BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

WEDNESDAY, OCTOBER 19, 2022
2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf
Alternate: Councilmember Kate Harrison

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://us02web.zoom.us/j/84245795906. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial **1-669-900-9128** or **1-877-853-5257** (Toll Free) and Enter Meeting ID: **842 4579 5906**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: September 28, 2022**

2. **Review and Approve Draft Agenda:**
   a. 11/3/22 – 6:00 p.m. Regular City Council Meeting

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**

4. **Adjournments In Memory**

Scheduling

5. **Council Worksessions Schedule**

6. **Council Referrals to Agenda Committee for Scheduling**

7. **Land Use Calendar**

Referred Items for Review

8a. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies

8b. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

Unscheduled Items

9. **Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**

10. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment – Next Meeting Monday, October 31, 2022

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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.

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.

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.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

COMMUNICATION ACCESS INFORMATION:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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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 Thursday, October 13, 2022.

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, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.
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BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

WEDNESDAY, SEPTEMBER 28, 2022

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf
Alternate: Councilmember Kate Harrison

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

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To join by phone: Dial **1-669-444-9171** or **1-833-548-0282** (Toll Free) and Enter Meeting ID: **829 9258 2463**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

Roll Call: 2:32 p.m. Present – Arreguin, Hahn, Harrison (for Wengraf)

Public Comment – 1 speaker

Review of Agendas

1. **Approval of Minutes: September 12, 2022**
   Action: M/S/C (Arreguin/Hahn) to approve the minutes of 9/12/22.
   Vote: All Ayes.

2. **Review and Approve Draft Agenda:**
   a. 10/11/22 – 6:00 p.m. Regular City Council Meeting
   Action: M/S/C (Arreguin/Hahn) to approve the agenda of 10/11/22 with the changes noted below.
   - *Item Added: Animal Fix Clinic (City Manager) – Consent Calendar*
   - *Item Added: Spay Neuter Your Pet (City Manager) – Consent Calendar*
   - *Item Added: Fair Work Week (Hahn) – Action Calendar*
   - *Item Added: Hopkins Corridor (Hahn) – Action Calendar*
   - *Item 4 Bid Solicitations (City Manager) – revised recommendation*
   - *Item 12 Harriet Tubman Terrace (Commission) – moved to Action Calendar*
   - *Item 13 Autonomous Vehicles (Taplin) – Vice Mayor Harrison and Councilmember Robinson added as co-sponsors*
   - *Item 14 Reports to Law Enforcement (Harrison) – revised item submitted*
   - *Item 18 West Berkeley RPP (Kesarwani) – moved to Consent Calendar*
   - *Item 19 Rapid Flashing Beacons (Harrison) – moved to Consent Calendar*
   - *Item 20 Land Acknowledgement (Hahn) – moved to Consent Calendar*
   - *Item 21 Healthy Checkout Review (City Manager) – removed from the agenda*

   <u>Order of Action Calendar</u>
   Item 16 Zoning Ordinance
   Item 17 ZAB Appeal
   Fair Work Week
   Hopkins Corridor
   Item 12 Harriet Tubman Terrace
   Vote: All Ayes.

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
   - None Selected

4. **Adjournments In Memory** - None

Scheduling

5. **Council Worksessions Schedule** – received and filed

6. **Council Referrals to Agenda Committee for Scheduling** – received and filed

7. **Land Use Calendar** – received and filed

Referred Items for Review

8a. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies

8b. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

Action: 2 speakers. Discussion held regarding return to in-person meetings. Item continued to next meeting.

Unscheduled Items

9. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)

10. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals

Items for Future Agendas

- **None**

Adjournment

Action: M/S/C (Arreguin/Hahn) to adjourn the meeting.
Vote: Ayes – Hahn, Arreguin; Noes – None; Abstain – None; Absent - Harrison.

Adjourned at 3:24 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on September 28, 2022.

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Mark Numainville, City Clerk

Communications

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DRAFT AGENDA

BERKELEY CITY COUNCIL MEETING

Thursday, November 3, 2022
6:00 PM

Jesse Arreguin, Mayor

Councilmembers:

District 1 – Rashi Kesarwani
District 2 – Terry Taplin
District 3 – Ben Bartlett
District 4 – Kate Harrison
District 5 – Sophie Hahn
District 6 – Susan Wengraf
District 7 – Rigel Robinson
District 8 – Lori Droste

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Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <<INSERT URL HERE>>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **<<INSERT MEETING ID HERE>>**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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 to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, 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. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

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." Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move 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.

Consent 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. **Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**
   From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)
   Recommendation: Adopt second reading of Ordinance No. 7,837-N.S. Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.
   First Reading Vote: All Ayes.
   Financial Implications: Staff time
   Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

2. **Referral Response: Amendments to the Zoning Ordinance to clarify and streamline the permit process for Amusement Device Arcades**
   From: City Manager
   Recommendation: Adopt second reading Ordinance No. 7,838-N.S., Zoning Ordinance amendments to provide consistency for the incidental use of Amusement Devices and regulate Amusement Device Arcades as Commercial Recreation Centers.
   First Reading Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.
   Financial Implications: See report
   Contact: Jordan Klein, Planning and Development, (510) 981-7400

Consent Calendar

3. **Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**
   From: City Manager
   Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022.
   Financial Implications: To be determined
   Contact: Farimah Brown, City Attorney, (510) 981-6950

4. **Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**
   From: City Manager
   Recommendation: Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, and October 11, 2022.
   Financial Implications: To be determined
   Contact: Farimah Brown, City Attorney, (510) 981-6950

5. **2022 Annual Commission Attendance and Meeting Frequency Report**
   From: City Manager
   Recommendation: Review and accept the 2022 annual commission attendance and meeting frequency report.
   Financial Implications: None
   Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

6. **Contract No. 32200039 Amendment: Townsend Public Affairs, Inc. for Legislative and Funding Advocacy Strategy**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200039 with Townsend Public Affairs, Inc., for an ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by $72,000, for an amount not-to-exceed $117,000, and extending the contract from December 31, 2022 to December 31, 2023.
Financial Implications: General Fund - $72,000
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

7. **Contract No. 32100186 Amendment: Mildred Howard Public Art Commission for Adeline Street and Martin Luther King Jr. Way**
From:
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100186 with artist Mildred Howard in order to increase the size of the public art commission “Untitled” to 11’ tall as directed by the Civic Arts Commission. The art work is slated to be installed in the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way. The artwork budget is to increase by $144,000 for a total contract amount not to exceed $354,000.
Financial Implications: Cultural Trust Fund - $144,000
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

8. **Renewal of the Solano Avenue BID for Calendar Year 2023**
From: City Manager
Recommendation: Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board’s (hereafter “Solano BID Advisory Board” or “the Advisory Board”) recommendation that Council: 1) approve the 2022 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2023; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2023; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 29, 2022.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

9. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 3, 2022**
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: Various Funds - $75,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

10. Contract: Robert Half International/Protiviti for Professional Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Robert Half International/Protiviti (Contractor) for professional services in support of the following Fire Department (Department) divisions: Fire Administration, Fire Prevention, Wildland Urban Interface, Emergency Medical Services, and Training from November 4, 2022 to November 3, 2023 in an amount not to exceed $250,000 with an option to extend for an additional two years.
Financial Implications: Various Funds - $250,000
Contact: David Sprague, Fire, (510) 981-3473

11. Contract: Restoration Family Counseling Center for Counseling, Education and Support
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into contract with Restoration Family Counseling Center Inc. (RFCC) for counseling, education and support, for a total amount not to exceed $80,000.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473

12. Contract No. 32200227 Amendment: Fire Aside for Mobile Vegetation Management Inspection Software
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200227 Mobile Vegetation Management Inspection Software for the Fire Department (Department); increasing the contract amount by $60,000 for an amended total contract amount not to exceed $220,000.
Financial Implications: See Report
Contact: David Sprague, Fire, (510) 981-3473

13. Contract No. 32200083 Amendment: Ganey Scientific for Project Management & Consulting
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200083 project management and consulting services for the Fire Department (Department); increasing the contract amount by $500,000 for an amended total contract amount not to exceed 1.4 million.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473

Consent Calendar

14. Purchase Order: Bauer Compressors Inc. for Self-Contained Breathing Apparatus and Related Accessories
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to issue purchase orders with Bauer Compressors Inc. using the General Services Agency's (GSA) contract No. EE08-19 for an amount not to exceed $1.7 million through July 31, 2023 for the purchase of self-contained breathing apparatus (SCBA) and related accessories.
Financial Implications: UC Settlement Fund - $1.7 million
Contact: David Sprague, Fire, (510) 981-3473

15. Revenue Contracts: Fiscal Year 2023 Aging Services Programs
From: City Manager
Recommendation: Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities and information and assistance services to seniors for the following programs for Fiscal Year 2023 (FY 2023):
a. Congregate Meals in the amount of $40,000;
b. Home Delivered Meals in the amount of $84,000;
c. Family Caregiver Support Program in the amount of $41,383;
d. Senior Center Activities in the amount of $30,000; and
e. Information and Assistance Services in the amount of $100,000.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

16. Contract No. 32000240 Amendment: Berkeley Unified School District (BUSD) for Mental Health MHSA-Funded Programs
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2023 in an amount not to exceed $1,394,167. This amendment will add $410,389 in funding to the contract in order to continue three mental health programs for an additional year and add a fourth for the same time period.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

17. **Greater Bay Area Regional Partnership Workforce, Education and Training Grant – California Mental Health Services Authority**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to enter into a Participation Agreement and any amendments with the California Mental Health Services Authority (CalMHSA) for the Greater Bay Area (GBA) Regional Partnership Workforce, Education and Training (WET) Grant, and to allocate local Mental Health Services Act (MHSA) funds in an amount not to exceed $42,609, through June 30, 2025.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

18. **Fiscal Year 2023 Meals on Wheels of Alameda County Donations for the Berkeley Meals on Wheels Program**
From: City Manager
Recommendation: Adopt a Resolution accepting donations, totaling approximately $80,000, for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency, for Fiscal Year 2023 (FY 2023).
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

19. **Contract No. 32100168 Amendment: Robert Half International/Protiviti for Professional Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100168 to increase spending authority with Robert Half International/Protiviti for professional services in support of the cyber-resilience projects in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X to increase the contract by $180,000 for a total amount not to exceed $732,432 through June 30, 2023.
Financial Implications: General Fund - $180,000
Contact: Kevin Fong, Information Technology, (510) 981-6500

20. **Contract No. 32000281 Amendment: ConvergeOne for on-site Avaya Administration, Maintenance and Support**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000281 to increase the spending authority with ConvergeOne (previously named Integration Partners), for Avaya on-site administration and maintenance, increasing the amount by $165,000 for a total not to exceed amount of $892,821, from July 1, 2020 to June 30, 2024.
Financial Implications: IT Cost Allocation Fund - $165,000
Contact: Kevin Fong, Information Technology, (510) 981-6500

Consent Calendar

21. Contract No. 32000223 Amendment: Gray Quarter, Inc. for Accela Professional Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000223 with Gray Quarter, Inc. for professional services, increasing the amount by $50,000, for a total not-to-exceed amount of $299,500 through December 31, 2023.
Financial Implications: IT Cost Allocation Fund - $50,000
Contact: Kevin Fong, Information Technology, (510) 981-6500

22. Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code
From: City Manager
Recommendation:
1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions; and schedule a Public Hearing for the second reading on November 29, 2022 pursuant to state law; and
2. Adopt a Resolution setting forth findings of local conditions that justify more stringent regulations than those provided by the 2022 California Building Standards Code, and rescinding Resolution No. 69,170-N.S.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

23. Re-enactment of the Berkeley Housing Code; Repealing Chapter 12.48 and Repealing and Re-enacting Chapter 19.40
From: City Manager
Recommendation: Adopt first reading of an Ordinance repealing Berkeley Municipal Code (BMC) Chapter 12.48 (Residential Rental Housing Safety Program), and repealing and re-enacting BMC 19.40 (Berkeley Housing Code), incorporating BMC Chapter 12.48 into BMC Chapter 19.40; and schedule a Public Hearing for the second reading on November 29, 2022, pursuant to state law.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

24. Revenue Grant Contract: Fiscal Year 2022-23 Alcoholic Beverage Control Grant
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager and/or Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of $74,940 for one fiscal year, July 1, 2022 through June 30, 2023.
Financial Implications: Alcoholic Beverage Control Fund - $74,940 (grant)
Contact: Jennifer Louis, Police, (510) 981-5900

Consent Calendar

25. Reappointment of Andrea Prichett and Edward Opton to the Mental Health Commission
From: Mental Health Commission
Recommendation: Adopt a Resolution approving the re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a second- three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.
Financial Implications: None
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Council Consent Items

26. Budget Referral: Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot
From: Councilmember Taplin (Author)
Recommendation: Refer to the budget process $500,000 for a local Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot Program, providing third-lien shared appreciation loans (SALs) to cover down payments and closing costs for qualifying applicants in a racial equity and reparative justice framework consistent with regulations for local, state, federal, and nonprofit DPA programs including, but not limited to: California Dream For All (CalHFA), AC Boost (Alameda County), Community Seconds (Fannie Mae), and Black Wealth Builders Fund.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

27. Budget Referral: Commitment to La Peña Cultural Center
From: Councilmember Bartlett (Author)
Recommendation: Refer to the AAO#1 Budget Process $150,000 to support the recovery and renovations of La Peña Cultural Center, a cultural hub and historic community building space within the city of Berkeley.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

28. Budget Referral: Commitment to the Completion of Affordable Housing at 1638 Stuart Street
From: Councilmember Bartlett (Author), Mayor Arreguin (Author)
Recommendation: Refer to the AAO#1 Budget Process $50,000 to support the Completion of Affordable Housing at 1638 Stuart Street so it can complete exterior renovations and continue to provide eight units of permanently affordable housing for households earning less than 80% of area median income.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

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 use the "raise hand" function 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 use the "raise hand" function 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. 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.

29. ZAB Appeal: 2018 Blake Street, Use Permit #ZP2021-0095 *(Continued from October 11, 2022)*
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units), and dismiss the appeal.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

30. ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – Old Business

31. **Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**
(Continued from October 11, 2022) (Item contains revised material)
From: Commission on Labor
Recommendation: Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.102.
Financial Implications: See report
Contact: Margot Ernst, Commission Secretary, (510) 981-5400

32. **Harriet Tubman Terrace Tenant Support** *(Continued from October 11, 2022)*
From: Housing Advisory Commission
Recommendation: Recommend City Council take the following actions:
-Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
-Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and
-City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.
Financial Implications: See report
Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Action Calendar – New Business

33. **Resolution Accepting the Annual Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal C**
From: City Manager
Recommendation: Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.
Financial Implications: None
Contact: Jennifer Louis, Police, (510) 981-5900; Liam Garland, Public Works, (510) 981-6300; LaTanya Bellow, City Manager's Office, (510) 981-7000

Action Calendar – New Business

34a. Measure FF Budget Recommendation - Expanded Fire Prevention Inspection Program
From: Disaster and Fire Safety Commission
Recommendation: With the risk of catastrophic wildfire steadily increasing due to climate change, the Disaster and Fire Safety Commission (DFSC) recommends prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department's Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). In addition, the Fire Code would be strengthened as needed to require removal of hazardous vegetation on the entirety of properties beginning in FY 25. The program would provide for City vegetation management crews to clear vegetation where property owners opt into the program or fail to comply, with no-interest liens placed upon properties to recover direct costs upon transfer. Special emphasis should be placed on eucalyptus groves due to their high flammability and potential to create spot fires. Funding for this expanded program, together with the Fire Department's existing home inspection program, which is focused on creating defensible space around structures, would be supported by devoting 21 percent and 26 percent of Measure FF revenues for FY 23 and FY 24, respectively.
Financial Implications: See report
Contact: Keith May, Commission Secretary, (510) 981-3473

34b. Companion Report: Measure FF Budget Recommendation – Expanded Fire Prevention Inspection Program
From: City Manager
Recommendation: That the Berkeley City Council reaffirms its support for the work being conducted by the Fire Department (Department) and considers the Disaster and Fire Safety Commission's (DFSC) Report during the FY24 budget process if the DFSC so chooses to resubmit an updated version at that time.
Financial Implications: None
Contact: David Sprague, Fire, (510) 981-3473

Action Calendar – New Business

35. Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024 *(Reviewed by the Budget & Finance Committee)*
From: Energy Commission
Recommendation: The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.
Policy Committee Recommendation: No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.
Financial Implications: See report
Contact: Billi Romain, Commission Secretary, (510) 981-7400

Action Calendar – Policy Committee Track Items

36. Referral to Conduct an Automatic Traffic Calming Review for the Area Immediately Surrounding the Project at 1201-1205 San Pablo Avenue
From: Councilmember Kesarwani (Author)
Recommendation: Refer to the City Manager to conduct an automatic traffic calming review for the area immediately surrounding the streets of the project located at 1201-1205 San Pablo Avenue within six (6) months of the building's occupancy reaching 90 percent of its capacity with the intent of expediting the traffic calming process for neighbors impacted by the development of this project. The traffic calming review should include the following intersections: Gilman and Kains; Gilman and Stannage; Harrison and San Pablo; Harrison and Kains; Harrison and Stannage.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

37. Budget Referral: No Right on Red Signs
From: Councilmember Taplin (Author)
Recommendation: That the City Council refers to the City Manager the implementation of "No Right on Red" signs to all intersections with traffic lights. Refer the necessary appropriations of $135,000 to the 2022 November Annual Appropriations Ordinance.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action Calendar – New Business

38. Resolution and Referral Supporting Local Implementation of SB 379: Online Instant Solar Permitting Process For Residential Solar And Solar-Plus-Storage Energy Systems
From: Councilmember Harrison (Author)
Recommendation:
1. Adopt Resolution supporting local implementation of SB 379 requiring cities to adopt online instant solar permitting process for residential solar and solar-plus-storage energy systems; and
2. Refer to the City Manager and Planning Department, consistent with SB 379 and climate goals, to explore and move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

39. Parking/Towing Fines & Fees Reform
From: Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation: 1. Adopt an Ordinance amending BMC 14.72.080 to allow otherwise eligible individuals to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Refer to the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows: a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets. b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent. c. Develop a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
3. Refer $383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Information Reports

40. Fiscal Year (FY) 2023 Civic Arts Grant Awards
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

Information Reports

41. **Fire Prevention Inspections Audit Status Report**
    From: City Manager
    Contact: David Sprague, Fire, (510) 981-3473

42. **Update: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees**
    From: City Manager
    Contact: Donald E. Ellison, Human Resources, (510) 981-6800

43. **LPO NOD: 2065 Kittredge Street/#LMSAP2021-0004**
    From: City Manager
    Contact: Jordan Klein, Planning and Development, (510) 981-7400

44. **Audit Status Report: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress towards the Year 2020 Zero Waste Goal**
    From: City Manager
    Contact: Liam Garland, Public Works, (510) 981-6300

45. **Audit Status Report: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity**
    From: City Manager
    Contact: Liam Garland, Public Works, (510) 981-6300

46. **Audit Status Report – Lease Audit: Conflicting Directives Hinder Contract Oversight**
    From: City Manager
    Contact: Liam Garland, Public Works, (510) 981-6300

47. **Audit Status Reports: Fleet Replacement Fund Short Millions & Rocky Road: Berkeley Streets At Risk and Significantly Underfunded**
    From: City Manager
    Contact: Liam Garland, Public Works, (510) 981-6300

48. **Audit Recommendation Status -Data Analysis of the City of Berkeley's Police Response**
    From: City Manager
    Contact: Jennifer Louis, Police, (510) 981-5900

49. **Audit Recommendation Status - 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale**
    From: City Manager
    Contact: Jennifer Louis, Police, (510) 981-5900

Information Reports

50. Update on BPD efforts related to the Improving Hate Crimes Reporting and Response Referral
From: City Manager
Contact: Jennifer Louis, Police, (510) 981-5900

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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Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

Agendas and agenda reports may be accessed via the Internet at:
https://berkeleyca.gov/your-government/city-council/city-council-agendas
and may be read at reference desks at the following locations:

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

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

COMMUNICATION ACCESS INFORMATION:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

Captioning services are provided at the meeting, on B-TV, and on the Internet.
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Mental Health Commission

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Mental Health Commission

Submitted by: Dr. Margaret Fine, Chairperson, Mental Health Commission

Subject: Reappointment of Andrea Prichett and Edward Opton to the Mental Health Commission

RECOMMENDATION

Adopt a Resolution approving the re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a second-three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.

