BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, MARCH 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 25, 2019**
2. **Review and Approve Draft Agendas:**
   a. 3/26/19 – 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.

8. Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers
From: City Manager
Referred: February 19, 2019
Due: July 9, 2019
Recommendation: Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.
Financial Implications: None
Contact: Mark Numainville, City Clerk, 981-6900; Farimah Brown, City Attorney, 981-6950

9. Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission *(Continued from February 26, 2019. Item contains revised material).*
From: Councilmembers Worthington, Davila, Harrison, and Bartlett
Referred: February 26, 2019
Due: July 16, 2019
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

Adjournment – Next Meeting Monday, March 18, 2019

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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.
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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.

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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 March 7, 2019.

Mark Numainville, City Clerk

Communications

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

BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, FEBRUARY 25, 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: 2:32 p.m. All present.

Public Comment – 4 speakers

Review of Agendas

1. **Approval of Minutes: February 11, 2019**
   Action: M/S/C (Wengraf/Harrison) to approve the minutes of 2/11/19.
   Vote: All Ayes.

2. **Review and Approve Draft Agendas:**
   a. 3/12/19 – 6:00 p.m. Regular City Council Meeting
   Action: M/S/C (Wengraf/Arreguin) to approve the agenda of 3/12/19 with the revisions noted below.
   Vote: All Ayes.
   - *Item 13 Persian New Year (Harrison) – Councilmembers Davila and Robinson added as co-sponsors*
   - *Item 14 HR 530 (Wengraf) – Councilmembers Harrison, Davila, and Hahn added as cos-sponsors*
   - *Item 15 Camp Kesem (Robinson) – Councilmember Davila added as a co-sponsor*
   - *Item 20 Presentation: Alameda County Mosquito Abatement District – Item removed from the agenda; to be rescheduled to a later date*
   - *Item 27 Implementation of Resolution 68,132 (Rent Board) – Schedule to April 2, 2019 as a presentation on the Action Calendar*

   Policy Committee Track Items
   - *Item 21 Adding Chapter 19.84 (Harrison) – Revised item submitted; Councilmembers Davila, Hahn, and Bartlett added as a co-sponsor; Referred to the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee*
   - *Item 22 Gender Pronouns (Robinson) – Revised item submitted; Scheduled for the March 12 Consent Calendar*
   - *Item 23 People of Tibet (Robinson) – Councilmember Davila added as a co-sponsor; Scheduled for the March 12 Consent Calendar*

Order of Action Items
Item 18 Density Bonus Ordinance Revisions
Item 16 ZAB Appeal: 2701 Shattuck Avenue
Item 17 Cannabis Ordinance Revisions
Item 19 Contract: Pride Industries

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
   - Selected Item 17 Cannabis Ordinance Revisions

4. **Adjournments In Memory Of –** None

Scheduling

5. **Council Worksessions Schedule**
   - Requested to add the Arts and Culture Plan to the schedule

6. **Council Referrals to Agenda Committee for Scheduling –** no action

7. **Land Use Calendar –** no action

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. **Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers**
   From: City Manager
   Referred: February 19, 2019
   Due: June 19, 2019
   Recommendation: Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.
   Financial Implications: None
   Contact: Mark Numainville, City Clerk, 981-6900; Farimah Brown, City Attorney, 981-6950

   Action: M/S/C (Wengraf/Arreguin) to continue the item to March 11, 2019.
   Vote: All Ayes.

Adjournment

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

Adjourned at 3:12 p.m.

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I hereby certify that these are the true and correct minutes of the meeting of February 25, 2019.

Mark Numainville, City Clerk

DRAFT AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, March 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. Referral Responses: Managing Recreational Vehicle (RV) Parking
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,643-N.S. (BMC Section 14.40.120) prohibiting parking campers and RVs during certain hours and creating additional resources for people living in RVs, and refer any additional costs to the FY20-21 Budget process.
First Reading Vote: Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Droste, Arreguin; Noes – Davila, Harrison, Robinson.
Financial Implications: See Report
Contact: Paul Buddenhagen, City Manager's Office, 981-7000

2. Minutes for Approval
From: City Manager
Recommendation: Approve the minutes for the Council meetings of February 5, 2019 (special), February 19, 2019 (regular), February 26, 2019 (regular), and February 28, 2019 (special).
Financial Implications: None
Contact: Mark Numainville, City Clerk, 981-6900

Consent Calendar

3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on March 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: $325,000
Contact: Henry Oyekanmi, Finance, 981-7300

4. Contract No.10438B Amendment: Ashby Village for Age-Friendly Berkeley Plan Production
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10438B with Ashby Village to design and print a finalized City of Berkeley Age-Friendly Plan, in an amount not to exceed $7,000 for a total contract amount not to exceed $57,000. Contract term will remain unchanged, and will expire on August 31, 2019.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400

5. Grant Application: the Surrendered and Abandoned Vessel Exchange (SAVE) grant program of the California Division of Boating & Waterways
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to apply for a grant in the amount of $130,000 from the California Division of Boating & Waterways ("DBW") Surrendered and Abandoned Vessel Exchange (SAVE) grant program for the removal and disposal of approximately 26 abandoned vessels located at the Berkeley Marina; and authorizing a local match contribution of $13,000.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

6. Contracts: Fehr & Peers and Parisi Associates for On-Call Traffic Engineering Services
From: City Manager
Recommendation: Adopt Resolutions authorizing the City Manager to execute two contracts and any amendments with Fehr & Peers and Parisi Associates for on-call traffic engineering services in an amount not to exceed $1,000,000 each for a combined total not to exceed amount of $2,000,000 from April 11, 2019 to June 31, 2022 with two 1-year options to extend.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

Consent Calendar

7. Adopt a Resolution of Intent to Consider a FlixBus Franchise Agreement for Long-Distance Bus Service
From: City Manager
Recommendation: Pursuant to Berkeley Municipal Code Chapter 9.60, adopt a Resolution declaring the Council's intention to consider at a public hearing, set for April 23, 2019, at 6:00 p.m., whether to grant a franchise to FlixBus, Inc. to provide long-distance bus service to the Berkeley public.
Financial Implications: See report - $400 fee
Contact: Phillip Harrington, Public Works, 981-6300

8. Contract No. 8884C Amendment - St. Vincent de Paul for Mattress Recycling
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 8884C with St. Vincent de Paul to accept mattresses collected from community members for refurbishing and recycling at the City's Solid Waste Management and Transfer Station. This amendment will increase the Contract $50,000 for a new total contract amount not to exceed $456,000 to fund services through contract expiration June 30, 2019.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

9. Re-appointment of Paul Kealoha-Blake to the Mental Health Commission
From: Mental Health Commission
Recommendation: Adopt a resolution for the re-appointment of Paul Kealoha-Blake to the Mental Health Commission, as a representative of the General Public Interest category, to complete his third term ending March 21, 2021.
Financial Implications: None
Contact: Karen Klatt, Commission Secretary, 981-5400

10. Transitioning cost of 4th of July Festival from the City's Marina Fund to the City's General Fund
From: Parks and Waterfront Commission
Recommendation: Adopt a resolution referring to the City Manager to transition the cost of the annual 4th of July Festival from its current funding source, the City's Marina Enterprise Fund, to the City's General Fund.
Financial Implications: See report
Contact: Roger Miller, Commission Secretary, 981-6700

Consent Calendar

11. Police Review Commission's co-sponsorship of a NACOLE Regional Training and Networking Event
From: City Manager and Police Review Commission
Recommendation: Authorize the Police Review Commission to co-sponsor, with the National Association for Civilian Oversight of Law Enforcement (NACOLE) and the BART Office of the Independent Police Auditor, a regional training and networking event on May 3, 2019 in Oakland, California.
Financial Implications: None
Contact: Paul Buddenhagen, City Manager's Office, 981-7000, Katherine Lee, Commission Secretary, 981-4950

Council Consent Items

12. Honoring Healthy Black Families, Inc.: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
From: Councilmember Davila
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember including $150 from Councilmember Cheryl Davila, to Healthy Black Families in honor of their 5th Anniversary, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, 981-7120

13. LifeLong Medical Care: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
From: Councilmember Davila
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember including $150 from Councilmember Cheryl Davila to LifeLong Medical Care for their many contributions to Berkeley with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, 981-7120

Council Consent Items

14. Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds
From: Councilmember Wengraf
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember, including up to $250 from Councilmember Wengraf, to support the City's Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's discretionary Council Office Budget and any other Councilmembers who would like to contribute allows the City of Berkeley to invite and support the community to the City's 17th Annual Holocaust Remembrance Day program on Sunday, April 28th, 11:00 AM at the Magnes Collection of Jewish Art and Life.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

15. Support for SB-190 Fire Safety: Building Standards
From: Councilmember Wengraf
Recommendation: Send a letter in support of SB-190 Fire Safety: Building Standards (Dodd) to Senator Dodd and copy Senator Skinner, Representative Wicks and Governor Newsom.
The Legislation would require the Office of the State Fire Marshal to: (1) Develop a model defensible space program to be used by cities and counties to enforce defensible space provisions; (2) Develop Wildland-Urban Interface Fire Safety Building Standards Compliance Training Manual, and make available via website. To be used locally in training of building officials, builders and fire service personnel; (3) Develop guidance document for maintenance of defensible space around residential structures; (4) Develop and update regularly a Wildland-Urban handbook listing products and construction systems that comply with specified Wildland-Urban Interface Fire Safety building standards; (5) Use money from the Building Standards Administration Special Revolving Fund in the State Treasury to carry out the provisions.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

16. The Suitcase Clinic: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund
From: Councilmember Robinson
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember including $250 from Councilmember Robinson, to The Suitcase Clinic to assist in the expansion of its free laundry program, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Robinson and any other Councilmembers who would like to contribute.
Financial Implications: See report
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.

17. ZAB Appeal: 1722 Walnut St
From: City Manager
Recommendation: Conduct a public hearing, and upon conclusion adopt a Resolution to affirm the Zoning Adjustments Board decision to deny Use Permit/Variance #ZP2018-0021 to legalize an unpermitted detached dwelling unit in the rear yard area of a lot legally developed with an eight-unit apartment building, and dismiss the appeal.
Financial Implications: None
Contact: Timothy Burroughs, Planning and Development, 981-7400

Action Calendar – Old Business

18. Referral Response: 1000 Person Plan to Address Homelessness *(Continued from February 26, 2019)*
From: City Manager
Contact: Kelly Wallace, Housing and Community Services, 981-5400

Action Calendar – Old Business

19. Missing Middle Report *(Continued from February 26, 2019. Contains revised materials)*

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

Recommendation: Refer to the City Manager to bring back to Council a 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.

Report should include, but is not limited to: - Identifying where missing middle housing is optimal; - Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit; - Excluding very high fire severity zones as defined by Cal Fire and/or City of Berkeley; - Considering form-based zoning, which addresses the appropriate form, scale and massing of buildings as they relate to one another, 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; - Considering provision of tenant and vulnerable low-income homeowner protections, demolition controls, and no net loss provisions; - Considering provisions that align with our land value recapture policy objectives to maximize affordability in Berkeley.

Financial Implications: See report

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

Action Calendar – New Business

20. Presentation: Alameda County Mosquito Abatement District

From: Alameda County Mosquito Abatement District

Contact: Ryan Clausnitzer, Alameda County Mosquito Abatement District, (510) 783-7744

Action Calendar – New Business

21a. Providing direction on closing the funding gap to complete Measure T1 Phase 1 projects

From: City Manager

Recommendation:

1. Council to provide direction on a preferred option to close the funding gap in the current Measure T1 Phase 1 program. Four possible options are summarized below and discussed in further detail starting on page 4 under Current Situations and its Effects – Funding Gap.

Option A: Reduce up to $5 million between 13 projects by reducing project scopes from Planning and Design to Conceptual, Construction to Planning and Design, Construction to Conceptual, or removing or delaying the project.

Option B: Reduce up to $4 million by reducing the Live Oak Community Center project scope from Construction to Planning and Design.

Option C: Authorize up to $3 million in additional funding for T1 Phase 1 and reduce $2 million between 7 projects by reducing project scopes from Planning and Design to Conceptual or Construction to Planning and Design.

Option D: Authorize up to $7 million in additional funding to complete all T1 Phase 1 projects.

2. Council adopt a resolution authorizing the chosen option to complete Measure T1 Phase 1 projects.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700, Phillip Harrington, Public Works, 981-6300

21b. Authorizing up to $7 million in additional funding to complete Measure T1 Phase 1 projects

From: Public Works Commission

Recommendation: The T1 team is requesting the PWC and the Parks and Waterfront Commission take action at their February meetings on their preferred course of action. The T1 team wants to make their recommendation to Council this spring.

The T1 sub-committees recommend that the PWC vote to endorse the following: - We prefer Option D to meet the funding shortfall. The T1 staff has stated that it is possible to transfer funds from other City sources and to repay it with Phase 2 bond proceeds. By choosing this option, we will maintain the momentum in the program and will accelerate infrastructure improvements in the City; - We are concerned that a disproportionate share of improvements has been allocated to areas of the City north of University Avenue. We want to make sure that projects at the Francis Albrier Center, Willard and other areas south of University be implemented; - We support identifying a green infrastructure project in Phase 1; - We support implementing the 7 street improvement projects in Phase 1.

Financial Implications: See report

Contact: Nisha Patel, Commission Secretary, 981-6300

Action Calendar – New Business

21c. Authorizing up to $7 million in additional funding to complete Measure T1 Phase 1 projects
From: Parks and Waterfront Commission
Recommendation: The T1 team is requesting the PWC and the Parks and Waterfront Commission take action at their February meetings on their preferred course of action. The T1 team wants to make their recommendation to Council this spring.
The T1 sub-committees recommend that the PWC vote to endorse the following: - We prefer Option D to meet the funding shortfall. The T1 staff has stated that it is possible to transfer funds from other City sources and to repay it with Phase 2 bond proceeds. By choosing this option, we will maintain the momentum in the program and will accelerate infrastructure improvements in the City; - We are concerned that a disproportionate share of improvements has been allocated to areas of the City north of University Avenue. We want to make sure that projects at the Francis Albrier Center, Willard and other areas south of University be implemented; - We support identifying a green infrastructure project in Phase 1; - We support implementing the 7 street improvement projects in Phase 1.
Financial Implications: See report
Contact: Roger Miller, Commission Secretary, 981-6700

21d. Recommendations for current T1 Phase 1 funding shortfalls
From: Energy Commission
Recommendation: The Berkeley Energy Commission recommends the City Council integrate greenhouse gas (GHG) reduction goals, as stated in the Climate Emergency Resolution adopted June 12, 2018, into the T1 funding priorities.
Financial Implications: See report
Contact: Billi Romain, Commission Secretary, 981-7400

21e. Contract: D.L. Falk Construction for North Berkeley Senior Center Seismic Upgrades and Renovations Project
From: City Manager
Recommendation: Adopt a Resolution:
1. Approving plans and specifications for the North Berkeley Senior Center Seismic Upgrades and Renovations Project, Specification No.19-11268-C; 2. Accepting the bid of (Contractor's Name) as the lowest responsive and responsible bidder; and 3. 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, for an amount not to exceed $8,320,400, which includes a contingency.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

Action Calendar – New Business

22a. Effective Enforcement of Safe Lead-Paint Practices
From: Community Environmental Advisory Commission
Recommendation: Direct the City Manager to prepare two ordinances as described below and return them for vote of the City Council within two months, so that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978:
1. An ordinance adding safe lead-paint practices (already mandated by the state and federal governments) to the City Code so that such practices can be regularly enforced as part of code enforcement; [this ordinance could follow the wording of an ordinance proposed in the City of Emeryville in 2017.
2. An ordinance in accord with California law that allows the city to be reimbursed for costs (staff time) for enforcement efforts (thus making it cost-effective for the City staff to engage in enforcement) and to automatically add fines up to $1,000 for each day of failing to comply with orders to cease unlawful practices. This ordinance could apply generally to all municipal code violations, in addition to lead paint cleanup, to fund and reimburse stronger enforcement efforts by the City.
Financial Implications: See report
Contact: Viviana Garcia, Commission Secretary, 981-7460

22b. Companion Report: Effective Enforcement of Safe Lead-Paint Practices
From: City Manager
Recommendation: Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to: - Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement; - Identify what resources, staff capacity, and program structure would be required to expand City enforcement of unsafe lead practices; - Continue current work to educate building permit applicants and contractors about safe lead paint practices; train and certify all City of Berkeley Building and Housing Inspectors in lead paint safety; respond to, investigate, and enforce safe lead paint practices as needed; and administer the Public Health Division's Childhood Lead Poisoning Prevention Program; and - Provide an update to City Council within one-year that identifies progress and next steps for expanding enforcement of unsafe lead practices.
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, 981-7400

Action Calendar – Policy Committee Track Items

23. Considering Multi-year Bidding Processes for Street Paving
From: Mayor Arreguin, Councilmember Hahn
Recommendation: 1. Restate the recommendation approved at the December 11, 2018 Council meeting to create a two-year bidding process for street paving to realize savings by (a) reducing by 50% City staff time devoted to bidding and contracting processes over each two year period and (b) benefitting from reduced pricing which may be available for larger contracts that offer greater economies of scale and reduce contractors' bidding and contracting costs.
2. Short-term referral to the City Manager to explore the possibility, feasibility, costs, and benefits of bidding in increments of up to 5 years to encompass entire 5-year paving plans, or other ideas to more rationally and cost-effectively align the paving plan with budget cycles and reduce costs associated with frequent bid cycles for relatively small contracts.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100

24. Allocating $30,000 to UC Theater Concert Career Pathways Education Program
From: Mayor Arreguin
Recommendation: Approve the allocation of $30,000 from excess unallocated General Fund revenues to the UC Theater Concert Career Pathways Education Program.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100

25. Short Term Referral to City Manager to Scope Process and Estimate Cost of New General Plan
From: Mayor Arreguin and Councilmember Hahn
Recommendation: Short Term Referral to the City Manager to return to City Council with an outline of the process for creating a new City of Berkeley General Plan. The cost for the first two years of work will be included in the report for consideration during the upcoming 2019-2021 Budget Process.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100

26. Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave Ordinance
From: Councilmember Bartlett
Recommendation: That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Action Calendar – Policy Committee Track Items

27. Refer to the City Manager to Designate Election Day as a City Holiday
From: Councilmembers Robinson and Davila
Recommendation: Refer the City Manager to designate Election Day as a City Holiday.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

28. Ban Racial Discrimination on the Basis of Hairstyle
From: Councilmembers Robinson, Davila and Bartlett
Recommendation: Ban racial discrimination on the basis of a person's natural hairstyle by either:
- Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibit grooming or appearance policies which target natural hair or hairstyles;
Or
- Issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Information Reports

29. City Council Short Term Referral Process – Monthly Update
From: City Manager
Contact: Mark Numainville, City Clerk, 981-6900

30. Homeless Commission Meeting Cancellations
From: City Manager
Contact: Peter Radu, Commission Secretary, 981-5400

31. Berkeley Economic Dashboards
From: City Manager
Contact: Jordan Klein, Economic Development, 981-7530

32. Zero Waste Division's Integration of the Non-Exclusive Waste Hauler Commercial Franchisees Commercial Customers Update
From: City Manager
Contact: Phillip Harrington, Public Works, 981-6300

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.*

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2a.09

Mental Health Commission

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Mental Health Commission

Submitted by: boona cheema, Mental Health Commission Chair

Subject: Re-appointment of Paul Kealoha-Blake to the Mental Health Commission

RECOMMENDATION
Adopt a resolution for the re-appointment of Paul Kealoha-Blake to the Mental Health Commission, as a representative of the General Public Interest category, to complete his third term ending March 21, 2021.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently six vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will prevent another vacancy from occurring on the Mental Health Commission, allowing the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

BACKGROUND
California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute a little over half or seven of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership. Two members shall be residents of the City of Albany with at least one of these seats filled by a direct consumer or family member.

