



Housing Advisory Commission

# HOUSING ADVISORY COMMISSION

## AGENDA

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### Regular Meeting

Thursday, June 6, 2019  
7:00 pm

### South Berkeley Senior Center

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

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

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

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1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the May 2, 2019 Regular Meeting Minutes (Attachment 1)
5. **Acknowledgement of Commissioner Igor Tregub's Service on the Housing Advisory Commission** – Commissioners Johnson & Wolfe
6. **Presentation and Discussion on Community Preference Policies for Affordable Housing** – Eli Kaplan, UC Berkeley Graduate Student (Attachments 2 & 3)  
*Full Report:* [https://drive.google.com/file/d/1mmE-k04rLaXIWMPFBAa5\\_d8dga9sSaH/view?usp=sharing](https://drive.google.com/file/d/1mmE-k04rLaXIWMPFBAa5_d8dga9sSaH/view?usp=sharing)
7. **Presentation and Discussion on the Adeline Corridor Specific Plan** – Alisa Chen, Planning Department  
<https://www.cityofberkeley.info/AdelineCorridor/>
8. **Discussion and Possible Action to Adopt a Work Plan for FY 2019/2020** – All (Attachments 4 & 5)
9. **Discussion and Possible Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance** – Commissioner Tregub (Attachment 6)
10. **Update on Council Items (Future Dates Subject to Change)** – *All/Staff*
  - a. Rebuilding Together Budget Referral (Attachment 7) (5/14)
  - b. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (6/11)
  - c. Recommendations for Educator and Educational Staff Housing (6/25)

- d. 1281 University Avenue Request for Proposals (7/9)
- e. Spring 2019 Bi-Annual Report (7/9)

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

- a. Tregub, Measure O Bond Oversight Committee Updates (Attachment 8)
- b. Wolfe, Sale of Harriet Tubman Terrace Apartments (Attachment 9)
- c. Wolfe, Housing Alliance for the Bay Area: AB 1487 (Attachment 10)
- d. May 22, 2019 Zero Waste Transfer Station Redesign Workshop (Attachment 11)

#### **12. Future Items**

#### **13. Adjourn**

##### Attachments

1. Draft May 2, 2019 Regular Meeting Minutes
2. Eli Kaplan, UC Berkeley, Executive Summary: Implementing a Community Preference Policy for Affordable Housing in Berkeley
3. Eli Kaplan, UC Berkeley, Community Preference Policy Presentation
4. Wolfe, Work Plan Suggestions from HAC Members to Share at June 6, 2019 Meeting
5. Lord, Work Plan Contributions
6. Tregub, Recommendation to Modify Certain Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance
7. May 14, 2019 Annotated Agenda Excerpt - Rebuilding Together Budget Referral
8. Measure O Bond Oversight Committee Letter to the Council Land Use, Housing & Economic Development Policy Committee
9. Wolfe, Sale of Harriet Tubman Terrace Apartments
10. Housing Alliance for the Bay Area: AB 1487
11. May 22, 2019 Zero Waste Transfer Station Redesign Workshop

##### Correspondence

12. Seema Rupani, East Bay Community Law Center, EBCLC Berkeley TOPA Recommendations
13. Christine Schwartz, Housing Advisory Commission Meeting 5/2/19 YouTube Video Link

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This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the

meeting date. Please refrain from wearing scented products to this meeting.

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

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**HOUSING ADVISORY COMMISSION**  
**Regular Meeting**  
**Thursday, May 2, 2019**

Housing Advisory Commission

**Time: 7:01 pm**

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

# DRAFT MINUTES

## 1. Roll Call

Present: Xavier Johnson, Matthew Lewis (substitute for Leah Simon-Weisberg, arrived at 7:03pm), Thomas Lord, Maryann Sargent, Alex Sharenko, Igor Tregub (arrived at 7:53pm), Marian Wolfe and Amir Wright.

Absent: Darrell Owens (unexcused) and Leah Simon-Weisberg (excused).

Commissioners in attendance: 8 of 9

Staff Present: Jenny McNulty, Brent Nelson, Alex Roshal, Mike Uberti and Jenny Wyant

Members of the public in attendance: 3

Public Speakers: 1

## 2. Agenda Approval

Action: M/S/C (Johnson/Wright) to move Agenda Item #6 before Agenda Item #5, to remove Agenda Item #10, and to approve the agenda.

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

## 3. Public Comment

There was one speaker during public comment.

## 4. Approval of the April 4, 2019 Regular Meeting Minutes

Action: M/S/C (Wolfe/Sharenko) to approve the minutes with an amendment acknowledging that Commissioner Sargent's absence was excused, and an amendment to Agenda Item #9 indicating that Commissioner Sharenko seconded the motion.

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

## 5. Presentation and Discussion on the Metropolitan Transportation Commission (MTC) Committee to House the Bay Area (CASA) Planning Initiative

Action: M/S/C (Johnson/Sharenko) to limit discussion to three minutes per commissioner following each commissioner's opportunity for initial questions.

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

(unexcused).

**6. Presentation and Discussion on Rental Housing Safety Program**

Public Speakers: 1

**7. Discussion and Possible Action on the 1281 University Avenue Subcommittee's Recommendation to Issue an RFP for 1281 University Avenue**

Action: M/S/C (Johnson/Sharenko) to extend the meeting 30 minutes to 9:30pm

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

Action: M/S (Lewis/Wright) to recommend a Request for Proposals for residential development at the City-owned site at 1281 University Avenue with a requirement that at least 50% of the on-site units be restricted to 50% AMI or below households, with consideration given for temporary use of the site, and, if the RFP yields no viable housing projects, the site would be sold to the Parks, Recreation and Waterfront Department for transition into a park with proceeds to be deposited in the Housing Trust Fund.

Action: M/S/C (Sharenko/Johnson) a substitute motion to recommend a Request for Proposals for residential development at the City-owned site at 1281 University Avenue with a requirement that at least 50% of the on-site units be restricted to 50% AMI or below households, and that Council consider interim use of the site for housing purposes.

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

Action: M/S/C (Johnson/Lewis) to reconsider the substitute motion.

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

Action: M/S/C (Lord/Sharenko) to extend the meeting 15 minutes to 9:45pm

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

Action: M/S/C (Tregub/Lewis) to consider Commissioner Tregub's motion as the main motion for this Agenda Item.

Vote: Ayes: Johnson, Lord, Sharenko, Tregub, and Wright. Noes: Sargent and Wolfe. Abstain: Lewis. Absent: Owens (unexcused) and Simon-Weisberg (excused).

Action: M/S/C (Tregub/Lewis) to recommend issuing a Request for Proposals for residential development at the City-owned site at 1281 University Avenue with a requirement that at least 50% of the on-site units be restricted to 50% AMI or below households, with consideration given to accommodations that serve unhoused or homeless

households including nontraditional living arrangements such as tiny homes and that Council consider interim use for the site for housing purposes.