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 four 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 keep 2 two positions filled and allow 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 at least fifty percent 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.

Currently, the Mental Health Commission consists of the following openings: two Berkeley Special Public Interest Commissioners; two Berkeley General Public Interest Commissioners; one Albany General Special Interest Commissioner; and one Mayoral appointee.

At its August 23, 2022 special commission meeting, the Mental Health Commission interviewed Andrea Prichett who is a teacher with the Berkeley Unified School District (BUSD), a board member of the Berkeley Flea Market, and a police accountability advocate. Ms. Pritchett is a founder and leader for more than 32 years of Berkeley Copwatch, a nonprofit organization “dedicated to monitoring the police and non-violently asserting our rights”.

Ms. Pritchett has served on the Mental Health Commission for 3 years. One of her main focuses has been on people living with mental illness and substance use issues and disorders and the interactions with law enforcement, as well as non-police crisis response service to distressed people in the community. She has spoken on and shown videos of police encounters with people living with mental illness to the Mental Health Commission to illustrate this work. In addition, another of her main focuses is diversion of people with mental illness and substance use issues and disorders away from policing and further avoiding involuntary commitment and transfer to the county psychiatric hospital or criminal legal involvement and incarceration at the county jail. In July 2022, Ms. Pritchett was one of 6 Commissioners to visit the crisis stabilization center, Amber House, located in Oakland. Amber House provides voluntary 23-hour emergency crisis stabilization services (1^{st} floor) and a crisis residential home (2^{nd} floor).

On August 23, 2022 the Mental Health Commission passed the following motion:

Re-Appoint Andrea Prichett to the Mental Health Commission

M/S/C (Opton, Turner) Make a motion to re-nominate
PASSED
Ayes: Escarcega, Fine, Jones, Opton, Kimber- Smith, Turner; Noes: None; Abstentions: Prichett; Absent: Taplin

At its August 23, 2022 special commission meeting, the Mental Health Commission interviewed Edward Opton for the General Public Interest seat. Mr. Opton is a retired attorney and has a Ph.D in clinical psychology and has volunteered at the National Center for Youth Law to improve mental health treatment for children in foster care. Mr. Opton has also been active in the community working on numerous issues that affect the community. Mr. Opton has served on the Mental Health Commission for 3 years. One of his focuses has been people living with mental illness and substance use issues and disorders and the intersection with law enforcement, the criminal legal system, and incarceration systems in Berkeley and Alameda County, as well as non-police crisis response service to people in crisis in the community. In addition, he has focused on diversion of people with mental illness and substance use issues and disorders away from policing and further avoiding involuntary commitment and transfer to the county psychiatric hospital or criminal legal involvement and incarceration at the county jail. In June 2022, he was one of 4 Commissioners to visit the crisis stabilization center, Amber House, located in Oakland. Mr. Opton further served as the Mental Health Commission appointee to the Reimagining Public Safety Task Force.

On August 23, 2022 the Mental Health Commission passed the following motion:

Re-Appoint Edward Opton to the Mental Health Commission

M/S/C (Kimber-Smith, Prichett) Make a motion for the re-appointment of Ned (Edward Opton)
PASSED
Ayes: Escarcega, Fine, Jones, Prichett, Kimber- Smith, Turner; Noes: None;
Abstentions: Opton; Absent: Taplin

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
Approval of the recommended action will allow the Mental Health 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 takes no position

CONTACT PERSON
Jamie Works-Wright, Commission Secretary, (510) 981-7721

Attachments:
1: Resolution

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

RE-APPOINTMENT OF ANDREA PRICHETT AND EDWARD OPTON 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, the Mental Health Commission, at its August 23, 2022 meeting recommended the re-appointment of Andrea Prichett and Edward Opton to the Mental Health Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.

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BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Budget Referral: Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot

RECOMMENDATION
Refer to the budget process $500,000 for a local Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot Program, providing third-lien shared appreciation loans (SALs) to cover down payments and closing costs for qualifying applicants in a racial equity and reparative justice framework consistent with regulations for local, state, federal, and nonprofit DPA programs including, but not limited to: California Dream For All (CalHFA), AC Boost (Alameda County), Community Seconds (Fannie Mae), and Black Wealth Builders Fund.

FINANCIAL IMPLICATIONS
$500,000 in general fund impact. Shared appreciation loans are repaid only upon transfer, refinancing, or sale of qualifying properties; the effective interest rate would be the property's net appreciation. To the extent feasible, administrative costs should be leveraged with other approved policy initiatives focused on reparative justice, including the Office of Racial Equity and consulting/community outreach for reparations.

The maximum loan amount for AC Boost applicants earning up to 100% of Area Median Income is $210,000 and $160,000 for households earning less than 120% AMI for a 97%-100 Combined Loan-to-Value (CLTV). Therefore, at a maximum, if $210,000 only covered a 17% down payment, a household could cover the remaining 3% with roughly $37,000. Since not all applicants qualify for the maximum amount or will require a full 3%, and layering with other assistance programs is strongly encouraged, smaller loan amounts per applicant can be anticipated.

CURRENT SITUATION AND ITS EFFECTS
Down Payment Assistance and Closing Cost Assistance is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Rising housing costs have widened the racial wealth gap, exacerbated gentrification and accelerated displacement in historically red-lined Black and brown communities across the Bay Area. Patterns of historical discrimination against people of color in mortgage lending, insurance, and consumer credit enforced by government policy and private sector practices[1] have compounded with discrimination in appraisals, infrastructure, employment and education such that homeownership increasingly drives the racial wealth gap.[2] The disproportionate declines in homeownership rates for Black and Latino households following the Great Recession and COVID-19 Recession have widened this gap further.[3]

High costs in Berkeley are driven in part by the lack of available housing for a growing population of middle-income households (80-120% of Area Median Income) who are increasingly priced out of first-time homeownership opportunities. As recent Census maps published in *Berkeleyside* have shown, South Berkeley saw a dramatic decline in the share of its Black population from 2010 to 2020 (34/3% decline in the San Pablo Park tract), while the share of Black populations increased in census tract with increased multifamily housing in the same period of time (e.g. Downtown Berkeley tract, 44.1% increase).[4]

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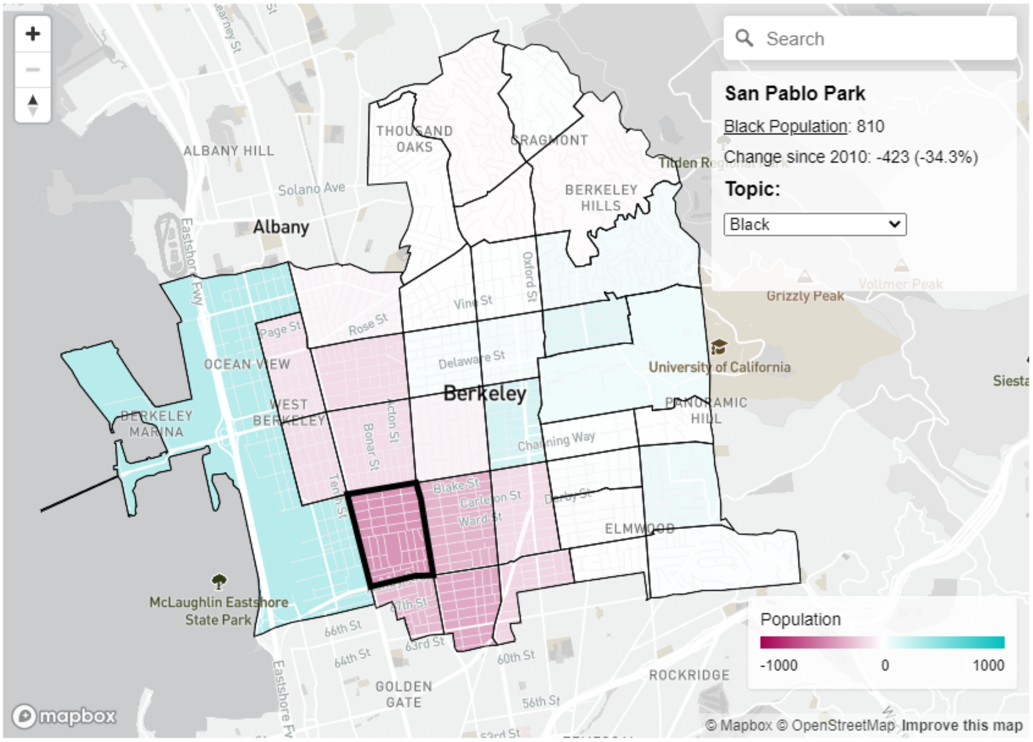
[1] Baradaran, M. (2017). *The color of money: Black banks and the racial wealth gap*. Harvard University Press.

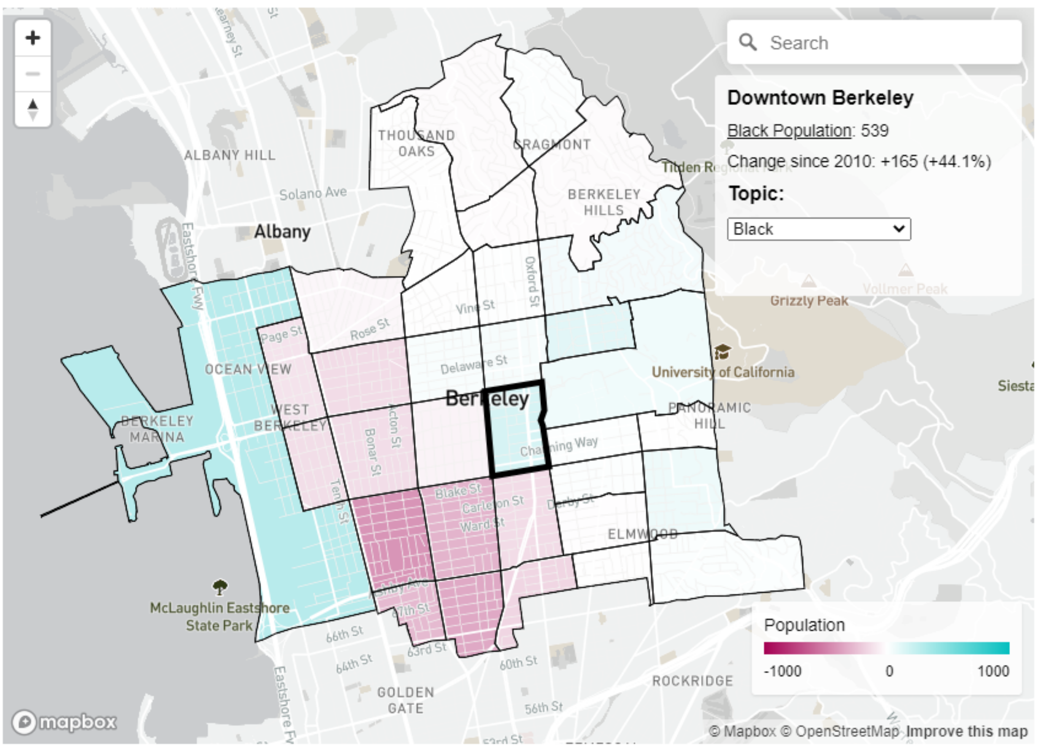
[2] Ray, R. et al. (2021). Homeownership, racial segregation, and policy solutions to racial wealth equity. *Brookings Institution.* Retrieved from https://www.brookings.edu/essay/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/

[3] Choi, J.H. (2022). Disparate impacts of the COVID-19 Pandemic Across Race and Ethnicity in the Housing Market: Statement befor the Committee on Financial Services, U.S. House of Representatives. *Urban Institute.* Retrieved from https://www.urban.org/sites/default/files/2022-08/Disparate%20Impacts%20of%20the%20COVID-19%20Pandemic%20Across%20Race%20and%20Ethnicity%20in%20the%20Housing%20Market%20with%20QFRs.pdf

[4] Markovich, A. (2022). A changing Berkeley: 6 maps show how the past decade has reshaped the city. *Berkeleyside.* Retrieved from https://www.berkeleyside.org/2022/07/17/berkeley-population-demographics-housing-census-2020-maps



Demographic change in race/ethnicity by census tract, 2010 to 2020. Select a racial/ethnic group from the drop down menu to see the group's change in population from 2010 to 2020. Data: U.S. Census. Visualization: Darrell Owens and Doug Ng



The Berkeley City Council has committed to equitably increasing housing supply in its Sixth Cycle Housing Element Update in a 2021 Resolution to End Exclusionary Zoning in Berkeley and pursuant to Affirmatively Furthering Fair Housing standards in Assembly Bill 686 (2019). Additionally, Berkeley's Neighborhood Preference Program aims to affirmatively redress displacement in lower-income communities of color by providing preference to former Berkeley residents in our affordable housing lottery. Due to the persistent high cost of housing in Berkeley, further efforts to level the homeownership playing field offer an important tool for redressing the racial wealth gap.

Recent efforts in the state of California and Alameda County have focused on maximizing racial justice outcomes in homeownership through Down Payment Assistance (DPA). The California Dream For All program, established by Senate Bill 197 (2021), established a revolving fund for shared appreciation loans (SALs) providing down payment assistance to low- and moderate-income homebuyers in the purchase of owner-occupied homes. The California Housing Finance Authority (CalHFA), which administers the program, is currently developing draft program terms.

In Alameda County, voters approved $580 million in General Obligation bonds for affordable housing as Measure A1 in June 2016, which included funds for down payment assistance. The AC Boost program was established by the Board of Supervisors to provide second-lien shared appreciation loans capitalized by $50 million in Measure A1 funds. As of March 2022, the program had reserved $7.43 million in funds for 38 applicants. The program design includes provisions to encourage applicants to purchase homes near work or public transit, benefit former residents who have been displaced from the County, and benefit educators and first responders. The program provides multilingual outreach and marketing, and tracks racial equity outcomes (see Attachment).

The high cost of housing in Berkeley means fewer homes available on the market will qualify an applicant for the maximum loan amount ($160k-$210k for a 0-3% down payment), and that additional closing costs will price out marginal applicants.

Hello Housing, the nonprofit program manager for AC Boost, reported to the District 2 Council Office that 22% of survey respondents said they could cover the 3% down payment but not closing costs.