Mr. Kealoha-Blake has served on the Mental Health Commission since March 20, 2012. Since that time he has served as Chair multiple times and has been an active and conscientious member of the Commission. He was dropped from the Commission in

December after missing a meeting which resulted in him missing half of the meetings during the last six month period of 2018. There were a total of four meetings during this timeframe, and he had missed the September meeting as well. His third term will end on March 21, 2021.

The Mental Health Commission passed the following motion at the January 24, 2019 meeting:

> **M/S/C (Posey, Davila) Move to re-nominate Paul Kealoha-Blake to the Mental Health Commission in a Berkeley General Public Interest Seat.**
>
> **Ayes:** cheema, Davila, Fine, Heda, Posey **Noes:** None; **Abstentions:** None; **Absent:** Castro; Ludke.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this project.

RATIONALE FOR RECOMMENDATION
Approval of the recommended action will prevent a vacancy from occurring on the Mental Health Commission allowing the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

ALTERNATIVE ACTIONS CONSIDERED
None.

CITY MANAGER
The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON
Karen Klatt, Commission Secretary, Health, Housing & Community Services, 981-7644

Attachments:
1: Resolution

RESOLUTION NO. ##,###-N.S.

RE-APPOINTMENT OF PAUL KEALOHA-BLAKE TO THE MENTAL HEALTH COMMISSION AS A REPRESENTATIVE OF THE GENERAL PUBLIC INTEREST

WHEREAS, Membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, two appointments of residents of Albany (*one of which shall be a representative of the special public interest category*), and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Mr. Kealoha-Blake's third term on the Mental Health Commission will end on March 21, 2021; and

WHEREAS, the Mental Health Commission, at its January 24, 2019 meeting, recommended the re-appointment of Mr. Kealoha-Blake.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley re-appoints Paul Kealoha-Blake to the Mental Health Commission as a representative of the General Public Interest category, to complete his third term ending on March 21, 2021.

2a.10

Parks and Waterfront Commission

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Parks and Waterfront Commission

Submitted by: Erin Diehm, Chair, Parks and Waterfront Commission

Subject: Transitioning cost of 4th of July Festival from the City's Marina Fund to the City's General Fund

RECOMMENDATION

Adopt a resolution referring to the City Manager to transition the cost of the annual 4th of July Festival from its current funding source, the City's Marina Enterprise Fund, to the City's General Fund.

BACKGROUND

The 4th of July Festival is a Berkeley tradition, in its 23rd year, attracting 60,000 visitors annually. It creates an ideal opportunity for residents to spend time out of doors to celebrate this national holiday in the company of their fellow diverse community members. It offers family-friendly alcohol-free activities in the daytime followed by a spectacular firework show in the evening. However, due to its reliance on the Marina Enterprise Fund for annual funding, the livelihood and longevity of the festival are at risk. The goal of this Resolution is to address existing concerns and find a workable long-term funding solution so that the Berkeley community may continue to enjoy this important national holiday event.

The City's Marina Enterprise Fund was set up decades ago in compliance with state requirements for lands held in The Public Trust and is separate from the City's General Fund. There are just two sources of revenue for the Marina Fund: berth rentals and leaseholds. The revenue is then expected to cover all expenses incurred at the marina, including routine operations, staffing, periodic capital improvements, and special events. Altogether, the special events cost the Marina Fund approximately $725K per year, including $525K for Adventure Playground and the Shorebird Nature Center, $150K for the 4th of July Festival and $50K for the Kite Festival.

The Marina Fund and the infrastructure it supports is facing a crisis. Unfortunately, a "sinking fund" to cover the cost of expected capital improvements was never established. The annual set aside should have been $1-2M per year. Without a sinking fund in place, the marina's infrastructure -- docks, pilings, electrical systems, parking lots, and more -- has experienced decades of deferred maintenance and much of it has

reached its end of life. In an unfortunate turn of events, the dilapidated state of the infrastructure then encourages some slipholders to leave the marina, reducing revenue even further. It is a vicious cycle. Staff projects that the Marina Fund will reach insolvency in 2021.

Given the crisis facing the Enterprise Marina Fund, financial solutions (large and small, immediate and long-term) must be identified and pursued. One such solution is to remove the cost of the 4th of July Festival from the Marina Fund and transition it to the City's General Fund, a savings of approximately $150K per year for marina operations.

The change would bring several benefits. First, most marinas don't pay for recreational events. Transitioning the cost will better align the fiscal responsibilities of Berkeley's marina with those of other cities. Second, transferring the cost does not require a years-long planning process and, it is hoped, could happen relatively quickly during the next budget cycle. The savings could then be used to help fund critical repairs at the marina. Third, and perhaps most important, transitioning the cost of the 4th of July Festival will ensure the longevity of this family-friendly beloved Berkeley tradition. It can continue to be held on July 4th, when community members are more likely to have a work holiday and thus are able to bring children to the daytime events, giving them the opportunity to enjoy fresh air and sunshine on this recognized national holiday.

FINANCIAL IMPLICATIONS
Staff time to review and incorporate the changes into next budget cycle. Annual allocation of $150,000 from City's General Fund.

ENVIRONMENTAL SUSTAINABILITY
No negative impact and consistent with City standards.

CITY MANAGER
City Manager takes no position. This could be a referral to the budget process.

CONTACT PERSON
Erin Diehm, Chairperson, Parks and Waterfront Commission, 510-666-0662

Attachments:
1. Resolution

RESOLUTION NO. ##,###-N.S.

TRANSITIONING COST OF ANNUAL 4th OF JULY FESTIVAL
FROM THE CITY'S MARINA ENTERPRISE FUND TO THE CITY'S GENERAL FUND

WHEREAS, the Parks and Waterfront Commission reviews the policies, projects, programs, planning efforts, activities, funding and the physical condition of parks, pools, camps, recreation centers, the Marina, and public greenery, and advises the City Council on these matters; and

WHEREAS, the 4th of July Festival is a Berkeley tradition, in its 23rd year, attracting 60,000 visitors annually; and

WHEREAS, the 4th of July Festival creates an ideal opportunity for residents to spend time out of doors in the company of their fellow diverse community members; and

WHEREAS, the 4th of July Festival offers family-friendly alcohol-free daytime activities, including live music, arts and crafts booths, children's activities, food vendors, free boat rides with the Dragon Boat club, and access to Adventure Playground, followed by a spectacular evening fireworks show on the water; and

WHEREAS, the 4th of July Festival held at the Berkeley Marina benefits the larger Berkeley community, and is offered as a free-of-charge event; and

WHEREAS, the 4th of July celebration is funded by the City's Marina Enterprise Fund, and not the City's General Fund; and

WHEREAS, according to recent records, the Marina Fund's cost for sponsoring the event is approximately $155,000, which covers traffic control, staffing, refuse, portable toilets, the fireworks display, and cleanup efforts; and

WHEREAS the Marina Enterprise Fund is facing an unprecedented financial crisis, with more than $100M of unfunded capital need, an annual structural deficit of $800K, and, perhaps most alarmingly, a projected insolvency in 2021.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby refers to the City Manager to use the City's General Fund to cover the cost of the majority of the 4th of July Festival, beginning in 2019 and continuing each year.

BE IT FURTHER RESOLVED that the Festival shall continue to be held at the Berkeley Marina on July 4th and continue to include a daytime festival and evening fireworks.

2a.11

[Commission Name]

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Police Review Commission

Submitted by: George Perezvelez, Chairperson, Police Review Commission

Subject: Police Review Commission's co-sponsorship of a NACOLE Regional Training and Networking Event

RECOMMENDATION

Authorize the Police Review Commission to co-sponsor, with the National Association for Civilian Oversight of Law Enforcement (NACOLE) and the BART Office of the Independent Police Auditor, a regional training and networking event on May 3, 2019 in Oakland, California.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Staff of the Police Review Commission have been working with staff from NACOLE and the BART Independent Police Auditor's Office to plan a Bay Area regional training and networking event, set for May 3, 2019, in Oakland. (See *Save the Date* announcement, attached.) The Commissioners of the PRC request the City Council's permission for the Commission to be listed as a co-sponsor of this program. The PRC voted to make this request at its February 13, 2019 meeting as follows: M/S/C Perezvelez/Allamby; Ayes -- Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, Yampolsky; Noes – None; Abstain – None; Absent – Roberts.

BACKGROUND

NACOLE's mission is to enhance fair and professional law enforcement that is responsive to community needs. It is the largest civilian oversight organization in the country, with a membership comprised of oversight practitioners, community stakeholders, law enforcement personnel, elected officials, journalists, academics, students, and others. Each fall, NACOLE holds an annual conference attended by the organization's members and others from across the nation.

Additionally, NACOLE holds a series of regional training and networking events throughout the year. The regional gatherings are designed to allow more opportunities for civilian overseers and interested stakeholders to meet and exchange information and ideas about issues of local law enforcement oversight.

The May 3, 2019 event is expected to draw oversight practitioners and interested community members from Berkeley, Oakland, San Francisco, San Jose, Richmond, Sonoma County, Sacramento, and beyond. Topics to be addressed are: civilian oversight of county jails, release of police personnel records under SB 1421, and the strengths and limitations of different oversight models.

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects or opportunities are associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

In accordance with the Commissioners' Manual, Council approval is needed for a commission to co-sponsor an event.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Katherine J. Lee, Police Review Commission Officer, Police Review Commission, 510-981-4960.

Attachments:

1: Save the Date announcement for May 3 NACOLE event.

Attachment 1

Lee, Katherine

From: NACOLE Director of Training & Education <mcellhiney@nacole.org>
Sent: Wednesday, January 30, 2019 8:56 AM
To: Lee, Katherine
Subject: Save the Date for the Regional Meeting in the Bay Area

SAVE THE DATE!

2019 NACOLE Regional Training & Networking Series

May 3, 2019

Kaiser Center

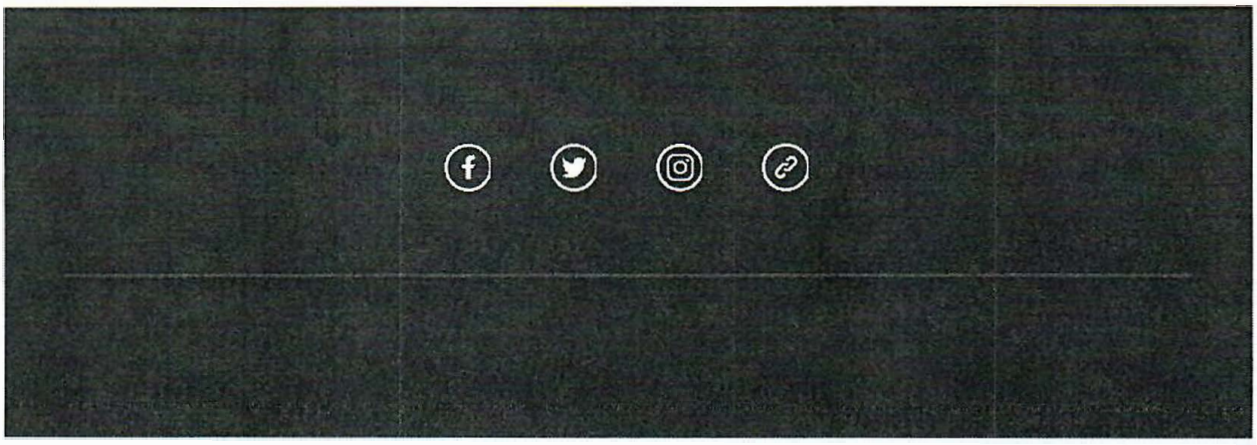
300 Lakeside Drive | Oakland, California

In partnership with the BART Office of the Independent Police Auditor and the City of Berkeley, NACOLE is excited to announce that it will be holding one of the 2019 Regional Training and Networking events in the Bay Area. We hope that you will be able to join us in Oakland, California on May 3, 2019 at the Kaiser Center. ***Registration and additional training information will be***

available shortly. Please watch your inbox for additional details to be sent in the near future.

This event is geared toward a variety of audiences, including but not limited to community members, oversight practitioners, justice system stakeholders, and academics. It will seek to address many issues important to those who support, are interested in, or work in the field of civilian oversight of law enforcement. In particular, this training opportunity will take on topics such as civilian oversight of county jails, California's new transparency laws, and information on the strengths and limitations of the different models of civilian oversight of law enforcement.

Please note that this event is open to all those wishing to attend. The registration fee for this event is $75 and includes training, continental breakfast, and lunch. We anticipate offering Continuing Legal Education (CLE) credits, pending approval, for an additional $25 fee. ***Please note that no one will be turned away from this event for lack of funds. Registration fees will be waived or a donation accepted for those who find that paying the full registration fee would prohibit their ability to attend and who are not seeking CLE credits.***



Councilmember
Cheryl Davila
District 2

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Honoring Healthy Black Families, Inc.: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember including $150 from Councilmember Cheryl Davila, to Healthy Black Families in honor of their 5th Anniversary, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; $150 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (budget code 011 11 102 000 0000 000 411).

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

For over the past five years, Healthy Black Families has provided community-centered programming and services in Berkeley to advance health and racial equity. We focus on the health, well-being, and agency of Black Families and the Black community.

CONTACT PERSON

Cheryl Davila, Councilmember, District 2 510.981.7120

ATTACHMENT: 1: Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has discretionary funds in her office expenditure account (budget code 011 11 102 000 0000 000 411); and

WHEREAS, Healthy Black Families is community based 501(c)3 organization that was established in 2014 to provide community-centered programming and services in Berkeley to advance health and racial equity; and

WHEREAS, racial equity is a priority for the City of Berkeley; and

WHEREAS, Healthy Black Families focuses on the health, well-being, and agency of Black Families and the Black community; and

WHEREAS, Healthy Black Families provides for the essential needs of program participants such as childcare, transportation vouchers and food incentives for meetings. Annually, HBF hosts various activities including, Mother's Day celebration, Turkey Basket distribution, December Holiday gathering, February Black History Month Celebration and a Summer Barbeque. Cultural celebrations are critical to the social and spiritual unity of our black families and integrated into HBF programming. All of our programs are free, provide incentives for participation, provide childcare at the site of meetings when needed and other supportive things for families who participate.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to $250 per office shall be granted to Healthy Black Families in honor of their 5th Year Anniversary.

2a.13

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: LifeLong Medical Care: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION
Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember including $150 from Councilmember Cheryl Davila to LifeLong Medical Care for their many contributions to Berkeley with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION
No General Fund impact; $150 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (budget code 011 11 102 000 0000 000 411).

ENVIRONMENTAL SUSTAINABILITY
None.

BACKGROUND
LifeLong Medical Care has been committed to serving the community for over 40 years with compassion. LifeLong has a number of robust programs offering quality care including medical, dental and social services throughout Alameda and Contra Costa Counties for all ages.

CONTACT PERSON
Cheryl Davila, Councilmember, District 2 510.981.7120

ATTACHMENT: 1: Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has discretionary funds in her office expenditure account (budget code 010-0224-410); and

WHEREAS, LifeLong Medical Care has been serving the community for over 40 years; and

WHEREAS, the program initially focused on the unmet needs of low-income seniors through the “Over 60 Health Center”; and

WHEREAS, LifeLong Medical Care has since evolved into a robust program offering quality care for all ages, including medical, dental and social services throughout Alameda and Contra Costa Counties; and

WHEREAS, LifeLong Medical Care provides education and advocacy through a team of experts that are trained through their Heart 2 Heart Program; and

WHEREAS, LifeLong Medical Care is committed to addressing community needs and reducing health inequalities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to $250 per office shall be granted to LifeLong Medical Care to fund the above services for their 2019 Gala.

2a.14

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf

Subject: Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember, including up to $250 from Councilmember Wengraf, to support the City's Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's discretionary Council Office Budget and any other Councilmembers who would like to contribute allows the City of Berkeley to invite and support the community to the City's 17th Annual Holocaust Remembrance Day program on Sunday, April 28th, 11:00 AM at the Magnes Collection of Jewish Art and Life.

FINANCIAL IMPLICATIONS

No General Fund impact: $250 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

The City of Berkeley's 17th Annual Holocaust Remembrance Day program includes a candle lighting ceremony, a Holocaust Survivor's story, an artist presentation, a grandchild's story, live cultural music, and refreshments afterwards. The community event invites attendees to enjoy Jewish history, honor those who survived and perished in the Holocaust and strengthen convictions to never let the Holocaust happen again.

Expenses for this event, including rental rates and auxiliary costs, have increased dramatically over the last few years. We are asking for Councilmember's generous support.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments: 1: Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THEH EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Susan Wengraf and other Councilmembers have surplus funds in their office expenditure accounts; and

WHEREAS, a California non-profit tax exempt corporation, Jewish Community Center, seeks funds in the amount up to $250 per contributing Councilmember's Council Office Budget discretionary accounts that provided the following public services of rental fees, light refreshments, honorariums, publicity, and video production; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust, and unity among Berkeley residents. The grants provide a spacious venue, video documentation, and light refreshments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to $250 per office, shall be granted to the Jewish Community Center to fund the City of Berkeley's 17th Annual Holocaust Remembrance Day program.

Susan Wengraf
Vice Mayor and Councilmember District 6

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Susan Wengraf

Subject: Support for SB-190 Fire Safety: Building Standards

RECOMMENDATION

Send a letter in support of SB-190 Fire Safety: Building Standards (Dodd) to Senator Dodd and copy Senator Skinner, Representative Wicks and Governor Newsom.

The Legislation would require the Office of the State Fire Marshal to:

1. Develop a model defensible space program to be used by cities and counties to enforce defensible space provisions.

2. Develop Wildland-Urban Interface Fire Safety Building Standards Compliance Training Manual, and make available via website. To be used locally in training of building officials, builders and fire service personnel.

