifies the application of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903*, which established the 3-part “ABC” test to defend the labor rights of misclassified workers.

Prior to the *Dynamex* ruling, misclassified workers were unfairly denied wages and benefits by companies which sought to avoid paying payroll taxes, payment of premiums for workers compensation, Social Security, unemployment, and disability insurance. The Court decision and resulting 3-part “ABC” test reduce ambiguity, preventing worker misclassification and ensure that workers are fairly compensated.

AB 5 expresses the Legislature’s intent to codify the Court decision and clarify its future applications in state law.

It is crucial that the California Legislature defends workers’ rights and hold employers accountable. For these reasons, we strongly support AB 5.

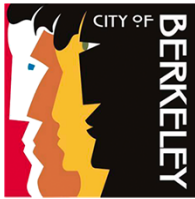
Respectfully,  
the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin  
Mayor, City of Berkeley

Members of the Berkeley City Council

Attachment 2:





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 February 26, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for AB 177 (Election Day Holiday)

RECOMMENDATION

Send a letter to Senator Skinner, Assemblymember Wicks, and Assemblymember Low supporting AB 177, which would add any day a statewide general election is held to the list of state holidays.

BACKGROUND

Under current election law, Election Day occurs on the first Tuesday after the first Monday in November of each even-numbered year. Election Day is not on the list of California State holidays. Since Election Day falls on a weekday, getting to the polls can be difficult for people who have to attend school or work.

Voter turnout among young people is low, and turnout for registered voters aged 18-29 is consistently lower than all other age groups. Closing public schools and community colleges on Election Day would give young people greater opportunities to vote and exercise their civic duty.

Wait times and crowds at the polls can be unpredictable, and for people who work full time, finding time in the day to vote can be stressful. Polls are often busiest during the morning, evening, and during lunch breaks because of people's work schedules. Giving workers the day off to vote would make voting easier for them and increase efficiency at polling stations.

This bill would add Election Day to the list of days where public schools and community colleges close and state employees get paid time off. This would give students and state workers more time to cast their ballots, and is an important step towards increasing voter turnout and promoting civic engagement in California.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Rachel Alper, Intern to Councilmember Rigel Robinson, (510) 981-7170

Attachments:

- 1: Letter of support to Senator Skinner
- 2: Letter of support to Assemblymember Wicks
- 3: Letter of support to Assemblymember Low
- 4: Bill Text - AB 177

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB177](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB177)

The Honorable Nancy Skinner  
Member of the Senate  
State Capitol, Room 2059  
Sacramento, CA 95814

Re: AB 177 (Low) – Election Day Holiday

Dear Senator Skinner,

The Berkeley City Council would like to convey its full support for AB 177. AB 177 seeks to make voting easier for students and state workers by making Election Day a holiday.

Under current election law, Election Day occurs on the first Tuesday after the first Monday in November of each even-numbered year. Election Day is not on the list of California State holidays. Since Election Day falls on a weekday, getting to the polls can be difficult for people who have to attend school or work.

Voter turnout among young people is low, and turnout for registered voters aged 18-29 is consistently lower than all other age groups. Closing public schools and community colleges on Election Day would give young people more time to vote.

Wait times and crowds at the polls can be unpredictable, and for people who work full time, finding time in the day to vote can be stressful. Polls are often busiest during the morning, evening, and during lunch breaks because of people's work schedules. Giving workers the day off to vote would make voting easier for them and increase efficiency at polling stations.

This bill would add Election Day to the list of days where public schools and community colleges close and state employees get paid time off. This would give students and state workers more time to cast their ballots, and is an important step towards increasing voter turnout and promoting civic engagement in California.

Berkeley City Council requests that you support this important legislation to make voting easier for Californians.

Respectfully,  
Berkeley City Council

The Honorable Buffy Wicks  
Member of the Assembly  
State Capitol, Room 5160  
Sacramento, CA 95814

Re: AB 177 (Low) – Election Day Holiday

Dear Assemblymember Wicks,

The Berkeley City Council would like to convey its full support for AB 177. AB 177 seeks to make voting easier for students and state workers by making Election Day a holiday.

Under current election law, Election Day occurs on the first Tuesday after the first Monday in November of each even-numbered year. Election Day is not on the list of California State holidays. Since Election Day falls on a weekday, getting to the polls can be difficult for people who have to attend school or work.

Wait times and crowds at the polls can be unpredictable, and for people who work full time, finding time in the day to vote can be stressful. Polls are often busiest during the morning, evening, and during lunch breaks because of people's work schedules. Giving workers the day off to vote would make voting easier for them and increase efficiency at polling stations.

Voter turnout among young people is low, and turnout for registered voters aged 18-29 is consistently lower than all other age groups. Closing public schools and community colleges on Election Day would give young people more time to vote.

This bill would add Election Day to the list of days where public schools and community colleges close and state employees get paid time off. This would give students and state workers more time to cast their ballots, and is an important step towards increasing voter turnout and promoting civic engagement in California.

Berkeley City Council requests that you support this important legislation to make voting easier for Californians.

Respectfully,  
Berkeley City Council



The Honorable Evan Low  
Member of the Assembly  
State Capitol, Room 4126  
Sacramento, CA 95814

Re: AB 177 (Low) – Election Day Holiday

Dear Assemblymember Low,

The Berkeley City Council would like to convey its full support for AB 177.

Under current election law, Election Day occurs on the first Tuesday after the first Monday in November of each even-numbered year. Election Day is not on the list of California State holidays. Since Election Day falls on a weekday, getting to the polls can be difficult for people who have to attend school or work.

Wait times and crowds at the polls can be unpredictable, and for people who work full time, finding time in the day to vote can be stressful. Polls are often busiest during the morning, evening, and during lunch breaks because of people's work schedules. Giving workers the day off to vote would make voting easier for them and increase efficiency at polling stations.

Voter turnout among young people is low, and turnout for registered voters aged 18-29 is consistently lower than all other age groups. Closing public schools and community colleges on Election Day would give young people more time to vote.

Adding Election Day to the list of state holidays is an important step towards increasing voter turnout and promoting civic engagement in California.

Thank you for introducing this important piece of legislation.

Respectfully,  
Berkeley City Council



**REVISED  
AGENDA MATERIAL  
for Supplemental Packet 2**

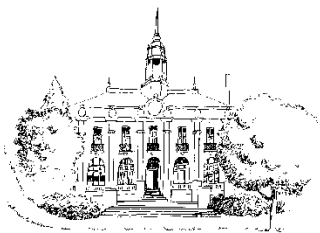
**Meeting Date:** October 16<sup>th</sup>, 2018

**Item Number:** 21

**Item Description:** Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

**Submitted by:** Councilmember Worthington

Add Councilmember Harrison as co-sponsor.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### CONSENT CALENDAR

October 16, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember [Cheryl Davila, Kate Harrison, and](#) Kriss Worthington  
Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

#### RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

#### BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the City to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:  
<https://drive.google.com/file/d/1V9nY1BeWSbFOlgb7YF5opB4rkBKvBqd/view?usp=sharing>

#### FINANCIAL IMPLICATIONS:

Minimal.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

ORDINANCE NO. -N.S.

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

**Section 1. Title**

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

**Section 2. Definitions**

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - a) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**Section 3. Prohibition on Use of City Resources**

- 1) No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
  - a) The intent and purpose of this ordinance;
  - b) The availability of alternative services, goods and equipment; and
  - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
  - a) Information published by reliable sources
  - b) Information released by public agencies
  - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
  - d) Information submitted to the City Manager by any member of the public, and thereafter duly verified
- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the

determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

#### **Section 4. Investigation And Reporting**

- (a) The City Manager, or his or her designee, shall review compliance with Section 3. The City Manager may initiate and shall receive complaints regarding violations of Section 3. After investigating such complaints, the City Manager shall issue findings regarding any alleged violation. If the City Manager finds that a violation occurred, the City Manager shall, within 30 days of such finding, send a report of such finding to the City Council, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Sections 3.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Manager.
- (c) By May 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 3 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

#### **Section 5. Enforcement**

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

#### **Section 6. Severability**

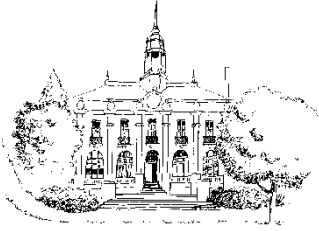
The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

#### **Section 7. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

#### **Section 8. Effective Date**

This Ordinance shall take effect on [DATE].



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### ACTION CALENDAR

February 26, 2019

*(Continued from January 29, 2019)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington, Councilmember Cheryl Davila, and  
Councilmember Ben Bartlett

Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice  
Commission

#### RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

#### BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the city to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:  
<https://drive.google.com/file/d/1V9nY1BeWSbFOlgb7YF5opB4rlkBKvBqd/view?usp=sharing>

#### FINANCIAL IMPLICATIONS:

Minimal.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170



ORDINANCE NO. -N.S.