In AC Boost's first and second funding cycles, out of 17 Berkeley residents who submitted complete applications:

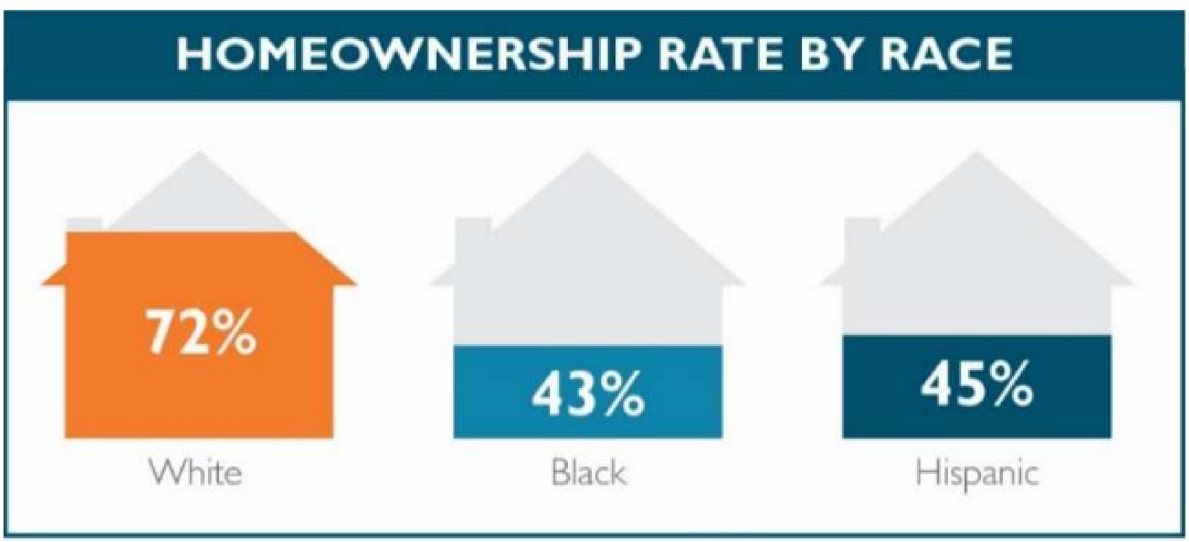
- 9 applicants were approved for a reservation of funds
    - 3 had their reservation of funds expire
    - 3 are currently shopping for homes
    - 3 purchased a home in:
        - Emeryville (2)
        - Oakland (1)

BACKGROUND

Between 1934 and 1968, 98% of mortgages that received government backing were extended exclusively to White households. Evidence indicates that a first-time Black homebuyer is less likely to be able to afford a 20% down payment, but no more likely to default on payments than a white homebuyer who can—rather, the disparity in mortgage defaults has been attributed to higher and variable interest rates in predatory lending practices that target communities of color.[5]

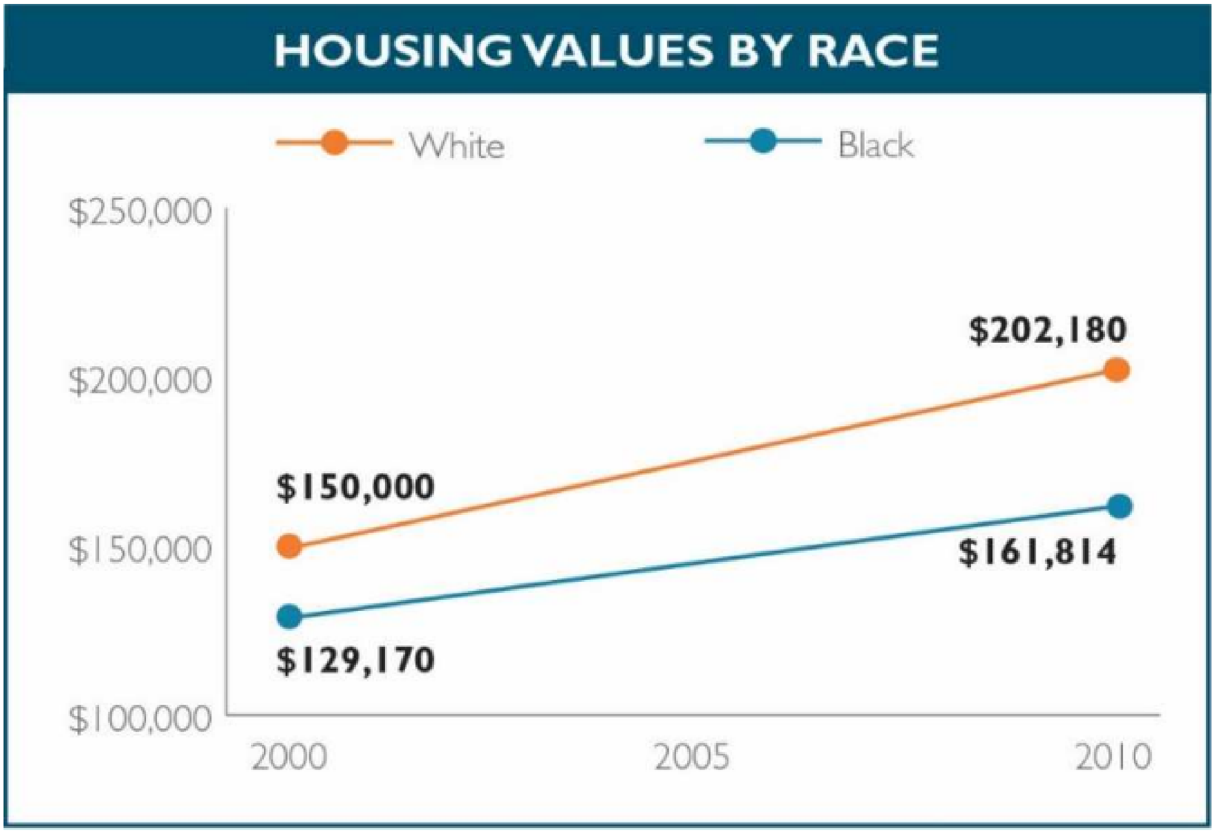
Because Black households have historically been excluded from wealth-building opportunities even after centuries of zero compensation for forced labor, the asset wealth and liquid savings of white households are more easily transferred and sustained across generations, while Black wealth has remained tenuous over repeated cycles of theft and destruction through redlining, Urban Renewal, and predatory lending.

Disparities in property appraisal and lending discrimination have exacerbated the institutionally-enforced racial wealth gap. Inequities in access to credit effectively make the homeownership gap a self-fulfilling prophecy of poverty and lending discrimination. This is the result of public policy choices intended to reinforce racial inequality; affirmative and targeted public investment must now reverse it.

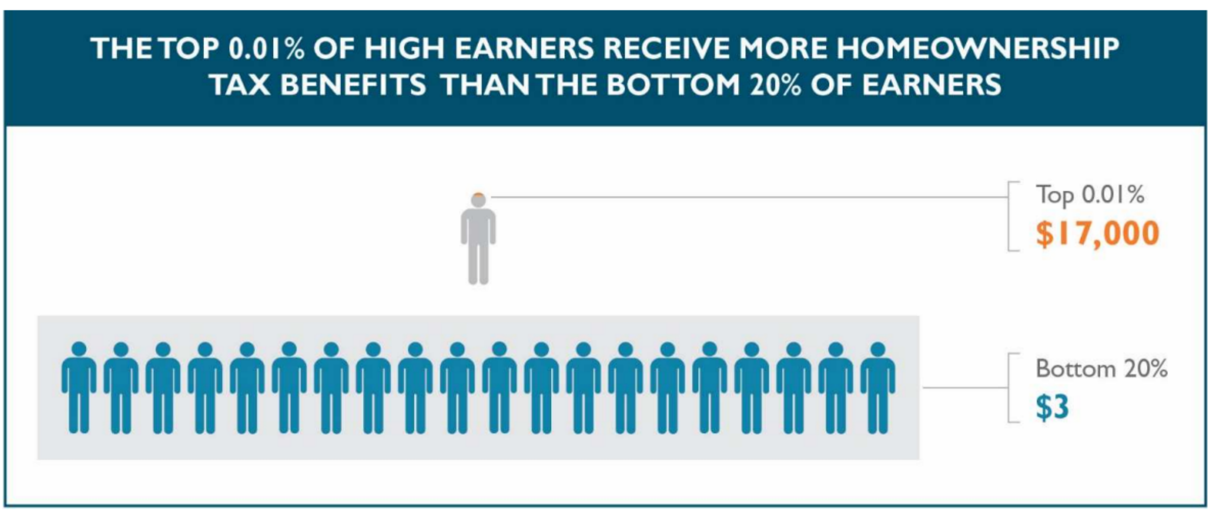


Source: Pew Research Center, 2017

[5] Chopra, A. et al. (2017). A Downpayment on the Divide: Steps to Ease Racial Inequality in Homeownership. *Prosperity Now.* Retrieved from https://prosperitynow.org/resources/downpayment-divide-steps-ease-racial-inequality-homeownership



Source: *Institute on Assets and Social Policy*, 2014



Source: *From Upside Down to Right-Side Up*, 2014

CA Dream For All and other DPA programs are financially sustainable policy interventions to close the racial wealth gap primarily because sufficient cash savings to afford 20% combined loan-to-value (CLTV) down payments for a first home demonstrably do not correlate with future debt servicing capacity. However, Black households disproportionately lack access to high quality mortgages. Nationally, Black households nationally had a median debt-to-income ratio of 41% in 2020, compared to 37% for white households; in October 2020, 45% of Black consumers had subprime credit scores, compared to 18% of White consumers. Black and Latino homebuyers disproportionately rely on federal assistance through FHA loans, which private lenders perceive as riskier and thus have larger mortgage payments to account for lower down payments. However, the California Treasurer's Office reports that sellers are indifferent to the use of shared appreciation loans (SALs) covering down payments, which makes them a potentially effective and scalable tool for reducing racial disparities in homeownership.[6]

Figure 12: Loan Application Denial Rates for All Applicants and Applicants Over 120 AMFI, by Race

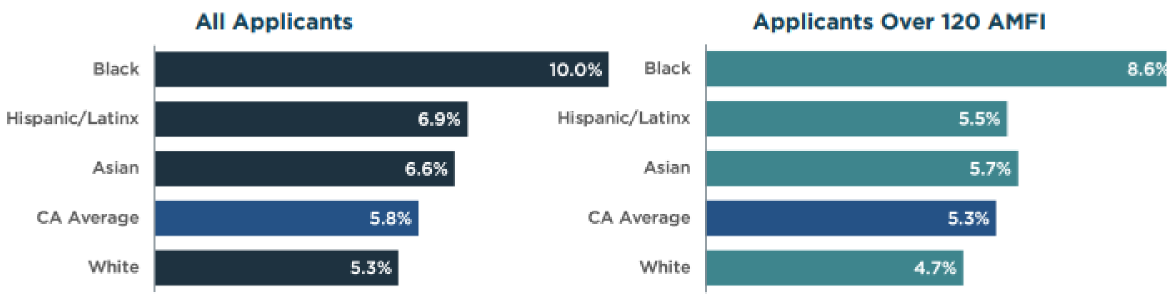
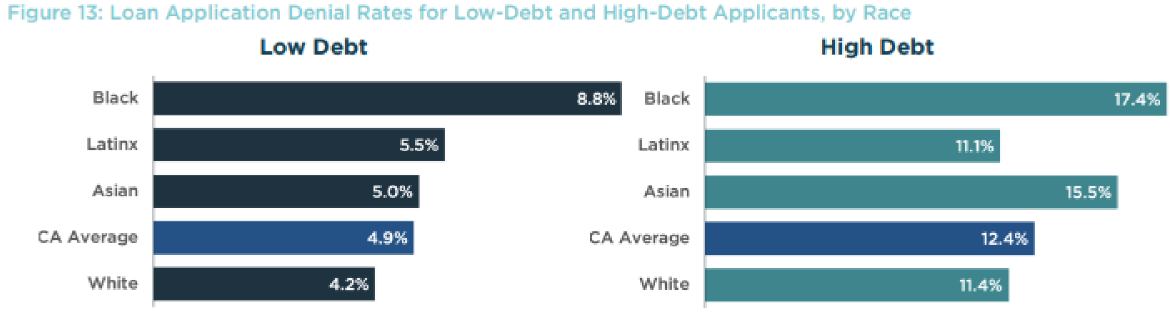


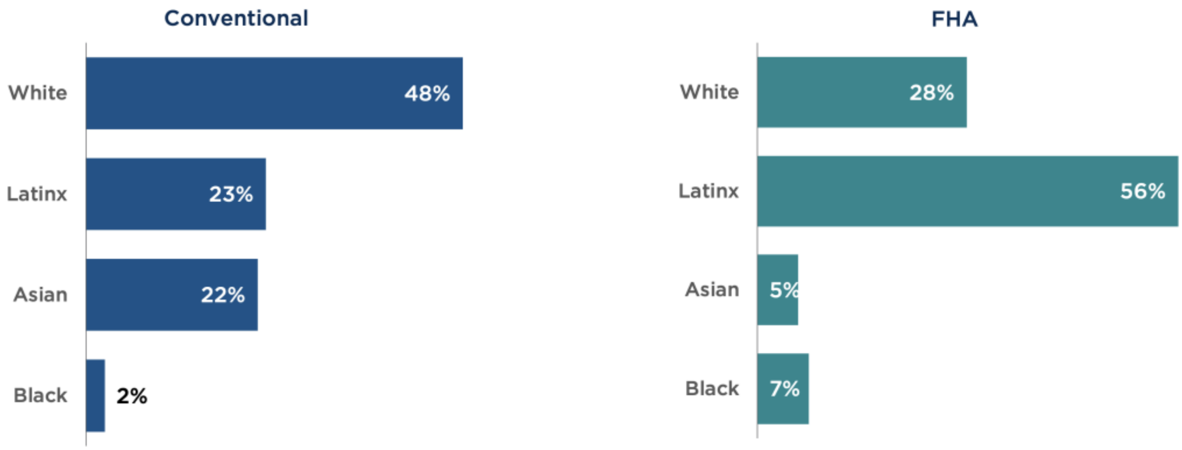
Figure 13: Loan Application Denial Rates for Low-Debt and High-Debt Applicants, by Race



Source: HMDA 2020

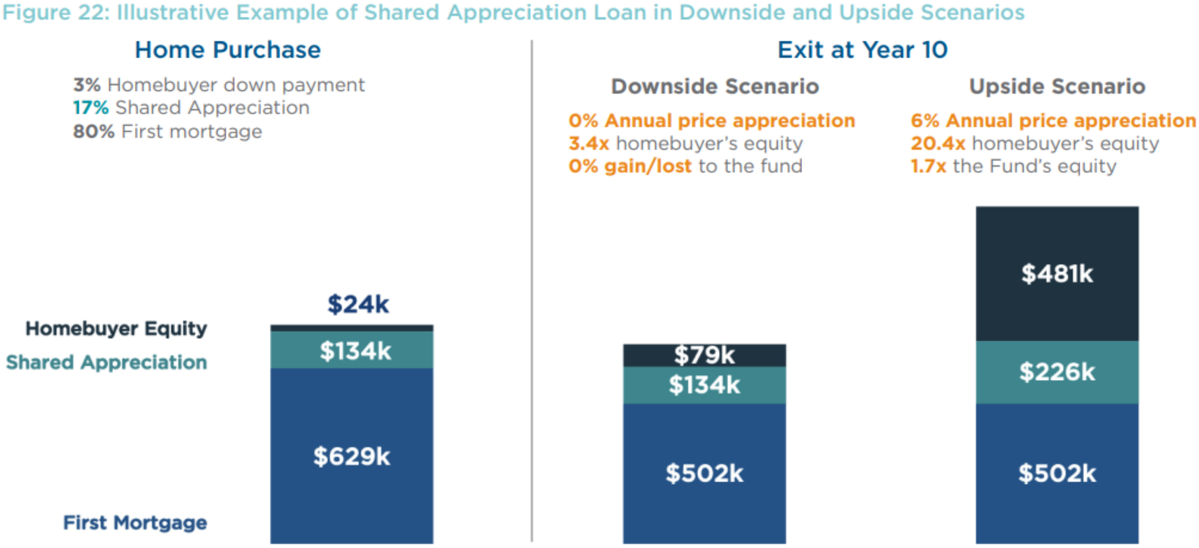
[6] CA Fwd. et al. (2022). California Dream For All: A Proposed Shared Appreciation Loan Investment Fund for the State of California. *California Treasurer's Office.* Retrieved from https://www.treasurer.ca.gov/publications/ca-dream-for-all-report.pdf

Figure 14: Share of Conventional and FHA Loans Issued to Borrowers, by Race



The Treasurer's report further states: *"SAL's most compelling advantage is the combination of reducing the monthly payment to a household, while generating revenue to serve future households and providing protection to the homebuyer in the event of depreciation. The biggest drawback is the financial complexity of the terms for a SAL… A well-designed SAL can provide borrowers the opportunity to build wealth in upside scenarios and share losses in downside scenarios."*

Figure 22: Illustrative Example of Shared Appreciation Loan in Downside and Upside Scenarios



Sources: HR&A Advisors

In order to maximize reparative racial justice outcomes and maintain fiscal sustainability for future generations, a municipal DPA initiative should include the following program considerations:

1. **Ensure that applicant eligibility is compatible with existing DPA programs so that applicants can "layer" multiple loans to cover 100% combined loan-to-value (CLTV).** As a second lien program, Alameda County has approved layering AC Boost loans with subordinate loan programs such as WISH Funds, NeighborhoodLIFT Funds, the Black Wealth Builders Fund, and several closing cost assistance programs. However, the lotteries of AC Boost applicants and their corresponding applications for subordinate loans may not necessarily overlap, making layering more difficult.

2. **As much as feasible, integrate administrative processes so that applicants in high-cost cities can seamlessly layer state and regional assistance programs, including CA Dream For All loans and future programs planned for the Bay Area Housing Finance Authority (BAHFA).**

3. **Enable SALs to cover closing costs in addition to down payments.** Consider cost-benefit tradeoffs for limiting closing cost assistance to escrow fees (e.g. escrow services, title insurance, document preparation, recording fees, etc.) rather than lender fees (e.g. mortgage origination).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

AC Boost's down payment assistance fund includes incentives to reduce Vehicle Miles Traveled (VMT) while mitigating displacement by encouraging home purchases close to jobs and public transit. According to Wheeler et al (2018), the urban core of the San Francisco Bay Area (including Berkeley) contains some of the lowest carbon emissions per capita in California, making urban infill housing a key policy lever for cities to reduce carbon footprints by reducing VMT per capita.[7] Preventing displacement from Berkeley also prevents increased emissions from households who would otherwise be priced out to areas with higher per capita emissions.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

ATTACHMENTS

1. CA Dream For All - Treasurer's Office Report
2. AC Boost: Measure A1 Oversight Committee Presentation
3. Black Wealth Builders Fund - Frequently Asked Questions

[7] Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, *3*(2), 35-51.

CALIFORNIA DREAM FOR ALL:
A PROPOSED SHARED APPRECIATION LOAN INVESTMENT FUND FOR THE STATE OF CALIFORNIA

CAFWD.ORG

JUNE 2022

FIONA MA, CPA
CALIFORNIA STATE TREASURER

ACKNOWLEDGMENTS

This report was prepared for the California State Treasurer's Office by California Forward with assistance from HR&A Advisors, CSG Advisors, and California Community Builders.