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

## **8. Discussion and Possible Action on the Bi-Annual Housing Policy Report Subcommittee Recommendations**

Action: M/S/C (Wright/Tregub) to adopt the Bi-Annual Housing Policy Report Subcommittee recommendations, as amended by Commissioner Johnson, to Council to allocate \$5 million in general fund revenue as follows:

• Small Sites/Community Land Trusts	\$1,000,000
• Housing Trust Fund	\$2,500,000
• Development of New Housing Programs (Housing Co-Ops, Land Trusts)	\$250,000
• Anti-Displacement	\$900,000
• Administrative Costs	\$350,000
<b>Total (2019)</b>	<b>\$5,000,000</b>

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

## **9. Discussion and Possible Action on a Work Plan Process**

Action: M/S/C (Johnson/Tregub) to direct Commissioners to submit ideas for the annual work plan in an outline format and submit for inclusion in the June agenda.

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

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

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

## **12. Future Items**

## **13. Adjourn**

Action: M/S/C (Tregub/Wright) to adjourn the meeting at 9:45pm.

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

Approved on June 6, 2019

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

# Implementing a Community Preference Policy for Affordable Housing in Berkeley

## Executive Summary

As Berkeley faces the related problems of increasingly unaffordable housing costs and declining racial and economic diversity, residents and policymakers are seeking solutions to enable economically vulnerable Berkeley households to remain in their community. Currently, both current and displaced Berkeley residents are no more likely to obtain affordable housing in their city than a similar applicant with no connection to Berkeley. Local governments across the country have adopted preference policies that increase the likelihood that applicants meeting certain criteria obtain affordable housing. A preference policy has the potential to strengthen the City's existing anti-displacement efforts by improving the ability for low-income Berkeley residents to access affordable housing and remain in their neighborhoods.

## Legal Considerations for Cities that Implement Preference Policies

Cities implementing preference policies must be cognizant of the legal constraints posed by the Fair Housing Act and the Constitution as well as Department of Housing and Urban Development (HUD) regulations. These policies risk three types of legal challenges:

- Intentional discrimination claims under the Equal Protection Clause of the Fourteenth Amendment: Cities considering preference policies to mitigate the decline of communities of color in gentrifying neighborhoods cannot prioritize residents of color for affordable housing, as this preference would be considered intentionally discriminatory and in violation of the Constitution.
- Right-to-travel claims under the constitutional right to interstate travel and migration: Courts have ruled that policies based on the duration of a person's residence in a location infringe on the right to travel. Cities interested in adopting preference policies to stem the displacement of longtime residents are limited in their ability to prioritize this population, as residency preferences cannot include duration requirements.
- Disparate impact claims under the Fair Housing Act: The disparate impact standard means policies that are not intentionally discriminatory may still violate the Fair Housing Act. A preference could be invalidated under a disparate impact claim if the policy constrains the housing choices of certain groups or results in primarily one racial group obtaining affordable housing in a city or neighborhood.

## Case Studies of Preference Policies in Other Cities

This research seeks to help the City of Berkeley better understand the possibilities and constraints for a community preference policy. This report uses case studies to investigate how a community preference policy could be effectively implemented in Berkeley. The case studies explore current policies in Santa Monica, CA; Cambridge, MA; San Francisco, CA; Portland, OR; and Oakland, CA and examine the following aspects of each city's policy:

- What preference categories are included in the policy?

- What types of affordable housing are affected by the policy?
- Are city agencies or housing developers responsible for verification of preferences?
- How does the policy affect the tenant selection process for affordable housing?
- What city resources are required for implementation?
- What has been the impact of the policy?
- Has the policy faced any challenges from courts or the federal government?

### **Key Takeaways from Research**

Recurring themes within the case studies suggest lessons for the City of Berkeley to consider when creating a community preference policy for its affordable housing programs:

- The following preference categories are common across policies:
  - A general live/work preference for all city residents and non-residents who work in the city.
  - A preference related to displacement caused by government action, such as code enforcement or urban renewal activities.
  - A preference related to displacement caused by no-fault evictions.
- Cities with preferences for inclusionary units directly apply the preference policy for these units, and these city governments are responsible for tracking vacancies and processing applications for inclusionary units.
- City participation in verifying preference eligibility and applying the preference to the tenant selection process facilitates more consistent and accurate implementation as well as thorough data collection, but this level of involvement also requires more resources.
- Policies with a breadth of preference categories minimize the risk of lawsuits. None of the case study cities have faced lawsuits related to violating the Fair Housing Act, constitutional rights, or other aspects of the law. In all of these cities, preference is not limited solely to current residence in a city.
- The funding sources for affordable housing affect the risk of challenges from HUD. Financing projects with CBDG and HOME dollars does not require HUD to approve the preferences being used for a project, while other sources of federal funding result in more oversight from HUD.
- Cities should define policy goals, create metrics for effectiveness, and collect data to measure policy impact.

### **Constraints for Policy Implementation in Berkeley**

Implementing a preference policy in Berkeley would require changes to the City's existing affordable housing programs and processes. Several factors pose potential barriers to applying a preference policy to these programs:

- Diffuse management of the affordable housing application process in Berkeley: the City of Berkeley does not accept applications for affordable housing, track vacancies, or maintain waiting lists.
- Additional staffing and funding is needed for implementing new programs.



- Unintended consequences of community preferences: the current displacement crisis in the Bay Area is a regional issue, and a preference policy in Berkeley impacts the ability of the region's low-income households to access affordable units in Berkeley.

### **Recommendations for Preference Policy Design**

This report concludes by proposing preference categories and implementation processes for a preference policy in Berkeley. These recommendations focus on two timeframes for implementation: immediate next steps for the City and longer-term processes that would require more substantial changes to the City's affordable housing systems.

- Preference category recommendations for initial implementation:
  - Live/work preference for affordable housing applicants who currently live in Berkeley and non-residents who work in Berkeley.
  - Displacement preference for current or former residents displaced from Berkeley residences by government action or no-fault eviction.
- Recommendations for processes to implement a preference policy within the City's existing affordable housing systems:
  - Determine metrics for policy effectiveness.
  - Collect data to measure policy impact.
  - Adopt a preference policy with two initial preference categories, a live/work preference and a preference for current and former residents displaced by government action/no-fault evictions
  - Create a certificate program for the displaced tenant preference.
  - Update relevant policies and procedures so that affordable housing providers for both inclusionary and nonprofit units incorporate the preference policy for all future affordable housing units built in Berkeley.
  - Explore whether the preference policy can be applied to the re-rental of existing inclusionary and nonprofit units.
- Longer-term recommendations for actions required to develop a preference category that can assist Berkeley residents displaced by rising housing costs and other economic factors:
  - Conduct outreach and engagement with community stakeholders and affordable developers to inform the development of new preference categories and refine existing preference categories.
  - Develop a preference category that incorporates generational ties to Berkeley and applies to current and former residents displaced by economic factors.
    - Potential preference category: preference for current or former residents with generational ties to redlined Berkeley neighborhoods.
- Longer-term recommendations for instituting centralized City administration of Berkeley's affordable housing programs, which can result in more effective preference policy implementation:
  - Create a single application administered by the City for all inclusionary units in Berkeley.
  - Create a centralized City-administered lottery process and online application portal for all inclusionary and nonprofit units.