3. Develop guidance document for maintenance of defensible space around residential structures.

4. Develop and update regularly a Wildland-Urban handbook listing products and construction systems that comply with specified Wildland-Urban Interface Fire Safety building standards.

5. Use money from the Building Standards Administration Special Revolving Fund in the State Treasury to carry out the provisions.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Catastrophic fires as a result of extreme weather conditions have devastated California in the last several years. The extent of loss of life and property have exceeded any situation the state has historically had to address. Faced with this new probability of increasing risks from wildfire, as a result of climate change, legislators are interested in developing better resources for both industry and individuals to be able to better prevent and mitigate these potential disasters.

SB-190 directs the State Fire Marshal to work out the details, in collaboration with local agencies, of fire safety code requirements to mitigate the state's increased fire risk. This state leadership will increase clarity and education to fire safety staff and support the City of Berkeley to strengthen its existing fire safety protocols and regulations.

ENVIRONMENTAL SUSTAINABILITY

Fire prevention is critical for environmental sustainability. In 2018, California wildfires emitted as much carbon dioxide as an entire year's worth of California's electricity according to a November 30, 2018 press release from the U.S Department of the Interior.

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments:
1: Letter of Support
2: SB-190

Honorable Bill Dodd
California State Senator
State Capitol, Room 4032
Sacramento, CA 95814

Dear Senator Dodd:

The City of Berkeley supports S.B. 190, Fire Safety: Building Standards. Thank you for addressing fire prevention on the state level. We need state guidance and regulation to help California's areas vulnerable to the catastrophic impacts of wildfires, especially since as they becoming increasingly frequent due to climate change.

The 1991 Tunnel Fire that burned the Oakland and Berkeley Hills, and cost 25 lives, numerous injuries and nearly 3,500 homes, taught us the importance of preventative measures. By requiring the Office of the State Fire Marshal to develop a model defensible space program for the State's cities and counties to use, your bill encourages prevention.. The same is true for the other components of your bill, such as requiring the State Fire Marshal to create a Wildland-Urban Interface Fire Safety Building Standards Compliance Training Manual for local jurisdictions to use to train their building officials and fire service personnel.

We all want to prevent fires in California. We know that fires don't stay within the confines of a specific city's limits. S.B 190 can help all of California's cities and counties to strengthen their fire prevention tactics and regulations. The City of Berkeley is in full support of S.B. 190.

Thank you,

The Berkeley City Council

CC:
Senator Skinner
Representative Wicks
Governor Newsom

Introduced by Senator Dodd
(Coauthors: Assembly Members Gallagher, Grayson, Lackey, and Salas)

January 30, 2019

An act to amend Section 51189 of the Government Code, to amend Section 18931.7 of, and to add Section 13159.5 to, the Health and Safety Code, relating to fire safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 190, as introduced, Dodd. Fire safety: building standards.

(1) Existing law requires a person, as defined, who owns, leases, controls, operates, or maintains a occupied dwelling or occupied structure in, upon, adjoining specified types of land areas within a very high fire hazard severity zone to maintain defensible space around the structure fire protection or a firebreak, as specified.

Existing law also requires the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, to recommend updated building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures, as provided.

This bill would require the Office of the State Fire Marshal to develop, in consultation with representatives from local, state, and federal fire services, local government, building officials, utility companies, the building industry, and the environmental community, a model defensible space program to be made available for use by a city, county, or city and county in the enforcement of the defensible space provisions. The bill would set forth required components of the program.

(2) Existing law requires the Director of Forestry and Fire Protection to identify areas in the state, except as specified, as very high fire hazard severity zones based on specified criteria in order to enable public officials to identify measures that will retard the rate of spread and reduce the potential intensity of uncontrolled fires that threaten to destroy resources, life, or property and to require that those measures be taken. Existing law requires the State Fire Marshal to prepare and adopt a model ordinance that provides for the establishment of very high fire hazard severity zones. Existing law also requires the State Fire Marshal to annually review, revise as necessary, and administer the California Fire Service Training and Education program. Existing law requires a local agency to designate, by ordinance, very high fire hazard severity zones within its jurisdiction.

This bill would require the Office of the State Fire Marshal to develop and make available on their internet website a Wildland-Urban Interface Fire Safety Building Standards Compliance training manual intended for use in the training of local building officials, builders, and fire service personnel. The bill

would require the Office of the State Fire Marshal to develop a guidance document for the maintenance of defensible space around residential structures. The bill would also require the Office of the State Fire Marshal to develop and update on a regular basis a Wildland-Urban Interface Products handbook listing products and construction systems that comply with specified Wildland-Urban Interface Fire Safety building standards.

(3) Existing law establishes the Building Standards Administration Special Revolving Fund in the State Treasury. Existing law provides that moneys in the fund, which include building permit applicant fees, shall be available, upon appropriation, to the Office of the State Fire Marshal, among other state entities, for expenditure in carrying out various provisions relating to building and housing standards, as provided. This bill would additionally provide that, upon appropriation, moneys in the fund may be available for purposes of carrying the requirements described in paragraphs (1) and (2).

2a.16

CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson

Subject: The Suitcase Clinic: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember including $250 from Councilmember Robinson, to The Suitcase Clinic to assist in the expansion of its free laundry program, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Robinson and any other Councilmembers who would like to contribute.

BACKGROUND

The Suitcase Clinic is a UC Berkeley student organization and volunteer community that offers free health and social services to underserved populations, including unhoused Berkeley residents. It also strives to educate students, engage in community organization, and support public policy efforts that address homelessness in the local community.

The Suitcase Clinic is requesting funds for the expansion of its free laundry program for those experiencing poverty or homelessness. Over the past few months, they have seen a spike in the use of our service that is currently offered on the second Tuesday of each month. Because free laundry services are lacking in Berkeley they would like to expand the program to increase access to the basic right of clean clothing.

FINANCIAL IMPLICATIONS

No General Fund impact; $250 is available from Councilmember Robinson's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

No Impact

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:
1: Resolution for Council Expenditures

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Rigel Robinson has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, The Suitcase Clinic, seeks funds in the amount of $500 to expand its free laundry service for the Berkeley community; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of allowing all Berkeley residents, regardless of their means, to have access to clean clothing, an amenity fundamentally necessary for human dignity.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to $500 per office shall be granted to The Suitcase Clinic to fund expanded free laundry services.

2a.19

Lori Droste
Councilmember, District 8

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: **February 26, 2019**

Item Number: **21**

Item Description: **Missing Middle Report**

Submitted by: Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

This item has been revised to include considerations for scaling of floor to area ratios, land value recapture.

Lori Droste
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 Report

RECOMMENDATION

Refer to the City Manager to bring back to Council a 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.

Report should include, but is not limited to:

- Identifying where missing middle housing is optimal
- Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.[1]
- Excluding very high fire severity zones as defined by Cal Fire and/or City of Berkeley.

[1] City of Portland, https://www.portlandoregon.gov/bps/article/711691.

- Considering form-based zoning, which addresses the appropriate form, scale and massing of buildings as they relate to one another, as a potential strategy[2],
- 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,
- Considering provision of tenant and vulnerable low-income homeowner protections, demolition controls, and no net loss provisions
- Considering provisions that align with our land value recapture policy objectives to maximize affordability in Berkeley.

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.[3] 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.[4] 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.[5] 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

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[2] Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. https://formbasedcodes.org/definition/

[3] Metropolitan Transportation Commission, 2018. http://www.vitalsigns.mtc.ca.gov/

[4] Berkeley Home Prices and Values, https://www.zillow.com/berkeley-ca/home-values/

[5] 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

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."[6]

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.[7] In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.[8] 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.[9] 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.[10]

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).[11] 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

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[6] Zuk, M., & Chapple, K. (2015). Urban Displacement Project. http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf

[7] "The Cost of Building Housing" *The Terner Center* https://ternercenter.berkeley.edu/construction-costs-series

[8] 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

[9] 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/

[10] Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. https://www.cityofberkeley.info/BHA/Home/Payment_Standards,_Income_Limits,_and_Utility_Allowance.aspx

[11] "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#_

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.[12]

Families

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Terner 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."[13] Rent for a two bedroom apartment in Berkeley costs approximately $3,200/month[14] while the median child care cost in Alameda County is $1,824 a month, an increase of 36% in the past four years.[15] 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%.[16] Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.[17] 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.[18] 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.[19]

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[12] City of Berkeley Human Resources, "Job Descriptions" accessed 2.4.2019 http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568

[13] Romem, Issa and Elizabeth Kneebone, 2018. "Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?" https://ternercenter.berkeley.edu/disparity-in-departure

[14] Berkeley Rentals, https://www.zillow.com/berkeley-ca/home-values/

[15] 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/

[16] The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

[17] 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

[18] 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

[19] *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

BACKGROUND

Missing Middle

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[20] 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.[21] Approximately half of Berkeley's housing stock consists of single family units[22] 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.

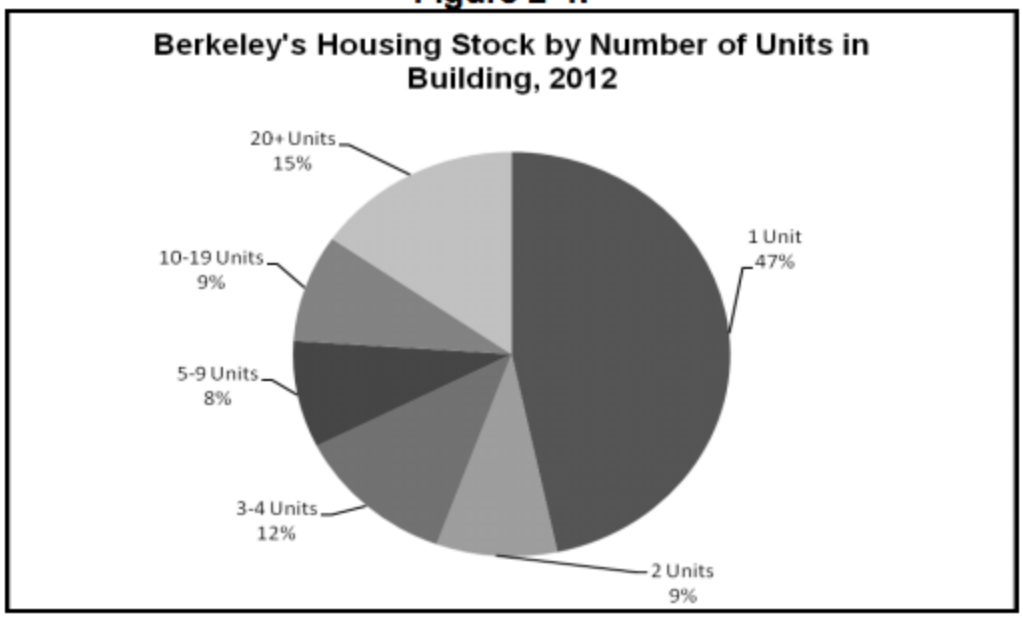
President and Fellows of Harvard College and the Massachusetts Institute of Technology. https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf

[20] Parolek, Dan. Opticos Design. http://missingmiddlehousing.com/

[21] Berkeley Home Prices and Values, https://www.zillow.com/berkeley-ca/home-values/

[22] 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

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 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, having been built before they were banned in districts only allowing single family homes. 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."[23] 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.[24]

[23] The Montgomery Planning Dept., "The Missing Middle Housing Study," September 2018. http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf
[24] Ibid.

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.[25] 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…"[26] In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"[27] and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.[28]

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)

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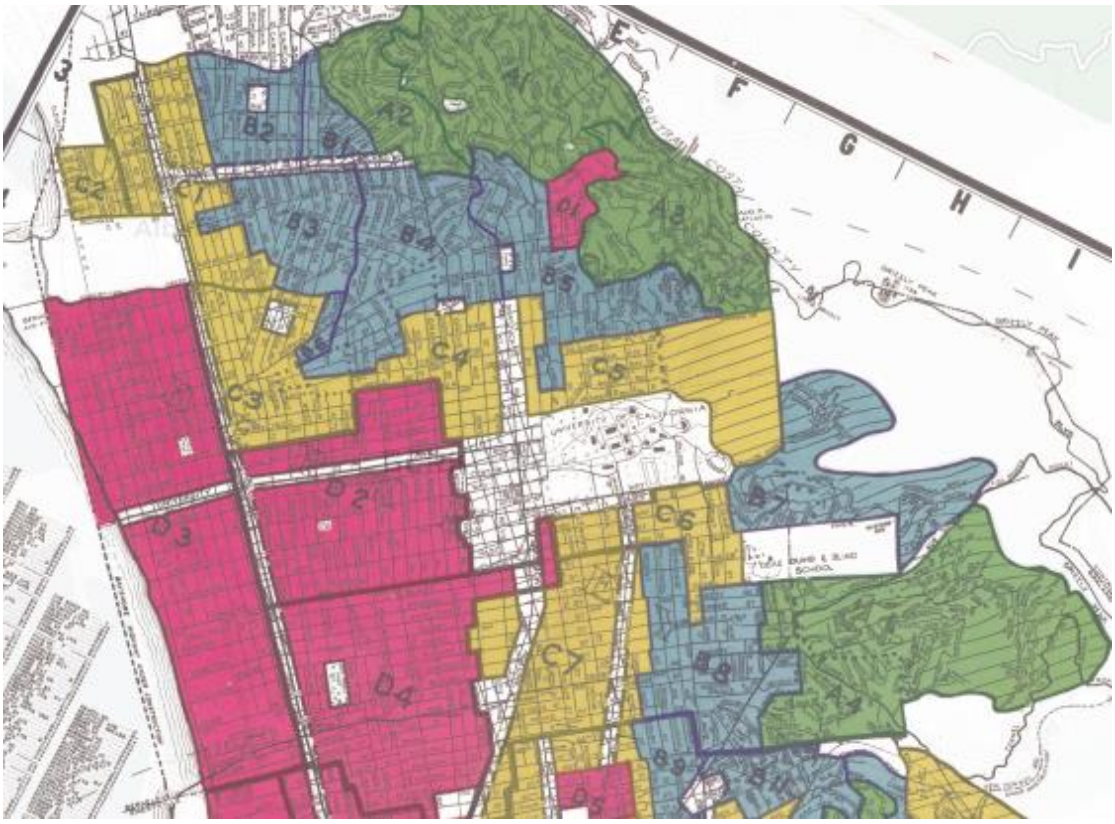
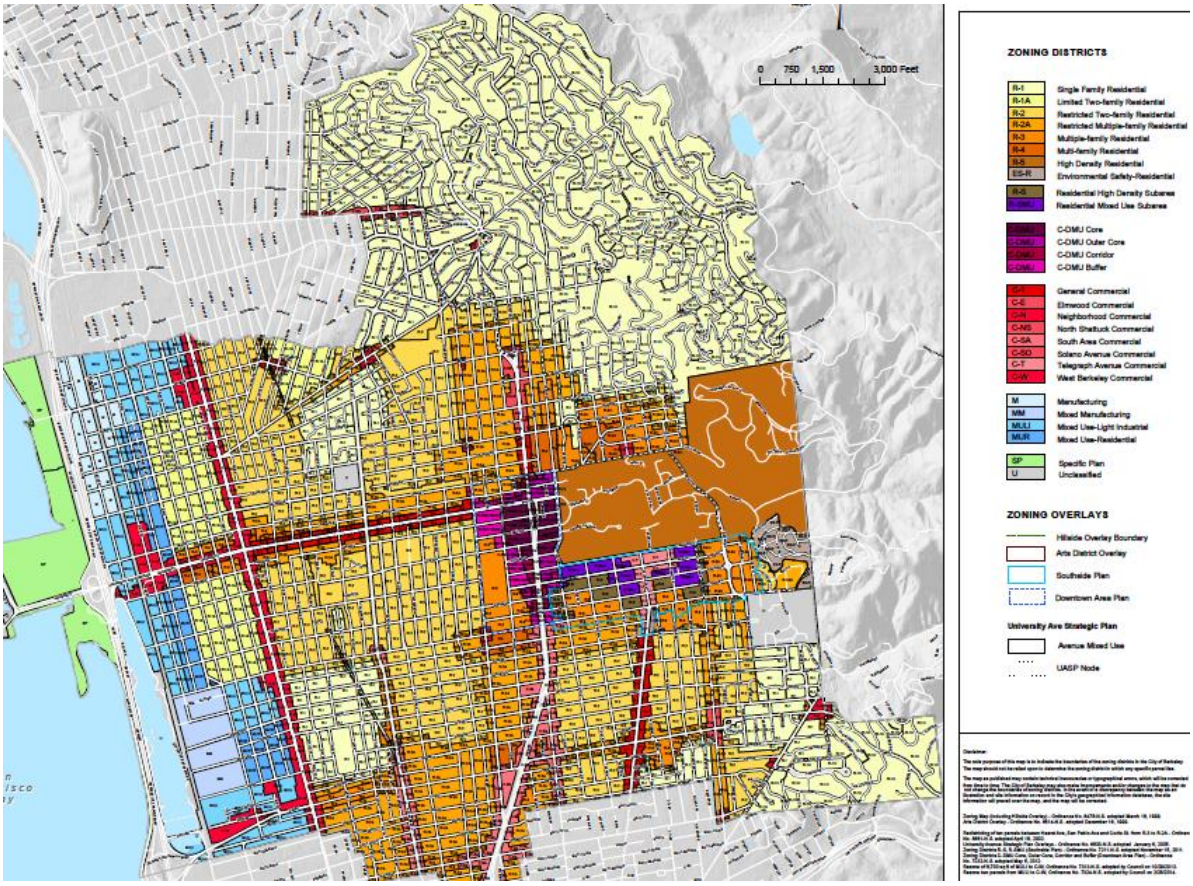
[25] Wollenberg, *Berkeley, A City in History,* 2008.
[26] Claremont Park Company Indenture, 1910
[27] Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf
[28] Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. Berkeley Planning Journal, 3(1). Retrieved from https://escholarship.org/uc/item/26b8d8zh

neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.[29]



Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany. *https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full* *in 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.*

[29] 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



[The images above 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.]

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.[30] While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

TENANT AND ANTI-DISPLACEMENT STRATEGIES

The types of zoning modifications that may result from the requested report could, as discussed above, significantly increase Berkeley's housing stock with units that are more affordable to low- and middle-income residents. However, staff's report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low-income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn't result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding date of application).

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.