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

**Section 1. Title**

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

**Section 2. Definitions**

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
  - a) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
  - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

**Section 3. Prohibition on Use of City Resources**

- 1) No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
  - a) The intent and purpose of this ordinance;
  - b) The availability of alternative services, goods and equipment; and
  - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
  - a) Information published by reliable sources
  - b) Information released by public agencies
  - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
  - d) Information submitted to the City Manager by any member of the public, and

thereafter duly verified

- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

#### **Section 4. Investigation And Reporting**

- (a) The City Manager, or his or her designee, shall review compliance with Section 3. The City Manager may initiate and shall receive complaints regarding violations of Section 3. After investigating such complaints, the City Manager shall issue findings regarding any alleged violation. If the City Manager finds that a violation occurred, the City Manager shall, within 30 days of such finding, send a report of such finding to the City Council, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Sections 3.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Manager.
- (c) By May 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 3 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

#### **Section 5. Enforcement**

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

#### **Section 6. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

**Section 7. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

**Section 8. Effective Date**

This Ordinance shall take effect on [DATE].





Office of the Mayor

CONSENT CALENDAR  
February 26, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Retirement of Council Ad Hoc Subcommittees

RECOMMENDATION

Adopt a Resolution:

1. Officially retiring the Ad Hoc Subcommittee on Community Benefits, Ad Hoc Subcommittee on Urban Shield, Ad Hoc Subcommittee on Small Business, Ad Hoc Subcommittee on Automatic Door Openers effective immediately, and;
2. Retiring the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week, and Ad Hoc Subcommittee on Climate Emergency effective March 31, 2019, and requesting that these Ad Hoc Subcommittees complete their business before that time and make a recommendation to the City Council.

BACKGROUND

The City Council has created several Standing and Ad Hoc committees in order to study and analyze important city issues. Once an Ad Hoc Subcommittee has completed its work it must report back to the City Council, in some cases by an established target date. Some Ad Hoc committees may not always have a specific report back date and a formal action of the Council is needed to officially clarify the status of the Subcommittee.

The City Council Rules of Procedure Chapter II, Section I, state that when an Ad-Hoc Subcommittee is established by the Council there must be a specific charge or outline of responsibilities which must be completed, and a target date established for a report back to Council. The maximum life of a Subcommittee is one year unless extended.

The City Council Rules of Procedure and Order Chapter II, Section I, also states that Subcommittees must be reviewed annually by the Council to determine if they are to continue.

Throughout 2017 and 2018, the Council established a number of Ad Hoc Subcommittees to study important issues and review proposed legislation. Some of



Office of the Mayor

these Ad Hoc Committees were established with a date certain by which they must complete their work, and some Subcommittees have no target date.

In order to allow more review and public comment on proposed legislation, the City Council voted on December 11, 2018 to create a system of Standing Policy Committees. The new Standing Policy Committees negate the need for multiple Ad Hoc Subcommittees to review Council items and discuss important policy issues.

### **Status of Existing Ad Hoc Subcommittees**

The Ad Hoc Subcommittee on NCRIC and Urban Shield and the Ad Hoc Subcommittee on Small Business have completed their designated responsibilities and have reported back to the City Council. They should therefore be officially retired.

The Ad Hoc Subcommittee on Community Benefits was established on January 23, 2018 to review a specific City Council item "*Strengthening Provisions of Significant Community Benefits in the Downtown*". One year has passed since the Subcommittee was established and since that time the Council has asked the Planning Commission to amend the Development Agreement process, which will enable taller buildings Downtown to seek streamlined approval and provide specific community benefit packages. Because of this, the Agenda and Rules Committee voted on January 7, 2019 to take no action on the "*Significant Community Benefits*" item. Therefore this Subcommittee should be retired.

The Ad Hoc Subcommittee on Automatic Door Openers was established on October 13, 2017 to analyze the issue of automatic door openers in new multi-unit residential buildings and whether to apply the requirement to existing buildings. One year has passed and the Council did not extend the life of the Subcommittee. Therefore it should be retired.

The Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week was established on April 3, 2018 to review and make recommendations on legislation expanding Paid Family Leave and Fair Scheduling requirements for employees. This Ad Hoc Subcommittee was created with no target date to report back. This item requests that the Subcommittee complete its work and make a recommendation to the City Council by March 31, 2019.

The Ad Hoc Subcommittee on Climate Emergency was created on June 12, 2018 with the primary goal of coordinating a regional Climate Emergency Mobilization Town Hall. The Subcommittee, chaired by Councilmember Davila, organized a Town Hall in August 2018. Since that time the Subcommittee has met regularly to discuss ways to implement the city's Climate Emergency Declaration. With the creation of a Standing Policy



Office of the Mayor

Committee on Facilities, Infrastructure, Transportation, Environment and Sustainability and multiple City Commissions (Energy, Zero Waste, CEAC, Transportation) developing policies on accelerating our Climate response, it is appropriate to retire this Subcommittee and allow the new Council Committee and City Commissions to carry on the work. This item requests that the Subcommittee complete its work by March 31, 2019 and make a recommendation to the City Council.

#### RATIONALE FOR RECOMMENDATION

To maintain an accurate accounting of the status of Council committees so that it is clear to the public which committees are active and inactive.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with the recommendation of this report.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution



Office of the Mayor

RESOLUTION NO. ##,###-N.S.  
SUNSET OF COUNCIL AD-HOC COMMITTEES

WHEREAS, the City Council has created several standing and ad hoc committees to address significant city issues; and

WHEREAS, some of these committees have completed their tasks and are no longer active.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Ad Hoc Subcommittee on Community Benefits, Ad Hoc Subcommittee on Urban Shield, Ad Hoc Subcommittee on Small Business, Ad Hoc Subcommittee on Automatic Door Openers are hereby retired; and

BE IT FURTHER RESOLVED that the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week, and Ad Hoc Subcommittee on Climate Emergency are officially retired effective March 31, 2019; and

BE IT FURTHER AND FINALLY RESOLVED that the Council requests that the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week and Ad Hoc Subcommittee on Climate Emergency complete their business and make a recommendation to the City Council by March 31, 2019.





Office of the Mayor

CONSENT CALENDAR

February 26, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín

Subject: Excused Absence for Councilmember Ben Bartlett

RECOMMENDATION

Excuse Councilmember Ben Bartlett from the November 27, 2018 Council meeting as a result of illness.

BACKGROUND

Pursuant to the City Charter, Article V, § 19, the City Council must approve an absence by a Councilmember from a meeting in order for that absence to be considered excused. Specifically, it states:

*If the Mayor or any member of the Council is absent from one or more regular meetings of the Council during any calendar month, unless excused by the Council in order to attend to official business of the City, or unless excused by the Council as a result of illness from attending no more than two regular meetings in any calendar year, he or she shall be paid for each regular meeting attended during such months in an amount equal to the monthly remuneration divided by the number of regular meetings held during such month.*

Councilmember Bartlett was unable to provide a 72 hour notice of his absence from the November 27, 2018 Council meeting due to an unforeseen sickness.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100





Office of the Mayor

CONSENT CALENDAR

February 26, 2019

To: Members of the City Council

From: Mayor Jesse Arreguin

Subject: Establishment of Traffic Circle Policy Task Force

RECOMMENDATION

Establish a Traffic Circle Policy Task Force comprised of representatives from neighborhoods currently maintaining traffic circles. Members will be appointed by the Mayor and chosen from geographically diverse parts of the city, including one representative from Berkeley Partners for Parks. Staff participating will be appointed by the City Manager.

The charge of this Task Force is to:

1. Evaluate the City's current traffic circle vegetation policy for consideration by the City Council and Traffic Engineer;
2. Find a solution, through active participation and engagement with the community, that respects:
  - Environmental Policy
  - Habitat
  - Safety and Performance Standards
  - Existing and future liability issues that address sight lines; and
3. Deliver a policy to City Council for adoption prior to August 9, 2019.
4. Conduct a community-led process to update that policy to ensure pedestrian/bicycle/vehicle safety and community efforts to beautify traffic circles.

Task Force activities may include, but are not limited to:

- Recommend appropriate characteristics and parameters for allowed plantings based on input from the community and city staff;
- Recommend a policy that ensures lines of sight and other important safety considerations;
- Work with City staff to conduct a survey of current traffic circles and their vegetation;
- Conduct a survey of neighborhood associations, neighborhood captains, community and community groups such as Berkeley Partners for Parks to determine which traffic circles are being maintained by community members;
- Examine the City of Oakland's 'Adopt a Spot' initiative to encourage community involvement in the maintenance of public spaces by loaning tools, supplies, and technical assistance to committed members of the community;
- Host a presentation from City staff to better understand concerns with the current traffic circle policy and any safety concerns that should be taken into consideration;
- Recommend a clear set of guidelines/criteria to allow for community maintenance of traffic circles, with input from city staff;

RESUBMITTAL – CONSENT CALENDAR, February 26, 2019

Traffic Circle Policy Task Force

- Outline the appropriate community outreach strategy and process to share the updated policy for managing vegetation in traffic circles;
- Recommend a replanting strategy, with emphasis on drought-resistant plants.