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# Implementing a Community Preference Policy for Affordable Housing in Berkeley

A client report prepared in collaboration with the City of Berkeley's Department of Health, Housing, and Community Services

Eli Kaplan | UC Berkeley | Master of City Planning | Spring 2019

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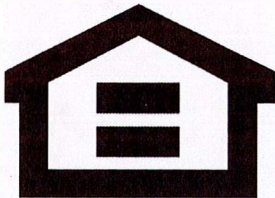
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## What are community preference policies?

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### 14th Amendment

...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



**EQUAL HOUSING  
OPPORTUNITY**

## Legal considerations

These policies risk three types of legal challenges:

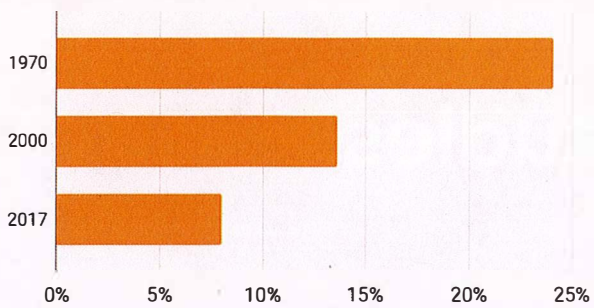
- Intentional discrimination claims under the Equal Protection Clause of the 14th Amendment
- Right-to-travel claims under the constitutional right to interstate travel and migration
- Disparate impact claims under the Fair Housing Act

Sources for images: <https://freespeechforpeople.org/protecting-the-promise-of-the-14th-amendment/>  
<http://massrealestatelawblog.com/2015/07/09/sotus-recognizes-disparate-impact-liability-in-fair-housing-but-with-limitations/>

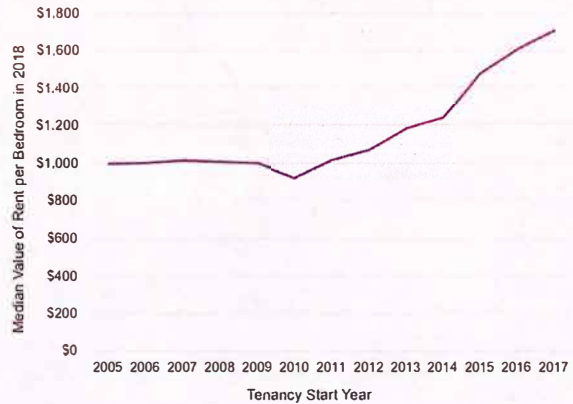
**Why have a community  
preference policy in  
Berkeley?**

## Rising rents and demographic change

Proportion of Berkeley Residents who are Black



Source: U.S. Census Bureau, Census 1970, Table PA01; U.S. Census Bureau, Census 2000, Summary File 1, Table P10; U.S. Census Bureau, American Community Survey 2017 5-Year Estimates, Table DP05



Source: Berkeley Rent Stabilization Board, 2018.

**1,596 affordable units**

**16,000 low-income renters**

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# Case Studies

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## Case study cities

- Santa Monica, CA
  - Cambridge, MA
  - San Francisco, CA
  - Portland, OR
  - Oakland, CA
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## Key aspects of each case study

- What preference categories are included in the policy?
  - What types of affordable housing are affected by the policy?
  - Are city agencies or housing developers responsible for verification of preferences?
  - How does the policy affect the tenant selection process for affordable housing?
  - What city resources are required for implementation?
  - What has been the impact of the policy?
  - Has the policy faced any challenges from courts or the federal government?
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# Recommendations for Berkeley

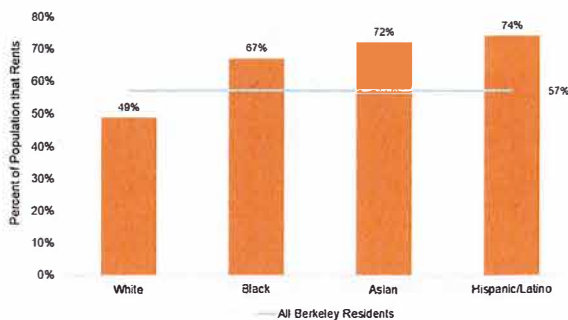
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## Categories for initial implementation

- **Live/work preference** for affordable housing applicants who currently live in Berkeley and non-residents who work in Berkeley.
- **Displacement preference** for current or former residents displaced from Berkeley residences by government action or no-fault eviction.

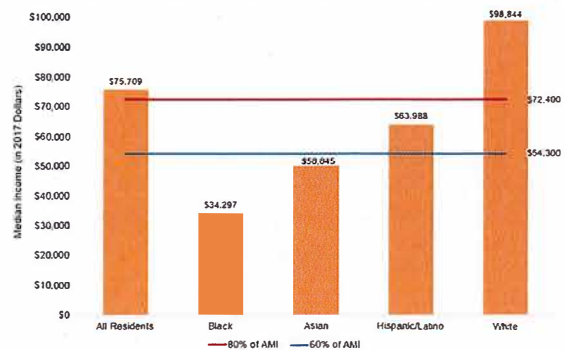
## Live/work preference: intent and impact

Differences in Rates of Renting by Race/Ethnicity in Berkeley, 2017



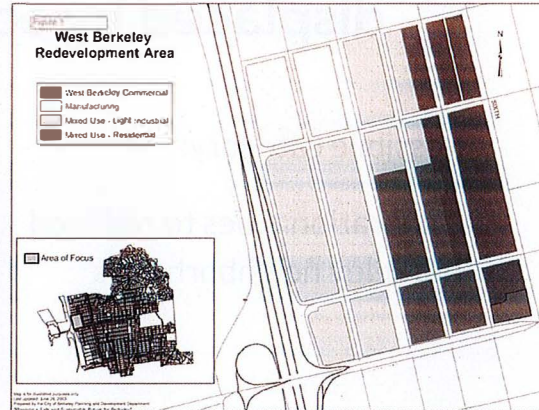
Source: 2013-2017 ACS 5-Year Estimates, Table B25003

Differences in Median Income by Race/Ethnicity in Berkeley, 2017



Source: 2013-2017 ACS 5-Year Estimates, Table S1903

## Displacement preference: intent and impact



Parking lot at Ashby BART, constructed in the 1970s by razing dozens of homes

Sources for images: <https://www.berkeleyside.com/2017/02/03/10-vehicles-burglarized-ashby-bart-berkeley>  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level 3 - BRA/2009-12-08\\_BRA\\_Item\\_03\\_Five-Year\\_Implementation\\_Plan\\_for\\_the\\_West\\_Berkeley\\_Project\\_Area.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level%203%20BRA/2009-12-08_BRA_Item_03_Five-Year_Implementation_Plan_for_the_West_Berkeley_Project_Area.pdf)