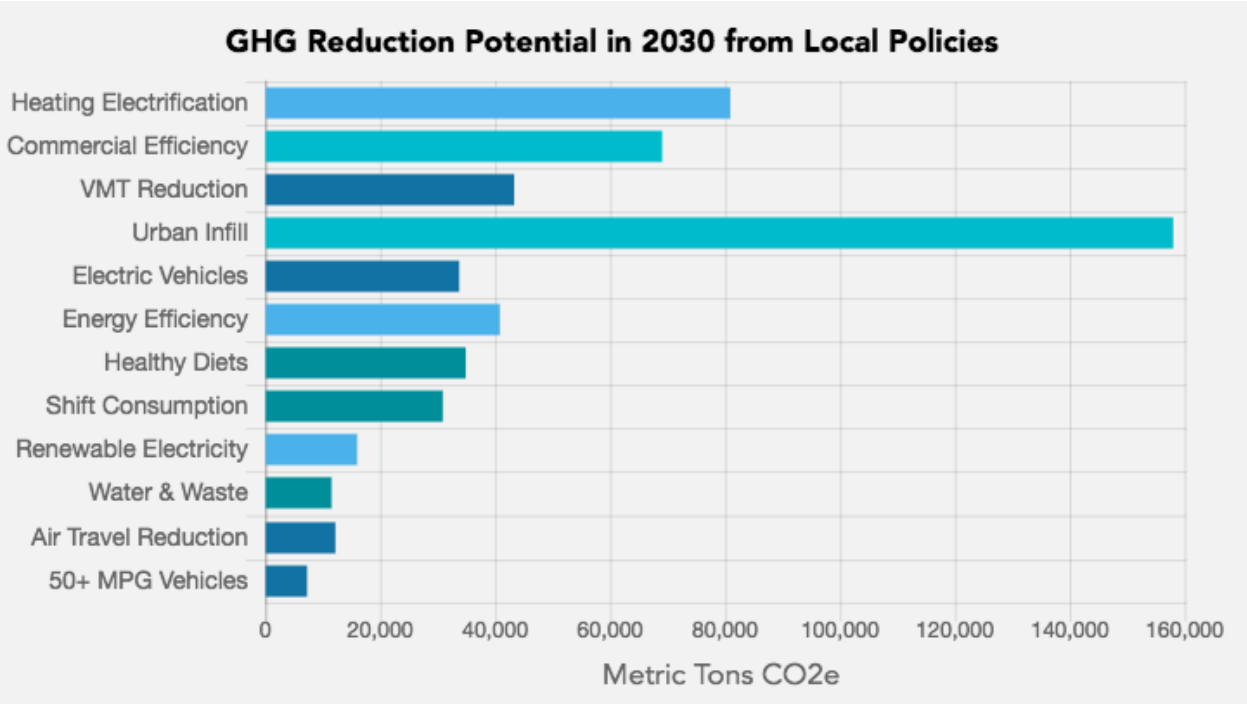
ENVIRONMENTAL SUSTAINABILITY

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."[31] The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short,

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

[31] "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

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

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) and speaks and consults nationally on these topics.

Lori Droste
Councilmember, District 8

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: **February 26, 2019**

Item Number: **22**

Item Description: **Missing Middle Report**

Submitted by: Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

This item has been revised to include considerations for scaling of floor to area ratios, land value recapture.

Lori Droste
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 Report

RECOMMENDATION

Refer to the City Manager to bring back to Council a 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.

Report 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 up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable, saving and lightly modifying an older structure as part of internally dividing it into more than one unit.[1]
- Excluding very high fire severity zones as defined by ~~the~~ Cal Fire and/or City of Berkeley.

[1] City of Portland, https://www.portlandoregon.gov/bps/article/711691.

- Considering form-based zoning as a potential strategy[2],
- 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,
- Considering provision of tenant protections, demolition controls, and no net loss provisions
- Considering provisions that align with our land value recapture policy objectives to maximize affordability in Berkeley.

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.[3] 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.[4] 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.[5] 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-

[2] Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. https://formbasedcodes.org/definition/

[3] Metropolitan Transportation Commission, 2018. http://www.vitalsigns.mtc.ca.gov/

[4] Berkeley Home Prices and Values, https://www.zillow.com/berkeley-ca/home-values/

[5] 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

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."[6]

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.[7] In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.[8] 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.[9] 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.[10]

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).[11] 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

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[6] Zuk, M., & Chapple, K. (2015). Urban Displacement Project. http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf

[7] "The Cost of Building Housing" *The Terner Center* https://ternercenter.berkeley.edu/construction-costs-series

[8] 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

[9] 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/

[10] Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. https://www.cityofberkeley.info/BHA/Home/Payment_Standards,_Income_Limits,_and_Utility_Allowance.aspx

[11] "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#_

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.[12]

Families

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Terner 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."[13] Rent for a two bedroom apartment in Berkeley costs approximately $3,200/month[14] while the median child care cost in Alameda County is $1,824 a month, an increase of 36% in the past four years.[15] 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%.[16] Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.[17] 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.[18] 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.[19]

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[12] City of Berkeley Human Resources, "Job Descriptions" accessed 2.4.2019 http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568

[13] Romem, Issa and Elizabeth Kneebone, 2018. "Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?" https://ternercenter.berkeley.edu/disparity-in-departure

[14] Berkeley Rentals, https://www.zillow.com/berkeley-ca/home-values/

[15] 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/

[16] The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

[17] 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

[18] 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

[19] *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

BACKGROUND

Missing Middle

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[20] 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.[21] Approximately half of Berkeley's housing stock consists of single family units[22] 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.

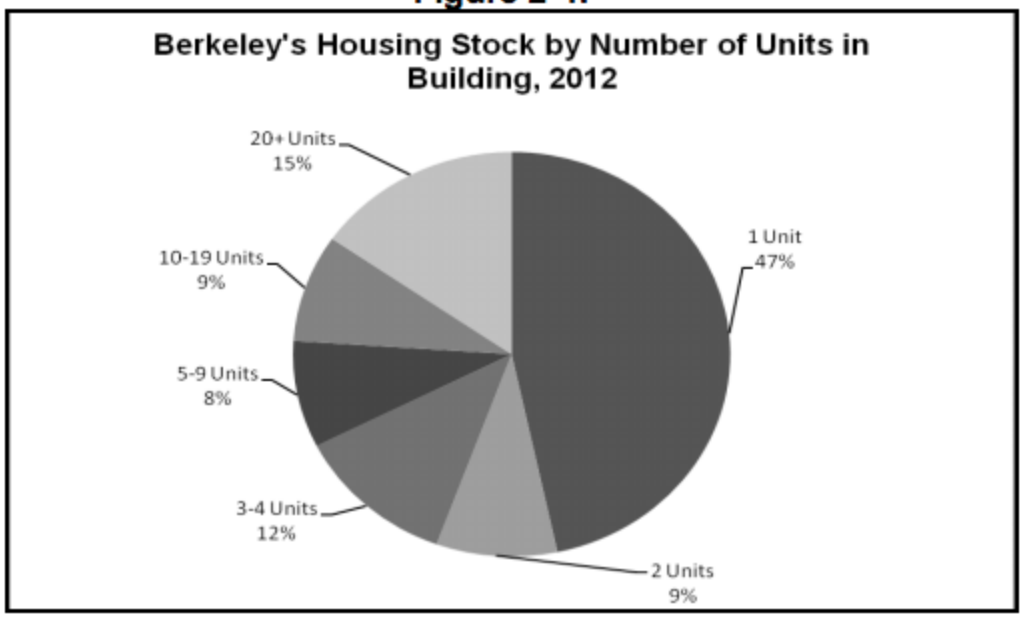
President and Fellows of Harvard College and the Massachusetts Institute of Technology. https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf

[20] Parolek, Dan. Opticos Design. http://missingmiddlehousing.com/

[21] Berkeley Home Prices and Values, https://www.zillow.com/berkeley-ca/home-values/

[22] 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

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 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, having been built before they were banned in districts only allowing single family homes. 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."[23] 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.[24]

[23] The Montgomery Planning Dept., "The Missing Middle Housing Study," September 2018. http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf
[24] Ibid.

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.[25] 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.

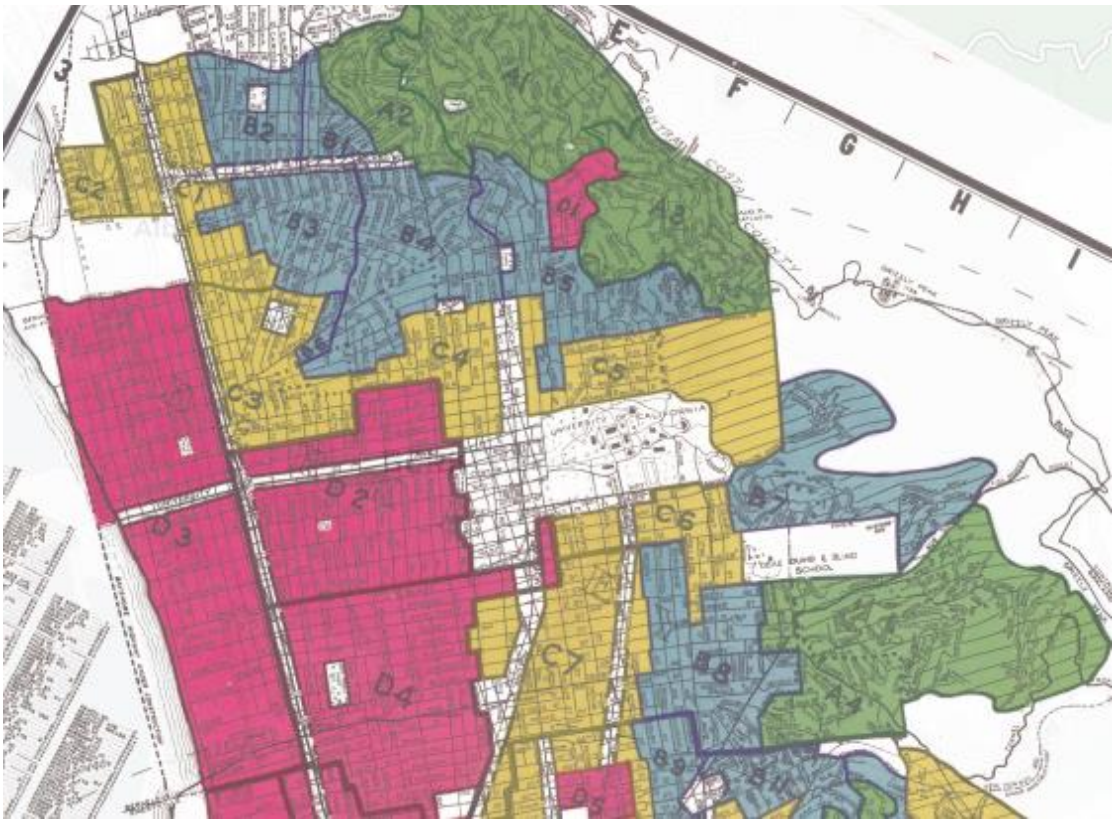
Mason-McDuffie race-restrictive covenants state: "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void…"[26] In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"[27] and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.[28]

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)

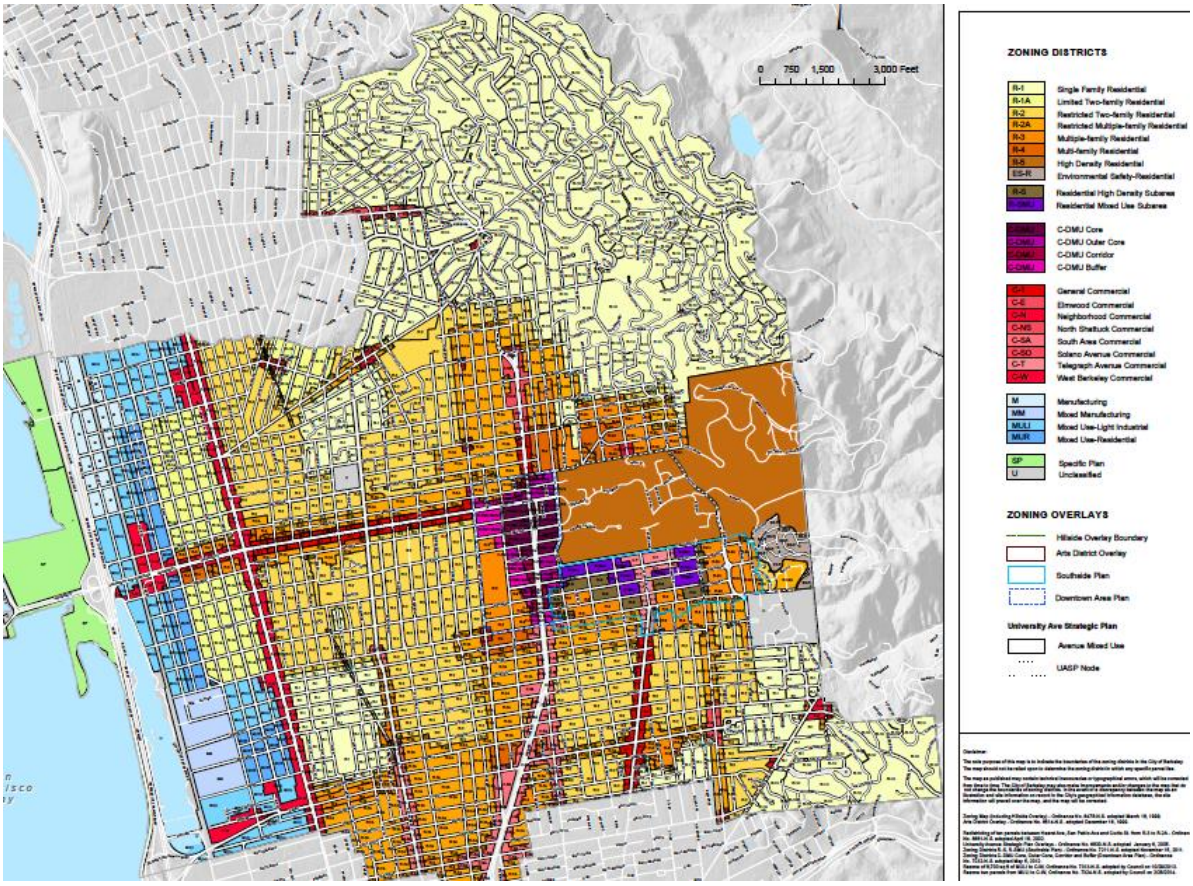
[25] Wollenberg, *Berkeley, A City in History,* 2008.
[26] Claremont Park Company Indenture, 1910
[27] Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf
[28] Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. Berkeley Planning Journal, 3(1). Retrieved from https://escholarship.org/uc/item/26b8d8zh

neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.[29]



Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany. https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full in 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.

[29] 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



[The images above 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.]

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.[30] While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

TENANT AND ANTI-DISPLACEMENT STRATEGIES

The types of zoning modifications that may result from the requested report could, as discussed above, significantly increase Berkeley's housing stock with units that are more affordable to low- and middle-income residents. However, staff's report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low-income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn't result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding date of application).

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.

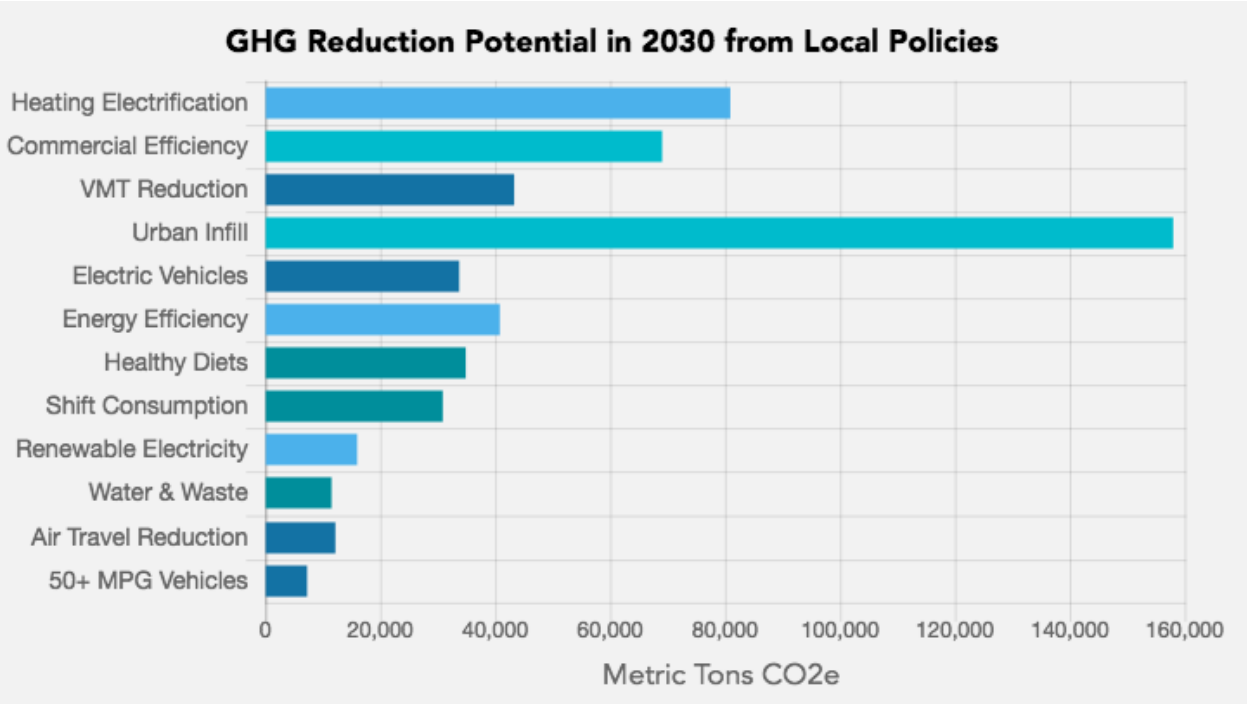
ENVIRONMENTAL SUSTAINABILITY

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."[31] The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short,

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

[31] "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

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

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.

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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) and speaks and consults nationally on these topics.