#### BACKGROUND

In the summer of 2018 in response to a legal settlement agreement, the Public Works Department provided notice to all neighbors responsible for the maintenance of traffic circle vegetation, informing them that the City would be removing trees and other large vegetation that obscures line of sight and poses a safety risk.

This communication elicited significant concern from the community. Residents responded by asking for more outreach and engagement of neighborhood traffic circle volunteers, particularly regarding decisions on the removal of vegetation or updates to policy. The current Traffic Circle Planting and Maintenance policy, last updated in 2012, prohibits vegetation over two feet in height and/or six inches in diameter, yet there are many trees that exceed these limit in traffic circles. There is a need to update this policy to reflect current conditions and to ensure ongoing maintenance that improves safety at these intersections.

On August 8, 2018, the Mayor, Councilmembers and City staff held a public meeting where many of the traffic circle volunteers attended along with Berkeley Partners for Parks. A major takeaway was a strong desire by many for a more formal process to engage neighborhood volunteers and other stakeholders in updating the current Traffic Circle policy.

On September 25, 2018, the City Council unanimously referred to the Parks and Transportation Commissions to create a city/community task force on Traffic Circle vegetation maintenance. Since the Council's referral, the Parks Commission was informed that they do not have the authority to establish a Task Force, and that Council action is required.

A stakeholder task force would be the most strategic, effective, and appropriate approach to respond to the community's substantial interest in, and continuing care for, the circles. The City has partnered with its citizens on their stewardship for almost two decades. Now is the ideal time to revisit, enhance and formalize that partnership, support community involvement and work together to address important safety concerns. To help meet the spirit and desired follow up of the August 8<sup>th</sup> community meeting, it is important for community members to have representatives actively participating in and contributing to discussions about the traffic circles.

#### FINANCIAL IMPLICATIONS

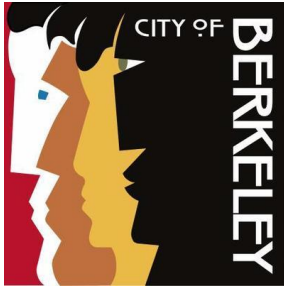
Costs associated with staffing the Traffic Circle Task Force, hosting community meetings and developing a new Traffic Circle Planting Policy.

#### ENVIRONMENTAL SUSTAINABILITY

Supports the City's Climate Emergency Declaration, the City's Climate Action Plan and commitment to Vision Zero.

#### CONTACT PERSON

Mayor Jesse Arreguin (510) 981-7100



Councilmember Ben Bartlett

City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

CONSENT CALENDAR

February 26th, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Ensuring the Sustainability of the Berkeley Flea Market

RECOMMENDATION

Referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market, to sustain and enhance its ability to serve both merchant participants and the community at large.

CURRENT SITUATION

The Berkeley Flea Market is struggling financially, as a result, the board members of the Community Services United (CSU)--the Berkeley nonprofit organization that runs the Market--have decided to shut down the market for the months of February and March. During this break, the CSU intends to create a plan to reinvigorate the market. The Market currently faces the risk of being shut down permanently, unless a sustainable path to solvency is discovered and enacted.

BACKGROUND

The Berkeley Flea Market is a community institution, providing pathways to entrepreneurship, a celebration of diversity and cultural expression, a community meeting place, and opportunities for reuse and recycling. The Market has contributed to the vitality of South Berkeley for nearly 50 years.

In late 2018, the Market suffered from reduced revenues due to smoke from the Camp Fire and extended rainy weekends. One rainy day easily contributes to a loss of an entire weekend's earnings. As a result, the Market is in a dire financial situation and is unable to cover its regular expenses-- including rent, insurance, and portable toilets. These elements are the backbone to the market and facilitate small business activity and contribute to creation of community.

The City of Berkeley can and should provide assistance to the Berkeley Flea Market including capacity building, developing a business plan, marketing, and exploring alternate locations in the public right of way near their current location that will reduce costs for the Market and boost its visibility.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

The Market will be shut down this upcoming February and March. In the meantime, the board members of CSU are implementing new plans to temporarily alleviate the situation during their two-month break. One existing plan is to share and/or sublet a part of their office space with another individual or group of people in need of a space to work. Sharing the space will split the rent in half and thus, provide CSU with an extra thousand dollar to save.

#### ACTIONS/ALTERNATIVES CONSIDERED

A potential alternative is to find an alternate location that is not only cheaper, but also physically visible and accessible. Exploring different venue options can and should be supported by the efforts of the City of Berkeley due to the amount of resources it has.

Some have also introduced the idea of increasing the space rental fees for vendors, but this alternative only shifts the CSU's financial crisis onto the backs of those whose income roots itself in their businesses at the Market. The market is designed for working class and poor people to be their own bosses and make a living, and increasing the space rental fees will deter vendors from selling at the market and further interfere with CSU's plans towards building sustainability.

#### OUTREACH OVERVIEW AND RESULTS

This past December, the board members of CSU initiated a GoFundMe campaign in order to pay their rent and manage the administration of the market. Aiming to receive support from community members, nonprofit organizations and neighborhood associations, and the people who frequently visit the Berkeley Flea Market, the campaign only raised \$2,654 of its \$20,000 goal. Unfortunately, this only covers about a month's worth of the Board's expenses. CSU needs an effective and immediate plan that goes beyond a fundraising campaign and will continuously sustain both the market and those whose income is primarily from their service as a vendor.

RATIONALE FOR RECOMMENDATION

The Berkeley Flea Market is on the verge of closing. Not only will its closing disrupt the Market's long years of creative collaboration and community building, but also it will negatively impact the lives of the working class and poor people who are the primary owners of the Market's diverse number of businesses. Therefore, the City of Berkeley needs to use their resources to help ensure the sustainability of the Market.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The Council should refer to the City Manager to provide assistance to the Berkeley Flea Market. The City Manager should then create a plan to further discuss with the board members of CSU on how to proceed.

In addition, all Councilmembers should assist with outreach by informing the community and their networks about the Market's search for an individual or group of people in need of a shared office space.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and other costs associated with special events.

ENVIRONMENTAL SUSTAINABILITY

No negative impact.

OUTCOMES AND EVALUATION

It is expected that the City of Berkeley will assist CSU with sustaining the Berkeley Flea Market and as a result, there will be a newly created, but effective business model that will solve their financial crisis.

CONTACT PERSON

Councilmember Ben Bartlett  
Katie Ly

510-981-7130  
katiely22@berkeley.edu







## Councilmember Ben Bartlett

City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor  
 Berkeley, CA 94704  
 PHONE 510-981-7130  
 EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Open Doors Initiative

Short Term Referral to Planning Commission

### RECOMMENDATION

That the City Council direct the Planning Commission to design a regulatory mechanism (Open Doors Initiative) to incentivize the creation of affordable starter homes for Berkeley city employees and persons of moderate income. The Open Doors Initiative is intended to provide assistance to homeowners in R1 and R1A zones to renovate their properties and become multi-family condominiums. To qualify for zoning approval, families must agree to deed restrictions which limit the sale of the newly-created condominiums to Employees of the City of Berkeley and/or first time moderate income first time home buyers -- the 'Missing Middle'..

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

The Open Doors Initiative serves the policy goals of economic inclusion, community resilience, and environmental sustainability.

### CURRENT SITUATION

#### Ever-Increasing Housing Costs Have Drastically Reduced First-Time Home Buyers

Housing ownership is a human right. The Open Doors Initiative is meant to increase home ownership opportunities for first-time home buyers among the 'missing middle' (people earning 80-120% AMI) who are increasingly shut out of the market.

Housing is now prohibitively expensive. The nation has seen a steep decline of first-time home buyers. In 2010, first-time buyers purchased roughly half of the homes sold nationally; in 2016, only 35% went to first-time buyers<sup>1</sup>.

<sup>1</sup> <https://www.nytimes.com/2017/04/21/realestate/first-time-home-buyers-statistics.html>

While the number of first-time home buyers has steadily decreased, the cost of homes has simultaneously increased. Zillow reports that the median home value in Berkeley is \$1,231,400 and predicts that Berkeley home values will rise 5.9% within the next year.<sup>2</sup> In comparison, the median home value in the United States is \$222,800<sup>3</sup> - just 18% of the median home value in Berkeley.

Many would-be home buyers are finding that they cannot afford to do so. In fact, a recent Credit Sesame survey of more than 1,000 renters found that roughly half of renters only rent a home because they can't afford to own.<sup>4</sup>

## BACKGROUND

### The Need for Starter Homes

The Open Doors Initiative proposes to increase the number of starter homes, such as condominiums. It envisions residential homeowners dividing their properties into condominiums in Berkeley. Homeowners are granted increased density, with administrative approval, and other fiscal incentives -- provided the homeowner meets certain affordability restrictions and sells to city employees, and first-time homebuyers of moderate income.

Previous generations leveraged the rising housing market to utilize the equity of “starter” homes to allow them to purchase larger homes. This process also gave young families experience of maintaining homes and building community. Today this fundamental act has become more difficult, as the supply of starter homes have drastically dwindled<sup>5</sup>.