## Processes for initial implementation

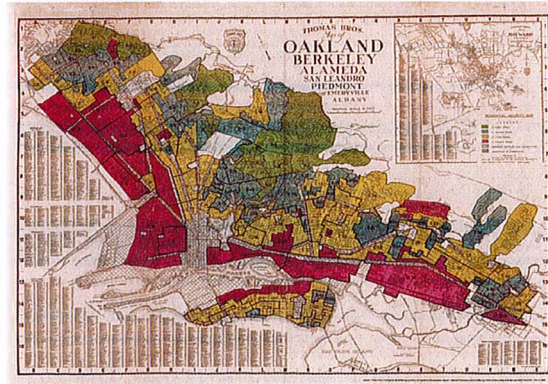
- Determine metrics for policy effectiveness.
- Collect data to measure policy impact.
- Adopt a preference policy with two initial preference categories
- Create a certificate program for the displaced tenant preference
- Update relevant policies and procedures so affordable housing providers incorporate the preference policy for all future project
- Explore whether the preference policy can be applied to the rental of existing inclusionary and nonprofit units



## Longer-term: preference for residents displaced by economic factors

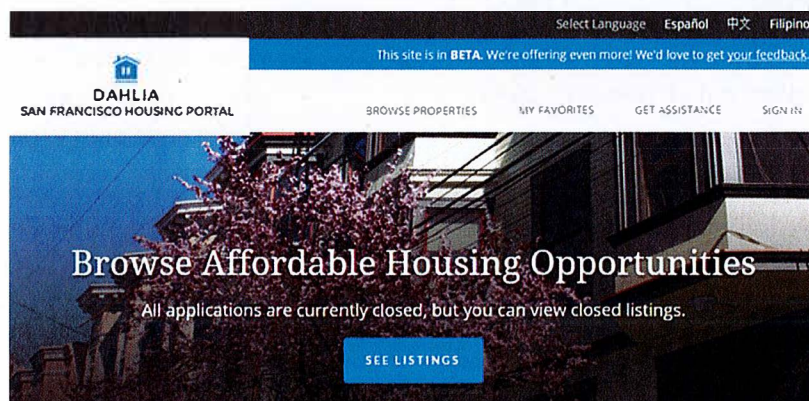
Possible category:

Generational ties to redlined Berkeley neighborhoods



Sources for images: Mapping Inequality Project, University of Richmond

## Longer-term: centralized City administration of affordable housing



Sources for images: <https://gcn.com/articles/2017/06/15/dahlia-sf-housing-portal.aspx>

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## HAC Referral

- Develop a policy to address the erosion of People of Color, including the African American sector of our Berkeley society
  - Develop rules and regulations to halt the loss of People of Color including the African American communities
  - Develop a "right to return" for Berkeleyans, especially People of Color, including the African American communities who have been displaced by these economic and social developments, and those who continue to be employed in our City, even after having to relocate beyond our boundaries
  - Solicit expert and lived experience testimonies regarding displacement and gentrification
  - Recommend alternatives to prevent displacement and gentrification of our valued Berkeley residents of color and African Americans
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## Many thanks to:

**Mike Uberti, City of Berkeley**  
**Alisa Shen, City of Berkeley**  
**Dr. Karen Chapple**  
**Dr. Carolina Reid**

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**From:** Thomas Lord <lord@basiscraft.com>  
**Sent:** Monday, May 27, 2019 7:21 PM  
**To:** Housing Advisory Commission  
**Subject:** Re: Items for June HAC Agenda – Please Submit by Tuesday, 5/28

Mike,

I broke a bone in a nasty bike accident and so I have no proper memos this month. I've also asked for an excused absence for June.

Please include this message in the packet regarding the work plan item. My apologies for not having a proper memo but I intend to focus this year on getting the smoking ordinance recommendation out the door ASAP, social housing, the housing org summit, and the April 30th City Council referral titled "Research and Recommend Policies to Prevent Displacement and Gentrification of Berkeley Residents of Color and African Americans".

When preparing a work plan, the Commission should include that the planned housing summit and the Council referral each require additional resources for public outreach and special meetings.

Regards,

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On 2019-05-23 11:50, Housing Advisory Commission wrote:

Dear HAC Commissioners & Interested Parties:

We are now accepting agenda items for the June 6, 2019 HAC meeting. Please send your items to the HAC email by **Tuesday, 5/28**.

Please note: I will be out of the office Friday, May 24 and City offices will be closed on Monday, May 27 for Memorial Day.

Thank you,

Mike Uberti

Community Development Project Coordinator

City of Berkeley, Department of Health, Housing & Community Services

2180 Milvia Street, 2nd Floor, Berkeley CA 94704

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

### RECOMMENDATION

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

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

### FISCAL IMPACTS OF RECOMMENDATION

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

### CURRENT SITUATION AND ITS EFFECTS

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

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

- “1. I am a resident in a multi-unit residence within the City of Berkeley;
2. This Complaint is not confidential and may be shared with the person responsible for the violation;
3. If this is the 3rd complaint, City of Berkeley Code Enforcement staff will review the complaint and if they find the complaint contains enough information to move forward, they will consider the matter for further action.
4. If an administrative citation is issued, and the recipient(s) appeals, I will be called to testify at an administrative appeal hearing. I agree to make myself available to testify, and understand that if I fail to testify, the citation may be dismissed”<sup>5</sup>

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

## BACKGROUND

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

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

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

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

<sup>4</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/SFMUH-ComplaintForm-02-28-18.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/SFMUH-ComplaintForm-02-28-18.pdf)

<sup>6</sup> *Ibid.*

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

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

At its March 2019 meeting, the HAC convened a Smoke-Free Housing Ordinance Subcommittee (Commissioners Lord and Tregub), which met in April 2019. Members of the sub-committee reached consensus on several recommendations to the HAC, which were discussed at the April 2019 HAC meeting. Additional feedback was solicited from HAC members at that meeting. Though there appears to be disagreement between the two members of the subcommittee as to whether it was necessary for the subcommittee to meet a second time and as to the timing of bringing forward these recommendations to the HAC for possible action, the recommendations themselves broadly reflect the substantive consensus achieved at the April subcommittee meeting and feedback from other HAC members and members of the public.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

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

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

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

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

The current process requires an extremely high bar of evidence and effort for a complainant, and in a situation in which the complainant resides in close quarters with the allegedly offending party, may open the complainant up for possible retaliation (due to the lack of anonymity of the complaint). While it is recognized that the non-anonymity requirement is intended to fulfill a particular legal standard, consideration should be given to working with the City Attorney in exploration of what additional pathways for enforcement may be possible. In addition, while the correctness of a complaint is fundamental to its ability to be processed, using the same language in the complaint form that is seen in a sworn affidavit is likely to intimidate some would-be complainants from undergoing the process of completing and submitting the form. Furthermore, while the Smoke-Free Multi-Unit Housing Ordinance page on the City of Berkeley website currently includes several forms in Spanish as well as English, the complaint form itself is only available in English. No other languages besides English and Spanish were found anywhere on the site.<sup>7</sup> The requirement that only a hard copy can be submitted and that electronic submission mechanisms are not accepted is overly burdensome, in

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



an age where even police reports can be filed online. The provision that three separate complaints (two of them from separate individuals) must be received within the span of six months shifts the burden of policing onto the complainants rather than City, which is charged with enforcing this ordinance. Each of these recommendations addresses these and related concerns above.