Lori Droste
Berkeley City Councilmember, District 8

ACTION CALENDAR
March 26, 2019
(Continued from February 26, 2019)

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

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Report should include, but is not limited to:

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- Considering form-based zoning as a potential strategy[1]

[1] 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
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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.[2] 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.[3] 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.[4] 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."[5]

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[2] Metropolitan Transportation Commission, 2018. http://www.vitalsigns.mtc.ca.gov/
[3] Berkeley Home Prices and Values, https://www.zillow.com/berkeley-ca/home-values/
[4] 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
[5] Zuk, M., & Chapple, K. (2015). Urban Displacement Project. 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.[6] In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.[7] 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.[8] 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.[9]

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).[10] 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.[11]

Families

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[6] "The Cost of Building Housing" *The Terner Center* https://ternercenter.berkeley.edu/construction-costs-series

[7] 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

[8] 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/

[9] Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. https://www.cityofberkeley.info/BHA/Home/Payment_Standards,_Income_Limits,_and_Utility_Allowance.aspx

[10] "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#_

[11] 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 Terner 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."[12] Rent for a two bedroom apartment in Berkeley costs approximately $3,200/month[13] while the median child care cost in Alameda County is $1,824 a month, an increase of 36% in the past four years.[14] 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%.[15] Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.[16] 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.[17] 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.[18]

BACKGROUND

Missing Middle

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[12] Romem, Issa and Elizabeth Kneebone, 2018. "Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?" https://ternercenter.berkeley.edu/disparity-in-departure

[13] Berkeley Rentals, https://www.zillow.com/berkeley-ca/home-values/

[14] 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/

[15] The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

[16] 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

[17] 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

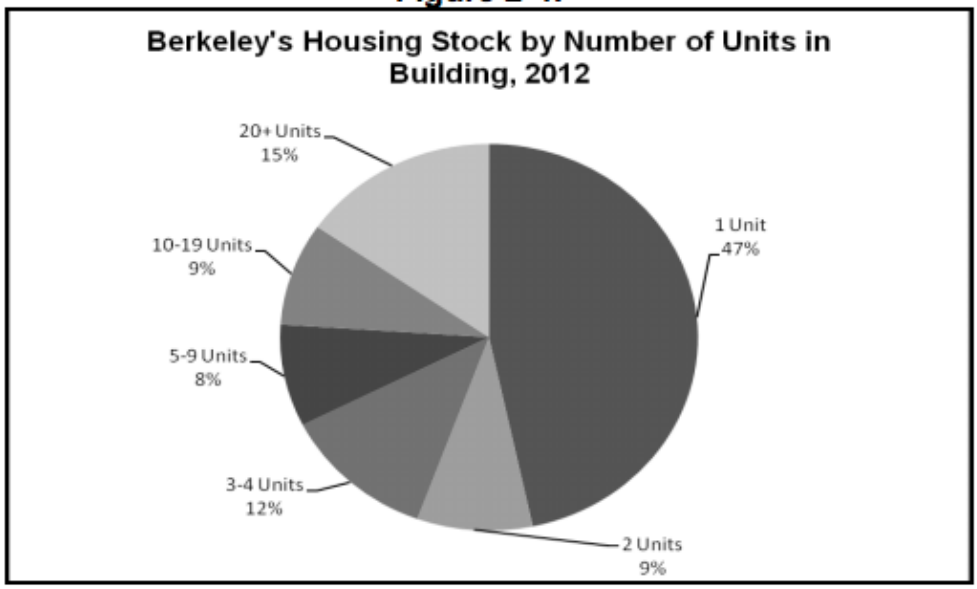
[18] *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf

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[19] 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.[20] Approximately half of Berkeley's housing stock consists of single family units[21] 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

[19] Parolek, Dan. Opticos Design. http://missingmiddlehousing.com/
[20] Berkeley Home Prices and Values, https://www.zillow.com/berkeley-ca/home-values/
[21] 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

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."[22] 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.[23]

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.[24] 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…"[25] In

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[22] The Montgomery Planning Dept., "The Missing Middle Housing Study," September 2018. http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf

[23] Ibid.

[24] Wollenberg, *Berkeley, A City in History,* 2008.

[25] 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”[26] and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.[27]

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.[28]

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.

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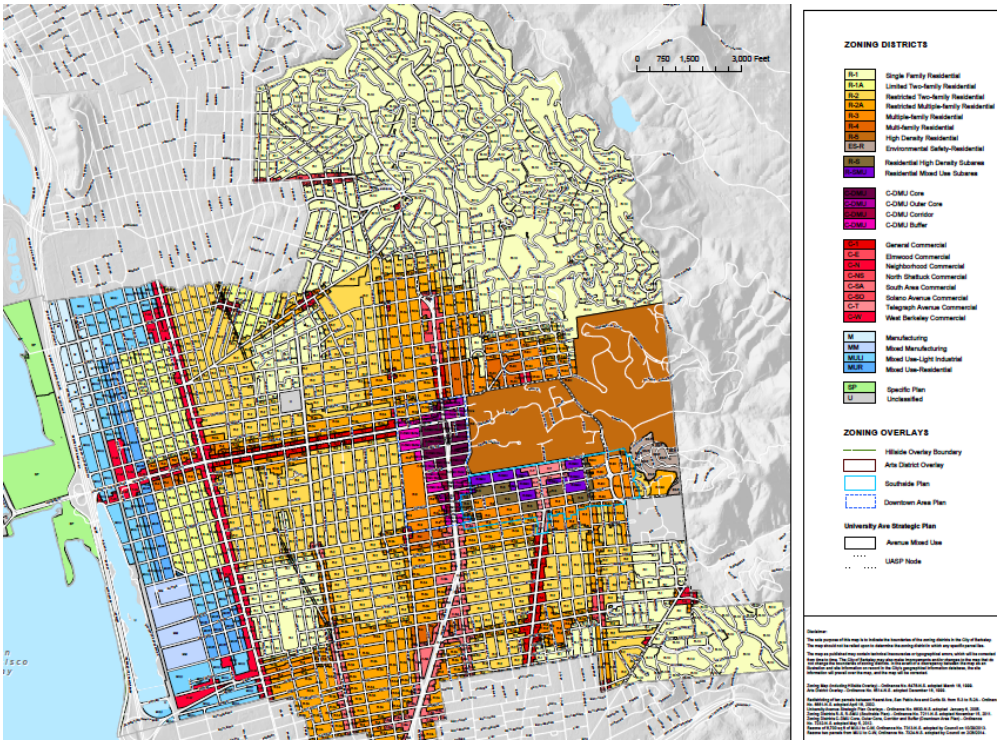
[26] Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf

[27] 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

[28] 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

Thomas Bros Map of Oakland, Berkeley, Alameda, San Leandro, Piedmont Emeryville Albany. [29]



[29]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.[30] 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.

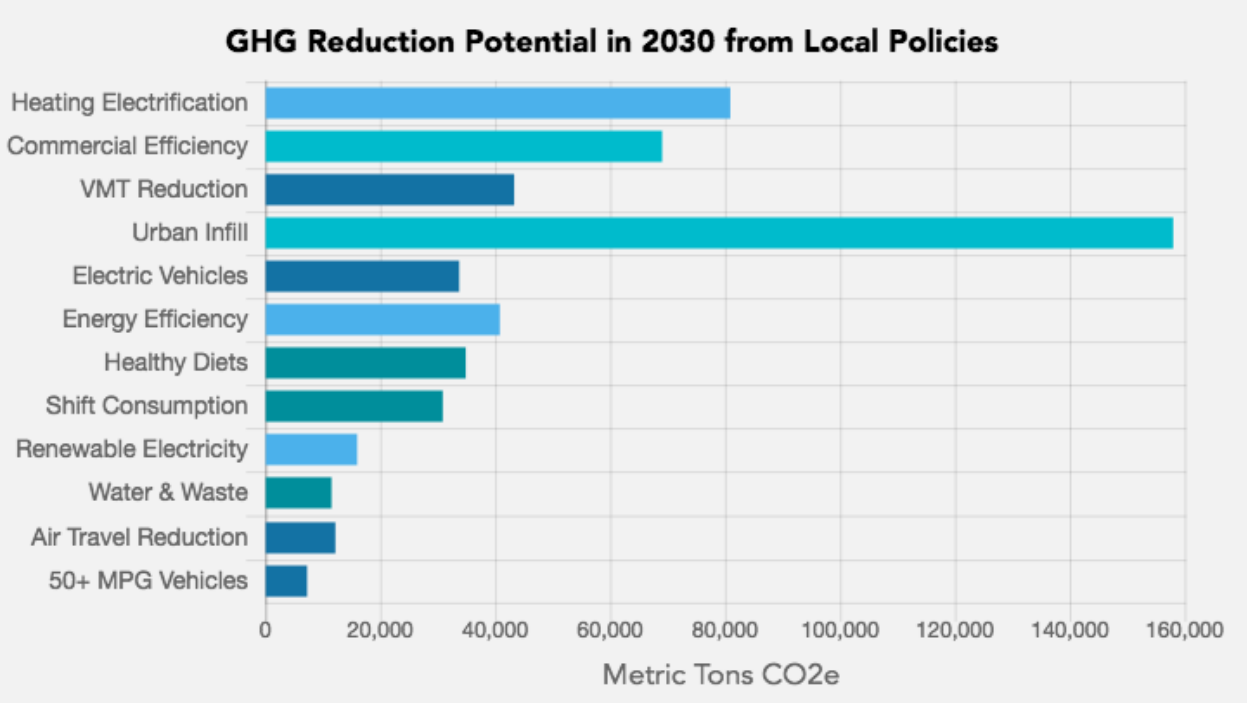
IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT
Not applicable as this item requests an analytical report.

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."[31] The most impactful local policy to

[30] Zuk, M., & Chapple, K. (2015). Urban Displacement Project. http://www.urbandisplacement.org/map/sf
[31] "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

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) and speaks and consults nationally on these topics.

2a.21b

Public Works Commission

ACTION CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Public Works Commission

Submitted by: Jim McGrath, Parks and Waterfront Commission

Subject: Authorizing up to $7 million in additional funding to complete Measure T1 Phase 1 projects

BACKGROUND

The Public Works Commission (PWC), along with the Parks and Waterfront Commission, are the lead commissions to oversee the implementation of Measure T1. They have expressed interest to be actively involved in the program implementation. Quarterly meetings with the T1 staff began August 2018 and five meetings have been held to date. The meetings have been very collaborative. In October 2018, the T1 staff informed the T1 sub-committees of a projected funding shortfall for the Phase 1 projects and the need to develop a change management process.

PROJECTED PHASE 1 FUNDING SHORTFALL

There are 33 approved projects in Phase 1. To accomplish the projects, as planned, the T1 staff estimates a funding shortfall of $5.7 to 7.0 million. The shortfall comes primarily from bids received that are higher than engineer's estimates and additional cost escalation on projects. To address the shortfall, the following have been accomplished:

- Developed a change management process
- Developed criteria to prioritize projects
- Prepared a prioritization scorecard
- Prepared four options to address the shortfall The options are as follows:

Option A – Reduce project scope by $5.7 million
- Fully fund the north Berkeley senior center and the Live Oak projects
- 16 projects have their scopes reduced

Option B – Reduce project scope by $0.5 million
- The Live Oak project is substantially reduced, 3 other projects have their scopes reduced
- Fully fund the north Berkeley senior center

Option C – Request additional funding of $3 million and reduce project scope by $2.7 million

- Fully fund the north Berkeley senior center and the Live Oak projects
- 9 projects have their scopes reduced
- Request $3 million of additional funding

Option D – Request additional funding of up to $7 million

- Fully fund all phase 1 projects as planned
- Request up to $7 million of additional funding

RECOMMENDATON

The T1 team is requesting the PWC and the Parks and Waterfront Commission take action at their February meetings on their preferred course of action. The T1 team wants to make their recommendation to Council this spring.

The T1 sub-committees recommend that the PWC vote to endorse the following:

- We prefer Option D to meet the funding shortfall. The T1 staff has stated that it is possible to transfer funds from other City sources and to repay it with Phase 2 bond proceeds. By choosing this option, we will maintain the momentum in the program and will accelerate infrastructure improvements in the City.
- We are concerned that a disproportionate share of improvements has been allocated to areas of the City north of University Avenue. We want to make sure that projects at the Francis Albrier Center, Willard and other areas south of University be implemented.
- We support identifying a green infrastructure project in Phase 1.
- We support implementing the 7 street improvement projects in Phase 1.

At a regular meeting of the Public Works Commission on Thursday, February 7, 2019, the commission took action to recommend Option D as described in the Recommendation above (M/S/C: McGrath/Dominguez/U): Ayes: Constantine, Erbe, Dominguez, Freiberg, Krpata, McGrath, Yep; Noes: None; Abstain: None; Absent: Hitchens.

2a.21c

Parks and Waterfront Commission

ACTION CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Parks and Waterfront Commission

Submitted by: Jim McGrath, Parks and Waterfront Commission

Subject: Authorizing up to $7 million in additional funding to complete Measure T1 Phase 1 projects

BACKGROUND

The Public Works Commission (PWC), along with the Parks and Waterfront Commission, are the lead commissions to oversee the implementation of Measure T1. They have expressed interest to be actively involved in the program implementation. Quarterly meetings with the T1 staff began August 2018 and five meetings have been held to date. The meetings have been very collaborative. In October 2018, the T1 staff informed the T1 sub-committees of a projected funding shortfall for the Phase 1 projects and the need to develop a change management process.

PROJECTED PHASE 1 FUNDING SHORTFALL

There are 33 approved projects in Phase 1. To accomplish the projects, as planned, the T1 staff estimates a funding shortfall of $5.7 to 7.0 million. The shortfall comes primarily from bids received that are higher than engineer's estimates and additional cost escalation on projects. To address the shortfall, the following have been accomplished:

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Option A – Reduce project scope by $5.7 million
- Fully fund the north Berkeley senior center and the Live Oak projects
- 16 projects have their scopes reduced

Option B – Reduce project scope by $0.5 million
- The Live Oak project is substantially reduced, 3 other projects have their scopes reduced
- Fully fund the north Berkeley senior center

Option C – Request additional funding of $3 million and reduce project scope by $2.7 million

- Fully fund the north Berkeley senior center and the Live Oak projects
- 9 projects have their scopes reduced
- Request $3 million of additional funding

Option D – Request additional funding of up to $7 million

- Fully fund all phase 1 projects as planned
- Request up to $7 million of additional funding

RECOMMENDATON

The T1 team is requesting the PWC and the Parks and Waterfront Commission take action at their February meetings on their preferred course of action. The T1 team wants to make their recommendation to Council this spring.

The T1 sub-committees recommend that the PWC vote to endorse the following:

- We prefer Option D to meet the funding shortfall. The T1 staff has stated that it is possible to transfer funds from other City sources and to repay it with Phase 2 bond proceeds. By choosing this option, we will maintain the momentum in the program and will accelerate infrastructure improvements in the City.
- We are concerned that a disproportionate share of improvements has been allocated to areas of the City north of University Avenue. We want to make sure that projects at the Francis Albrier Center, Willard and other areas south of University be implemented.
- We support identifying a green infrastructure project in Phase 1.
- We support implementing the 7 street improvement projects in Phase 1.

At a regular meeting of the Parks and Waterfront Commission on Wednesday, February 13, 2019, the commission took action to recommend Option D as described in the Recommendation above (M/S/C: McGrath/Fogel/U): Ayes: Brostrom; Diehm; Fogel; Kamen; Kawczynska; McGrath/ McKay; Targ; Wozniak; Noes: None; Abstain: None; Absent: None.

2a.21d

Energy Commission

ACTION CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Berkeley Energy Commission

Submitted by: Ryan Bell, Chairperson, Berkeley Energy Commission

Subject: Recommendations for current T1 Phase 1 funding shortfalls

RECOMMENDATION

The Berkeley Energy Commission recommends the City Council integrate greenhouse gas (GHG) reduction goals, as stated in the Climate Emergency resolution adopted June 12, 2018, into the T1 funding priorities.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

Many measures supported by T1 have implications for future carbon emissions and fossil fuel use. We understand there is a budget shortfall for Phase One of the T1 projects, which may also affect Phase Two decisions. We are concerned that if the City reduces funding for T1 projects, aspects of those projects that reduce carbon emissions may be sacrificed. If the City is serious about reducing fossil fuel use and carbon emissions, we should not sacrifice those aspects.

At the January 23, 2019 meeting, the commission took the following action:

Action: Motion/Second (Leger/Stromberg) to recommend that the City Council integrate greenhouse gas reduction goals as stated in the (Climate Emergency resolution adopted June 12, 2018) into the T1 funding priorities.

Vote: Ayes –Leger, Bell, Patel, Weems, Paulos, Stromberg; Noes – None; Abstain – None; Absent – Luce, Schlachter.

BACKGROUND

The Fossil Free Berkeley and Climate Emergency resolutions asked the Energy Commission to consider actions “to further implement the Climate Action Plan and establish the goal of becoming a Fossil Fuel Free Berkeley” and to consider several actions the city might take as part of this review.

ENVIRONMENTAL SUSTAINABILITY
These recommendations are intended to accelerate citywide reductions in GHGs.

RATIONALE FOR RECOMMENDATION
While making recommendations for all of the actions the Council requested that the commission consider, the main recommendations for reducing GHG emissions focus on transportation and residential and commercial buildings as they are responsible for 98% of Berkeley's GHG emissions.

ALTERNATIVE ACTIONS CONSIDERED
None considered.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON
Billi Romain, Commission Secretary, 510-981-7432

2a.22a

Community Environmental Advisory Commission

ACTION CALENDAR
March 26, 2019

To: Honorable Mayor, Members of the City Council,

From: Community Environmental Advisory Commission (CEAC)

Submitted by: Michael Goldhaber, CEAC Chair

Subject: Effective Enforcement of Safe Lead-Paint Practices

RECOMMENDATION

Direct the City Manager to prepare two ordinances as described below and return them for vote of the City Council within two months, so that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978:

1) an ordinance adding safe lead-paint practices (already mandated by the state and federal governments) to the City Code so that such practices can be regularly enforced as part of code enforcement; [this ordinance could follow the wording of an ordinance proposed in the City of Emeryville in 2017 ({see Attachment 1]

2) an ordinance in accord with California law that allows the city to be reimbursed for costs (staff time) for enforcement efforts (thus making it cost-effective for the City staff to engage in enforcement) and to automatically add fines up to $1,000 for each day of failing to comply with orders to cease unlawful practices. This ordinance could apply generally to all municipal code violations, in addition to lead paint cleanup, to fund and reimburse stronger enforcement efforts by the City. [See Attachment 2, for legal justification].

FISCAL IMPACTS OF RECOMMENDATION:

Because the recommended actions would allow streamlining enforcement measures when lead-paint safe practices are ignored, and because the City would have a way to be reimbursed for any staff time resulting in successful litigation, the total effect would probably be a net saving for the City, quite apart from the reduced costs needed for any

kind of mitigation of lead poisoning of residents or the environment. (In addition to reimbursement for FTE's, the City is apparently permitted to level fines of up to $1,000.00 per day for ongoing violations.)

CURRENT SITUATION AND ITS EFFECTS:

The only current mention of lead paint in the Municipal Code is 13.78.060 [Tenant Protections] C.7: "No Landlord of any Rental Unit located in the City of Berkeley, shall […] in bad faith fail to follow appropriate industry standards to or protocols designed to minimize exposure to [….] lead paint […]" The language says nothing about owners, developers, remodelers, etc., who are not acting as landlords.

The City currently requires that all permits that contain plans for construction or remodeling are stamped with the statement:

Lead Hazard Warning

Due to the possible presence of lead-based paint, lead-safe work practices are required by law for all repairs that disturb paint in pre-1979 buildings. Failure to do so could create lead hazards that violate California Health and Safety Code, Sections 17920.10 and 105256 with potential fines for violations up to $5,000 (Section [d] amended) or imprisonment for not more than 6 months in the county jail or both. For more information, visit www.aclppp.org

We understand that recipients of permits must declare that that they have read (and will heed) this warning. But at present the City staff has no adequate way to respond to reported violations of the declaration. Recently, knowledgeable residents observed neighbor's violations of safe practices and repeatedly complained to City officials but were unable to obtain any redress until CEAC did its best to intervene on their behalf, and even after that intervention, enforcement was limited. The limited investigation we were able to conduct, through the good offices of our Secretary revealed the City officials felt their hands were tied because the City has no lead-paint code of its own. Also, previously, we heard repeatedly that the City staff was reluctant to enforce because staff time such as for court appearances and evidence preparation would not be sufficiently compensated by the fines allowed by State law. We have now learned that State Law permits the City to enact an ordinance allowing FTE recovery of such staff time, as indicated Appendix 2

At its October 11, 2018 meeting, the Commission approved the above recommendation and requests that the Planning Commission bring said action to City Council for adoption.