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I. EXECUTIVE SUMMARY

This report provides a design framework for the California Dream for All, a proposed shared appreciation loan investment fund for the state of California. In July 2021, the California legislature enacted Assembly Bill 140 (AB 140), which empowered the California State Treasurer's Office to develop a design framework for the California Dream for All program that makes homeownership more affordable to low- and moderate-income Californians.

California faces an unprecedented gap in access to housing that is affordable, particularly for ownership. Home prices across the state have spiraled upwards for years. According to the California Association of Realtors, the median sales price for a single-family home was $786,000 in 2021—a 38% increase since 2018, before the onset of the COVID-19 pandemic. Meanwhile, incomes have failed to keep pace with increasing prices. In 2020, the median home price was 8.5 times median yearly income —a level that is nearly four times the ratio in 1969. Lack of affordability is a challenge in every community across the state, but is more acute in some regions than others. For example, the median house price in the Bay Area is nearly double the median house price in the Inland Empire. Aspiring homeowners in the Inland Empire still struggle to find the resources to afford a home, but in the Bay Area, the challenge is even more acute. These types of regional variations abound across the state.

The high price of homeownership has disproportionately impacted first-time homebuyers. As house prices grew, so did the amount of wealth necessary to make a down payment on a house. In 2021, a 20% down payment on a median price home would total $119,000; this represents one and half times the amount that the average household in California makes in a year. Very few first-time homebuyers have access to this level of savings, and as a result, most choose to make much smaller down payments, which in turn increases their monthly mortgage costs. According to a survey by the California Association of Realtors, first-time homebuyers put down 6% compared to repeat buyers who put down 12%. Homebuyers who make smaller down payments must often take on supplementary costs like mortgage insurance, and frequently face additional fees or higher interest rates. These costs make it difficult for first-time homebuyers to maintain homeownership, or to access the wealth benefits that homeownership may offer.

Accessing homeownership and making a large down payment is often even more difficult for low-income communities and communities of color. This program is designed to provide assistance to homeowners from all disadvantaged groups, especially those that have been the targets of both legal and social discrimination. Black and Latino households, for example, are far less likely to receive down payment assistance than are White households, and the percentage of home loans going to Black and Latino families are both approximately 20% lower than their shares of the population. As a result, statistics on racial disparities will often be used to highlight the gap between communities of economic and social privilege and those that need this program to access the California dream of homeownership. Yet it's also clear that challenges extend far beyond racial discrepancies—between 2010 and 2019, for example, the homeownership rate decreased from 48% to 44% for all households with incomes of less than $100,000. This program is designed to benefit disadvantaged communities of all demographics, and racial disparities are far from the only driver of action.

California has a wide range of homebuyer assistance programs that help households access ownership, but their impact is limited. The majority of homebuyer assistance programs administered statewide offer between 3% and 5% down payment support, which is not enough to eliminate the need for mortgage insurance in most cases. And many of these programs at the local and state level are constrained by uneven funding allocations that make it difficult to serve even a fraction of the need across the state. Nevertheless, these programs have benefitted many homeowners and will often work in concert with the program outlined in this report in some cases eliminating the need for a down payment entirely. And the existing ecosystem of service providers, mortgage underwriters and community financial counselors that support potential homebuyers through these programs can be leveraged to serve a far larger number of households.

One option to expand access to homeownership in California is through a "shared appreciation" loan (SAL) supported by the State. SALs are repaid through a portion of the amount that the home price appreciates in value over time. Homebuyers do not make a payment on the loan until they sell the property. A SAL as designed below even splits the risk of home price depreciation with homebuyers. The result of this financing structure is both dependable and lower monthly housing costs than other financing options available to homebuyers with limited savings. While a SAL cannot by itself solve the supply-side issues that dramatically impacted housing affordability in California, there may be future opportunities to link shared appreciation to other reforms in order to increase housing supply.

With a few key design decisions, a SAL supported by the State could significantly expand access to homeownership by making homeownership more affordable and by reducing the amount of wealth required to purchase a home. Several privately-funded SAL programs exist, but they generally have program features that are less favorable to homebuyers due to the rate of return required by the private capital. In order to maximize public benefit and support first-time homebuyers, a sustainable and prudent long-term product should include the following design features:

- A loan amount that ensures a 20% down payment, but no more than 30%;
- Income targeting between 100% and 150% of area median income to allow for regional variation in home pricing;
- A 1 to 1 (or "pro rata") split between the homebuyer and the program in the appreciated value of the home;
- Flexibility to target originations and design terms to support disadvantaged communities

Helping households reach a 20% down payment significantly reduces the cost of homeownership and increases affordability. The size of the first mortgage is reduced, and mortgage insurance is eliminated, which substantially cuts monthly payments. For example, if a household used a SAL to achieve a 20% down payment instead of relying on a Federal Housing Administration (FHA) loan to purchase a median-priced home, their monthly payment would fall by almost $1,200. Shared appreciation offers a lower cost of homeownership that makes it more sustainable for homebuyers who would otherwise be unlikely to own a home.

WHAT IS A SHARED APPRECIATION LOAN?

SALs offer an alternative to either public subsidy or conventional mortgage financing. That is, a SAL is repaid through a predetermined percentage of the appreciation, or depreciation, in the home's value. This contrasts with conventional mortgages that have a fixed or variable interest payment on the outstanding loan amount. It also is different from a subsidy program where the assistance is not repaid.

At the time of the home purchase, SALs reduce the amount of down payment borrowers need to pay into the transaction. A SAL replaces some or all of the down payment a household would provide for a conventional loan.

SALs are commonly structured as second mortgages. Second mortgage lenders can have specific credit, equity and income requirements that borrowers must meet. The primary difference between a second mortgage and a first mortgage is how repayment is prioritized. If the borrower cannot repay the debt in full, both loans are secured with the same asset, but the first mortgage receives priority if the home is foreclosed or sold to repay the debt. The second mortgage lender therefore assumes more risk. A SAL does not have monthly payments, and is therefore often called a "silent second" mortgage. The financial arrangement more closely resembles an equity investment in the property than a loan against the property. The basic terms of the second mortgage, such as interest rate and amortization schedule, are also set independently of the first mortgage. A SAL can align with the underwriting requirements of first mortgage lenders and the requirements of the secondary mortgage market because it becomes "junior" to the first mortgage. In other words, the first mortgage will be paid first in the event of a borrower default resulting in a foreclosure sale.

Sellers or developers are indifferent to whether a homebuyer uses a SAL. SALs do not directly impact the buyer or seller; homes are sold at a market rate through conventional market transaction processes. The seller, whether an investor, developer, or homeowner, lists the property and can receive offers from potential buyers with and without shared appreciation financing.

The State can support SALs through a statewide revolving fund: the CA Dream for All Fund. The goal of the Fund would be to increase access to homeownership for first-time homebuyers and disadvantaged communities, including previously redlined neighborhoods and historically marginalized groups like communities of color. The value created through appreciation will allow the initial public funding to help new homeowners in California for decades to come; for example, **with a present value investment of $10.8 billion, the State would help generate about six times that amount in household wealth for low- and moderate-income homebuyers, while still continuing to receive future repayments to assist later borrowers.** If capitalized with $1 billion annually for 10 years, the CA Dream for All Fund is projected to be able to make approximately $48 billion in loan originations over 40 years, benefitting 157,000 homebuyers in the process. Assuming a rate of price appreciation that matches the last 40 years in California, assisted homebuyers would gain $134 billion in wealth—a return that represents nearly six times the taxpayer cost of capitalizing the Fund. With this structure, the State faces very limited financial risk because the allocations are expected to revolve without exposure to additional financing needs. The CA Dream for All Fund could be financed through a combination of annual budget allocations, general obligation bond funds and revenue bonds.

Clear requirements should govern the program's financing options in order to optimize its impact. To determine and assess program financing options, several minimum thresholds were set:

- **The funding approach should not limit who the program can help,** such as excluding areas of the state or preventing the program from assisting lower-income borrowers or those who need larger amounts of assistance.
- **The funding approach must be compatible with Fannie Mae and Freddie Mac underwriting requirements** and not prevent borrowers from using government-sponsored enterprise (GSE) first mortgages.
- **The funding approach should provide an ongoing way to help first-time buyers over many years to come,** rather than only helping buyers in the next few years, given future affordability pressures anticipated in California.
- **Investments of taxpayer funds need to be sustainable**, without significantly impacting the State's borrowing capacity, ability to promote housing that is affordable or ability to meet other critical needs.
- **The funding approach should not expose the State to any meaningful future financial risk**—for example, by requiring the Stateto cover shortfalls because of the CA Dream for All portfolio's performance.
- **The State should leverage taxpayer monies with non-taxpayer monies so as to expand the number of borrowers who are ultimately served—consistent with the purposes of the program,** without narrowing who can be helped, violating other minimum thresholds or reducing borrower equity.

These basic minimum thresholds operate as extremely important guardrails when considering different financial approaches and structures.

Governance of the CA Dream for All Fund will require collaboration between a variety of stakeholders. The CA Dream for All Fund should have a board as well as an administrator. In order for the fund to meet its goals of supporting first-time homebuyers and disadvantaged communities, a community advisory board will also be critical. The community advisory board will help to ensure that specific groups or areas of the state remain represented in the CA Dream for All Fund's borrowers.

The success of the CA Dream Fund for All will depend on how well it connects to existing systems and supports homebuyers who have traditionally been left out and left behind. In order to ensure that homebuyers both benefit from and comprehend the terms of a SAL, the CA Dream for All Fund will need to incorporate housing counseling into every step of the loan origination and servicing process. Borrower outreach will also be critical to ensure that mortgage lenders, counselors and target homebuyers fully understand the loan repayment mechanisms. Effective outreach will require making clear and easy-to-understand materials available in many languages. This is especially important since the wealth building benefits of the CA Dream Program accrue slightly more slowly than standard fixed interest rate down payment programs, and it is vital that homeowners understand the benefits and drawbacks of paying off their CA Dream for All loan. Furthermore, it will be important that the benefits of the program are clear to the real estate industry—a group that includes not only real estate brokers, but also developers who may be able to structure new housing projects for CA Dream for All Fund borrowers over time.

The following report offers a blueprint for progress. First, it lays out the barriers to affordable homeownership facing Californians today, and the necessity for decisive action. Second, it explains the mechanics, uses and value of tools like shared appreciation loans to tackle the problem. Third, it proposes a comprehensive program designed to address our challenges and accomplish our objectives. Fourth, it lays out methods and structures for funding and financing this program in order to safeguard the State's resources and promote positive results. Fifth, it recommends strategies for outreach, equity and implementation to achieve the most effective impact. The report is accompanied by an appendix of supplemental materials including a glossary of terms, case studies, preliminary program guidelines, and additional supporting analyses.

Through deep research and analysis, this report presents a clear view of a complex issue. It demonstrates the stakes of our task and the scope of our solutions. Ultimately, it serves as a guide—describing where we have been, detailing where we are, and illuminating a sustainable and affordable pathway for homeownership.

II. INTRODUCTION & BACKGROUND

In July 2021, the California Legislature enacted Assembly Bill 140 (Chapter 111, Statutes of 2021), which provided for a study to be undertaken by the California State Treasurer, in collaboration with the California Housing Finance Agency and the California Department of Housing and Community Development and other relevant parties, to develop a framework for a project called the "California Dream for All" program.

Following the 2007-2009 financial crisis and the ensuing Great Recession, capital requirements for banks originating and holding mortgage loans were altered in significant ways. The resulting tightening of lending standards has presented challenges to would-be first-time homebuyers everywhere—but in California, where median home prices in urban areas nearest to employment opportunities have risen to all-time highs, the problem is particularly acute.

The enabling legislation is aimed at reducing the cost of home ownership for lower- and middle-income Californians. The conceptual plan is also intended to enable and encourage homebuilders to sell homes at prices that are more attainable by purchasers in these demographics.

Introduction

This report provides a design framework for the California Dream for All, a proposed shared appreciation loan investment fund for the state of California. In July 2021, the California legislature enacted Assembly Bill 140 (AB 140), which empowers the California State Treasurer's Office to develop a design framework for the California Dream for All program that makes homeownership more affordable to low- and moderate-income Californians.

This report by California Forward (CA FWD) provides a summary of the challenges to affordable homeownership facing Californians today, the mechanisms by which a *shared appreciation loan (SAL)* investment fund could increase access to homeownership, the required fund design to meet policy priorities, an approach to financing and the implementation and governance needs of the proposed design.

What the RFP required

The State Treasurer's Office RFP said that a core goal of the CA Dream for All project would be "making home ownership more affordable by reducing the cost of such ownership for lower- and middle-income Californians." The project team has committed to designing a program that effectively broadens choices for disadvantaged and vulnerable communities of all demographics—especially those that have been victims of historic and ongoing inequity in access to mortgage financing and homeownership, including communities of color.

A key component of fulfilling this commitment is ensuring that, as the program is implemented, it creates direct benefits for families and individuals whose ability to participate in the mortgage market has been impeded by current and historic policy decisions.

Why this is important[1]

Homeownership provides people with the opportunity to build generational wealth, and can often be a tool for long-term economic prosperity and success. Homeowners can take advantage of economic opportunities like tax subsidies, and can increase wealth by gaining value in assets that will appreciate over time.

The ability to withstand a temporary loss of income or significant unexpected expense depends largely on having a reserve of wealth. In this regard, homeowners have a huge advantage over renters; in 2019, the median wealth of homeowners was $254,900—more than 40 times the $6,270 median for renters. Even when we don't account for home equity, the median wealth of owners is $98,500—more than 15 times that of renters.[2] Data from a long-term study that followed about 1,700 households from 1984 through 2009 revealed that a difference in years of homeownership was the largest driver of the wealth gap between White and Black families, accounting for 27% of the total gap—a greater influence than household income, differences in unemployment, college education, inheritance and pre-existing family wealth.[3]

1 "Housing, Homeownership, and the Racial Wealth Gap." California Community Builders, March 2022. Retrieved from: https://www.ccbuilders.org/housing-homeownership-and-the-racial-wealth-gap/

2 "The State of the nation's housing." Cambridge, Mass.: Joint Center for Housing Studies of Harvard University, 2021. Retrieved from: www.jchs.harvard.edu/state-nations-housing-2021

3 Shapiro, Thomas, Tatjana Meschede and Sam Osoro. "The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide." Institute on Assets and Social Policy, 2013. Retrieved from: drum.lib.umd.edu/bitstream/handle/1903/24590/racialwealthgapbrief.pdf

Wealth changes our conception of social inequality, its magnitude and its origins. We know that wealth does not only rely on hard work or discipline; it depends greatly on systemic factors like access to capital, homeownership and other wealth building tools. In many cases, these are tools that the United States government made accessible for some families while intentionally leaving others behind—especially families of color and immigrants.[4] The intergenerational nature of wealth means that, without public interventions, it will be impossible for families that have historically been excluded from homeownership to catch up.[5] Access to homeownership should not be viewed as a housing or shelter issue, but instead as one concerning economic and social justice.

Homeownership is an important part of the American Dream. More than 80% of renters in America hope to own a home someday.[6] Homeownership helps families build wealth, and when lending is done responsibly, it creates a foundation for economic stability in the form of fixed housing costs. Yet there is persistent and well-documented inequality across racial lines in the ability to access and maintain homeownership.[7] White households are more likely to own their homes than any other racial group. For those non-White households lucky enough to be homeowners, most are more recent homeowners who are more likely to have high-risk mortgages and are most vulnerable to foreclosure and volatile housing prices.[8]

The value of homeownership includes control over one's own space, stable monthly payments, tax incentives and improved credit scores.[9] Home equity accounts for 60% of the total wealth among America's middle class.[10] Eliminating racial disparities in homeownership rates and home equity gains would shrink the racial wealth gap by 31% and 16%, respectively, according to a recent analysis by Demos.[11]

In sum:

- **Wealth grants families and individuals many benefits that impact their quality of life.** Of two families with the same income, but different levels of wealth, the family with more wealth has greater access to higher-quality education, more funds for retirement, better health, an improved ability to wait for the right job, a greater possibility of passing on wealth and better overall financial stability.
- **The ability to accumulate wealth does not rely on factors like hard work or persistence.** Rather, it relies on access to resources and capital that help individuals build wealth. Today, for example, communities of color who have not historically had access to wealth-building tools face a racial wealth gap that impedes their ability to reach economic prosperity and stability.
- **Access to capital has been and remains a major barrier to homeownership for low- and moderate income families, people of color and other disadvantaged communities.** Discrimination in lending practices and policies, as well as other barriers, have impacted disadvantaged communities for centuries—and the results hare still being felt today.

Why a focus on communities of color?