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

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

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

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

#### ALTERNATIVE ACTIONS CONSIDERED

Members of the HAC Smoke-Free Housing Subcommittee briefly discussed but dismissed the notion of making changes to the underlying Berkeley Smoke-Free Multi-Unit Housing Ordinance itself. Feedback from some HAC members further reinforced the recognition that the development of the Ordinance was intended to strike a delicate balance between preserving the rights of all Berkeley residents of multi-family housing to live in a smoke-free environment and protecting the rights of existing long-term tenants. Therefore, though some of the recommended actions, if approved, may trigger the need to provide subtle tweaks to the enforcement none of the recommendations above alter the fundamental architecture of the Ordinance.

31. **BOSS Rising Stars Gala Event: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmembers Davila and Bartlett**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmember Cheryl Davila, to support the Rising Stars Youth Leadership Gala Event (BOSS) May 31, 2019, 6-8PM, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Funds - \$100  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Adopted Resolution No. 68,889–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$100; Councilmember Robinson - \$100.
32. **Opposition to Revision of Title IX Sexual Harassment and Assault Regulations Proposed by U.S. Department of Education, Secretary Betsy DeVos**  
**From: Councilmembers Davila, Harrison, Hahn, and Wengraf**  
**Recommendation:** Adopt a resolution opposing the proposed revisions of Title IX regulations on gender and sex-based discrimination as proposed by Secretary DeVos of the United States Department of Education.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Adopted Resolution No. 68,890–N.S.
33. **Resolution in Support of Charter Reform Assembly Bills**  
**From: Councilmembers Harrison and Bartlett**  
**Recommendation:** Adopt a resolution in support of Assembly Bills 1505, 1506, and 1507, which regulate charter schools and give public school boards more authority to resist privatization of schools. Send letters of support to Assemblymember Wicks, Senator Skinner, and Governor Newsom.  
**Financial Implications:** None  
Contact: Kate Harrison, Councilmember, District 4, 981-7140  
**Action:** Councilmember Hahn added as a co-sponsor. Adopted Resolution No. 68,891–N.S.
34. **Rebuilding Together Budget Referral**  
**From: Councilmembers Harrison and Wengraf, and Mayor Arreguin**  
**Recommendation:** Refer to the budget process a two-year allocation to fund Rebuilding Together East Bay-North from the General Fund according to the Housing Advisory Commission recommendations, with an evaluation after the first 18 months to determine whether the organization's fiscal reporting would be in compliance with CDBG reporting requirements were the organization to apply again.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140  
**Action:** Councilmember Bartlett added as a co-sponsor. Approved recommendation.

May 15, 2019

Dear Honorable Members of the Land Use, Housing and Economic Development Policy Committee:

The Measure O Bond Oversight Committee (“MOBOC”) respectfully submits this letter in order to share our desired role and responsibilities.

As you know, the Measure O ballot question stated that the use of Measure O funds would be “subject to citizen oversight and independent audits.” Additionally, the Measure O impartial analysis stated, in part, that Measure O “include[d] financial accountability requirements to ensure that the expenditure of Bond proceeds will be used only for the purpose of financing affordable housing projects and related costs. Financial accountability measures include an annual independent financial audit and oversight by an independent oversight committee to ensure that Bond proceeds are expended to finance affordable housing projects.” MOBOC enthusiastically embraces its role as an independent oversight committee and we look forward to fulfilling this required responsibility.

MOBOC is also interested in, and believes it has the expertise to be entrusted with, additional responsibilities regarding the use of Measure O funds and affordable housing funds more broadly. MOBOC respectfully requests that it be tasked with the following responsibilities:

- To provide **general recommendations** to the City Council on (a) the priorities for Measure O funds as well as (b) the distribution of Measure O funds for eligible program areas
- To provide **specific recommendations** as to the use of Measure O funds for specific projects (e.g., Berkeley Way)

To the extent the Land Use, Housing & Economic Development Policy Committee feels that it is appropriate and would not contribute to procedural duplication, MOBOC also would be interested in taking on the same responsibilities (i.e., providing general and specific recommendations) with respect to other affordable housing funding sources (e.g., General Fund.)

At its May 15, 2019 meeting, the MOBOC took the following vote in support of this letter:

Action: M/S/C (Tregub/Calavita) to send a letter, with edits noted, to the Land Use, Housing and Economic Development Policy Committee outlining the Committee’s desired roles and responsibilities.

Vote: Ayes: Calavita, Cutler, Daniels, Marthinsen, Smith and Tregub. Noes: None. Abstain: None. Recused: Oatfield. Absent: Carr (excused) and Williams (unexcused).

Thank you for your consideration.

Sincerely,

Josh Daniels, Chair  
On Behalf of the Measure O Bond Oversight Committee

**To:** Housing Advisory Commission (HAC)  
**From:** Marian Wolfe  
**Date:** May 27, 2019  
**RE:** Sale of Harriet Tubman Terrace Apartments, 2870 Adeline St, Berkeley  
April 2019 Purchase Price: \$33 million

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Tom Lord informed me that Harriet Tubman Terrace Apartments, an affordable senior project located in the Adeline Corridor, recently sold for \$33 million. This price seemed high to him (and to me as well). We were concerned that the sale of this property would result in higher rents. So, why would Harriet Tubman Terrace, a development with restricted rents that is more than 40 years old, sell for such a high amount (approximately \$362,637 per unit which translates to \$620/SF)?

Furthermore, here is how Harriet Tubman Terrace is described in the most recent Housing Element for the City of Berkeley (page 180):

Harriet Tubman Terrace, located at 2870 Adeline Street, provides 90 units of affordable housing for seniors. It was originally developed in 1975 using HUD's Section 236 mortgage interest subsidy program and has Section 8 Housing Assistance Payment operating subsidies. The Housing Assistance Payment has been renewed annually since 1991, which is why it appeared in the list of at-risk properties in the 2001 Housing Element. However, in 2004, the Michaels Development Company, which has one of the largest affordable housing portfolios in the nation, acquired the property from the American Shelter Corporation. To assist with the acquisition, the City of Berkeley held the public hearing for Michaels Development Company's tax-exempt bond financing, and agreed to monitor the development related to the bond financing. As part of the tax exempt bond financing, a regulatory agreement was recorded on the property, which restricts its use to affordable housing until 2059.

So, the buyer of this development is obligated to maintain affordability for another 40 years. After contacting several different sources, I was provided with the following information by a staff member at Bridge Housing:

Buyer of Record

**National Foundation for Affordable Housing Solutions**

11810 Grand Park Ave.  
Rockville, MD 20852  
(301) 998-0400

Buyer Type is a Non Profit (For now, the website is down.)

National Foundation for Affordable Housing Solutions, Inc. (The Foundation) is a 501(c)(3) nonprofit developer based in Rockville, Maryland that specializes in LIHTC and other affordable housing communities. The Foundation has developed over 7,000 units in 70 communities in 12 states and Washington, DC. Approximately half of the units and communities they have developed are designated as Senior/Elderly communities. The Foundation is led by its President and CEO Todd Travis. Todd joined the Foundation in November 2011 as the Chief Financial Officer, responsible for the daily operation of the Foundation's accounting, financial, and IT functions.