M/S/C (Ticconi, Lim) to prepare two ordinances that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978. Ayes: Simmons, Varnhagen, Ticconi, and Goldhaber, Lim. Noes: None. Absent: Kapla, Gould. Abstained: Hetzel

BACKGROUND:
In 1991, Berkeley voters enacted a parcel-fee to be paid to joint Powers Authority in the County, now known Healthy Homes. There had been considerable confusion about the powers of Healthy Homes. **We restate once again: Because what was enacted to pay for this organization is a fee and not a tax, by State Law, Healthy Homes may investigate and even remediate but may not enforce laws.** In a previous resolution and in previous appearances before the City Council, CEAC has emphasized the need for City enforcement of lead-paint safety. **Only the City of Berkeley is in a position to enforce against violations that occur within its boundaries, except when CAL-OSHA choose to enforce unsafe labor practices.** Unfortunately, until July, CEAC was unaware that the city needs to update its own codes in the way described above.

ENVIRONMENTAL SUSTAINABILITY:
As we have reported previously, lead from paint can be serious ground contaminant as well as very dangerous toxin for infants and young children—or, for that matter, young animals—whose brains are still developing. Lead-paint particles insufficiently contained that land on the ground can be washed into the Bay where marine life can be contaminated.

RATIONALE FOR RECOMMENDATION:
Repeated failure by City staff to crack down on violations of State Law and of agreements freely entered into by developers and contractors with the Planning Department indicate the need for new and clear steps to make sure enforcement occurs. This, we have now learned, is clearly within the scope of the City's powers. No alternative to passing new ordinances would clarify the abilities and powers of city staff to carry out necessary enforcement of vital laws.

ALTERNATIVE ACTIONS CONSIDERED:
No alternative to passing new ordinances would clarify the abilities and powers of city staff to carry out necessary enforcement of vital rules. However, additional steps, such as better citizen education, while no substitute for adequate enforcement, would help ensure that even more violations are reported and nipped in the bud.

CITY MANAGER
See companion report.

CONTACT PERSON
Michael Goldhaber, Chair, Community Environmental Advisory Commission
Viviana Garcia, Commission Secretary, 981-7460

Attachments:
1. Proposed Emeryville ordinance as modified by CEAC
2. Excerpt of *California League of Cities Proceedings* from 2014

Attachment 1, PROPOSED EMERYVILLE ORDINANCE WITH OUR MODIFICATION:

"Lead-Safe Renovation, Repair and Painting Certification Required. No renovation of a building, facility or other structure shall be initiated within the city if such renovation is regulated under 40 CFR §745.82, unless the applicant for the renovation complies with all of the following:

(1) submits and complies with a sworn written statement, on a form prescribed by the Building Code Inspector, stating that:

a. individuals performing the renovation are properly trained in accordance with 40 CFR Part 745, Subpart E;

b. renovators and firms performing the renovation are certified in accordance with 40 CFR Part 745, Subpart E; and

c. the work practices in 40 CFR 745.85 will be followed during the renovation; and

(2) submits a copy of the certifications issued to renovators and firms performing renovations pursuant to 40 CFR Part 745, Subpart E."

We recommend adding: "Violations are subject to fine" as authorized by California Government Code section 53069.4(a)(1).

Attachment 2, from a *California League of Cities Proceedings* from 2014:

"State law authorizes cities to recover much of the costs of enforcement as long as the city has adopted a proper ordinance. If done correctly, in many types of code enforcement cases, the city will have the right to recover all costs involved, from abatement costs to staff costs, attorney's fees and incidental expenses. This can include those costs incurred in the administrative, civil, warrant and even appellate processes, among others.

"In addition, State law contains numerous provisions, some cited above, for recovery of enforcement costs when abatement action is taken pursuant to those statutes.(See, e.g., Gov. Code §§ 38772–38773.7)

"In addition, cities are authorized to enact ordinances for the recovery of attorney's fees in "any action" to abate a nuisance, as well as abatement and administrative costs. Gov. Code § 38773.5.(See, e.g., Health & Safety. Code, § 17980.7(d)(1) [State Housing law provision providing for recovery of all costs, including investigation and enforcement costs]; Civ. Code § 3496 [providing for cost recovery in certain public nuisance cases].)——Excerpts from *California League of Cities Proceedings of May , 2014 Meeting on Protecting Neighborhood Livability*….]

ACTION CALENDAR
March 26, 2019

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Sophie Hahn

Subject: Considering Multi-year Bidding Processes for Street Paving

RECOMMENDATION

1. Restate the recommendation approved at the December 11, 2018 Council meeting to create a two-year bidding process for street paving to realize savings by (a) reducing by 50% City staff time devoted to bidding and contracting processes over each two year period and (b) benefitting from reduced pricing which may be available for larger contracts that offer greater economies of scale and reduce contractors' bidding and contracting costs.

2. Short-term referral to the City Manager to explore the possibility, feasibility, costs, and benefits of bidding in increments of up to 5 years to encompass entire 5-year paving plans, or other ideas to more rationally and cost-effectively align the paving plan with budget cycles and reduce costs associated with frequent bid cycles for relatively small contracts.

BACKGROUND

In November 2011, the City Auditor provided an analysis of the conditions of Berkeley's 216 miles of streets that showed widespread disrepair resulting from years of underfunding. The impact of the many years of underfunding is compounded by the exponential increase in cost to refurbish streets that have reached "at risk" or "failed" status.

The City of Berkeley's existing Street Rehabilitation and Repair Policy requires that a 5-year Street Rehabilitation Plan be reviewed each year and adopted formally by the City Council. After approval, the City releases bids for one year of paving projects, requiring City Staff and contractors to undertake the bidding process on a yearly basis.

At the December 11, 2018 City Council meeting, Council approved combining the 2018 and 2019 paving projects into the 2019 program after the City was unable to secure a cost effective paving contractor for 2018 in an extremely competitive market.

Permanently moving to a bi-annual or other multi-year bid process will reduce staff time spent on preparing, circulating, evaluating and awarding bids, as well as render Berkeley's projects more attractive to contractors in a very competitive market. It is expected that larger contracts result in reduced per-mile costs due to better economies of scale and reduced contractor costs associated with yearly bidding processes.

During the December 2018 discussion, Public Works staff suggested that a two year bid process is not only feasible, but also logical as the City's budget and funding processes span two years. While this proposal is already being considered (having been referred by Council at the December 11, 2018 meeting), it is important for Council to reiterate that accelerating paving overall while reducing costs in all ways possible is a key citywide priority, and to include the consideration of longer multi-year bidding cycles to assess whether additional cost savings and integration into existing budget cycles can be achieved.

FINANCIAL IMPLICATIONS

The City is likely to realize long term savings by utilizing two-year or other multi-year bidding processes.

ENVIRONMENTAL SUSTAINABILITY

Improved PCI leads to better fuel efficiency and therefore less greenhouse gas emissions from vehicles.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100
Councilmember Sophie Hahn 510-981-7150

Attachments:

1: Annotated Agenda, December 11 2018 Berkeley City Council Meeting, Item 15

Consent Calendar

13. Contract: Gallagher & Burk, Inc. for FY 2018 Measure M Street Rehabilitation Project
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the FY 2018 Measure M Street Rehabilitation Project, Specification No. 18-11179-C (Re-Issued); accepting the bid of Gallagher & Burk, Inc. as the lowest responsive and responsible bidder; 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 $3,863,909.
Financial Implications: Street Capital Improvement Program Fund - $3,863,909
Contact: Phillip Harrington, Public Works, 981-6300
Action: Adopted Resolution No. 68,716–N.S.

14. Letter of Support on Behalf of SB 3342 - Housing, Opportunity, Mobility, and Equity Act of 2018
From: Housing Advisory Commission
Recommendation: Direct the City Manager to send a letter of support on behalf of proposed SB 3342, referred to as the HOME Act.
Financial Implications: None
Contact: Amy Davidson, Commission Secretary, 981-5400
Action: Approved recommendation.

15. Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan
From: Public Works Commission
Recommendation: Adopt a Resolution that recommends approval of the Five-Year Street Rehabilitation Plan for FY2019 to FY2023 as proposed by Staff.
Financial Implications: See report
Contact: Nisha Patel, Commission Secretary, 981-6300
Action: Moved to Action Calendar. 8 speakers. M/S/C (Harrison/Droste) to adopt Resolution No. 68,717–N.S. that recommends approval of the Five-Year Street Rehabilitation Plan for FY2019 to FY2023 as proposed by Staff amended to include Milvia Street from Blake Street to Russell Street in FY2019. Provide direction to staff and request additional information from staff as follows:

- Review the Plan after two years
- Consult the Transportation Commission on the Plan
- Provide the Lifecycle analysis and the Bike Plan overlay analysis
- Consider a two-year bid process
- Annual report to Council on Measure M projects
- Report to Council on the funding sources for scheduled and completed paving projects

Vote: All Ayes.

2a.24

Office of the Mayor

CONSENT CALENDAR
March 26, 2019

To: Members of the City Council

From: Mayor Jesse Arreguin

Subject: Allocating $30,000 to UC Theater Concert Career Pathways Education Program

RECOMMENDATION
Approve the allocation of $30,000 from excess unallocated General Fund revenues to the UC Theater Concert Career Pathways Education Program.

BACKGROUND
On December 5, 2017, with the adoption of the Mayor's Recommendations for the Allocation of Unassigned General Fund Excess Equity, the City Council allocated $30,000 to The UC Theatre to support the Concert Career Pathways Education Program.

The Council did not make an allocation to this youth work force development and education program in 2018 and The UC Theatre has requested a grant of $30,000 from the City of Berkeley to help fill a funding gap for this renowned program. The City's one-time grant will enable The UC Theatre to leverage the city's funding to secure donations and foundation funding which will increase the number of Berkeley youth served through this program.

The UC Theatre is an independent non-profit music venue with youth education programs operated by the Berkeley Music Group (BMG). The UC Theatre Concert Career Pathways Education Program (CCP) develops critical and creative thinking skills necessary to become successful in the workplace, offering youth passionate about music jobs an opportunity to develop a career in the field. CCP teaches young people ages 17 to 25 the technical, creative, and business aspects of concert and event promotion. This nine-month program provides a hands-on work-based learning model in combination with free workshops and paid internships. UC Theater offers these programs to youth attending local schools, underserved youth through partnerships with established non-profit community organizations, and to the public.

Concert Career Pathway Grads come from diverse backgrounds; 50% are young women, 70% are people of color, over half are from low-income households. 80% of program graduates have been successfully placed in jobs.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7100 ● TDD: (510) 981-6903 ● Fax: (510) 981-7199
E-Mail: mayor@cityofberkeley.info

CCP is unique in that it connects one's love of music and arts with education and hard, technical skills in a lucrative industry. The Bay Area is home to a live concert and events industry that is currently experiencing growth. Potential jobs in the field offer competitive compensation: Production Managers can earn $75,000 a year, and publicists, promoters, and marketing directors can earn upper five and six figures.

No other music venue in the nation focuses on educating youth, building skills, and paving career pathways in business, production, and promotion amongst arts venues like The UC Theatre. CCP combines workshops, hands on training, and paid internships that teach best practices in producing live concerts and events. The Concert Career Pathways Program has already achieved national recognition for its focus on creating job opportunities in the live music industry for low-income and youth of color.

CCP was intentionally designed with youth development leaders and industry professionals to support participants in addressing different barriers to entry in the job market. CCP supports participating youth to build skills applicable to the music industry and many other careers they may choose. Broad skills, such as budgeting, marketing, management, media and communications, are used in a variety of professions.

Partnerships with youth organizations ensure a strong support system for participants in developing soft skills necessary for success while also determining professional goals throughout the program. The UC Theatre Taube Family Music Hall and Berkeley Music Group partner with established youth organizations to recruit young people into the program, deliver ongoing support and training for participants, and provide feedback to continue program improvement. Partner non-profit organizations comprise the theatre's Educational Advisory Committee: Berkeley Youth Alternatives, RYSE (Richmond), Youth Uprising (East Oakland), Berkeley YMCA, PG&E Teen Center, East Bay Center for the Performing Arts (Richmond), Center for Independent Living (Berkeley), Berkeley Unified School District, and Berkeley Rep School of Theatre.

Funds from this one-time grant will fill a gap in funding and provide stipends for internships.

Going forward, The UC Theatre has submitted an application for community agency funding for the CCP as part of the four-year allocation process.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

FINANCIAL IMPLICATIONS

$30,000 from excess unallocated General Fund revenues. If this item is approved, the grant will be included in the Amendment to the Annual Appropriations Ordinance which Council will adopt in April.

CONTACT PERSON
Mayor Jesse Arreguin (510) 981-7100

Attachments:
1. February 25, 2019 Billboard Magazine article "*Berkeley's UC Theater Works to Diversify the Next Gen of Live Music Executives*"
2. Background on UC Theater and Concert Career Pathways Program

Links to Articles on Concert Career Pathways Program:

Billboard Magazine (2/15/2019)
https://www.billboard.com/articles/business/8498640/berkeley-uc-theatre-david-mayeri-diversity-live-music-business

East Bay Express (12/4/2018)
https://www.eastbayexpress.com/oakland/the-uc-theatre-is-paving-the-way-toward-a-more-equitable-music-industry/Content?oid=23475852

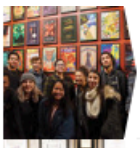
Forbes Magazine (11/27/18)
Why UC Theatre's Robyn Bykofsky Believes Creative Leadership Starts With Listening

Hypebot (11/26/2018)
Diversifying The Music Industry - A Local Approach

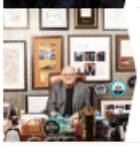
SACKS AND CO.

billboard

23.2M EST. MONTHLY VIEWS



BUSINESS 12:28 PM
Berkeley's UC Theatre Works to Diversify the Next Gen of Live Music Executives



BUSINESS 2:10 PM
A-List Lawyer Joel Katz Talks James Brown, Negotiating for Jon Platt and Why Labels Are Adding Moral Clauses for Execs

BUSINESS 1:58 PM
Lockn' Festival Announces 2019 Lineup with Trey Anastasio & Tedeschi Trucks Band Collaborations

BUSINESS 11:38 AM
Executive Turntable: Moves at Warner/Chappell Music, Downtown, Tunedly

BUSINESS 10:27 AM
The Feldman Agency Founder Sells Management Company to Two Top Executives

BUSINESS 11:03 AM
Why 16-Year-Old Rapper NLE Choppa Turned Down a $3 Million Record Deal to Partner With UnitedMasters: Exclusive

BUSINESS 2/14/2019
With Jamaican Festival Bright Side, California Band Rebelution Aims To Bridge the Reggae Culture Gap

BUSINESS 9:06 AM
Amazon's Exit Could Scare Off Tech Companies From NYC

BUSINESS 2/14/2019
Universal Music Group 2018 Earnings: Revenue Tops $7.1B as Streaming Spikes 31 Percent

BUSINESS 2/14/2019
Will Allegations Actually Affect Ryan Adams' 2019 Tour and Album?

BUSINESS 2/13/2019
Dave Grohl Explains Foo Fighters Cancellations and Why the Band Will (Probably) Never Break Up

Berkeley's UC Theatre Works to Diversify the Next Gen of Live Music Executives

2/15/2019 by Dave Brooks

Rebekah Gonzales

Bykofsky (back row, third from right) surrounded by former and present members of UC Theatre's Concert Career Pathways program.

David Mayeri began his career in the music industry the same way many of his contemporaries did: He started young and knew the right people. It was 1970, and the legendary San Francisco-based promoter **Bill Graham** was starting to produce shows at an old theater inside Berkeley (Calif.) High School, which Mayeri attended. Mayeri worked as Graham's unpaid intern until he was offered a gig that paid $10 for 16 hours of work unloading, staging and repacking touring shows.

Mayeri worked for Bill Graham Presents for 35 years, eventually rising to COO before he left in 2004. He then founded the nonprofit Berkeley Music Group to operate the UC Theatre, a 101-year-old movie theater, in November 2012 and spent three years restoring it as a music venue called UC Theatre Taub Family Music Hall. Mayeri was ready to staff the building in 2016 when he noticed a lack of diversity in the applications he received.

"There's a number of socioeconomic issues that can create barriers for individuals in live music," says Mayeri, including reliance on unpaid interns and low-paying entry-level jobs that make it impossible for candidates from low-income families to break in. "Many people in executive positions today came up through professional networks that are still very homogeneous and only reinforce the cultural barriers that young people face."

SACKS AND CO.

Berkeley's UC Theatre Works to Diversify the Next Gen of Live Music Executives

February 15, 2019
By Dave Brooks
https://www.billboard.com/articles/business/8498640/berkeley-uc-theatre-david-mayeri-diversity-live-music-business

Rebekah Gonzales

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"There's a number of socioeconomic issues that can create barriers for individuals in live music," says Mayeri, including reliance on unpaid interns and low-paying entry-level jobs that make it impossible for candidates from low-income families to break in. "Many people in executive positions today came up through professional networks that are still very homogeneous and only reinforce the cultural barriers that young people face."

Hoping to create opportunities for women and people of color, Mayeri brought on educator-activist Robyn Bykofsky to serve as education director. In 2016, they launched Concert Career Pathways, a free, nine-month program for students ages 17-25 that offers workshops and paid internships in the live sector. Applications for the 2019 edition open in March. "We wanted to help young people better understand what has been a very opaque industry," says Bykofsky. "We were looking beyond typical employment issues to understand how imbalances in access to opportunity were created."

In the program, students study production management and event planning by working with stagehands, floor staff and sound engineers. They also learn about lighting, visual design, budgeting, marketing and social media promotion as well as how to book talent.

"Our graduates come from diverse backgrounds," says Mayeri, adding that half the students in each program are female and 70 percent are people of color. Once the program's six workshops are complete, graduates participate in paid internships, working eight to 12 hours per week or 20-show cycles. "Several" graduates now work at the theater.

"We work to be a true collaborator with the diverse communities we serve," says Bykofsky. "I want to make sure we are providing them with the support they need to thrive."

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

The UC Theatre Taube Family Music Hall is a local independent 1,400 capacity multi-tiered non-profit music venue operated by the Berkeley Music Group (BMG). Our mission is to present a vibrant and diverse range of live performances to advance the understanding and appreciation of music, culture and education in the east bay. We provide inclusive, diverse, and culturally rich music programing as well as youth education programs that are transforming lives. In 2018, Berkeley Music Group and The UC Theatre Taube Family Music Hall hosted 95 concerts and 25 private events.