Bloomberg reports that starter home inventory has hit its lowest level since Trulia began keeping track in 2012<sup>6</sup>. The supply of starter homes is declining at 17% year-over-year, nearly twice as fast as all homes, and over 3 times faster than larger homes<sup>7</sup>. In July 2017, only 450,000 homes listed below \$200,000 remained in the market, which was about 120,000 fewer than in July 2015 (See id.)

Berkeley is now presented with an historic opportunity to impact the housing crisis by increasing its availability of starter homes. Currently, “[o]ver a third, or 35 percent, of millennials say ‘the down payment’ is their biggest obstacle to buying a home.”<sup>8</sup>

With the Open Doors Initiative, houses that once cost upwards of \$1,000,000 and require a 20% down payment of \$200,000 (and often being sold for cash outright) will now be incentivized to

---

<sup>2</sup> <https://www.zillow.com/berkeley-ca/home-values/>

<sup>3</sup> <https://www.zillow.com/home-values/>

<sup>4</sup> <https://www.gobankingrates.com/investing/real-estate/reasons-women-struggling-buy-home/>

<sup>5</sup> <https://optimise-design.com/bring-back-starter-home/>

<sup>6</sup> <https://www.bloomberg.com/news/articles/2018-03-21/u-s-starter-homes-are-pricier-smaller-older-and-scarcer>

<sup>7</sup> [https://www.realtor.com/research/housingshortage\\_starterhomes/](https://www.realtor.com/research/housingshortage_starterhomes/)

<sup>8</sup> <https://www.cnbc.com/2018/09/14/the-2-main-reasons-young-people-cant-buy-homes.html>

become individual starter homes with drastically reduced costs – four condominiums created from the above converted home would ideally each cost approximately \$250,000 with a 20% down payment of only \$50,000. Such a change would turn homeownership into an achievable goal for many people, including young families.

“Americans 65 to 74 are now the country’s fastest-growing age group. According to a 2014 AARP survey, 88 percent of older Americans want to remain in place as they age.”<sup>9</sup> Open Doors Initiative encourages seniors in Berkeley who own large homes to downsize, earn money and while saving their assets.

In summary, we believe that increasing starter homes, will increase accessibility to homeownership for under-represented communities, artists, younger people, first responders, and teachers. This will, in turn:

- a. Reduce the wealth gap between older, predominately white homeowners and underrepresented communities;
- b. Increase diversity of Berkeley neighborhoods;
- c. Support Resiliency and Sustainability by reducing commute times for First Responders and City Employees;
- d. Provide financial benefit to senior homeowners

#### Accommodating City Workers Will Benefit Minority Groups, Who Are Disproportionately Unable to Purchase Homes.

To accommodate workers like teachers and first responders in Berkeley, federal housing rules allow us to set aside workforce housing through a deed restriction. A workforce deed restriction, accompanied by a change in zoning, can ensure that new homes with deed restricted units are only made available to people who have a history of employment in Berkeley/Alameda County and/or meet certain income requirements. Not only would this deed restriction ensure that units are never sold or rented to anyone who earns income outside of the Berkeley/Alameda County, but also it would protect Berkeley’s long-term local workers by stabilizing the housing supply for residents. Because Berkeley city workers are disproportionately minorities, accommodating city workers with deed restrictions will benefit Berkeley minorities.

To successfully increase accessibility for these different communities, we have to change the underlying zoning in order to allow developers to convert single-family homes into duplexes, fourplexes, and other forms of housing that could house multiple groups of people. Currently, these types of housing are not allowed to be built in the R1 and in a few R2 districts as a result of zoning issues. Thus, we need to address zoning conditions in order to increase accessibility to homeownership for our constituents.

#### Wealth Gaps Have Resulted from Homeownership Inequalities

---

<sup>9</sup> [https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report\\_us\\_5b27c1f1e4b056b2263c621e](https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report_us_5b27c1f1e4b056b2263c621e)

The impact of rising housing costs has manifested itself in glaring wealth disparities between homeowners and renters. Roughly half (51.2%) of the total wealth accumulated by the typical American homeowner is derived from the value of their primary residence<sup>10</sup>. Owning a home can drastically improve one's net worth. "Since 2013, the average homeowner has seen their net worth rise from \$201,600 to \$231,400. Renters have watched theirs fall from \$5,600 to \$5,000."<sup>11</sup>

Due to the increase in housing costs and the resulting inaccessibility to homeownership for many people, fewer people are able to accrue wealth by purchasing a home. These wealth disparities are most prevalent in underrepresented communities. For instance, a significant wealth gap has appeared between white and non-white households. "Recent data from the Survey of Income and Program Participation (2014) shows that black households hold less than seven cents on the dollar compared to white households."<sup>12</sup>

"The Institute for Policy Studies recent report *The Road to Zero Wealth: How the Racial Divide is Hollowing Out the America's Middle Class* (RZW) showed that between 1983 and 2013, the wealth of the median black household declined 75 percent (from \$6,800 to \$1,700), and the median Latino household declined 50 percent (from \$4,000 to \$2,000). At the same time, wealth for the median white household increased 14 percent from \$102,000 to \$116,800."<sup>13</sup>

This gap shows no sign of slowing, but rather is projected to increase in the coming years. "In fact, by 2020 [...] black and Latino households are projected to lose even more wealth: 18 percent for the former, 12 percent for the latter. After those declines, the median white household will own 86 times more wealth than its black counterpart, and 68 times more wealth than its Latino one." (See id.)

Another wealth disparity that has grown more extreme is between the younger and older generation. "Older people have always had more net worth than younger people, of course, but never like this. Thirty years ago, families headed by someone over 62 had eight times the median wealth of families headed by someone under 40. By 2013, older families had 15 times the wealth of younger families."<sup>14</sup>

Because homeownership increases one's ability to expand one's net worth, it is the surest on-ramp to addressing these grotesque wealth disparities.

### Displacement as a Result of High Home Costs

---

<sup>10</sup> <https://www.zillow.com/research/black-hispanic-home-wealth-16753/>

<sup>11</sup> [https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report\\_us\\_5b27c1f1e4b056b2263c621e](https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report_us_5b27c1f1e4b056b2263c621e)

<sup>12</sup> <https://insightcced.org/what-we-get-wrong-about-closing-the-racial-wealth-gap/>

<sup>13</sup> <https://www.forbes.com/sites/brianthompson1/2018/02/18/the-racial-wealth-gap-addressing-americas-most-pressing-epidemic/#25b6eb127a48>

<sup>14</sup> [https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report\\_us\\_5b27c1f1e4b056b2263c621e](https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report_us_5b27c1f1e4b056b2263c621e)

Historically, Berkeley's redlining policies denied people of color access to its best neighborhoods. Today, though these policies have long been gone, the residual effect of those policies combined with the housing crisis has had the effect of reinforcing similar divides. "The difference between the large homes and winding roads of the predominantly white neighborhoods of the Hills and the Claremont neighborhood, and the modest, mixed-use character of racially diverse South and West Berkeley is indicative of the city's racial and class-based divisions."<sup>15</sup>

Housing costs in the United States have condemned many to a life of poverty, especially African Americans and Hispanics. "Though the number of Americans living in poverty has increased by 41 percent since 2000, the number of "high-poverty census tracts" has increased even faster. By now, 51 percent of blacks and 44 percent of Hispanics live in these areas of concentrated poverty, compared to just 17 percent of whites. According to numerous studies, children who grow up in areas of concentrated poverty are disadvantaged on nearly every measure, from school quality to violence to social mobility."<sup>16</sup>

The ever-increasing cost of housing has also forced teachers and first responders to live long distances from their workplaces. For example, San Francisco has seen a teacher shortage, because housing is so costly that the average teacher can only afford .7% of the homes on the market.<sup>17</sup> In addition, despite earning more than \$100,000 in San Francisco and San Jose, first responders can afford just 2.4% and 6.6% of currently listed homes, respectively.<sup>18</sup> In the event of a fire or massive tragedy, we need first responders to be able to live in Berkeley.

A closer look at the makeup of first-time buyers reveals a disturbingly large gap between white and non-white purchasers. The breakdown is as follows: 79% were white, 9% Hispanic, 8% Asian Pacific Islander, 7% African American, and 3% other<sup>19</sup>.

This racial divide is not just present in first-time buyers. Zillow reports that "[i]n 1900, the gap in the homeownership rate between black and white households was 27.6 percentage points. It's now 30.3 percentage points."<sup>20</sup> Additionally, according to the same report, "the difference between white and Hispanic homeownership rates has more than tripled", from 7.9 percentage points in 1900 to 25.7 percentage points in 2016. (See id.) "It's the widest gap among whites, blacks, Hispanics and Asians." (See id.)