Why Would an Investor Pay a Relatively High Sales Price for an Affordable Development?

Harriet Tubman Terrace is a project-based HAP property.<sup>1</sup> The HAP payment rent for a one-bedroom unit is approximately \$1,990 per month and for a studio, it is \$1,550 per month. While I have not undertaken the calculations, these rents, which are guaranteed by HUD, support the purchase price, and even “for-profit” investors may decide to purchase affordable projects with project based vouchers.

The good news for tenants at Harriet Tubman Terrace is that there should be no concern about rents increasing for them, and that the nonprofit that purchased the property (National Foundation for Affordable Housing Solutions, Inc.) has a good reputation.

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<sup>1</sup> <https://www.hud.gov/hudprograms/rs8pbra>

## Housing Alliance for the Bay Area: AB 1487 Assemblymember David Chiu (D-17)



**Through AB 1487, the Bay Area can join together to find Bay Area-specific solutions to our region's housing affordability needs. New regional funding and programs will strengthen our region with more affordable homes and protections for longtime residents to ensure all Bay Area residents, no matter their color or income, have a safe, stable, affordable place to call home.**

### HOUSING ALLIANCE FOR THE BAY AREA

Our Bay Area region's challenges don't stop and start at our county borders; it's time that our solutions don't either. Addressing the Bay Area's housing affordability crisis as a region is vital to advancing racial and economic equity. AB 1487 creates the Housing Alliance for the Bay Area (HABA), new, bold regional funding and programs that will help our Bay Area address our housing affordability needs.

### HOW AB 1487 WORKS

AB 1487 provides regional solutions for our regional problems by equipping the Bay Area with a regional, cross-county strategy for funding and programs that address affordable housing and tenant protections.

AB 1487 creates the Housing Alliance for the Bay Area (HABA), a first step to building the new regional housing infrastructure needed to solve our housing and displacement needs. HABA will develop new programs and funding to support regional strategies to create more affordable homes and protect longtime residents. HABA will:

- Incentivize outcomes by providing resources and tools;
- Provide funding and financing to advance production, preservation, and protection strategies;
- And deploy technical assistance to bolster local capacity and generate useful data to inform our local housing policies and programs.



## WHY AB 1487 IS THE RIGHT SOLUTION

As the Bay Area searches for solutions to our housing and displacement crisis, one thing is clear: our region will be stronger and better equipped to tackle this challenge together as the Bay Area. The Bay Area's housing market is regional, and AB 1487 offers the regional approach we need by creating tools, programs, and funding that extend across our county borders.

A new, bold regional approach to address housing affordability and tenant protections will equip our Bay Area region with the funding and programs our community needs. HABA gives the Bay Area the opportunity to come together across our nine counties, commit to developing regional solutions, and help every Bay Area resident regardless of income or color to have a safe, stable, affordable place to call home.

## HOW YOU CAN HELP

- Contact Your Lawmaker. Visit our Action Center to share your support for AB 1487 with lawmakers and the bill sponsor: [www.nonprofithousing.org/ActionCenter](http://www.nonprofithousing.org/ActionCenter)
- Join NPH's Legislative Issues Working Group to discuss affordable housing policy and the Legislature: [pedro@nonprofithousing.org](mailto:pedro@nonprofithousing.org)
- Endorse our efforts and join our coalition: [jr@nonprofithousing.org](mailto:jr@nonprofithousing.org)

*AB 1487 is an NPH Sponsored Bill for the 2019 legislative session.  
Visit [nonprofithousing.org/ActionCenter](http://nonprofithousing.org/ActionCenter) to view NPH's full Legislative Agenda.*

**Uberti, Michael**

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**From:** Obermeit, Heidi  
**Sent:** Thursday, May 09, 2019 3:28 PM  
**To:** Obermeit, Heidi  
**Subject:** You are cordially invited to the May 22 Zero Waste Transfer Station Redesign Workshop

Hi Commission Secretaries,

Please see the news release below for information about the Zero Waste Division's final public workshop to gather input on conceptual plans for a proposed redesign of the City's Solid Waste & Recycling Transfer Station.

Please forward this information/invite to your Commissioners.

Thanks,

Heidi

**Heidi Obermeit**  
**Recycling Program Manager**  
City of Berkeley, Department of Public Works  
Zero Waste Division  
1201 Second Street  
Berkeley, CA 94710  
**Phone:** (510) 981-6357 **Fax:** (510) 981-6360  
**Website:** [www.CityofBerkeley.info](http://www.CityofBerkeley.info)  
**Email:** [hobermeit@cityofberkeley.info](mailto:hobermeit@cityofberkeley.info)

The screenshot shows the top navigation bar of the City of Berkeley website with links for Home, Residents, Businesses, Visitors, Services, and Elected Officials. The date April 25, 2019 is displayed in the top right. The main content area features a news release titled "City of Berkeley News" with a sub-headline "May 22 Workshop: to reduce waste, help redesign transfer station". The text of the news release reads: "Come out to the last of our public sessions on reconfiguring our transfer station, a critical piece in our efforts to reduce what Berkeley sends to the landfill. At this May 22 session, you'll see the most developed layouts to date for the future transfer station, which accepts and then transfers recyclables, compost and garbage."



The input from this meeting will further refine the designs that will be presented to the Zero Waste Commission in June and, ultimately, to the City Council in November.

These preliminary plans were created through a series of [community meetings](#) and [workshops](#) about the station, which transfers garbage, recycling, compost and other materials. Both plans:

- make it easier to drop off materials that aren't collected curbside
- propose an environmental center, allowing greater capacity for school tours or other education
- catwalks, to help the public view and learn more about the work of reducing waste
- design the facility to be able to take in other materials

If you come, you'll get an overview, and you'll be able to review these conceptual plans. You'll also be able to give input on how you want to experience this facility, a critical nexus in the City's efforts to reduce waste.

**May 22<sup>nd</sup> (Wednesday)**  
**City of Berkeley - West Branch**  
**Community Meeting Room**  
**5:00 p.m. to 7:00 p.m.**  
1125 University Avenue

[Read more at CityofBerkeley.info](#)

## Recent News From City of Berkeley

- [Take charge of your sexual health: Get tested](#)



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**From:** Seema Rupani <srupani@ebclc.org>  
**Sent:** Friday, May 24, 2019 12:19 PM  
**To:** Berkeley Mayor's Office; All Council; City Clerk  
**Cc:** Measure O Oversight Board; Housing Advisory Commission; Health, Housing & Community Services  
**Subject:** EBCLC Berkeley TOPA Recommendations  
**Attachments:** EBCLC\_Berkeley TOPA Recommendations for City Council\_5.24.19\_CEJ.pdf

Greetings Honorable Mayor and Berkeley City Council Members (CC: HHCS; HAC; and Measure O Bond Oversight Committee):

In view of the upcoming staff information report on TOPA at the 6/11 City Council meeting, we are writing to share our analysis and recommendations on a TOPA in the City of Berkeley. We ask that you review and incorporate our feedback, attached, as you proceed with developing a TOPA policy for Berkeley.