The UC Theatre has created over 150 full and part-time jobs and hosted hundreds of events representing a wide variety of programing interests offered for the Bay Area community such as Green Day, the Banff Mountain Film Festival, Balkan Beat Box, Matisyahu, Bill Nye the Science Guy, Joe Jackson, Nicholas Jarr, Lord Huron, NOFX, Berkeley High School Jazz Ensemble, Tinariwen, Run the Jewels, Malatu Astatke, Toro y Moi, Dudu Tassa and the Kuwaitis, the Berkeley Community Fund Gala, Berkeley Art Museum Gala, the return of the Rocky Horror Picture Show, and the Golden Gate Symphony and Chorus.

In 2018, The UC Theatre continued to expand the diversity of our programming and experienced a 13% growth in number of shows we annually present. While offering diverse programming that brings in diverse audiences honors our mission we are learning that it has its challenges in terms of building a UC Theatre family. However, we remain committed to bringing events into the Berkeley Community that reflect the community at large in terms of diversity and representation and know that our continued commitment to do so will eventually help us build a loyal constituency. We know that the 125,000 people that we annually bring in for shows and events has positively impacted downtown Berkeley businesses, and we continue to work with several local nonprofits to support their fundraising efforts by offering discounted and free rentals.

The Speak Your Truth (SYT) Concert Series is a student run concert venue within theatre. We have reconfigured our space to be able to put on smaller events on our Tier 1 stage, such as our Speak Your Truth events managed by our Youth Advisory Board & Concert Career Pathways graduates and created a Tier 2 stage (500 capacity) to complement our main stage (1,400 capacity). April will mark our three-year anniversary of theatre operations, and we have fine-tuned processes across the board re: human resources, filing incidents reports, and running facilities systems; and are in the process of creating an emergency action plan. We provided an all staff active shooter training and next year will implement an all staff sexual harassment training.

Concert Career Pathways (CCP) develops critical and creative thinking skills necessary to become successful in the workplace, offering youth passionate about music jobs an

opportunity to develop a career in the field. CCP teaches young people ages 17 to 25 the technical, creative, and business aspects of concert and event promotion. This nine-month program develops critical and creative thinking skills necessary to become successful in the 21st century workplace. Our hands-on work-based learning model is a combination of free workshops and paid internships. We offer these programs to youth attending local schools, underserved youth through partnerships with established non-profit community organizations, and to the public. Our Concert Career Pathway Grads come from diverse backgrounds; 50% are young women, 70% are people of color, over half are from low-income households. 80% of program graduates have been successfully placed in jobs.

Job training programs in the Bay Area focus on fields such as culinary arts, technology, and solar energy. CCP is unique in that it connects one's love of music and arts with education and hard, technical skills in a lucrative industry. The Bay Area is home to a live concert and events industry that is currently experiencing growth. Potential jobs in the field offer competitive compensation: Production Managers can earn $75,000 a year, and publicists, promoters, and marketing directors can earn six figures or more. No other music venue in the nation focuses on educating youth, building skills, and paving career pathways in business, production, and promotion amongst arts venues. CCP combines workshops and paid internships that teach best practices in producing live concerts and events.

Despite the wealth in the Bay Area, teenagers and young adults, particularly low-income youth of color, still struggle to find educational opportunities that lead to living wage jobs. CCP provides hands-on job experiences, fostering the understanding of work as an integral and satisfying aspect of life, and connecting youth to a field in which there are current job opportunities and career ladders.

CCP was intentionally designed with youth development leaders and industry professionals to support participants in addressing different barriers to entry in the job market. CCP supports participating youth to build skills applicable to the music industry and many other careers they may choose. Broad skills, such as budgeting, marketing, management, media and communications, are used in a variety of professions.

Partnerships with youth organizations ensure a strong support system for participants in developing soft skills necessary for success while also determining professional goals throughout the program. The UC Theatre Taube Family Music Hall and Berkeley Music Group partner with established youth organizations to recruit young people into the program, deliver ongoing support and training for participants, and provide feedback to continue program improvement. Partner non-profit organizations comprise

the theatre's Educational Advisory Committee: Berkeley Youth Alternatives, RYSE (Richmond), Youth Uprising (East Oakland), Berkeley YMCA, PG&E Teen Center, East Bay Center for the Performing Arts (Richmond), Center for Independent Living (Berkeley), Berkeley Unified School District, and Berkeley Rep School of Theatre.

Our Advanced Event Business and Leadership Training program for our Youth Advisory Board (YAB) members and CCP interns and graduates further develops technical, business and leadership skills in live music and event production with the goal of creating a necessary leadership pipeline to diversify the live music and events industry.

Management Training Program - Our Advanced Event Business Management and Leadership Training program is rooted in Multicultural Leadership and focuses on full-time administrative office management positions in: Advertising and Marketing, Fundraising Development, Talent Buying, Education Program Development, Special Events, Venue and Event Financial Management, Merchandise Management, and more. This Management and Leadership Business Training Program is a three to five-year program that provides training that focuses on building participant management and leadership skills so that they can improve performance for each department as well as the entire venue while seeing the larger picture, giving direction to a team, and supervising staff.

The Speak Your Truth (SYT) Concert Series - An Advanced Promotions & Production Management Training program. This concert series is completely produced and run by CPP Grads, YAB members, and Interns to give them hands-on experience in promotions and production management training. SYT takes place on our Tier One stage (a venue within the theatre on the top tier of The UC Theatre), a 250-capacity nightclub space that provides a platform for emerging local artists to share their talents on stage.

Participants will further develop skills in the following departments: Talent Buying, Grassroots Marketing, Digital Marketing, Live Sound Engineering, Theatrical Lighting, Stage Management, Production Management, Event Coordination, Budget and Financing and Event Sponsorship

The music industry management program, like many industries in the United States, lacks equality, diversion, and inclusion. The UC Theatre believes that bringing together young leaders from a variety of backgrounds with diverse perspectives will help create a more equal industry and provide a space for underserved youth to have their voices heard by their peers, some of whom come from more privileged backgrounds, providing exposure to and immersion in diverse voices and ideas. This unique

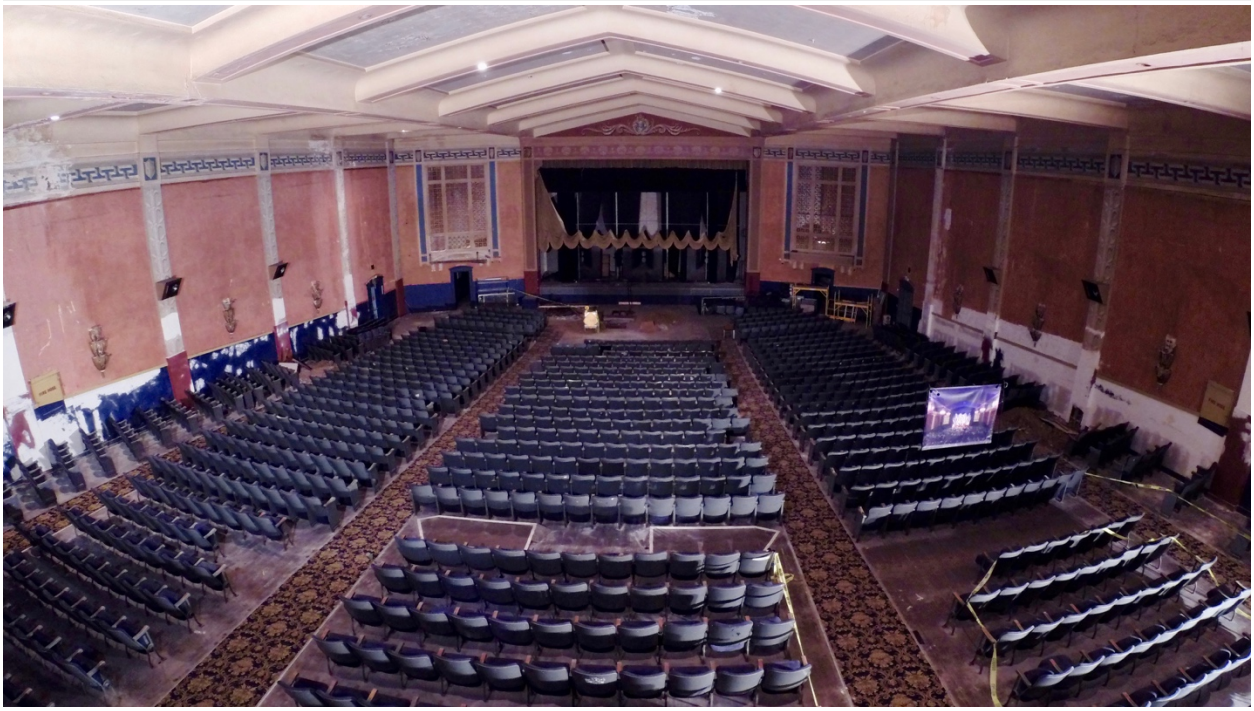
management program supports up-and-coming leaders of the Bay Area that hold promise for re-imagining the music industry in ways that advance intergenerational and multicultural leadership, inclusion and equity.

UC Theatre 1917

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

UC Theatre 2007 (Not Operating)

THE UC THEATRE
TAUBE FAMILY MUSIC HALL



The UC Theatre in 2012 (Still Not Operating)

The UC Theatre 2015 (Started Renovation)

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

The UC Theatre Taube Family Music Hall Grand Opening April 2016

Pete Escovedo Latin Jazz Orchestra at The UC Theatre Taube Family Music Hall July 23, 2016

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

Tinariwen at The UC Theatre Taube Family Music Hall April 1, 2017

G. Jones Concert at The UC Theatre Taube Family Music Hall November 17, 2018

Clozee at The UC Theatre Taube Family Music Hall December 27, 2018

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

Mayer Hawthorne at The UC Theatre Taube Family Music Hall December 31, 2018

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

BMG Concert Career Pathways Cohort 1

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

Top left to right: Isaac Rezendiz (CCP 2017-2018 cohort), Bobby Kirwin (Youth Advisory Board member), Nicole Peña (CCP 2016-2017 cohort), Robyn Bykofsky (BMG Education Director), Phil Katague (CCP 2016-2017 cohort), Bryan Fuentes (CCP 2016-2017 cohort).
Bottom left to right: Solomon Davis (CCP 2018-2019 cohort); Briana Pike (CCP 2018-2019 cohort); Rosy Wu (CCP 2018-2019 cohort), Nancy Garcia (CCP 2016-2017 cohort).

THE UC THEATRE
TAUBE FAMILY MUSIC HALL

Shana Penn & Tad Taube at The UC Theatre Taube Family Music Hall Lobby Naming Ceremony September 22, 2016

Office of the Mayor

CONSENT CALENDAR
March 26, 2019

To: Honorable Members of the City Council
From: Mayor Jesse Arreguín and Councilmember Sophie Hahn
Subject: Short Term Referral to City Manager to Scope Process and Estimate Cost of New General Plan

RECOMMENDATION

Short Term Referral to the City Manager to return to City Council with an outline of the process for creating a new City of Berkeley General Plan. The cost for the first two years of work will be included in the report for consideration during the upcoming 2020-2021 Budget Process.

BACKGROUND

The Berkeley General Plan is a comprehensive and long-range statement of community priorities and values developed to guide public decision-making in future years. The Plan's goals, objectives and policies serve as a guide for day-to-day decisions that are essential for responsive government. Decisions made by the Berkeley City Council and its advisory boards and commissions about the physical development of the City should be consistent with the goals, objective and policies of the Plan. The City Council and Planning Commission use the General Plan when evaluating land use changes and making funding and budget decisions. It is also used by the Zoning Adjustments Board and City staff to help regulate development proposals and make decisions on projects. The policies of the Plan apply to all property, both public and private within the Berkeley city limits. It should be noted that the University of California and other State/County agencies are not legally obligated to comply with the Plan, but will reference the document.

Berkeley's General Plan was adopted by the City Council on December 18, 2001 following a process that started in the mid-1990's resulting in a first draft completed by staff dated May 1999. A second draft was sent to the Planning Commission, following several community meetings in October 1999. In October 2000, the Planning Commission published a Planning Commission Draft General Plan. On July 11, 2001 the Planning Commission concluded its work on the update of the Berkeley General Plan and forwarded its recommended General Plan to the City Council for consideration and adoption.

It is customary, and in some communities required, for General Plans to be updated every 15 – 20 years. There have been significant changes within the City of Berkeley since the

last General Plan update in 2001.

CURRENT SITUATION

Berkeley's General plan was designed to work with the City's more detailed Area Plans which were amendments to the 1977 Master Plan. The Area Plan goals and policies must be consistent with the General Plan goals and policies and both must be considered when making decisions. In order to achieve this consistency some amendments were made and those amendments were specifically identified in the General Plan.

Since the adoption of the General Plan in 2001, several new specific plans have been approved by the Berkeley City Council. These include the adoption of the Downtown Area Plan and the Southside Plan. There are other significant area plans currently in process: the Adeline Corridor Plan and planning for the North Berkeley BART station that was initialized by AB2923 that sets new rules for development on BART property -- mostly on parking lots that surround many of the agency's stations. Additionally, a planning process is being considered for the San Pablo Corridor.

Other plans that have impacted the City of Berkeley are the current University of California 2020 LRDP. This agreement between the City of Berkeley and the University will expire in 2020 and the University is beginning the process for a new Long Range Development Plan.

In January 2018, the City of Berkeley had a population of 121,874 based on the California Department of Finance 2018. This exceeds the General Plan EIR's population that forecasted 116,359 by the year 2020. Current estimates provided by the Metropolitan Transportation Commission project a 1% annual growth throughout the Bay Area through 2040.

Due to the significant growth in population, there is currently a housing deficit. This especially impacts those residents that cannot afford new market rate housing and has contributed directly to the spike in homelessness. Additionally, the University has not created housing to (1) support the student population anticipated in the 2020 LRDP, plus (2) house the additional 11,000 students the University has absorbed over the plan projections.

Climate Change is rapidly progressing and, if not checked, will severely impact the future of our planet. Consideration for the impending impacts on sustainability, human and non-human subsistence and infrastructure demands must be addressed by the community at large.

Finally, the question of consistency and clarity between the General Plan and Zoning Code should be resolved. Specific deficiencies and lack of definition such as design and detriment standards, inclusionary housing requirements and open space allocation (Quimby Act Fees) should be determined. In order to ensure that the City of Berkeley can plan for its future, a new community process should begin for the development of a new General Plan with a goal of adopting an update plan by the end of 2023.

FINANCIAL IMPLICATIONS

City Manager to provide a cost estimate for City Council to consider funding through the

2020 - 2021 Budget Process that will support a new General Plan process.

ENVIRONMENTAL SUSTAINABILITY

Berkeley's Climate Action Plan and sustainability goals will be incorporated into a new General Plan.

STRATEGIC PLAN

Supports long-term goals #1 through #7

CONTACT PERSON

Mayor Jesse Arreguin, (510) 981-7100

Councilmember Ben Bartlett

City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR
March 26th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: *Dynamex* Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave Ordinance

RECOMMENDATION

That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903.

CURRENT SITUATION

The California Supreme Court decision in *Dynamex* held that the burden is on the employer to establish that a worker is an "independent contractor," as opposed to an "employee," and that in order to meet this burden, the employer must establish each of the three factors in the "ABC" test. In light of the *Dynamex* decision, it is clear that many workers have been improperly misclassified as "independent contractors" when they should have been classified as employees. Employees are entitled to workers' compensation insurance and other benefits; independent contractors are not. Since Berkeley's Minimum Wage Ordinance and Paid Sick Leave Ordinance apply to workers who are defined as employees under the California Labor Code, the *Dynamex* decision clarified that these ordinances apply more broadly than as interpreted by many employers. The Berkeley City Council must ensure that the Minimum Wage Ordinance and Paid Sick Leave Ordinance are interpreted in a manner consistent with the holdings in *Dynamex*.

BACKGROUND

Companies have frequently misclassified workers as independent contractors to avoid paying for workers' benefits and filing taxes. "According to the California Labor Commissioner's website, the misclassification of workers as independent contractors costs the state roughly $7 billion in lost payroll taxes each year."[1] Enforcement of the *Dynamex* decision will reduce these costs and reduce misclassification by requiring employers to classify their workers as employees unless the employer establishes each of the following three factors:

[1] https://www.latimes.com/local/lanow/la-me-ln-independent-contract-20180430-story.html

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.

The *Dynamex* decision is retroactive. *See Oriana Johnson v. VCG-IS LLC,* case number 30-2015-00802813 (Superior Court of the State of California, Orange County) (July 18, 2018).

Enforcement of the *Dynamex* decision will result in more workers being classified as employees entitled to the minimum wage pursuant to California's minimum wage laws in Section 1197 of the California Labor Code. Berkeley's Minimum Wage Ordinance and Paid Sick Leave Ordinance apply to employees as defined below:

1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and
2. **Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law**, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

The City Council must therefore ensure that the Minimum Wage Ordinance and Paid Sick Leave Ordinance are interpreted and enforced consistently with *Dynamex*.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

The Berkeley Minimum Wage Ordinance and Paid Sick Leave Ordinance define an "employee" as:

> "Employee" shall mean any person who: 1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and 2. Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

ACTIONS/ALTERNATIVES CONSIDERED

Because these ordinances have already been passed and are currently implemented in Berkeley, the City Council must refer to the City Manager and Labor Commission to determine how the *Dynamex* ruling applies to ensure the current laws are being interpreted and enforced properly.

Alternatives would include repealing and replacing these ordinances or only selectively enforcing them. Because these ordinances provide a solid and readily adaptable legal framework for protecting workers' rights, they should not be repealed. Selectively enforcing them is illegal.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

After consulting with multiple labor unions and social justice organizations, forty-nine of them have officially provided their support to proceed with the recommendations of this item. The organizations that have signed their support are displayed in the attachment below.

RATIONALE FOR RECOMMENDATION

The City of Berkeley has devoted itself to protecting its citizens' rights to a minimum wage and livable benefits. *Dynamex* has clarified which workers are entitled to the rights of employees under state law in a manner that should increase the number of workers classified as employees. As a result, more workers will receive the protections and benefits of employees under state law. Likewise, by ensuring that local ordinances are interpreted and enforced consistently with the *Dynamex* ruling, the City will increase the number of people protected by those ordinances.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

This is a referral to the City Manager and Labor Commission to interpret and enforce the Minimum Wage Ordinance and Paid Sick Leave Ordinance consistent with *Dynamex*. Specifically: (1) placing the burden on the hiring entity to establish that the worker is not intended to receive the benefits of, and included within, the Minimum Wage Ordinance and/or Paid Sick Leave Ordinance; and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three factors embodied in the ABC test—namely (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. Moreover, like *Dynamex*, the interpretation of the ordinances to be consistent with *Dynamex* can and should be retroactive.