It is likely that the racial and gender wage gaps present in the United States have directly affected homeownership rates. When getting approved for a mortgage, a borrower's income is an

---

<sup>15</sup> <https://www.berkeleyside.com/2018/09/20/redlining-the-history-of-berkeleys-segregated-neighborhoods>

<sup>16</sup> [https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report\\_us\\_5b27c1f1e4b056b2263c621e](https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report_us_5b27c1f1e4b056b2263c621e)

<sup>17</sup> <https://www.sfgate.com/technology/businessinsider/article/SF-teachers-cant-afford-housing-in-SF-12797504.php>

<sup>18</sup> <https://www.trulia.com/research/affordable-housing-occupation-2018/>

<sup>19</sup> The percentage exceeds 100% because participants could choose more than one ethnicity.

<https://www.nytimes.com/2017/04/21/realestate/first-time-home-buyers-statistics.html>

<sup>20</sup> <https://www.zillow.com/research/homeownership-gap-widens-19384/>

important factor when lenders assess his or her reliability, which puts borrowers with less income at a severe disadvantage.

In 2016, Pew Research found that African American men earned 73% of what white men earned, and Hispanic men earned approximately 69%<sup>21</sup>. White women earn approximately 82% of white men, Asian women earn 87%, African American women earn 65%, and Hispanic women earned only 58%. (See id.)

The New York Times's study of first-time buyers reflects the effect of the gender wage gap; while the median home price for a single male was \$157,000, the median price for a single female was \$146,300<sup>22</sup>.

Another group adversely affected by the rising housing costs is young people, who are increasingly unable to afford homes. "Though every age bracket contains significant inequalities, Americans over 65 are the only cohort with higher homeownership rates now than in 1987. Homeownership for every other age group has fallen significantly"<sup>23</sup>

Many young people continue to be hindered by their student loans, preventing them from purchasing a home. "Paying college loans is a big burden for homebuyers. It's harder to save for a down payment and can make qualifying for a mortgage more difficult. It can also delay a purchase as people pay down their debt."<sup>24</sup>

A recent study has also revealed that people in the LGBTQ+ community face unique challenges when buying a home. In April 2018, a survey by Freddie Mac among 2,313 LGBT community members (aged 22 to 72) living in the United States found that "49 percent of LGBT households are likely to own a home - considerably lower than the current national rate (64.3 percent)."<sup>25</sup> The study showed that when deciding where to live, LGBT renters cited price, safety and a LGBT-friendly location as the most important factors. (See id.)

Berkeley prides itself on accepting people from all walks of life. However, unless a conscious effort is made to increase accessibility of homeownership, underrepresented communities will continue to be denied access to the same benefits enjoyed by current, often very wealthy, homeowners. "Homeownership has become an indispensable part of being a full participant in American society," National Urban League President and CEO Marc H. Morial said. "An erosion of homeownership rates among African Americans represents not only a devastating financial loss but a barrier to full participation in the American dream."<sup>26</sup>

---

<sup>21</sup> <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/>

<sup>22</sup> <https://www.nytimes.com/2017/04/21/realestate/first-time-home-buyers-statistics.html>

<sup>23</sup> [https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report\\_us\\_5b27c1f1e4b056b2263c621e](https://www.huffingtonpost.com/entry/housing-crisis-inequality-harvard-report_us_5b27c1f1e4b056b2263c621e)

<sup>24</sup> <http://www.nareb.com/black-hispanic-homeownership-rates-remain-stuck-below-whites/>

<sup>25</sup> <https://freddiemac.gcs-web.com/news-releases/news-release-details/new-research-finds-lgbt-homeownership-rates-lag-behind-general>

<sup>26</sup> <https://newsroom.wf.com/press-release/consumer-lending/wells-fargo-commits-increase-african-american-homeownership>

## Funding

In addition to private lenders and federal and state homeownership programs, potential funding sources include Measure A1 Homeowner Development Funds and Qualified Opportunity Zones.

In 2016, Alameda County passed Measure A1, which issued \$580 million in bonds to acquire and improve real property to help poor and middle-class people buy homes.<sup>27</sup> The Open Doors Initiative proposes to use these A1 Homeowner Development Funds for low income first-time home buyers.

Additionally, the Initiative proposes to explore the use of Qualified Opportunity Zone funds to aid in financing construction costs. Qualified Opportunity Zone funds were established in the Tax Cuts and Jobs Act of 2017 with the purpose of improving Qualified Opportunity Zones.<sup>28</sup> Investors with capital gains can defer taxes on those gains if they invest within Qualified Opportunity Zones.<sup>29</sup>

These Qualified Opportunity Zone funds should be used towards the construction costs related to the creation of starter homes. This will ease the financial burden of seniors seeking to downsize their homes and promote the construction of new starter homes in Berkeley.

## REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

Currently Berkeley has a number of units zoned as R1 and R1A, Single Family Residential. The Open Doors Initiative will allow homeowners in an R1 and R1A zone to apply for administrative approval to convert their single family home into a multi-family unit, provided they meet affordability restrictions and agree to sell to moderate income persons and/or city workers including, first responders, firefighters, and other public employees.

The Open Doors Initiative will also require deed restrictions in units that are converted from R1 and R1A to multi-family condos to sell to city workers that meet income requirements, ensuring that the “Missing Middle” of income earners with the city of Berkeley have access to home ownership.

## **ACTIONS/ALTERNATIVES CONSIDERED**

That the City Council adopt The Open Doors Initiative to assist the creation of affordable starter homes and empower city employees and first-time home buyers. The Open Doors Initiative will allow homeowners in R1 and R1A zones to apply to renovate their properties to become multi-family condominiums, while providing incentives for doing so. To qualify for zoning approval, families must agree to deed restrictions which prohibit them from selling the newly-created

---

<sup>27</sup>[https://ballotpedia.org/Alameda\\_County,\\_California,\\_Affordable\\_Housing\\_Bond\\_Issue,\\_Measure\\_A1\\_\(November\\_2016\)](https://ballotpedia.org/Alameda_County,_California,_Affordable_Housing_Bond_Issue,_Measure_A1_(November_2016))

<sup>28</sup><https://www.wellsfargo.com/the-private-bank/insights/planning/wpu-qualified-opportunity-zones/>

<sup>29</sup><https://www.wealthmanagement.com/high-net-worth/what-are-qualified-opportunity-zones>

condominiums to anyone who is not an employee with the city of Berkeley or does not meet income requirements. These deed restrictions are meant to provide a path to home ownership for persons within the missing middle and workers with the city of Berkeley who could otherwise not afford to own a home in the city they serve.

#### **RATIONALE FOR RECOMMENDATION**

As noted above, the homeownership has become increasingly more difficult. By financially incentivizing R1 homeowners to convert to multi-family condominiums, the city of Berkeley will offer a path to older homeowners seeking to downsize to leverage their equity while providing Berkeley city workers with a supply of affordable condominiums. Over time, as the housing market rises, Berkeley city workers and moderate income persons who own these condominiums will be able to leverage the equity themselves when taking out loans, or sell the condominiums to other Berkeley city workers and moderate income persons.

#### **IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT**

To be determined.

#### **FISCAL IMPACTS OF RECOMMENDATION**

To be determined by an impact study.

#### **ENVIRONMENTAL SUSTAINABILITY**

Duplexing single family homes promotes environmentally sounded infill housing development. In addition, the Open Doors Initiative does not require the creation of additional parking spaces.

#### **OUTCOMES AND EVALUATION**

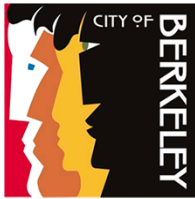
To be determined.

#### **CONTACT PERSON**

Councilmember Ben Bartlett:  
Matthew Napoli

510-981-7130  
[napoli.matthew@gmail.com](mailto:napoli.matthew@gmail.com)





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 February 26, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Refer to the City Manager and the Planning Commission to Modify BMC 22.20.065 (the Affordable Housing Mitigation Fee Act) such that Affordable Housing Fees for Rental Developments are Levied Based on a Project's Gross Residential Floor Area.

RECOMMENDATION

Refer to the City Manager and the Planning Commission to modify BMC 22.20.065 (the Affordable Housing Mitigation Fee Act) such that Affordable Housing Mitigation Fees for rental developments are levied on the basis of a project's gross residential floor area, rather than on its number of housing units.

BACKGROUND

Currently, all new residential development of five units or more must either pay an Affordable Housing Mitigation Fee to the City's Affordable Housing Trust Fund, set aside 20% of a project's units as below market rate housing, or some combination of the two. For rental developments, the fee is currently calculated based on the number of residential units in the project according to the following formula:

$$[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$$

Where:

- A = Total number of units in the project
- B = Number of Very-Low Income Units provided in the project.
- C = Number of Low-Income Units provided in the project.

By calculating Affordable Housing Mitigation Fees on a per-unit basis, current law incentivizes developers to build fewer units. In the past, developers have replaced standard layouts (studio, one-bedroom, and two-bedroom units) with dorm-style layouts (up to eight beds per unit). This increases the *density* of each unit but reduces the overall *number* of units, allowing applicants to pay significantly smaller fees without providing any additional housing.