The California Legislature has for the past five years shown a significant and consistent commitment to addressing systemic inequality and the needs of disadvantaged communities, including communities of color, with a particular focus on creating equitable outcomes for all. Since 2018, examples of this commitment include the creation of the Collaborative on Race and Equity; passage of Assembly Constitutional Amendment 5 of the 2019–20 Regular Session,

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4 Shapiro, Thomas M. "Race, homeownership and wealth." *Wash. UJL & Policy 20*, 2006. Retrieved from: openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1242&context=law_journal_law_policy

5 Weller, Christian, and Lily Roberts. "Eliminating the Black-White Wealth Gap Is a Generational Challenge." Center for American Progress, 2021. Retrieved from: www.americanprogress.org/issues/economy/reports/2021/03/19/497377/eliminating-black-white-wealth-gap-generational-challenge/

6 Shahdad, S. "Renters Report Future Home Buying Optimism, Financial Assistance Available to Population with Higher Homeownership Rates." Fannie Mae (blog), 2017. Retrieved from: http://www.fanniemae.com/portal/research-insights/perspectives/renters-homeownership-optimism-shahdad-092817.html.
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7 McCargo, Alanna, Jung Hyun Choi, and Edward Golding. "Building Black Homeownership Bridges: A Five-Point Framework for Reducing the Racial Homeownership Gap." Urban Institute, 2019. Retrieved from: https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf

8 Shapiro, Thomas, Tatjana Meschede and Sam Osoro. "The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide." Institute on Assets and Social Policy, 2013. Retrieved from: drum.lib.umd.edu/bitstream/handle/1903/24590/racialwealthgapbrief.pdf

9 Darity, William Jr., et al. "What We Get Wrong About Closing the Racial Wealth Gap." *Insight Center for Community Economic Development* (2018). Retrieved from: http://narrowthegap.org/images/documents/Wealth-Gap---FINAL-COMPLETE-REPORT.pdf
De La Cruz-Viesca, Melany, et al. "Fifty Years After the Kerner Commission Report: Place, Housing, and Racial Wealth Inequality in Los Angeles." *Russell Sage Foundation* (2018). Retrieved from: https://www.rsfjournal.org/content/rsfjss/4/6/160.full.pdf

10 Shapiro, Thomas M. "Race, homeownership and wealth." Wash. UJL & Policy 20 (2006). Retrieved from: openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1242&context=law_journal_law_policy

11 Sullivan, Laura, Tatjana Meschede, Lars Dietrich, Thomas Shapiro, Amy Traub, Catherine Ruetschlin, and Tamara Draut, "The Racial Wealth Gap: Why Policy Matters," *Demos* (2016). Retrieved from: www.demos.org/research/racial-wealth-gap-why-policy-matters

affirming the State's commitment to race and equity; creation of the Task Force to Study the Impact of Reparations for the Black Community; introduction of Senate Concurrent Resolution 92 of the 2019–20 Regular Session, which declared racism a public health crisis; and the passage of HR 39, which resolved that the Assembly will explore methods to integrate equity more formally into its daily activities, including the potential adoption of equity impact analysis into the existing committee and floor bill analysis process.[12]

An approach focused on equity and equitable outcomes is especially important in efforts related to homeownership. As the long-term financial impact of the COVID-19 pandemic continues to take shape, policy makers should learn from the aftermath of the Great Recession and the generational economic setbacks it caused for communities of color. While the foreclosure crisis caused the average family to lose 29% of their wealth, Black Americans lost 48% due to the dominant role of home equity in their wealth portfolios and the prevalence of predatory high-risk loans in communities of color.[13] At the same time, the Latino community lost a devastating 67% of total wealth.[14] Communities of color shouldered the burden of the crisis and were forced to either burn through their hard-earned savings or go into debt. For example, Black families' holdings of stock and mutual funds plummeted by two thirds—and given the long-term impacts of compounding interest, it will be very difficult to make up for this loss.[15] Discriminatory practices like redlining, mortgage steering and racially restrictive covenants—in addition to even wider structural problems like a lack of access to credit and lower incomes—have blocked the path to homeownership for households among communities of color, while reinforcing racial neighborhood segregation.

Federal policies created in the 1930s during the Great Depression made widespread homeownership and middle-class wealth accumulation possible by subsidizing and insuring long-term, low-interest mortgages with a much smaller down payment than was ever previously possible. This action put homeownership within reach for millions of people for the first time. Future policies sustained this effort, including by creating additional tax incentives and by subsidizing highways to allow suburban development. These efforts have contributed to America's 69% homeownership rate, which is higher than in many other countries. However, most of these subsidies only helped White households—and at a time when homeownership was becoming the primary vehicle for wealth-building for the White middle-class, non-White communities were intentionally excluded from the homeownership market for decades.[16]

Today, the racial homeownership gap is widest for those between 25 and 29 years old and closes incrementally with age. The earlier in life a person buys a home, the more wealth they can accumulate as the home appreciates and the mortgage loan gets paid down.[17] As a result, home purchasing worsens wealth inequality for future generations.[18]

Neighborhoods that were previously redlined still have higher poverty rates and less economic mobility for children.[19] They still experience a reduced housing supply, offering fewer opportunities to buy.[20] Communities in these neighborhoods tend to have a lower life

12 Adapted from March 26, 2022 "Equity Impact Assessment of Bills" briefing held by PolicyLink/Greenlining/EdTrust West.

13 Asante-Muhammad, Dedrick, Jamie Buell and Joshua Devine. "60% Black Homeownership: A Radical Goal for Black Wealth Development." National Community Reinvestment Coalition, 2021. Retrieved from: https://ncrc.org/60-black-homeownership-a-radical-goal-for-black-wealth-development/

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17 Shapiro, Thomas M. "Race, homeownership and wealth." Wash. UJL & Policy 20, 2006.: 53. Retrieved from: openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1242&context=law_journal_law_policy

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expectancy, and a higher incidence of chronic diseases.[21] At the same time, they also experience lower quality broadband access as well as lower house values and homeownership rates.[22]

These disparities are clear—yet simply increasing homeownership rates for households of color is not enough. Under current conditions, homeowners of color go into greater debt for less valuable homes. The average first home of a Black purchaser is valued at $127,000 and has $90,000 in mortgage debt, while White first-time homebuyers have an average home value of $139,000 with $75,000 in mortgage debt.[23] Reasons for the homeownership gap and home equity rising so much more for White homeowners include:

- The home-appraisal process has contributed significantly to the racial wealth gap. The history of redlining has led to homes in predominantly White neighborhoods appraising at nearly three times the value of a comparable home in a neighborhood with more communities of color.[24]
- Financial institutions reject households of color for home mortgages 60% more often than White families, even with comparable credit scores.[25]
- White families have more wealth to give as inheritances or to help with down payments, allowing their children to buy homes and start acquiring equity an average eight years earlier than Black families.[26]
- Due to having less money for down payments, families of color face higher interest rates. As a result, they tend to pay off their mortgages more slowly while paying much more in interest over the length of the loan.
- Households of color typically have higher student debt.

All these factors contribute to White families having a homeownership rate that is 23 percentage points higher than the average for non-White families throughout the country.[27] So, while homeownership has the potential to create wealth for anyone, unfair and unequal circumstances around homeownership widen the racial wealth gap. Of all the assets that lead to wealth, homeownership is often the first step and acts as a launching pad to asset diversity.[28] To ensure a future of wealth and racial equity, we must develop new ideas on how to increase homeownership opportunities and build wealth more equitably.[29]

Low-wealth homebuyers have needs that mainstream mortgage and homebuying programs often fail to address. For example, 33% of Black households have thin credit files, or credit-use levels that are insufficient for generating a credit score, compared to only 18% of White households.[30] Structural racism and other systemic factors that contribute to unemployment, income and student loan debt all affect credit history, which is a crucial factor in the mortgage loan approval process. Black borrowers fall 135 points below the overall average credit score for conventional loans, and Latino borrowers are 85 points lower.[31] Evidence suggests that this difference has little or nothing to do with individual borrower responsibility, and a lot to do with the fact that the credit scoring system is the product of a financial services industry that has structurally disadvantaged communities of color. Credit scoring systems are well-known for disadvantaging households of color. Including rent, cell phone and utility

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26 Shapiro, Thomas, Tatjana Meschede and Sam Osoro. "The roots of the widening racial wealth gap: Explaining the black-white economic divide." Institute on Assets and Social Policy, 2013. Retrieved from: drum.lib.umd.edu/bitstream/handle/1903/24590/racialwealthgapbrief.pdf

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30 Asante-Muhammad, Dedrick, Jamie Buell and Joshua Devine. "60% Black Homeownership: A Radical Goal for Black Wealth Development." National Community Reinvestment Coalition, 2021. Retrieved from: https://ncrc.org/60-black-homeownership-a-radical-goal-for-black-wealth-development/

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payments in credit scoring could help households of color demonstrate their creditworthiness.

While many of these issues have affected individuals who have lived in America for generations, more recent immigrants face unique challenges. Although Asian and Pacific Islander (API) households have a relatively high homeownership rate of around 60% as a whole, less than half of Pakistani (43%), Laotian (45%), Thai (46%), Korean (46%), Pacific Islander (41%) and Cambodian (39%) households own their homes.[32] This disparity shows the importance of disaggregated data when analyzing racial equity indicators. Data broken down by ethnicity, micro-geography and many other factors gives us information that a broad category like "Asian American" or "API" tends to obscure.

The Home Mortgage Disclosure Act (HMDA) requires financial institutions to provide mortgage data to the public. The first HMDA data disaggregated by race collected in 1991 revealed a striking racial disparity in loan denial rates for different groups: Black households were denied almost 250% more than White households, and the Latino denial rate was 50% higher than the White denial rate.[33] A study published in the *American Economic Review* concluded that "even after controlling for financial, employment, and neighborhood characteristics, Black and Latino mortgage applicants in the Boston metropolitan area are roughly 80% more likely to be turned down than whites."[34] Since the Great Recession, it has become even more difficult for lower-income families to access mortgage credit as lenders tightened their lending rules.[35] If racial and ethnic disparities in homeownership rates caused largely by disparities in access to credit were eliminated, the Black-White wealth gap would shrink by 31%.[36] Limiting access to homeownership only serves to weaken the U.S. economy and widen the wealth gap.[37]

According to the most recent data from the **California Dream Index**, the homeownership rate is 35% for Black families and 44% for Latino families. White families have a 59% homeownership rate.

CALIFORNIA DREAM INDEX

Securing enough cash for closing and a down payment creates another huge barrier to homeownership for many families. More than half of renters see the down payment as the major obstacle to buying a home. Increasing the visibility of and access to down payment assistance will especially benefit young homebuyers of disadvantaged groups like communities of color, who are less likely to receive parental support when purchasing a home than their White counterparts.[38]

Access to Affordable Homeownership in California

Californians have limited access to affordable homeownership due to a series of barriers that are detailed in the following section. The first set of barriers is at the market level, where the gap between housing demand and supply continues to increase and home prices are growing faster than household income. The result is that homeownership is becoming increasingly inaccessible to moderate-income renters, who are remaining in rental units or moving out of the state. The second set of financial barriers involves more limited and expensive mortgage options for first-time homebuyers than conventional mortgage financing. There are also barriers at the household level where homebuyers, particularly from lower-income households, face difficulty saving for closing costs and down payments, often as a result of long-term racial inequality. Finally, COVID-19 created market shocks throughout the state that have further reduced access to homeownership.

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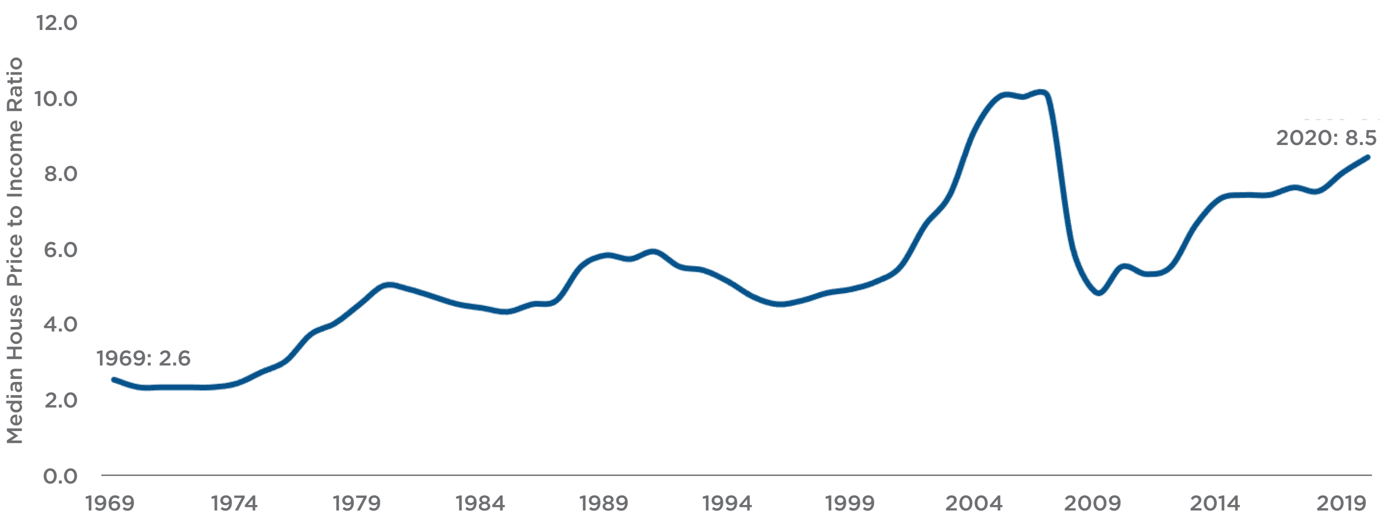
Market Barriers: Supply Gap and Price Growth

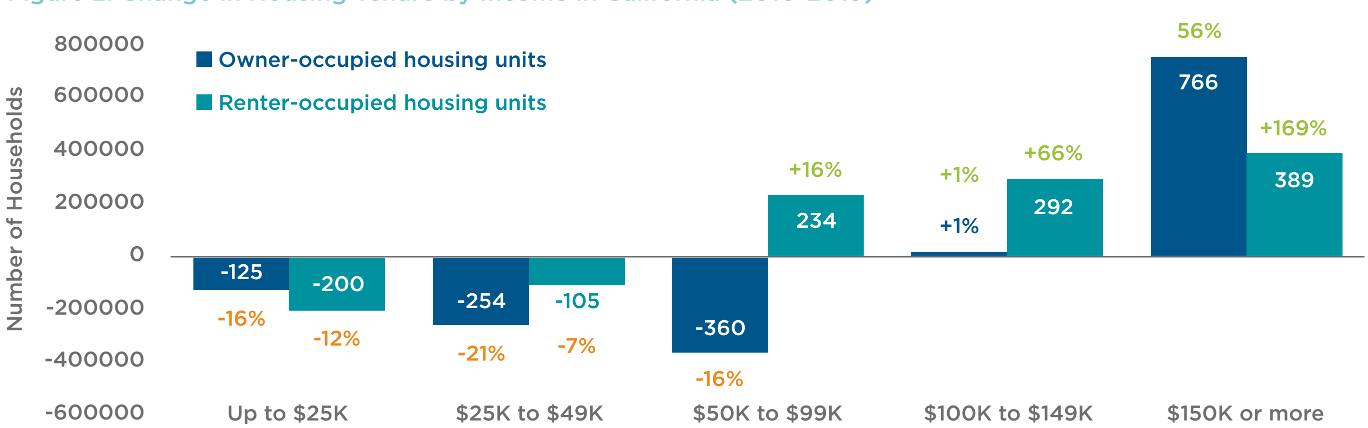
Despite strong income growth in the past decade, housing prices have far outpaced income growth, leading to larger affordability gaps. Figure 1 shows that growing disparity: in 1960, the median house price was 2.6 times the median income, but in 2020, the median house price had expanded to 8.5 times the median income. That increase has been particularly steep over the last decade. As a result, higher-income households have remained in apartments, which has crowded out lower-income households. For instance, Figure 2 shows that, since 2010, the number of owner-occupied housing units have only increased for households earning more than $150,000, which implies that homeownership has only been rising for those households. A clear outcome of this dynamic is people moving both within California and out of state.[39] The growth in higher-income renters is also an indication of the barriers to homeownership in California.

Figure 1: Rising Home Price to Income Ratio in California



Source: California Association of Realtors 2021; California Department of Housing and Community Development 2021; HR&A Advisors

Figure 2: Change in Housing Tenure by Income in California (2010-2019)



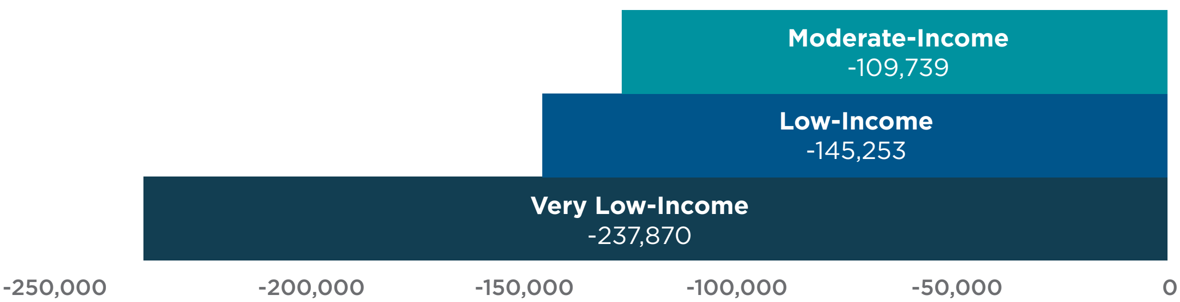
Source: American Community Survey 2010 and 2019; HR&A Advisors

39 Johnson, Hans. "Who's Leaving California-and Who's Moving In?" Public Policy Institute of California, 2022. Retrieved from: https://www.ppic.org/blog/whos-leaving-california-and-whos-moving-in/

Housing Demand and Supply Imbalance

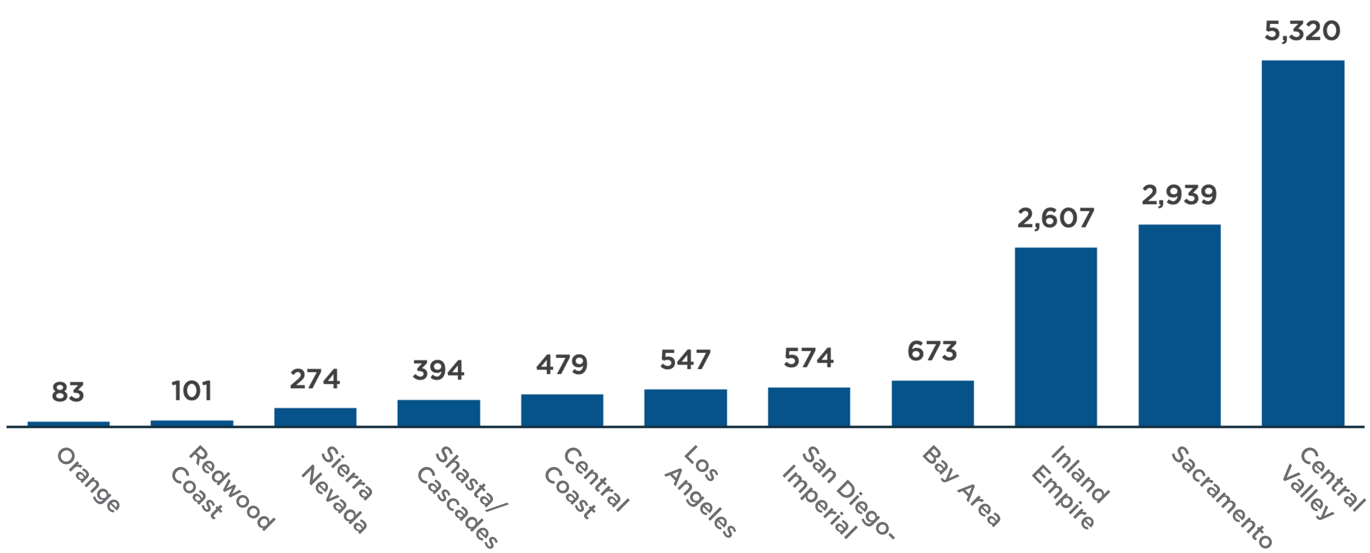
Declining homeownership can be linked in part to the state's housing shortage. In recent years, statewide housing construction has lagged relative to demand. Based on the Regional Housing Needs Allocation (RHNA) projections set by the California Department of Housing and Community Development (HCD), the California Housing Partnership estimates that the state must develop at least an additional 490,000 housing units (both rental and for-sale) by the end of the Fifth Housing Element Cycle (approximately early 2024) in order to meet demand for very low-, low- and moderate-income households.[40] For example, California is short nearly 110,000 units that are affordable to moderate-income households (both deed- and non-deed-restricted) and 238,000 units that are affordable to very low-income households. The state appears unlikely to meet these targets based on recent development activity, as it only built 37,000 affordable units between 2018 and 2020. In this same timeframe, the median sales price of single-family homes grew by at least 8% in every regional market.