We look forward to continuing to work with the City on this matter. Thank you and please feel free to contact us with any questions or concerns.

Sincerely,

East Bay Community Law Center's Community Economic Justice Clinic

-----  
Seema Rupani | Staff Attorney & Clinical Supervisor | Pronouns: She/Her  
[East Bay Community Law Center](#) | A Clinic of Berkeley Law School  
1950 University Avenue, Suite 200, Berkeley CA 94704  
D: 510-269-6614 | F: 510-849-1536

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## MEMORANDUM

**To:** Honorable Mayor and Berkeley City Council Members  
**Cc:** Department of Health, Housing and Community Development;  
Housing Advisory Commission;  
Measure O Bond Oversight Committee  
**From:** East Bay Community Law Center's Community Economic Justice Clinic  
**Date:** May 24, 2019  
**Subject:** **Analysis and Recommendations on Tenant Opportunity to Purchase Act in Berkeley**

### **PURPOSE**

The Community Economic Justice Clinic ("CEJ") of the East Bay Community Law Center ("EBCLC") is pleased that the City of Berkeley ("the City") has identified a Tenant Opportunity to Purchase Act ("TOPA") and Small Sites Program ("SSP") as top priorities for combatting displacement and promoting preservation. We understand that City Staff is scheduled to provide a TOPA-specific information report to the Mayor and City Council at the June 11 City Council Meeting. In view of this upcoming meeting, CEJ is writing to share its compiled analysis and recommendations on a TOPA in the City of Berkeley and respectfully request that the Mayor and Berkeley City Council incorporate these recommendations when legislating and implementing TOPA in Berkeley. While we are glad to hear that the City is potentially moving forward with a TOPA policy, we think it is critical that the City create a plan for funding and implementation.

**We urge the City to maximize TOPA's potential as an effective anti-displacement and preservation tool by developing a thoughtful policy and concurrently creating a coordinated plan for adequate funding and infrastructure to support policy implementation.**

### **BACKGROUND**

Since 2016, we have been monitoring the development of a Berkeley TOPA policy and engaging with the City at various stages of the process to advocate for a meaningful and effective TOPA that will help mitigate the displacement of Berkeley's vulnerable residents. The following recommendations are based on our extensive research on the challenges and

successes of TOPA in various jurisdictions, particularly in Washington D.C. We have also conducted extensive research on how TOPA and SSP can work together to meet Berkeley's particular needs, and have previously shared those findings and recommendations with City Staff. These compiled recommendations are informed by our fellow anti-displacement community partners and stakeholders in Berkeley, including impacted tenant and resident groups, as well as, non-profit democratic affordable housing developers, specifically the Northern California Community Land Trust, and Bay Area Community Land Trust. We are also working in regional coalition with Peoples' Land and Housing Alliance (PLHA), a group composed of tenant organizers, community lands trusts, nonprofit affordable housing developers, policy advocates, and technical assistance providers, with several members working on TOPA policies in their respective cities.

**We have authored a model ordinance, which we are currently updating to most effectively address the needs of vulnerable residents of the City. We aim to share our completed draft with the City shortly. With thoughtful drafting, planning, and implementation, we are confident that TOPA can serve as one important and effective strategy for anti-displacement and long-term affordable housing preservation.**

## **RECOMMENDATIONS**

### ***Ensure TOPA is a tenant-empowerment tool with the right to assign to a qualified affordable housing organization***

First and foremost, we think it is important that the City pass a TOPA policy over a Community Opportunity to Purchase ("COPA") policy. One of the most important and attractive features of D.C.'s TOPA is that the policy, at its heart, is a tenant empowerment tool: it gives tenants the right to collectively purchase their buildings when they go up for sale and to provide them with some leverage in a deeply inequitable housing market. Moreover, the policy creates pathways for tenants to become first-time home owners, and facilitates democratic resident ownership and grassroots community development models that Berkeley has long supported, such as Limited Equity Housing Co-ops ("LEHCs"). Therefore, the City should enact a TOPA policy in which the right to purchase belongs to tenants. However, tenants should be able to *choose* to assign their rights to a qualified organization - such as a non-profit or cooperative corporation - to purchase the home on their behalf, if they wish. This method of assignment is also beneficial for affordable housing developers because tenant buy-in with regard to their commitment to self-organization is often critical for their successful management of properties. NCLT and BACL T report that this is especially true for Berkeley's generally smaller housing stock. Moreover, in order to advance the policy of preserving housing for the most vulnerable tenants in Berkeley, as well as, to have the longest lasting impact, the City's ordinance should specify qualifications for the organizations to whom tenants can assign their rights. At a minimum, these qualified organizations must maintain the housing as permanently affordable, primarily serve tenants under 80% of AMI, and demonstrate a commitment to democratic residential control. These qualifications would allow the housing stock to remain both affordable and democratic: affordable because, prices would be stabilized not only for this generation of tenants, but future ones, allowing any subsidy being invested by the City to permanently remain with the

properties; and secondly, it would create democratic institutions for tenant empowerment and engagement with the future of local development. The City should maintain a list of vetted “qualified organizations” that tenants can assign their rights to.

***Include a second right of refusal for qualified affordable housing organizations in the event tenants forgo TOPA rights***

If tenants choose to pass up on their right to purchase or assign their rights, the list of “qualified organizations” shall then have an opportunity to purchase the properties outright. It is important, however, that the right of qualified organizations be subordinate to the right of tenants for all the reasons explained above.

***Protecting tenants’ rights and preserving affordability***

Not all tenants may elect to purchase under TOPA. This could mean that some tenants who exercise TOPA rights may become owners while some remain renters. Alternatively, tenants may collectively assign their right to a CLT with an agreement to maintain the housing as a rental property. In any scenario where tenants remain renters following a TOPA transaction, the City must ensure TOPA advances without compromising the protection and enforcement of tenants’ rights. To this end, the policy must preserve and extend just cause and applicable rent-control protections to prevent any internal displacement caused by the exercising of TOPA rights. Additionally, the City must hold qualified organizations who purchase under TOPA accountable to manage rental properties to provide decent, safe, and quality housing for tenants. Furthermore, tenants who do not wish to exercise their right to purchase should receive legal protection from any potential harassment or intimidation from fellow tenants or other third parties. Our colleagues in EBCLC’s Housing Practice are currently reviewing the implications of TOPA on tenants’ rights and rent control and will provide further expertise on how best to embed tenant protections in addition to what we have proposed.

***Mandating and enforcing permanent affordability***

In addition to preventing the displacement of vulnerable tenants, TOPA should serve as a catalyst for preserving affordable housing stock and sustaining permanent affordability for future generations. In effect, TOPA would level the playing field of the market by legally empowering tenants with rights and extended timelines to organize and purchase their housing accommodation or assign their rights to a qualified organization as described above. Moreover, while we are still evaluating an appropriately balanced approach, a key feature of our proposed policy would entitle tenants to invoke an appraisal process to challenge the bona fide nature of an owner’s offer price. The determined appraised value of the housing accommodation would then establish the existence of a bona fide offer of sale and set the sales price. In exchange for these TOPA rights, tenants must reciprocally agree to maintain the acquired property as permanently affordable, thereby protecting properties purchased under TOPA from further speculation.