Another way for developers to reduce their contribution to the Affordable Housing Trust Fund is to build larger, more expensive units, rather than smaller, more affordable units. This perverse incentive is clearly in opposition to the City's affordable housing goals.

Calculating the fee on the basis of gross residential floor area eliminates those two loopholes. Developers would no longer be able to reduce their contribution to the Affordable Housing Trust Fund by manipulating floor layouts. In addition, by eliminating the financial penalty for building more units, developers would be incentivized to propose denser projects, which is directly in line with the City's housing goals.

Such a change was recently enacted in San Francisco, taking effect January 1<sup>st</sup> of this year. The language from San Francisco's website (<https://sf-planning.org/inclusionary-affordable-housing-program>) describing the process they undertook to arrive at their new model is attached. Staff should consider their research, methodology, and conclusions when drafting their response.

#### FINANCIAL IMPLICATIONS

Potential revenues increases to the Affordable Housing Trust Fund from larger structures facing higher fees; potential revenue decreases from smaller units facing lower fees. Analysis must be conducted to determine the overall effect of these countervailing forces. Multiple fee levels should be assessed, including those that results in net zero changes in Affordable Housing Trust Fund revenues and those that increase revenues.

#### ENVIRONMENTAL SUSTAINABILITY

Increasing the affordability and density of housing near public transit has the potential to substantially reduce greenhouse gas emissions in line with the City's environmental goals. Potential revenue increases to the Affordable Housing Trust Fund could permit greater expenditures on housing affordability near transit.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

#### Attachments:

1: San Francisco's Amendments (<https://sf-planning.org/inclusionary-affordable-housing-program>)

Attachment 1: San Francisco's Amendments

## 2019 Affordable Housing Fee Update

Effective January 1, 2019, residential development projects that comply by paying the Affordable Housing Fee will be subject to the following fee based on the Gross Floor Area of residential use, rather than the number of dwelling units. The fee will be applied to the applicable percentage of the project, as set forth in Section 415.5 of the Planning Code:

**Affordable Housing Fee:** \$199.50 per square foot of Gross Floor Area of residential use, applied to the applicable percentage of the project:

- **Small Projects** (fewer than 25 dwelling units): 20% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Rental:** 30% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Ownership:** 33% of the project's Gross Floor Area of residential use

**Note:** The impact fee register in place at the time of payment shall be applied. However, a project for which a Site Permit has been issued prior to January 1, 2019 shall remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. Additionally, projects with an Environmental Evaluation Application that was accepted prior to January 1, 2013 pursuant to Planning Code Section 415.3(b) shall also remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. [The impact fee register may be found here.](#)

This change is pursuant to amendments to Section 415.5 that were adopted by the Board of Supervisors in July, 2017 (Board File No. 161351). Specifically, the Code requires that the Fee reflect MOHCD's actual cost to subsidize the construction of affordable housing units over the past three years, and directed the Controller to develop a new methodology for calculating, indexing, and applying the Fee, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC). In May, 2018 the Controller and TAC determined that the Fee should be applied on a per gross square foot basis to ensure that MOHCD's cost to construct the required amount of off-site affordable housing is appropriately and equitably captured from all projects, regardless of the size and number of units distributed within the project. The Controller directed MOHCD, in consultation with the Planning Department, to convert MOHCD's per unit cost to a per-square-foot fee, based on the average residential Gross Floor Area of projects that have paid the Fee in the past three years. The Fee amount indicated above has been calculated accordingly.

Pursuant to Section 415.5 and the specific direction of the Controller and TAC, MOHCD shall update the amount of the Affordable Housing Fee each year on January 1, using the MOHCD average cost to construct an affordable unit in projects that were financed in the previous three years and the Planning Department's average residential Gross Floor Area of projects that have elected to pay the Fee and have been entitled in the same time period. Each year this analysis will be updated to include new projects from the most recent year, and drop older projects that no longer fall into the three year period of analysis. The updated Fee amount will be included in the Citywide Impact Fee Register that is posted December 1 and effective on January 1.





Lori Droste  
Berkeley City Councilmember, District 8

**ACTION CALENDAR**  
February 26, 2019

**To:** Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle Initiative

RECOMMENDATION

Refer to the City Manager an analysis and report of potential revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

Analysis should include, but is not limited to:

- Identifying where missing middle housing is optimal/should be permitted
- Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into 2-4 units
- Excluding very high fire severity zones as defined by the California Department of Forestry and potentially Berkeley Hazardous Fire Zone 2 as well
- Considering form-based zoning as a potential strategy<sup>1</sup>

---

<sup>1</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>

- Creating incentives to maintain family-friendly housing stock while adding more diversity and range of smaller units
- Creating incentives for building more than one unit on larger than average lots
- Provision of tenant protections, demolition controls, and no net loss provisions

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>2</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since since December 2013.<sup>3</sup> The escalating rents coincide with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>4</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>5</sup>

---

<sup>2</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>3</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>4</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

<sup>5</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>6</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>7</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>8</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>9</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>10</sup> This means that many City of Berkeley employees couldn't afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn't be able to afford a home. Neither would a fire captain (making \$142,000) with a stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn't buy a house.<sup>11</sup>

### *Families*

---

<sup>6</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>7</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.” <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>8</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>9</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards\\_Income\\_Limits\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards_Income_Limits_and_Utility_Allowance.aspx)

<sup>10</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>11</sup> City of Berkeley Human Resources, “Job Descriptions” accessed 2.4.2019 <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>12</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>13</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>14</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>15</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>16</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2017 point-in-time count, Berkeley had approximately 972 individuals experiencing homelessness on any given night.<sup>17</sup> In order to help homeless individuals get housed, the City needs to create more homes. Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>18</sup>

## **BACKGROUND**

### **Missing Middle**

---

<sup>12</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>13</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>14</sup> D’Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>15</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>16</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

<sup>17</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspxn](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspxn)

<sup>18</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. [https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)



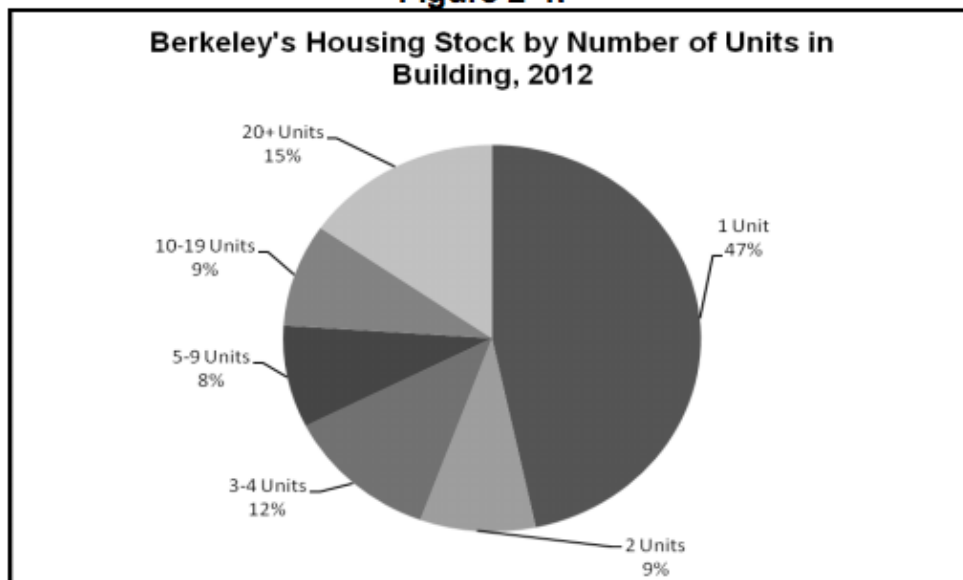
### What is missing middle housing?

Missing middle housing is a term used to describe:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>19</sup> and/or
2. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working people.<sup>20</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>21</sup> and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.

**Figure 2-4:**



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three

<sup>19</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>

<sup>20</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>21</sup> City of Berkeley 2015 -2023 Housing Element.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)

stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley before they were banned in districts only allowing single family homes and missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”<sup>22</sup> Additionally, missing middle housing is not permitted in areas zoned R1 (single family family only). Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>23</sup>

### **History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning**

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes, etc exist in areas now zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>24</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company’s use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>25</sup> In

---

<sup>22</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>23</sup> Ibid.

<sup>24</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>25</sup> Claremont Park Company Indenture, 1910

1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>26</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>27</sup>

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called ‘redlining’) and allowed lenders to enforce local segregation standards.<sup>28</sup>

The images below compare a HOLC-era map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.