Figure 3: Statewide Progress Toward RHNA Target (Unit Deficit/Surplus; 2015-2023)



Source: California Housing Partnership 2021

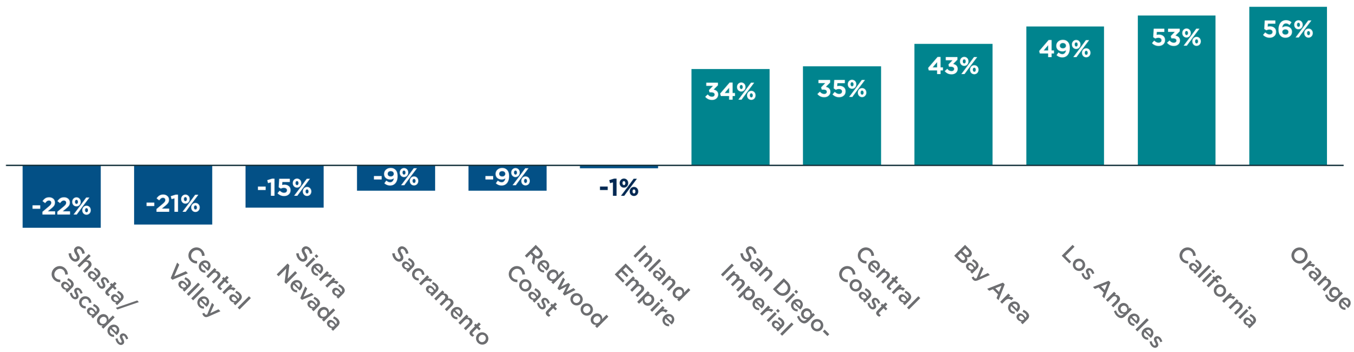
Figure 4: Units Built Affordable to Moderate-, Low-, or Very Low-Income Households (2018-2020)



Source: California Department of Housing and Community Development

40 California's 1969 Housing Element Law requires all cities and counties to engage in detailed residential planning as part of comprehensive plan updates every five to eight years.

Figure 5: Percentage Above or Below AMI Required to Purchase Median-Value Home



Source: California Association of Realtors 2021; California Department of Housing and Community Development 2021; HR&A Advisors

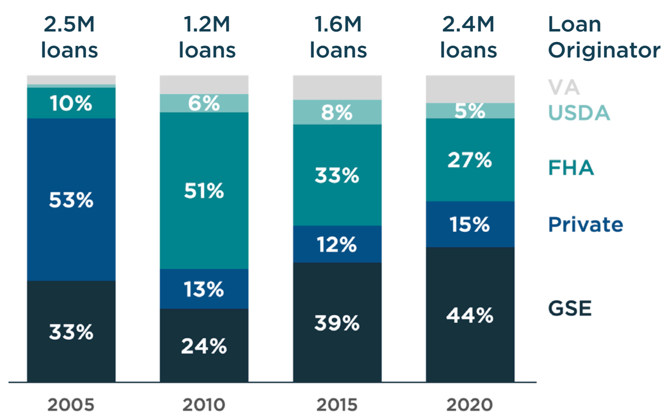
Affordability and market conditions also vary by region. Figure 7 shows the required percentage of Area Median Income (AMI) needed to afford a median-priced home across subregions in California with a 20% down payment. In the Los Angeles region, where the median home value is over $788,000, a household requires an income of at least $111,900, or 140% of the AMI, to purchase a home affordably at that price. Other high-cost markets face similar challenges, including Orange County, the Bay Area, the Central Coast and San Diego-Imperial. This affordability gap may be attributed to the slow rate of for-sale housing production in these areas. Despite accounting for more than two-thirds of the state's population, these five submarkets accounted for just 12% of affordable for-sale housing construction between 2018 and 2020. Figure 6 shows the regional breakdown of for-sale units built between 2018 and 2020 that are affordable to moderate-, low- or very low-income households.

Financing Barriers: Expensive Loan Products

For many homebuyers, the viability of homeownership also depends on the types of mortgage finance to which they have access. Though there are many types of mortgages, most can be classified as either government-insured mortgages or conventional mortgages. These mortgages offer significantly different terms and service different homebuyers. Conventional mortgages are offered by a range of private financial institutions and generally require higher down payment amounts than the government-insured mortgages. Government mortgage insurance, meanwhile, is primarily provided by the three main agencies:

- *Federal Housing Administration (FHA):* FHA is an agency within the Department of Housing and Urban Development (HUD) and is the largest provider of government mortgage insurance. Because FHA requires a minimum of only 3.5% down payment from borrowers, FHA loans are popular among first-time buyers who have little savings or have credit challenges.
- *Department of Veterans Affairs (VA):* The VA provides a guarantee on certain mortgages made to veterans.
- *U.S. Department of Agriculture (USDA):* The USDA administers a direct loan program for low-income borrowers in rural areas and a loan guarantee program for low- and moderate-income borrowers in rural areas.

Figure 6: Loans Originated for First-Time Buyers in the US (2005-2020)



Source: National Mortgage Database 2022

Figure 7: Mortgage Insurance Requirement by Types of Mortgage Products

Loan Product	Minimum Down Payment	Insurance Type	Upfront Premium	Annual Payment*
FHA	3.50%	Mortgage Insurance Premium (MIP)	1.75% of loan amount	~0.85-1.05% of loan amount
Conventional	3.00%	Private Mortgage Insurance (PIM)	None	~0.58-1.86% of loan amount
Conventional	20.00%	-	None	None

*Depends on the borrower's down payment, first mortgage size, loan term, and credit score.

FHA-insured mortgages play a particularly large role for first-time homebuyers, low- and moderate-income households and minorities both because of its smaller down payment requirement and because of its less stringent requirements related to credit history compared to conventional loans.[41] For example, since 2000, approximately 80% of FHA mortgages were made to first-time homebuyers and one-third of FHA loans were made to borrowers in communities of color.[42] In fact, twice as many FHA mortgages are made to Black and Latino borrowers as the rest of the market.[43] Notably, FHA loans represent about 24% of all loans made to all households making less than 100% AMI. This share is even higher for Black and Latino households, where the share of FHA loans is 36% and 39% respectively. The FHA clearly plays a central role in providing credit to borrowers not adequately served by the conventional market. This role has increased since the Great Recession, with both FHA loans and other government-insured loans accounting for a larger share of first-time homebuyer's' mortgages in 2020 than in 2005.

Although FHA-insured loans expand access to homeownership, the mortgages can be more expensive than conventional loans. Figure 11 details the mortgage insurance requirements for FHA and conventional loans.[44] Mortgage insurance protects lenders from the risk of higher leverage loans by limiting losses if the borrower defaults. Borrowers with FHA-insured mortgages pay Mortgage Insurance Premiums (MIPs), which carry an upfront cost (UPMIP) equal to 1.75% of the loan amount and an annual premium ranging from 0.85% to 1.05% of the original loan amount for the life of the loan, mostly depending on loan size. Borrowers with conventional mortgages who have down payments less than 20% are required to pay Private Mortgage Insurance (PMI), which is structured as a monthly payment ranging from 0.58% to 1.86% of the original loan amount per year mostly depending on the borrower's credit score until the homeowner reaches 78% loan-to-value or the borrower has 22% equity in their home.

With insufficient income or savings to afford a 20% down payment, asset-poor households have to take out a higher mortgage amount and incur higher monthly payments due to mortgage insurance premiums, which further contributes to the housing burden and deteriorates their financial condition. As illustrated in Figure 10, if a household is able to afford a 20% down payment on a median-priced home in California ($786,000), or $157,000, their monthly mortgage payment is at $3,157 with conforming loan at rates prevailing at the time this report was prepared. If the household is only able to afford a 3% down payment, the monthly mortgage payment will have to increase by $1,018 due to the larger mortgage amount and the lender's requirement for private mortgage insurance.[45] If the household opts for a FHA loan with a 3.5% down payment, the monthly payment is even higher at $1,180 as a result of the FHA mortgage insurance premium.

41 "FHA-Insured Home Loans: An Overview." Congressional Research Service, January 21, 2022. Retrieved from https://crsreports.congress.gov/product/pdf/RS/RS20530/3

42 FHA Annual Management Report Fiscal Year 2021, p. 15. U.S. Department of Housing and Urban Development. https://www.hud.gov/sites/dfiles/Housing/documents/FHAFY2021ANNUALMGMNTRPT.pdf. These figures are for FHA-insured forward mortgages and do not include FHA-insured reverse mortgages, known as Home Equity Conversion Mortgages (HECMs).

43 Ibid.

44 Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

45 Ibid; assuming rates for borrowers with FCIO 760 and higher

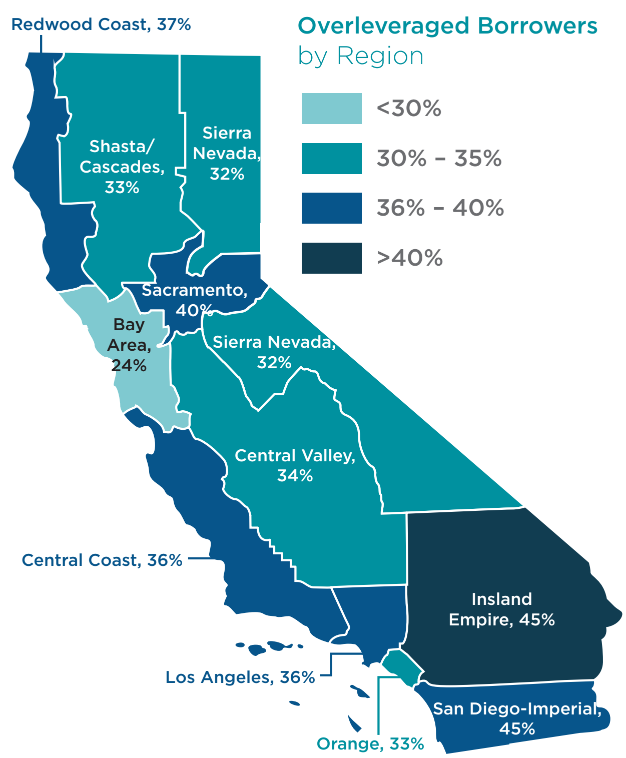
Figure 8: Mortgage Payment Comparison - FHA vs. Conventional Loan

	Conventional Loan		FHA
Down Payment	20.00%	3.50%	3.50%
1st Mortgage Payment	$3,160	$3,810	$3,800
PMI / FHA MIP	$0	$370	$540
Total Monthly Mortgage Payment	$3,160	$4,180	$4,340
Monthly Savings		**$1,020**	**$1,180**

Despite the differences in monthly mortgage payments, asset-poor households can also struggle to secure a competitive mortgage. In 2020, mortgage applicants with debt-to-income (DTI) ratios above 42% were nearly 2.5 times as likely to be denied loans as those with ratios at or below 35%.[46] This reflects the "ability to pay rules" that set the highest DTI a borrower can have at 43% DTI for qualified mortgages.[47] Regulation Z sets the requirements for qualified mortgages, which demonstrate to the secondary market that the creditors have made a "reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan." The maximum DTI to receive Qualified Mortgage status is 43%. Homebuyers with higher DTI loans must take out non-qualifying mortgages that have additional fees and higher interest rates than qualifying loans. In California, more than a third of homebuyers had a DTI over 42%, which implies many Californian's have non-conforming mortgages.[48] Furthermore, it reveals that many households access homeownership by putting themselves in precarious financial situations.

The combination of a small down payment and a less competitive mortgage further constrains how much a household can offer for a home. This puts many buyers at a significant disadvantage, especially in market environments where home costs are accelerating faster than wages and income. Small down payment mortgages are also less attractive to sellers, putting borrowers at a further disadvantage—especially in highly competitive markets. A recent survey found that 89% of home sellers would be "likely" to accept an applicant with a conventional loan, but only 30% would be likely to accept an applicant with a loan backed by either the FHA or the Department of Veterans Affairs (VA).[49] This discrepancy may be attributed to the additional terms that come with government-issued mortgages as well as a perception of elevated risk associated with the buyer's ability to secure financing. All-cash offers, by contrast, offer more guarantees that the sales transaction will close.

Figure 9. Share of Total Borrowers with High Debt (>42% DTI) by Region (2020)



Source: HMDA 2020

46 HMDA 2020.

47 "What is a Qualified Mortgage?" Consumer Financial Protection Bureau, 2019. https://www.consumerfinance.gov/ask-cfpb/what-is-a-qualified-mortgage-en-1789/

48 Ibid.

49 Goodman, Laurie, and Ratcliffe, Janneke. "The Tight Housing Market Boxes Out Government-Insured Borrowers, Widening Homeownership Gaps." Urban Institute, 2021. https://www.urban.org/urban-wire/tight-housing-market-boxes-out-government-insured-borrowers-widening-homeownership-gaps

Household Barriers: Savings, Wealth and Racial Inequality

Limited assets pose a major barrier to accessing homeownership. Surveys at the national level indicate that a lack of assets for a down payment may be the most significant barrier for prospective homebuyers. A 2021 survey of 2,500 non-homeowners found that 54% could not afford a down payment.[50] This result is consistent with a separate 2017 survey, in which 68% of all respondents cited down payment as a barrier.[51] While many low- and middle-income households struggle to save, asset-building is even more difficult for households of color. For instance, the median-income White household typically requires nine years of savings to afford a 5% down payment compared to 14 years for Black households and 11 years for Latino households.[52] This disparity reflects mortgage lending practices that deny households of color access to homeownership and economic mobility, perpetuating an intergenerational racial wealth gap.

High student debt further constrains homebuyers' ability to save for a down payment. In 2019, the median net worth of young renter households with a bachelor's degree was $62,000 if they were debt free—more than twelve times the net worth of a similar household with debt (-$4,860).[53] The difference between these two situations shows how student debt impacts wealth accumulation. Although a bachelor's degree may lead to higher earning potential over an individual career, the additional income often goes to pay off student debt in the early years. This added debt burden makes it more difficult for potential homebuyers to save the necessary down payment.

Furthermore, first generation homebuyers are also constrained by a lack of intergenerational wealth transfers that help them save for a down payment. One survey found that only 37% of first-generation homebuyers received help from their parents, compared to 51% of all first-time homebuyers.[54] This difference begins to reveal how beneficial homeownership is for multi-generational wealth building. Homeownership offers an opportunity to pass wealth between generations that puts first-generation homebuyers at a disadvantage when trying to save for a down payment.

As a result of these constraints, many homebuyers are priced out of the market. A smaller down payment correlates to higher mortgage payments, which many low- and moderate-income homebuyers cannot afford. Figure 10 shows how much more savings a homebuyer needs to accumulate to make a 20% down payment on a median price compared to a 10% down payment in different regions across the state. The difference ranges from approximately $5,200 to $18,000. The implication is that first-time homebuyers may need to save for many more years, and may never have enough savings to make a 20% down payment. These conditions create a competitive market that strongly disadvantages low- and moderate-income households.