ENVIRONMENTAL SUSTAINABILITY

No negative impact.

FISCAL IMPACTS

Workers in the City of Berkeley would be in better positions to support themselves financially and to contribute more to Berkeley's economic development.

OUTCOMES AND EVALUATION

It is expected that the City Council will refer to the City Manager and Labor Commission to ensure that the Minimum Wage Ordinance and Paid Sick Leave Ordinance are interpreted and enforced consistently with *Dynamex*.

CONTACT PERSON

Councilmember Ben Bartlett: 510-981-7130
Kyle Tang: kyle.tang@berkeley.edu

ATTACHMENTS/SUPPORTING MATERIALS

1. List of Labor Unions and Social Justice Organizations Supporting the Decision


California LABOR Federation
State Building & Construction Trades Council
SEIU California
Stronger Together
SOUTH BAY LABOR COUNCIL
UPTE CWA 9119 AFL•CIO
UNITEHERE!
California Federation of Teachers AFT AFL-CIO
UNITED STEELWORKERS USW
UFCW
AFSCME We Make California Happen
UDW The Homecare Providers Union
NATIONAL DOMESTIC WORKERS ALLIANCE
CALIFORNIA IMMIGRANT POLICY CENTER
WAGE JUSTICE CENTER
LEGAL AID AT WORK
WORKSAFE
CENTRO LEGAL DE LA RAZA
laane
A NEW ECONOMY FOR ALL
COSH
NELP NATIONAL EMPLOYMENT LAW PROJECT
WORKING PARTNERSHIPS USA
EMPLOYEE RIGHTS CENTER
EQUAL RIGHTS ADVOCATES
CHILD CARE LAW CENTER
CELA
COMMUNITY LEGAL SERVICES IN EAST PALO ALTO
LA RAZA CENTRO LEGAL
WESTERN CENTER ON LAW & POVERTY
KIWA WORKERS FOR JUSTICE
THE CENTER FOR POPULAR DEMOCRACY
AAUW of California
NATIONAL IMMIGRATION LAW CENTER
LOS ANGELES COUNTY FEDERATION OF LABOR
ASIAN AMERICANS ADVANCING JUSTICE LOS ANGELES
GOLDEN GATE UNIVERSITY SCHOOL OF LAW

2a.27

CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
March 26, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson, Cheryl Davila

Subject: Refer to the City Manager to Designate Election Day as a City Holiday

RECOMMENDATION
Refer the City Manager to designate Election Day as a City Holiday.

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 federal, State, or City holidays. Since Election Day falls on a weekday, getting to the polls can be difficult for people who have to attend school or work. The City of Berkeley has endorsed California Assembly Bill 177, which would make Election Day a state holiday. Sandusky, a small city in Ohio, recently made national headlines by switching Columbus Day and Election Day as local holidays. Taking similar steps in Berkeley would make voting easier and more accessible for many City employees, and would reinforce the City's commitment to the importance of democracy.

The City Manager should consider offsetting the addition of an Election Day holiday by eliminating another. One option is to celebrate Lincoln's Birthday concurrently with President's Day. Lincoln's Birthday occurs in the middle of the week on most years, with President's Day less than a week later. Since General Elections only occur every other year, there are several options to maintain the average number of City holidays per year. One would be to designate two City holidays in election years, one for the March primary and one for the November general election, but none in odd numbered years. Another option would be to designate the first Tuesday after the first Monday of November as a holiday for all years, even on years where there is no general election. On odd numbered years, the City could recognize that Tuesday as "Democracy Day" or something similar.

Should federal or state laws change to require that the City give its employees Election Day off, this change should revert such that the total number of holiday's increases by one. Rather than redesignating Lincoln's Birthday as a holiday, a Cesar Chavez holiday should be designated.

Staff should come back to Council with a recommendation and should begin any necessary meetings with union representation allowing enough time for the proposed changes to come into effect for the 2020 primary election.

FINANCIAL IMPLICATIONS

If the addition of a City holiday on Election Day is offset by the elimination of another City holiday, there would be few financial implications.

ENVIRONMENTAL SUSTAINABILITY
No impact.

CONTACT PERSON
Councilmember Rigel Robinson, (510) 981-7170
Rachel Alpert, Intern

2a.28

CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson, Cheryl Davila, and Ben Bartlett

Subject: Ban Racial Discrimination on the Basis of Hairstyle

RECOMMENDATION

Ban racial discrimination on the basis of a person's natural hairstyle by either:

- Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibit grooming or appearance policies which target natural hair or hairstyles.

Or

- Issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51.

BACKGROUND

In February 2019, the New York City Commission on Human Rights (NYCCHR) issued new Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, under the New York City Human Rights Law (NYCHRL). The City of Berkeley should follow in New York's footsteps, and take similar action to expressly prohibit racially discriminatory hair styling requirements in the areas of employment, housing, school, and other areas of daily living. In doing so, the Council should consider a number of approaches.

In New York, the NYCCHR found the contemporary manifestation of racial bias to include discrimination based on characteristics and cultural practices associated with being African American, including prohibitions on natural hair. In the 2019 Enforcement Guide, NYCCHR states current anti-discrimination law should be interpreted to give people of color "the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic,

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social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

In achieving these goals, the Council has multiple potential legislative routes to consider. Firstly, Berkeley could adopt BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial discrimination on the basis of hair or hair styling, and enumerate the rights of all persons to maintain natural, untreated hairstyles in all sectors of employment, housing, and public accommodations.

Modeling a different approach, the NYCCHR 2019 Enforcement Guide is written as a statutory interpretation document, under the NYCHRL. Similarly, the Council could issue local interpretation guidelines for two comparable California State laws: The 1959 Fair Employment Housing Act (FEHA) to cover discrimination in employment, and the 1959 Unruh Civil Rights Act (Unruh Act) to cover discrimination in places of public accommodation.

One component of FEHA's ban on discriminatory workplace practices covers disparate impact discrimination, which implicates rules that apply to all employees but have a disproportionate impact on members of a protected class. Any hair styling rule that permits members of some groups to wear their hair naturally, but requires others to use more extensive procedures, could be interpreted to be in violation of FEHA.

The Unruh Act, California Civil Code sections 51 through 52, states that a broad range of protected demographic categories "are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." According to settled legal precedent, the Unruh Act is understood broadly to prohibit public businesses from refusing service based on arbitrary or appearance-based characteristics. Thus, any denial of access to a place of public accommodation based on hairstyle is a clear violation of the Unruh Act.

FINANCIAL IMPLICATIONS
None.

ENVIRONMENTAL SUSTAINABILITY
None.

CONTACT PERSON
Councilmember Rigel Robinson, (510) 981-7170
Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments:
1: Ordinance

2: NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair
https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf
3: Unruh Civil Rights Act, California Civil Code Section 51
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=51
4: Fair Employment and Housing Act
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

ADOPT BERKELEY MUNICIPAL CODE CHAPTER 13.23 TO PROHIBIT RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

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

Section 1. That Berkeley Municipal Code Chapter 13.23 is added to read as follows:

Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Chapter 13.23.010 Purpose

The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking to eliminate all forms of racial discrimination within the City.

Chapter 13.23.020 Findings

The City Council of the City of Berkeley finds and determines as follows:

A) Discrimination against racial minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.

B) Racially discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.

C) The overall effect of grooming or appearance policies which target the natural hair styles of racial minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living.

D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic and economic levels.

Chapter 13.23.030 Definitions

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

A) “Grooming or appearance policies” or “appearance policies” means any code of dress, grooming, or appearance, written or unwritten, under which an individual is in any way penalized for noncompliance.

B) “Natural hair” means all natural patterns of hair growth across all racial and ethnic groups, including treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.

C) “Place of public accommodation” or “public accommodations” means providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. This unambiguously includes schools, due to the historical proliferation of racially discriminatory grooming and appearance policies in educational settings.

Chapter 13.23.040 Unlawful activities

It is unlawful for any employer, business owner, property owner, provider of public accommodation, or any agent or employee thereof to discriminate in the conditions or enforcement of a grooming or appearance policy. Such prohibited discrimination includes but is not limited to the following:

A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural hair, either textually or in practice;

B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or implicity bans any natural hair style.

C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural hair style;

D) Represent to any person because of their natural hair style that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;

E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural hair style;

F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural hair, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.

G) Enforce grooming or appearance policies inconsistently between members of different groups, to the effect of enacting unequal and discriminatory grooming standards.

Chapter 13.23.050 Enforcement

A) Any aggrieved person may enforce the provisions of this chapter by means of a civil action.

B) Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

C) Action for injunction under this subsection may be brought by any aggrieved person, by the city attorney, by the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

Chapter 13.23.060 Liability for costs and damages

Any person who violates the provisions of this chapter shall be liable to each person injured by such violation for reasonable attorney's fees and costs as determined by the court, plus damages equaling three times the amount of actual damages or a minimum of five hundred dollars.

Chapter 13.23.070 Criminal penalties

Any person who is found by a court of competent jurisdiction to be guilty of a willful violation of the provisions of this chapter shall be guilty of a misdemeanor as set forth in Chapter 1.20 of this code.

Chapter 13.23.080 Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory acts.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Upcoming Workshops – *start time is 6:00 p.m. unless otherwise noted*	
Scheduled Dates	
March 19	1. FY 2020 – FY 2021 Budget Update 2. Crime Report 3. Qualified Opportunity Zones
May 7	1. Proposed FY 2020 – FY 2021 Budget 2. Zero Waste Rate Review 3. Bond Disclosure Training
June 18	1. Transfer Station Feasibility Study 2. Green Stormwater Infrastructure 3. Arts and Culture Plan
Sept. 17	1. Vision Zero Action Plan 2. UC Berkeley Student Housing Plan

Unscheduled Workshops
1. Cannabis Health Considerations

Unscheduled Presentations (City Manager)
1. Measure T1 Project Prioritization (Action Calendar) 2. Parks, Recreation, and Waterfront CIP Update (Budget Presentation) 3. Public Works CIP Update (Budget Presentation) 4. AC Mosquito Abatement District (presentation by the District, March 26) 5. East Bay Municipal Utility District (presentation by the District, May 28 - tentative)

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	**61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley** *(Referred from the July 24, 2018 agenda)* **From: Housing Advisory Commission** **Recommendation:** 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. **Financial Implications:** See report Contact: Amy Davidson, Commission Secretary, 981-5400 **61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley** *(Referred from the July 24, 2018 agenda)* **From: City Manager** **Recommendation:** 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. **Financial Implications:** See report Contact: Dee Williams-Ridley, City Manager, 981-7000
2.	**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** *(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)* **From: Councilmember Worthington** **Recommendation:** 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. **Financial Implications:** Minimal Contact: Kriss Worthington, Councilmember, District 7, 981-7170
3.	**4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street** *(Referred from the September 25, 2018 agenda)* **From: City Manager** **Recommendation:** 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). 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale. **Financial Implications:** See report Contact: Kelly Wallace, Housing and Community Services, 981-5400

CITY CLERK DEPARTMENT
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL

Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
2025 Durant Ave (construct two new dwelling units)	ZAB	3/13/2019		
2028 Bancroft Ave (construction of new residential building)	ZAB	3/13/2019		
Public Hearings Scheduled				
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	ZAB			4/30/2019
Negative Declaration)				
2700 Tenth St (Pardee Parking Lot)	ZAB			4/30/2019
1444 Fifth St (construct four single-family dwellings)	ZAB			5/14/2019
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels)	ZAB			
90-Day Deadline: April 29, 2019				
Notes				

Last Updated: 2/27/2019

8

Office of the City Manager

ACTION CALENDAR
February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk
Farimah Brown, City Attorney

Subject: Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers

RECOMMENDATION

Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

This report responds to a short term referral that originally appeared on the agenda of the September 13, 2018 Council meeting and was sponsored by Councilmember Wengraf, Mayor Arreguin, and Councilmember Hahn.

The referral requested that the City Manager consider the following suggestions for eligibility requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations.

- Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment.
- City government experience
- Council District residency
- Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for City Councilmembers.
- In addition, consider requiring Councilmembers to nominate three people in a single action.

The proposed policy in the attached resolution incorporates all of these suggestions except for the requirement for Council District residency. The requirement for district residency was not included as it would conflict with the state codes governing standby

officers. The code allows for standby officers to be residents of another political subdivision. The reason for this is that a severe local emergency event that results in the unavailability of a Councilmember will have a higher likelihood of impacting the availability of a standby officer if that standby officer is from the same immediate area.

> ***California Government Code Section 8639***
> *The qualifications of each standby officer should be carefully investigated, and the governing body may request the Director of Emergency Services to aid in the investigation of any prospective appointee. No examination or investigation shall be made without the consent of the prospective appointee.*
>
> *Consideration shall be given to places of residence and work, so that for each office for which standby officers are appointed there shall be the greatest probability of survivorship. Standby officers may be residents or officers of a political subdivision other than that to which they are appointed as standby officers.*

The policy includes trainings in the same areas as trainings that Councilmembers receive: AB1234 (Ethics), Harassment prevention, Brown Act, Conflict of Interest, and roles and responsibilities in an emergency.

The policy also now requires that the standby officer be 18 years of age or older and a registered voter.

If the updated policy is adopted by the Council, the City Clerk Department, City Attorney's Office, and the Human Resources Department will coordinate to ensure that the eligibility criteria are met and that the background checks and trainings are completed.

Previously approved standby officers will be required to meet all training requirements of the updated policy.

BACKGROUND

On March 14, 1995, the Council adopted Resolution No. 57,906-N.S., designating a procedure for the selection of Standby Officers for City Councilmembers in the event of an emergency. This procedure is part of the City's emergency preparedness planning and ensures that in the case of a disaster or other catastrophic emergency causing the unavailability of one or more members of the Council (or Standby Officers where a Councilmember is unavailable), government can continue to function. Under state law, a Councilmember or Standby Officer is "unavailable" when he or she is "either killed, missing, or so seriously injured as to be unable to attend meetings and otherwise perform his [or her] duties." (Govt Code § 8636.)

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This recommendation is in response to a referral from the City Council. Standby Officers are an essential part of any fully developed emergency plan in order maintain the continuity of government in an emergency.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900
Farimah Brown, City Attorney, 981-6998

Attachments:
1: Resolution

Attachment 1

RESOLUTION NO. ##,###-N.S.

DESIGNATING PROCEDURE FOR SELECTION OF STANDBY OFFICERS FOR CITY COUNCILMEMBERS IN THE EVENT OF A DISASTER AND RESCINDING RESOLUTION NO. 57,906-N.S.

WHEREAS, the California Emergency Services Act, Government Code sections 8550, et seq., which sets out basic state procedures for declaration of emergency, includes a section "Preservation of Local Government," which provides various methods of insuring that in the case of a catastrophic emergency, in which it is possible that members of a governing body become unavailable, government can be reconstituted and continue until regular elections can be held; and

WHEREAS, the Act envisions reconstitution of the governing body through the predesignation of three standby officers for each Councilmember which may be appointed by the City Council, and who may substitute for the elected official if he or she were unavailable; and

WHEREAS, the Act provides some procedures but does not spell out the method of selection and ratification in all respects; and

WHEREAS, the Act further provides that the qualifications of each standby officer should be carefully investigated but does not mandate what the qualifications should be.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following procedure for appointment of Standby officers is adopted:

1. No person who has been convicted of the crimes of bribery, malfeasance in office, violation of Government Code Section 1090 or the Political Reform Act shall be eligible to be a Standby Officer.

2. Each Councilmember shall identify three potential standby officers for that Councilmember, shall obtain written consent for each person being named, shall designate each proposed officer as No. 1, 2 or 3, and shall submit the name of each person to the City Manager by April 30, 2019.

3. The initial nomination of all three standby officers must be done in a single action.

4. The City Manager shall investigate the qualification of each proposed standby officer, and shall submit the names of those proposed standby officers as to whom the investigation verified their qualifications to the City Council.

5. The names of the proposed, investigated and approved standby officers shall be submitted to the City Council as a whole for final approval.

6. In addition, the standby officer must possess city government experience, be 18 years of age or older and a registered voter, and complete the following trainings within six months of his or her approval by the City Council:

   a. Training in roles and responsibilities to serve as a standby officer.
   b. Training in Ethics as mandated by AB 1234
   c. Training in Conflict of Interest restrictions and disclosures
   d. Training in the requirements of the Brown Act
   e. Training in Workplace Harassment Prevention.

BE IT FURTHER RESOLVED that Resolution No. 57,906-N.S. is hereby rescinded.

Kate Harrison
Councilmember District 4

REVISED
AGENDA MATERIAL
for Supplemental Packet 1

Meeting Date: **February 26, 2019**

Item Number: **15**

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

Submitted by: **Councilmember Harrison**

Added a right to cure provision in the enforcement section. Amended the Cause of Action subsection to remove the damages provision and limit civil penalties to arbitrary and capricious violations. Limited reasonable attorney's fees and costs to $15,000.

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7140 TDD: 510.981.6903
E-Mail: *kharrison@CityofBerkeley.info*

Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@cityofberkeley.info

ACTION CALENDAR
~~January~~ February 2~~6~~9, 2019
(Continued from November 13, 2018)

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison, 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/1V9nY1BeWSbFOIgb7YF5opB4rlkBKvBqd/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) Right to Cure. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.

~~(a)~~(b) Cause of Action. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may ~~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)~~(c) ~~(b) Damages and~~ Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (~~a~~b) above, for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, 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)~~(d) ~~(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 in an amount not to exceed $15,000.

~~(d)~~(e) 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)~~(f) Any contracting 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].

REVISED
AGENDA MATERIAL
for Supplemental Packet 2

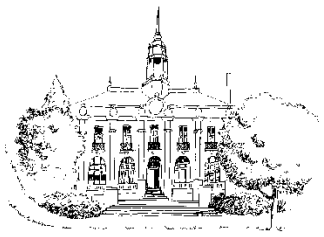
Meeting Date: **October 16th, 2018**

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

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PHONE 510-981-7170, FAX 510-981-7177,
EMAIL 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.

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https://drive.google.com/file/d/1V9nY1BeWSbFOIgb7YF5opB4rlkBKvBqd/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:

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

Section 2. Definitions

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    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.

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(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) (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) (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.

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Section 8. Effective Date

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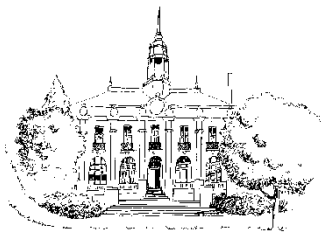

Kriss Worthington

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EMAIL 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:
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FINANCIAL IMPLICATIONS:
Minimal.

ENVIRONMENTAL SUSTAINABILITY:
Consistent with Berkeley’s Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:
Councilmember Kriss Worthington 510-981-7170

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    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.

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(b) (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) (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].