---

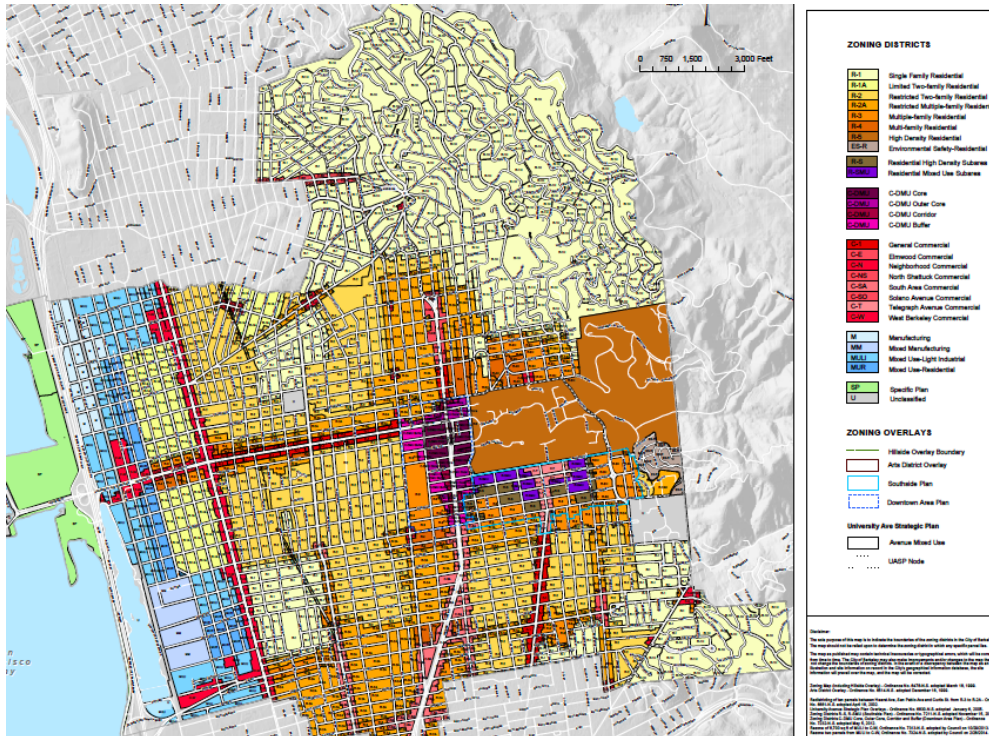
<sup>26</sup> Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

<sup>27</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

<sup>28</sup> NCRC Opening Doors to Economic Opportunity, “HOLC “REDLINING” MAPS: The persistent structure of segregation and economic inequality.” Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)



Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany. <sup>29</sup>



<sup>29</sup>Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," *American Panorama*, ed. Robert K. Nelson and Edward L. Ayers, accessed January 24, 2019. <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full> in

Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable areas to single-family homes (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>30</sup> While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report on potential zoning changes to inform future policy decisions, as opposed to immediate zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

Not applicable as this item requests an analytical report.

### **FINANCIAL IMPLICATIONS**

Staffing or consulting costs to analyze zoning code and produce the report.

### **ENVIRONMENTAL SUSTAINABILITY**

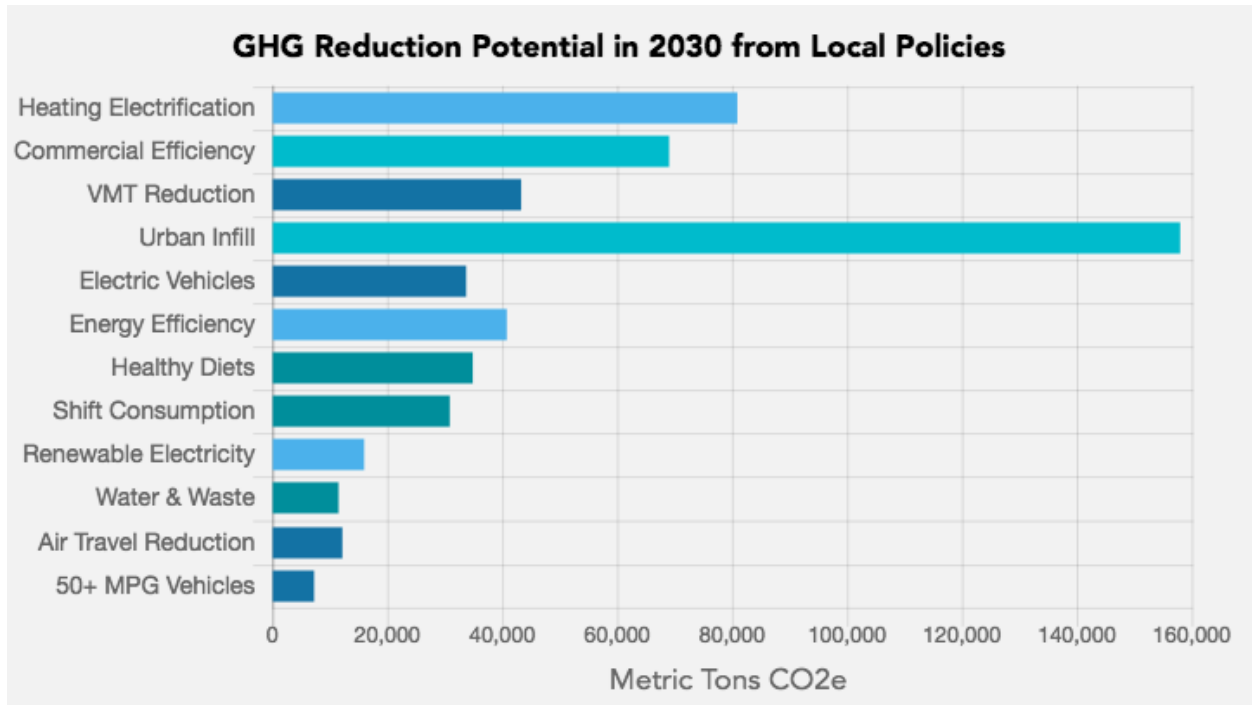
Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>31</sup> The most impactful local policy to

---

<sup>30</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

<sup>31</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

**ATTACHMENTS:**

Minneapolis Plan:

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>

## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*





City Auditor's Office

INFORMATION CALENDAR

February 26, 2019

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: City Auditor's Quarterly Summary Report on Audit Recommendations

INTRODUCTION

The City Auditor's Quarterly Summary highlights City management's action on audit recommendations and calls attention to the recommendations that remain open and require action.

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's Office monitored management's progress on implementing audit recommendations and reported to Council on actions and risks of inaction.

BACKGROUND AND ENVIRONMENTAL SUSTAINABILITY

The City Auditor's Office provides independent oversight of City operations and is a catalyst for improving City government and holding it accountable in its use of public resources. We manage our documents electronically in support of sustainability.

POSSIBLE FUTURE ACTION AND FISCAL IMPACTS

Council directs the City Manager to fully address audit recommendations and report on progress made, generally every six months. Implementing recommendations will improve fiscal sustainability, environmental sustainability, and progress toward other Council and community goals.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

## Attachment:

1: City Auditor's Quarterly Summary Report on Audit Recommendations, Q2, FY 2019



# City Auditor's Quarterly Summary Report on Audit Recommendations

Quarter 2, Fiscal Year 2019 (October—December 2018)

## Recommendation Updates Reviewed by the City Auditor

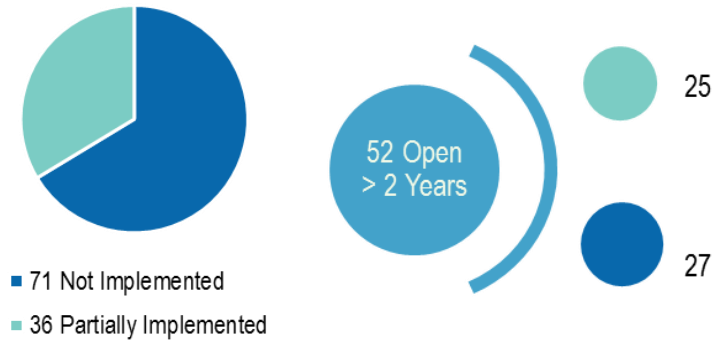
The Code Enforcement Unit (CEU) is the only auditee that submitted an audit update to our office during the second quarter. The unit has made substantial progress in addressing 10 of the 12 audit recommendations resulting in improved resource analysis, case management, and oversight.

For example, Council established standing Policy Committees as part of the legislative process to evaluate the resource impact and feasibility of any new policy or program, including ordinances. The CEU supervisor issued comprehensive procedures for staff including guidelines for assigning and prioritizing cases. The unit is recording various monthly statistics to capture performance metrics and trends in cases.

Additional actions are needed, however, to fully implement eight of the 12 recommendations.