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50 McNair, Kamaron. "48% of Renters Worry They'll Never Be Able to Buy; Down Payments Biggest Barrier." LendingTree, 2021. https://www.lendingtree.com/home/mortgage/homeownership-renting-survey/

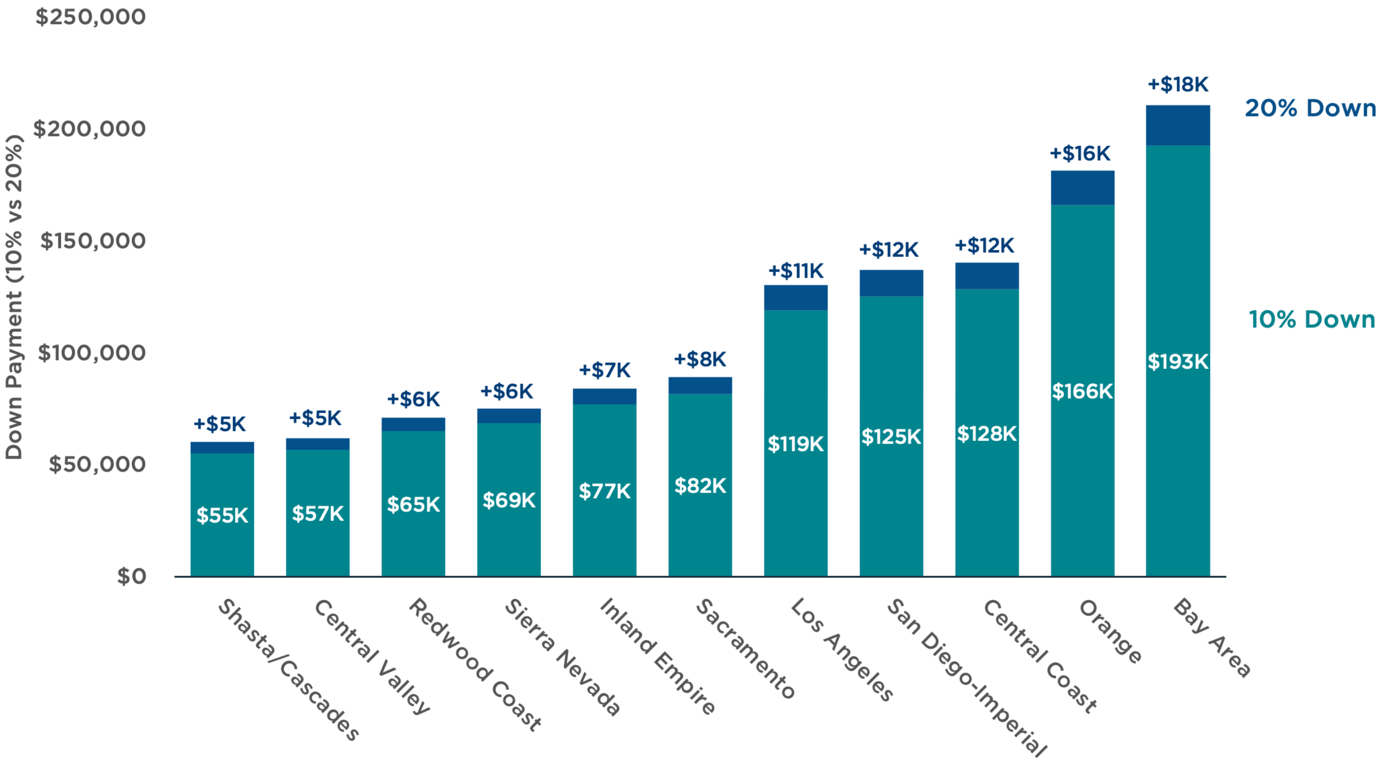
51 Gudell, Svenja. "Down Payment the Top Hurdle Holding Back Would-Be Home Buyers." Zillow, 2017. https://www.zillow.com/research/down-payment-hurdle-zhar-14790/

52 "Hardship for Renters: Too Many Years to Save for Mortgage Down Payment and Closing Costs." Center for Responsible Lending, April 2021. https://www.responsiblelending.org/research-publication/hardship-renters-too-many-years-save-mortgage-down-payment-and-closing-costs

53 "Hardship for Renters: Too Many Years to Save for Mortgage Down Payment and Closing Costs." Center for Responsible Lending, April 2021. https://www.responsiblelending.org/research-publication/hardship-renters-too-many-years-save-mortgage-down-payment-and-closing-costs

54 "2021 Homebuyer Insights Report. First-Generation Homeowner Spotlight." Bank of America, 2021.

Figure 10: Income Required to Make a 10% and 20% Down Payment



Source: HR&A Advisors

Racial Disparity in Access to Homeownership

Despite federal legislation prohibiting discrimination in the homebuying process, people of color continue to have more limited access to mortgage finance. While Latino and Black households account for 39% and 5% of all California households, respectively, they accessed just 31% and 4% of all home purchase loans in 2020.[55] Many households of color who do access loans may still be at a competitive disadvantage. Figure 11 shows that Latino households accounted for 56% of all government-issued mortgages, but just 23% of conventional mortgages. Mortgage underwriting criteria are partially responsible for these disparities; Black households nationally had a median DTI ratio of 41% in 2020, compared to 37% for White households, and as of October 2020, 45% of Black consumers nationally had subprime credit scores, compared to 18% of White consumers.[56]

However, economic characteristics do not fully explain racial disparities in mortgage access. In 2020, California lenders made fewer loans to Black applicants than White applicants, even when their incomes were high, $100,000 a year or more, and even when accounting for household debt.[57] In fact, high-earning Black applicants with low debt were rejected more often than White applicants in the same category and nearly as often as high-earning White applicants with high debt. Black applicants are also nearly twice as likely to be denied conventional mortgages as White applicants, even when controlling for income.

55 "HMDA Data Reveals Refi Boom During Pandemic, But Not For Black and Hispanic Homeowners." National Community Reinvestment Coalition, 2021. https://www.ncrc.org/hmda-data-reveals-refi-boom-during-pandemic-but-not-for-black-and-hispanic-homeowners/

56 HMDA, 2020.

57 HMDA, 2020.

Figure 11: Racial Disparities in Home Purchase Loan Access in California (2020)

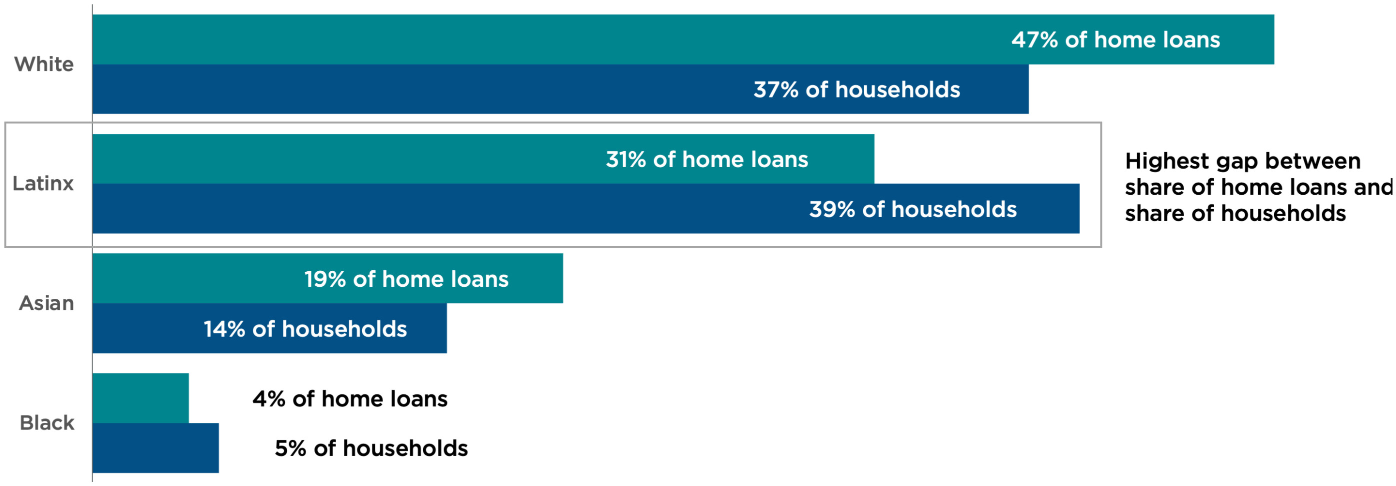


Figure 12: Loan Application Denial Rates for All Applicants and Applicants Over 120 AMFI, by Race

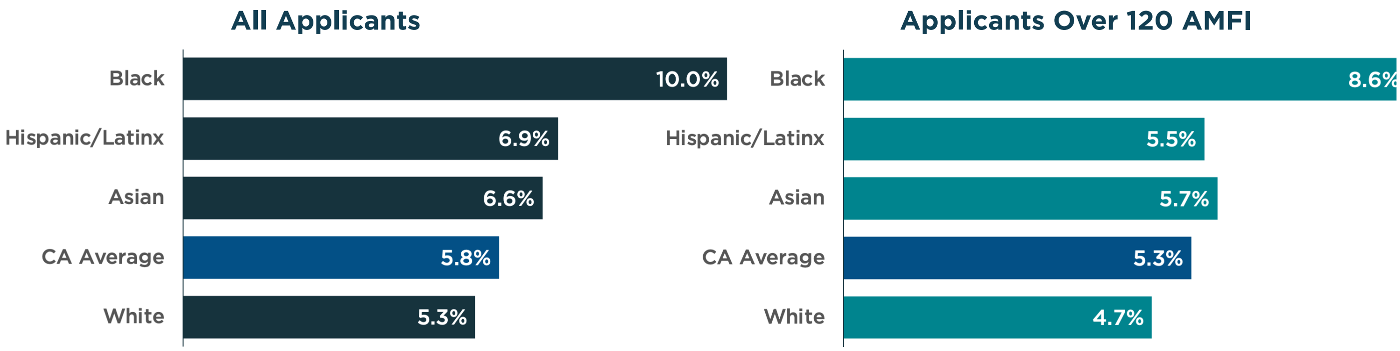
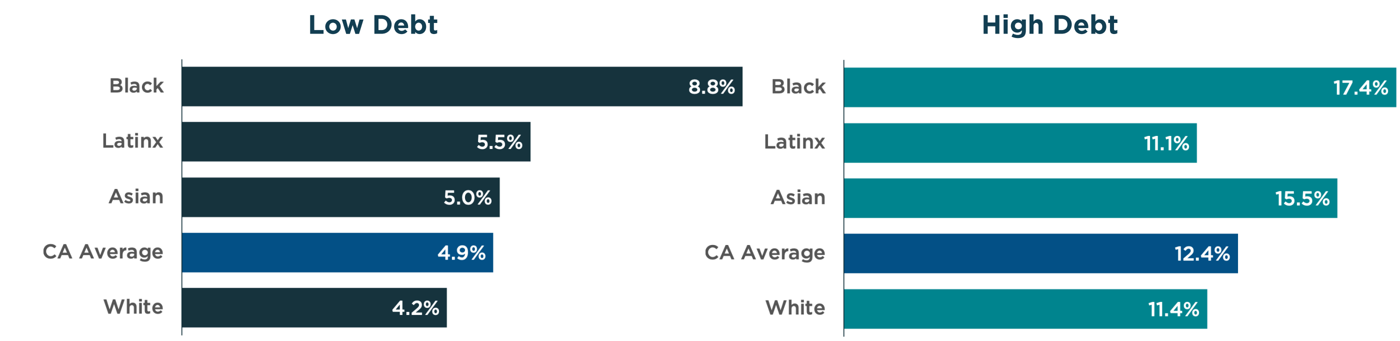
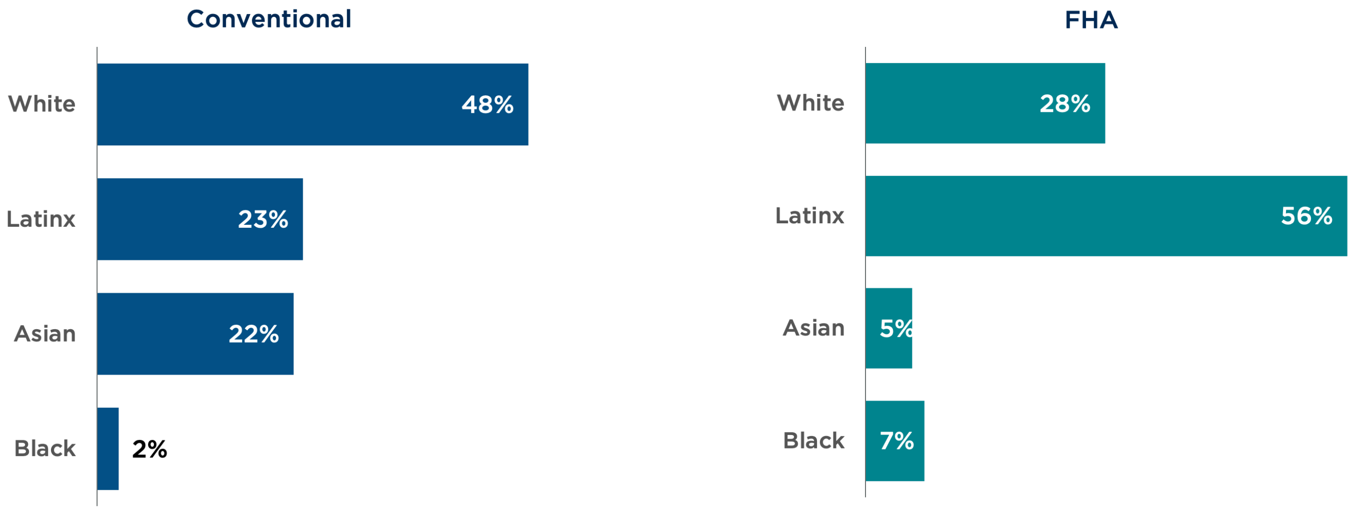


Figure 13: Loan Application Denial Rates for Low-Debt and High-Debt Applicants, by Race



Source: HMDA 2020

Figure 14: Share of Conventional and FHA Loans Issued to Borrowers, by Race



COVID-19 Impacts

The COVID-19 pandemic has negatively impacted existing and prospective homeowners. Through the first several months of the pandemic, an estimated 9.8% of American homeowners could not pay their mortgage on time.[58] These hardships have coincided with a reduction in home loans issued by banks and other mortgage lenders—also known as "credit tightening." Credit tightening can result from lenders requiring more stringent terms or the application of more restrictive regulation of the credit underwriting process, as was the case following the Great Recession. According to the Mortgage Credit Availability Index (MCAI), the availability of home loans nationwide dropped nearly 35% between February and September 2020. Credit availability has slightly rebounded since then, with a 5% increase between September 2020 and January 202,2 but it remains far below pre-pandemic levels. These constraints persist amid a continued escalation of home prices. Between 2020 and 2022, the median home price in California rose more than 26%.[59]

In response to this crisis, the State has dedicated funding to address housing affordability as part of its recovery effort. Through the California Comeback Plan, the State will dedicate over $3 billion to increase the supply of housing that is affordable to low-income families and increase access to homeownership. The CA Dream for All program is an important component of this allocation.

58 "Measuring the Crisis: Housing Data during the COVID-19 Pandemic." Urban Institute, 2020.

59 Mortgage Credit Availability Index. Mortgage Bankers Association. Retrieved from: https://www.mba.org/news-and-research/research-and-economics/single-family-research/mortgage-credit-availability-index-x241340

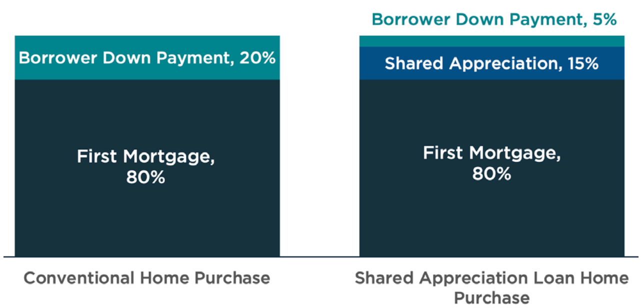
III. SHARED APPRECIATION LOAN

The following will lay out the basics of a shared appreciation loan, or SAL; how it benefits households compared to other home financing options; and the limitations of a SAL, particularly in a supply-constrained market like California.

SALs offer an alternative to either public subsidy or conventional mortgage financing. That is, a SAL is repaid through a predetermined percentage of the appreciation, or depreciation, in the home's value. This contrasts with conventional mortgages that have a fixed or variable interest payment on the outstanding loan amount. It also is different from a subsidy program where the assistance is not repaid.

At the time of the home purchase, SALs reduce the amount of down payment borrowers need to pay into the transaction. A SAL replaces some or all of the down payment a household would provide for a conventional loan. For example, Figure 15 shows a conventional loan with a 20% down payment and first mortgage. The SAL example reduces the down payment to 5% and replaces the balance with the SAL by providing down payment funds from a third party source.

Figure 15: Conventional Home Purchase vs. Shared Appreciation Home Purchase

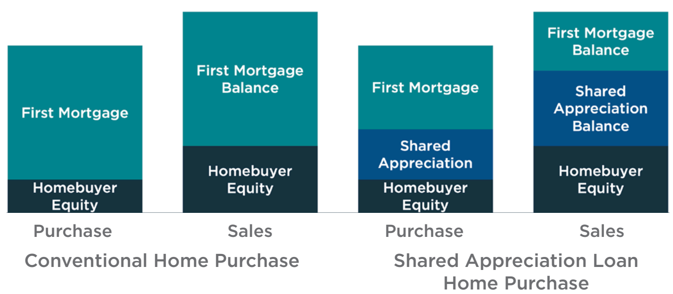


Source: HR&A Advisors

SALs are commonly structured as second mortgages. Second mortgage lenders can have specific credit, equity and income requirements that borrowers must meet. The primary difference between a second mortgage and a first mortgage is how repayment is prioritized. If the borrower cannot repay the debt in full, both loans are secured with the same asset, but the first mortgage receives priority if the home is foreclosed or sold to repay the debt. The second mortgage lender therefore assumes more risk. A SAL does not have monthly payments, and is therefore often called a "silent second" mortgage. The financial arrangement more closely resembles an equity investment in the property than a loan against the property. The basic terms of the second mortgage, such as interest rate and amortization schedule, are also set independently of the first mortgage. A SAL can align with the underwriting requirements of first mortgage lenders and the requirements of the secondary mortgage market because it becomes "junior" to the first mortgage. In other words, the first mortgage will be paid first in the event of a borrower default resulting in a foreclosure sale.

Sellers or developers are indifferent to whether a homebuyer uses a SAL. SALs do not directly impact the buyer or seller; homes are sold at a market rate through conventional market transaction processes. The seller, whether an investor, developer, or homeowner, lists the property and can receive offers from potential buyers with and without shared appreciation financing.

Figure 16: Shared Appreciation Loan at Purchase and Sale



Source: HR&A Advisors

The cost of a SAL to a borrower depends mainly on the level of home price appreciation and is aligned with market condition and household repayment capacity. One way to understand the cost of the loan is to evaluate the true annual cost as measured by the effective annual interest rate (EAR). With a pro rata SAL, the EAR is the annual rate of home price appreciation of the property, despite the size of the SAL. The EAR takes into consideration regional variances and differences in home conditions and valuation.

Existing Shared Appreciation Loan Programs

Among existing SAL programs, privately and publicly funded programs focus on different homebuyers. The privately funded SAL programs tend to bear higher cost of capital and therefore restrict eligible markets, property types and borrowers to increase the program's expected return to the entity providing the capital. This is a result of private sector investors' demand for higher returns on investment to meet their cost of capital. Such returns are anything but arbitrary; they are driven by market forces in an investment world that balances risks with rewards. The result is that private programs cannot provide sufficient subsidy or long-term investment to meet many low-and-moderate income households' needs, largely because of uncertainty around the timing of repayments of the initial capital investment.