The City must play a central role in creating and enforcing permanent affordability standards for tenants, tenant organizations, and qualified organizations to preserve affordability and prevent speculative resale. For tenants and tenant organizations, our proposal is that the City’s

standards restrict the resale price of the acquired property, similar to how LEHC's restrict their resale price, to a % which tracks either the Consumer Price Index or Area Median Income Index to allow for a fair return while also ensuring long-term affordability. Additionally, the City's standards for both tenants, tenant organizations, and qualified organizations should prioritize making the housing accommodation affordable for people at or below 80% AMI and hold these parties accountable to provide deeper levels of affordability, including 30-50% AMI, whenever feasible. Permanent affordability restrictions may materialize in a few ways. For example, the acquired property could be subjected to a Community Land Trust lease – a renewable 99-year lease with affordability and owner-occupancy restrictions which preserves affordability for both current and future residents. Another way is for tenants to form a LEHC which is governed and mandated by state law to limit ownership share price increases to no more than 10% per year. Together, CLTs and LEHCs offer one powerful way to ensure permanent affordability through the layers of resident-control/ownership, supervision, and stewardship of land and housing. Outside of the CLT and LEHC model, other affordability restrictions in leases or other documents are possible alternatives, so long as the City determines that such restrictions are enforceable and likely to be enforced by the City or other authorized third party enforcer to intercept inaction.

#### ***Applicability of TOPA & Accountability***

TOPA should apply broadly to rental properties in Berkeley, including single family homes and larger properties alike. There should be limited exemptions, such as for buildings owned by the government or a hospital, educational institution, convent, etc. Certain limited transfers should also be exempt, such as transfers between immediate family members or to a beneficiary of a trust. We have drafted a longer but precise list of exemptions and transfers that we are happy to share with the City. Moreover, there should be different minimum timelines for single family homes, 2-4 unit properties, and 5+ unit properties, similarly to D.C.'s TOPA policy. It is critical that the timelines allow adequate time for tenants to organize, make an informed decision, secure funding, and close the deal. Carefully crafted timelines are key to TOPA's success. The timelines ensure that all parties are executing their rights and obligations and provide a means for accountability throughout the TOPA process. We currently have crafted timelines under many provisions of our draft TOPA ordinance that we are happy to share with you.

#### ***Adequate funding***

There are two primary obstacles to purchasing property in the Bay Area: inflated land values and the rapid rate at which sales occur. The median price for a single family home in Berkeley is approximately \$1.3 million dollars. The Bay Area also has the fastest turnaround for home sales nationwide, meaning that housing in this region spends the shortest amount of time on the market. As these challenges persist, they impact the ability for low to moderate income tenants, first-time homebuyers, and non-profits such as CLTs to purchase property in Berkeley. While TOPA addresses one of these problems by slowing down the sales process on rental properties so that tenants have a right to purchase, this policy does not on its own address the problem of funding to acquire the properties. Moreover, the policy needs funding to support its implementation so that tenants can actualize their rights.

Therefore, City investment in both site acquisition and technical assistance infrastructure is critical to making a TOPA right meaningful to a wide array of tenants. The proposed Berkeley Biennial Budget for FY 20-21 states that one of the most important goals for the City is to “create affordable housing and support services for our most vulnerable community members.” As it stands, future Measure O and U1 monies will play a large role in the achievement of the aforementioned goals.

**The City should turn SSP into a much more robust and vibrant acquisition fund that can work in tandem with a TOPA policy. EBCLC recommends that the City make a commitment to invest at least an additional 4-6 million dollars into its SSP fund. The City should continue to increase that amount annually with the goal of accommodating immediate and continuous high need. Additionally, SSP criteria will need to be reconfigured to allow for low-income tenants to access funds and open access to all housing accommodations eligible under TOPA.**

A TOPA right without dedicated funding would make for a poor anti-displacement tool as low to middle income tenants would likely need some form of public subsidy to exercise this right and compete with the open market. Our research and communication with colleagues in DC revealed that TOPA’s success in DC really began in the last decade when the local government provided a significant amount of funding towards site acquisition. Over 1,400 units have been preserved in DC between 2002 and 2013. Similarly, San Francisco’s SSP which began with \$3 million in 2014 has now grown to a fund of over \$100 million which has directly contributed to the acquisition of 27 buildings. Moreover, San Francisco recently decided to add \$40 million to its SSP to support acquisitions under its new COPA policy. While we understand that the SSP fund may need to be built over time, a firm commitment is vital for the future success of TOPA in Berkeley.

***Adequate infrastructure & technical assistance***

In addition to funding for acquisitions and rehab, it is critical for the City to create a plan to provide adequate education and legal and technical assistance (“TA”) to tenants as part of TOPA implementation. TOPA’s increasing success in recent years in Washington D.C. can be attributed in large part to the robust funding and TA provided to tenants. For example, in D.C., the city funds several community organizations that have full-time staff supporting tenants to exercise their TOPA rights. These staff physically visit properties where TOPA notices are issued and help tenants to organize, legally form a tenant organization, understand their rights, and move through the TOPA timelines and processes. Lawyers then assist tenant groups with the transactions. Our research suggests that there is also a need for support for low-income tenants after they purchase, with budgeting, compliance requirements, and management of the property, to ensure that first-time homeowners are set up for success. The City of Berkeley does not need to provide this assistance on its own. EBCLC and local CLTs such as NCLT and BACLt, are poised to use their expertise to help provide this assistance, with capacity-building support from the City. Moreover, we have had conversations in our regional PLHA group about possible regional technical assistance for TOPA implementation across cities. If TOPA is going to be an effective tool to serve low-income tenants and those most vulnerable to displacement,

it is critical that the City of Berkeley work with community organizations to ensure that there is adequate education and technical assistance as part of TOPA implementation.

**CONCLUSION**

We appreciate your consideration and urge you to incorporate these recommendations as you evaluate and develop TOPA in the City. Our vision is that the City have an effective and meaningful TOPA that can benefit those most impacted by displacement and preserve affordability for current and future generations. We will continue to lift up the needs of those most impacted by the affordability crisis and engage with the Mayor, City Council Members, and the City at each stage of the process to achieve this vision.



**From:** Christine Schwartz <cschwartz29@yahoo.com>  
**Sent:** Friday, May 03, 2019 1:46 PM  
**To:** Housing Advisory Commission  
**Cc:** Xavier Johnson  
**Subject:** Housing Advisory Commission Meeting 5/2/19 YouTube Video Link

<https://youtu.be/I8Mph8toXa8>

Hello,

Please find above the Link for the above and share with the Commission as you wish!

Thank you and have a pleasant weekend.

Respectfully,  
Christine Schwartz  
Volunteer Community Videographer