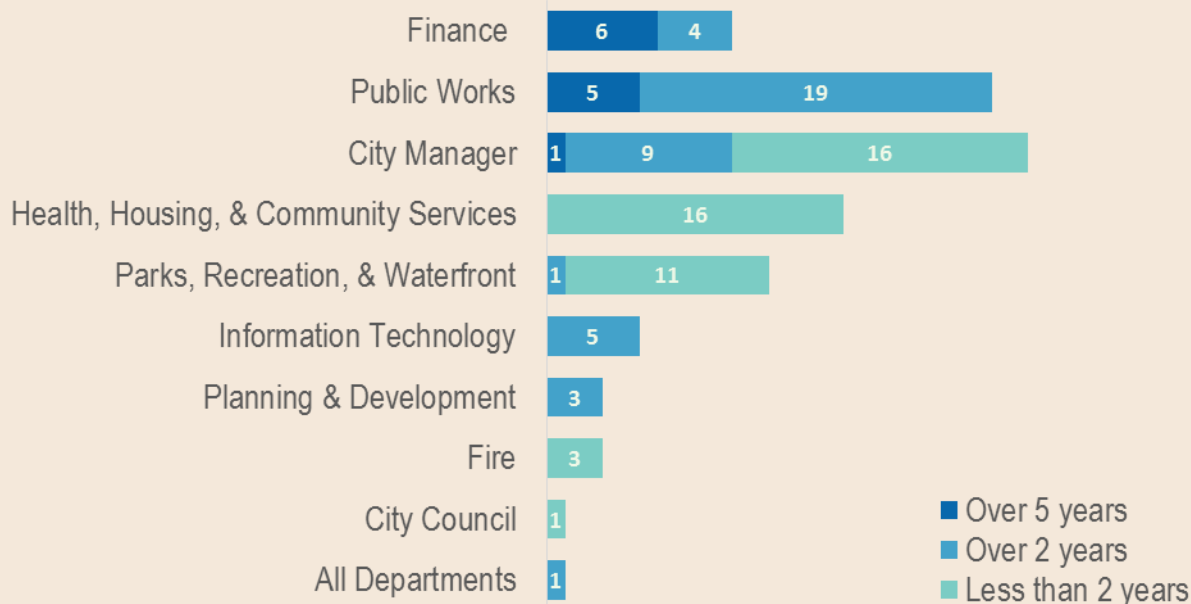
# 107

## Recommendations Open



Full implementation is less likely for **25** partially implemented and **27** not implemented recommendations that are **over 2 years** old, resulting in lost opportunities for improvement and continued risk of fraud.

## Open recommendations by department responsible for implementation



# Audits with Recommendations Not Implemented

| Audit                                                                                                                                     | Issued     | Recommendations | Lead Department                       |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------------|---------------------------------------|
| Leases Audit: Conflicting Directives Hinder Contract Oversight                                                                            | 6/2/2009   | 7               | City Manager                          |
| Business License Taxes: Providing Better Guidance and Customer Service Will Increase Revenues                                             | 5/29/2012  | 5               | Finance                               |
| Construction Permits: Monitor Performance and Fee Assessments to Ensure Excellent and Equitable Customer Service                          | 3/25/2014  | 3               | Planning and Development              |
| \$52,000 Theft: More Can Be Expected Without Citywide Changes in Culture and Procedures                                                   | 4/1/2014   | 3               | Finance, City Manager                 |
| Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal        | 7/1/2014   | 11              | Public Works                          |
| Audit Report: Most Contracts Executed Timely but Contract Project Managers Could Use Better Tools and Guidance                            | 10/6/2015  | 1               | Finance                               |
| Public Works Grant Follow Up                                                                                                              | 7/19/2016  | 14              | City Manager                          |
| Examination of Department Directors Transition Procedures Follow Up Audit                                                                 | 7/19/16    | 3               | City Manager                          |
| Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity                            | 9/20/2016  | 5               | Public Works                          |
| City at Crossroads as Long-Standing Need for Structured Approach to Line of Business Experts Function Intersects with ERP Implementation  | 1/24/2017  | 5               | Information Technology                |
| Berkeley's Ethical Climate Rated Strong Overall and Management Working to Make it Better                                                  | 3/14/2017  | 6               | City Manager                          |
| Berkeley Fire Department Ambulance Billing Follow Up                                                                                      | 3/28/2017  | 3               | Fire                                  |
| PRW On-Call Program: Ensure Equity by Developing Procedures for Charging for Services, and Improve Monitoring Practices and Communication | 11/14/2017 | 14              | Parks, Recreation, & Waterfront       |
| Stronger Oversight Necessary to Ensure Continued Assistance for Severely Physically Disabled Persons                                      | 5/1/2018   | 16              | Health, Housing, & Community Services |
| Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight                             | 6/26/2018  | 8               | City Manager                          |
| Credit Card Use: Clearer Guidance Needed                                                                                                  | 6/26/2018  | 3               | Finance                               |



| Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                |
|----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                            |                                                                                                                                                                |
| March 19                                                                   | <ol style="list-style-type: none"> <li>1. FY 2020 – FY 2021 Budget Update</li> <li>2. Crime Report</li> <li>3. Qualified Opportunity Zones</li> </ol>          |
| May 7                                                                      | <ol style="list-style-type: none"> <li>1. Proposed FY 2020 – FY 2021 Budget</li> <li>2. Zero Waste Rate Review</li> <li>3. Bond Disclosure Training</li> </ol> |
| June 18                                                                    | <ol style="list-style-type: none"> <li>1. Transfer Station Feasibility Study</li> <li>2.</li> </ol>                                                            |
| Sept. 17                                                                   | <ol style="list-style-type: none"> <li>1. Vision Zero Action Plan</li> <li>2. TBD</li> </ol>                                                                   |

| Unscheduled Workshops                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. UC Berkeley Student Housing Plan</li> <li>3. Green Stormwater Infrastructure</li> </ol> |

| Unscheduled Presentations (City Manager)                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Measure T1 Project Prioritization (Action Calendar)</li> <li>2. Parks, Recreation, and Waterfront CIP Update (Budget Presentation)</li> <li>3. Public Works CIP Update (Budget Presentation)</li> <li>4. AC Mosquito Abatement District (presentation by the District, March 12 - tentative)</li> <li>5. East Bay Municipal Utility District (presentation by the District, May 28 - tentative)</li> </ol> |

|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> <i>(Referred from the July 24, 2018 agenda)</i><br/> <b>From: Housing Advisory Commission</b><br/> <b>Recommendation:</b> That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley.<br/> <b>Financial Implications:</b> See report<br/> Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p><b>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> <i>(Referred from the July 24, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b> Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley.<br/> <b>Financial Implications:</b> See report<br/> Contact: Dee Williams-Ridley, City Manager, 981-7000</p> |
| 2. | <p><b>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance</b> <i>(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)</i><br/> <b>From: Councilmember Worthington</b><br/> <b>Recommendation:</b> Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties.<br/> <b>Financial Implications:</b> Minimal<br/> Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3. | <p><b>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street</b> <i>(Referred from the September 25, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b><br/> 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF).<br/> 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.<br/> <b>Financial Implications:</b> See report<br/> Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| <b>CITY CLERK DEPARTMENT</b>                                                             |                              |                               |                                                  |                           |
|------------------------------------------------------------------------------------------|------------------------------|-------------------------------|--------------------------------------------------|---------------------------|
| <b>WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br/>BEFORE THE CITY COUNCIL</b>      |                              |                               |                                                  |                           |
| <b>Address</b>                                                                           | <b>Board/<br/>Commission</b> | <b>Appeal Period<br/>Ends</b> | <b>Determination<br/>on Appeal<br/>Submitted</b> | <b>Public<br/>Hearing</b> |
| <b>NOD – Notices of Decision</b>                                                         |                              |                               |                                                  |                           |
| 2418 Acton St (new single-family residence)                                              | ZAB                          | 2/12/2019                     |                                                  |                           |
| 2009 Addison St (modification of Use Permit - Berkeley Rep)                              | ZAB                          | 2/12/2019                     |                                                  |                           |
| 2016 Shattuck Ave (Lucia's Pizzeria)                                                     | ZAB                          | 2/12/2019                     |                                                  |                           |
| 2628 Shattuck Ave (construct mixed-use building)                                         | ZAB                          | 2/12/2019                     |                                                  |                           |
| <b>Public Hearings Scheduled</b>                                                         |                              |                               |                                                  |                           |
| 2701 Shattuck Ave (construct 5-story mixed-use building)                                 | ZAB                          |                               |                                                  | 3/12/2019                 |
| 1722 Walnut St (permit a ninth dwelling unit)                                            | ZAB                          |                               |                                                  | 3/26/2019                 |
| 1050 Parker St (Medical Office Building/Initial Study-Mitigated<br>Negative Declaration) | ZAB                          |                               |                                                  | 4/30/2019                 |
| 2700 Tenth St (Pardee Parking Lot)                                                       | ZAB                          |                               |                                                  | 4/30/2019                 |
| 1444 Fifth St (construct four single-family dwellings)                                   | ZAB                          |                               |                                                  | TBD                       |
| <b>Remanded to ZAB or LPC</b>                                                            |                              |                               |                                                  |                           |
| 1155-73 Hearst Ave (develop two parcels)                                                 | ZAB                          |                               |                                                  |                           |
| 90-Day Deadline: April 29, 2019                                                          |                              |                               |                                                  |                           |
| <b>Notes</b>                                                                             |                              |                               |                                                  |                           |
|                                                                                          |                              |                               |                                                  |                           |
|                                                                                          |                              |                               |                                                  |                           |
|                                                                                          |                              |                               |                                                  |                           |

Last Updated: 2/6/2019