Private and public SAL programs target different homebuyers. That is, private programs offer both lines of credit for existing homeowners and upfront financing for first-time homebuyers. Private programs typically provide loans to high-income or moderate-income households in housing markets with strong appreciation. Finally, private program terms are weighted to provide a greater share of appreciation to the SAL loan repayment than the typical public program that is often pro rata sharing or forgivable (See Appendix B for more detailed information on existing shared appreciation programs). Public SAL programs, on the other hand, tend to focus on first-time homebuyers and target low- to moderate-income homebuyers.

Comparison with Other Shared Equity Models

It should be noted that a SAL is fundamentally different from other shared equity models like limited equity cooperatives (LECs) and community land trusts (CLTs). Most other shared equity homeownership models aim to preserve affordability by adding a long-term restriction on the sales prices rather than allowing households to reap the full benefits of home appreciation at sale. Meanwhile, a SAL program typically does not have an affordability component, and is focused on building assets for borrowers and sharing market risks.

Figure 17: Key Features of Private Shared Appreciation Programs

Program Feature	General Definition
Program Serves	Existing homeowners and first-time homebuyers
Funding Sources	Private investors incl. institutional investors, venture capital, REITs
Loan Amount	5%-30% of beginning property value Maximum loan amounts in the range of $120,000 - $600,000
Borrower Eligibility	500+ credit score, 75%-95% LTV, some down payment contribution
Appreciation Share Split	Programs receive appreciation split of 2.5:1 or higher.
Downside Protections	Most programs share downside risk but may apply an upfront risk adjustment
Repayment Events	Repayment typically occurs at borrower buy-out of the loan, home sale, or refinance. In some cases, borrower can refinance without repaying the SAL.
Examples	Landed, Unison, Hometap, Noah, The Point

Shared Appreciation Loan and Traditional First-Time Homebuyer Assistance

There are a number of existing types of public support that a first-time homebuyer can access, as described in Figure 19. Though the exact terms vary, the common limitation is the amount of assistance, which is typically below 5% of purchase price. In addition, most programs operate at a small scale with a long waiting list. A well-designed statewide SAL program could complement the existing financing options to overcome limitations of the existing programs.

Figure 18: Comparison with Shared Equity Homeownership Models

Model	Type	Primary Goal	Description
Limited Equity Cooperative (LEC)	Shared Equity	Long-term affordable housing stock	Residents jointly own shares in a cooperative which in turn owns housing units. Co-op members pay a monthly fee to cover shared expenses. Ownership shares can be sold based on a formula which typically maintain affordability.
Community Land Trust (CLT)	Shared Equity	Long-term affordable housing stock	A nonprofit entity (the CLT) purchases and holds a portion of the property (typically, the land value) and an income-qualified homebuyer owns the remaining portion (typically, the house). The CLT retains ownership of its portion at sale, which much be made to another income-qualified homebuyer, thus preserving the home for affordable homeownership.
Shared Appreciation Loan (SAL)	Shared Appreciation	Wealth-building for homebuyers	A lender provides a "silent second" mortgage to a homebuyer or existing homeowner in exchange for a share of the appreciated value on the home over the term of the loan.

Figure 19: Common Homeownership Financing Options for First-Time Homebuyers

Public Finance Instrument	General Definition
Forgivable Down Payment Assistance	Public subsidy with no repayment and interests, typically within a range of 3-5% of purchase price with the rare exception up to 10%, such as the CalHFA Forgivable Equity Builder Loan
Fixed Rate Down Payment Assistance	Silent second mortgage with fixed simple interest rate that accrues and is due at exit, typically up to 3-4% of purchase price, such as the CalHFA MyHome Program
Closing Cost Assistance Program	Silent second mortgage with zero interest, typically up to 3-4% of purchase price with zero interest, such as the CalHFA ZIP Program
Shared Appreciation	Silent second mortgage with no monthly payment and is due at exit based on a percentage share of home price appreciation or depreciation

CalHFA MyHome Program

The MyHome program is second, silent mortgage that covers the lessor of 3% of the loan amount and $15,000 (up to 3.5% for FHA), sits in te second lien position, and can be layered with any CalHFA first mortgage. To qualify for the MyHome program, the borrower must be first-time homebuyer, complete homebuyer education, and meet the **CalHFA income limits of 150% of county AMI** by household size. Public school and Fire Department employees, new construction properties, manufactured housing properties, and single-family homes with ADUs are exempt from the loan amount limit.

Loan Amount: 3% (3.5% for FHA) of the first mortgage up to $15,000

Eligible Use(s): Down Payment and Closing Coast Assistance [60]

60 MyHome Assistance Program. CalHFA, 2022. https://www.calhfa.ca.gov/homeownership/programs/myhome.pdf

CalHFA Forgivable Equity Builder Loan

The Forgivable Equity Builder Loan (FEB Loan) is an forgivable, zero percent interest second lien for first-time homebuyers that covers the loan amount up to 10% of the sales price of appraised value. To qualify for the FEB Loan, the borrower must receive approval for any CalHFA first mortgage that does not utilize the ZIP program, **earn income at or below 80% AMI**, be a first-time homebuyer, and take education. The Loan is forgiven is the borrow stays in the residence for five years; or, if paid off or sold before the first five years of the term, is forgiven on an annual pro-rated basis. The program is funded by federal proceeds from the Build Back Better bill.

Loan Amount: 10% of the sales price or appraised value

Eligible Use(s): Down Payment Assistance 61

CalHFA ZIP Program

The ZIP is used to cover closing costs, it will not reduce the first mortgage amount and thus cannot reduce the LTV on a first mortgage. To qualify for the ZIP program, the first mortgage must be CalPLUS Conventional or CalPLUS FHA, limiting eligibility to borrowers with **income at or below 80% of county AMI**, set by Fannie Mae, and those who have completed homebuying counseling. The ZIP program provides closing cost assistance equal to 2 or 3% of the loan amount and sits in the third lien position.

Loan Amount: 2-3% of the first mortgage

Eligible Use(s): Closing Cost Assistance

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Advantages of Shared Appreciation

As illustrated in Figure 20, each of these home purchase financing options has its unique benefits and drawbacks in terms of its ability to balance public and homebuyer priorities. With limited public funding resources, there is a direct tradeoff between the need to maximize the number of households assisted and the level of support provided to each individual homebuyer. **SAL's most compelling advantage is the combination of reducing the monthly payment to a household, while generating revenue to serve future households and providing protection to the homebuyer in the event of depreciation. The biggest drawback is the financial complexity of the terms for a SAL.**

Figure 20: Public and Homebuyer Priorities by Various Financing Options

Financing Instruments	Public Priorities		Homebuyer Priorities		
Financing Option	Recycle to new home buyer	Targeting specific population	Downside protection	Reduced monthly mortgage	Financial simplicity
Forgivable DPA	○	●	◐	◐	◐
Fixed Rate DPA	◐	●	○	●	●
Shared Appreciation	●	●	●	●	○
FHA Loan w/o DPA	○	○	○	○	●

Source: HR&A Advisors

61 CalHFA Conventional Loan Program Handbook. CalHFA, 2022. https://www.calhfa.ca.gov/homeownership/programs/archive/2022/20220510/loans-conventional-05-10.pdf

62 Forgivable Equity Builder Loan. CalHFA. 2022. https://www.calhfa.ca.gov/homeownership/programs/ForgivableLoan.pdf

Reduced Monthly Mortgage Payment

A SAL structure can provide deeper down payment assistance than most existing public down payment assistance (DPA) programs. That is, most existing forgivable and fixed rate DPA programs offer assistance equal to 3-5% of the purchase price. A few programs offer up to 10% assistance. The size of existing subsidies reflects that large forgivable down payment assistance to individual homebuyers is financially unsustainable, since the funds do not replenish. In contrast, a much larger average loan size, close to 20% of the purchase price, is financially sustainable with a SAL because the loan repayments replenish the initial investment.

For a SAL to significantly impact wealth accumulation and bestow the benefits of homeownership, a 20% down payment is necessary to eliminate high mortgage insurance premiums and significantly reduce monthly housing costs. As mentioned earlier, households must contribute a minimum 20% down payment in order to access conventional loans without private mortgage insurance. For example, to purchase a median-priced home in California ($786,000 in 2021) with a conventional loan, a homebuyer would need to make a $157,000 down payment. With a 17% SAL, a homebuyer can save $133,000 and only need to put 3% down. The homebuyer would also reduce their monthly mortgage payments by 27%, or $1,180, by avoiding mortgage insurance premiums and taking a lower leverage first mortgage, as illustrated in Figure 23.

SALs allow homebuyers to access homeownership with lower incomes than either conventional or FHA loans. A large SAL lowers monthly payments, reducing the financial burden and lowering the income required to qualify for the first mortgage. As shown in Figure 21, to purchase the median price house with a SAL, homebuyers would need an income of $88,000, or 114% of median income. Without the SAL, homebuyers would need an income of $121,000, or 156% of California's median income. Although the FHA loan supports increased access to mortgage financing, the current structure puts homeownership out of reach for a large share of Californians.

Support Wealth Accumulation

A well-designed SAL can provide borrowers the opportunity to build wealth in upside scenarios and share losses in downside scenarios. Figure 22 illustrates the impact to homebuyer equity with a pro rata SAL that provides 17% of the purchase price under both an upside scenario assuming 6% annual home price appreciation and a downside scenario where property value stays flat.

When the borrower sells the property at Year 10 in the upside scenario, the effective interest rate for SAL is 6%, and households are able to earn 22.9 times their initial down payment equity due to first mortgage amortization and shared appreciation sharing the upside. In the downside scenario, the effective interest rate for a SAL would be 0%. Households are still able to gain 2.3 times for their equity due to a first mortgage amortization and shared appreciation not charging any effective interests. This scenario shields the borrower from an economic downturn and adjusts the second mortgage repayment amount in alignment with market conditions.

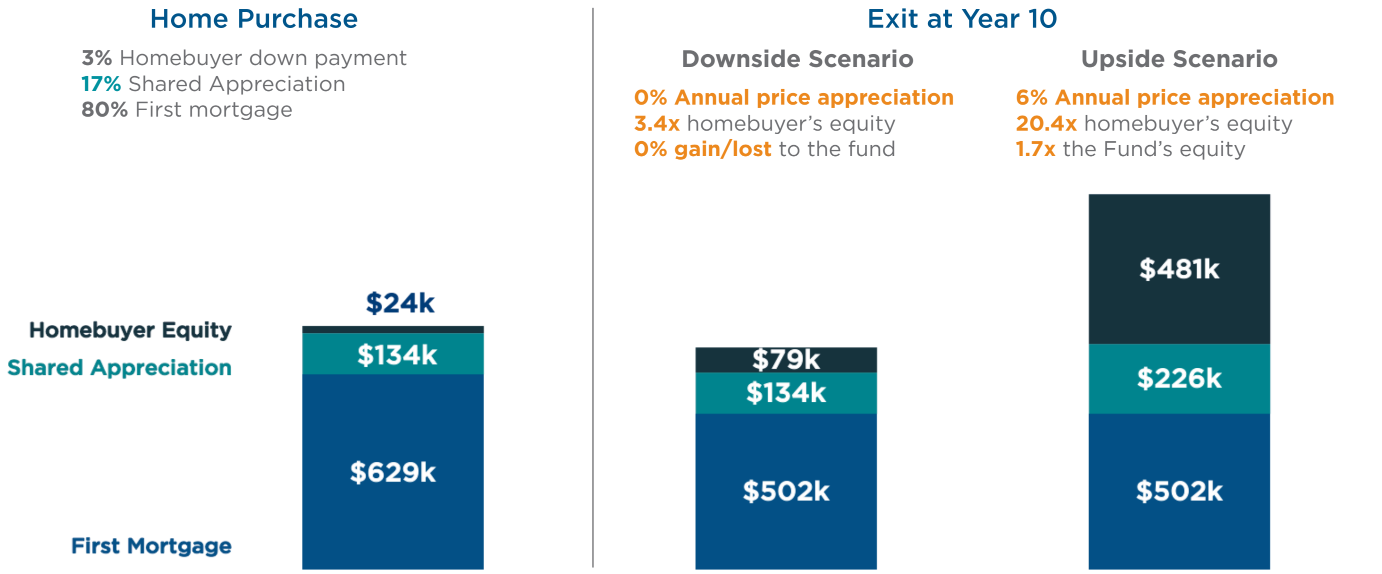
When compared to a fixed rate silent second mortgage of the same loan amount that charges a 3% annual simple-interest over 10 years, a pro rata SAL enables the borrower to accumulate more equity in a downside scenario at $55,000 compared to $15,000, since the effective interest rate for a SAL would be 0%, which is significantly lower than the fixed rate. For the fixed rate program, even if property value growth does not keep up with the interest rate, the same amount of repayment is due and leaves the borrower in a worse financial condition before homeownership.

In an upside scenario with 6% annual home price appreciation, the effective interest rate for a SAL would be 6%, and higher than the fixed rate loan. The SAL charges a higher repayment amount, but is within the borrower's ability to repay, thanks to the significant appreciation in property value. Households are still able to gain a 22.9 times multiple of their initial down payment with the SAL.

Figure 21: Shared Appreciation Benefits Compared to FHA Loan

	Shared Appreciation	FHA Loan
1st Mortgage Payment	$3,160	$3,800
FHA MIP	$0	$540
Total Monthly Mortgage Payment	$3,160	$4,340
Savings from Shared Appreciation		**$1,180**
Required Household Income	$88,110	$121,030
% California Median Income	**114%**	**156%**

Figure 22: Illustrative Example of Shared Appreciation Loan in Downside and Upside Scenarios



Sources: HR&A Advisors

Figure 23: Impacts on Borrower Equity - Shared Appreciation vs. Fixed Rate

	Shared Appreciation (17%)		Fixed-Rate (17%)	
	Homebuyer Equity	Equity Multiple	Homebuyer Equity	Equity Multiple
Downside Scenario	$79,357	3.4 x	$39,257	1.7 x
Upside Scenario	$480,525	20.4 x	$532,586	22.6 x

Sources: HR&A Advisors

Downside Risk Sharing

A well-designed SAL product provides both a wealth building opportunity and downside protection when home values drop. That is, if the value of a home is less than the purchase price then there is no appreciation to share with the SAL; the SAL principal is repaid, but the effective interest rate is zero. This allows the SAL principal to be recycled to a new borrower. At the same time, the borrower is protected from additional debt burdens that a more conventional interest rate structure creates. As a result, with a SAL and decreasing property values a borrower can still build wealth due to an amortizing first mortgage that reduces the loan amount over time.

In contrast, a fixed rate mortgage does not offer downside risk sharing. Even if home price appreciation is lower than the interest rate on the fixed interest rate, the full payment is due. The value of the fixed interest rate is the same regardless of market fluctuations, leading to worse financial outcomes for a borrower when appreciation rates are lower or more negative than a SAL.

Recycling Public Funding

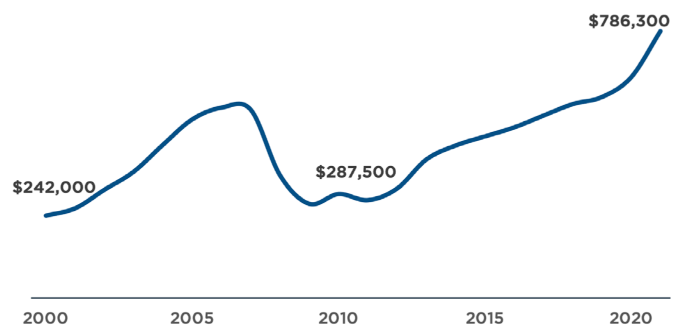
An initial public investment in a SAL will generate revenue that can be recycled to fund loans for multiple rounds of homebuyers over time. The public sector does not have to write off the value of the SAL to make the home affordable, as they do with forgivable down payment assistance, which increases the number of homebuyers who can be supported. Because the payment on a SAL is not due until sale or a repayment event (cash-out refinancing, etc.), the reduction in the cost of homeownership for the homebuyer is like a grant. A SAL combines the benefit of improved affordability with recycling public funding by tying payment to appreciation.

Because a SAL payment is tied to the appreciation of home prices, it will remain equally effective as it recycles, even in a rapidly appreciating housing market. During the height of COVID-19, and from 2010-2015 (see Figure 25), property values grew dramatically. The high rates of appreciation mean that when it comes time for a SAL to recycle, more funding is needed to provide the same level of support and to get a homebuyer to 20% down. While a second mortgage with a fixed rate might fail to keep up with market growth in a rapidly appreciating market, leaving insufficient funding to recycle in order to provide equal support to later rounds of homebuyers, a SAL is tied to the market and will remain equally effective after multiple rounds or recycling. See Figure 24 for how a pro-rata SAL recycles funds over five years compared to a fixed rate, 3%, simple-interest. silent second program, assuming the purchase of a median-priced home at $786,000 with a 6% annual price appreciation.

Figure 24: Impacts of Recycling Funds - Shared Appreciation vs. Fixed Rate

	Shared Appreciation	Fixed-Rate
Initial Second Mortgage Amount	$134,000	$134,000
Repayment Amount Due at Year 10 (Upside Scenario)	$226,000	$174,000
Down Payment Required for Next Borrower	$226,000	$226,000
Surplus/Shortfall	$0	($52,000)

Figure 25: California Median Prices of Existing Single-Family Homes



Sources: California Association of Realtors

Drawbacks of SAL Include Financial Complexity

A SAL is more complicated and less familiar than a conventional fixed rate mortgage. The amount that a homebuyer will have to pay is the biggest increase in complexity versus other types of public homeownership assistance products. There is neither a fixed interest rate nor a payment schedule that a homebuyer can refer to in order to understand what they will owe in the future. This uncertainty, along with other features of a SAL (setting the value for a home in a cash-out refinance, making partial payments, etc.), can be confusing and off-putting to potential homebuyers.

IV. FUND DESIGN

California Dream for All: Fund Goals

As outlined in AB 140, the CA Dream for All Fund ("the Fund") should be designed to:

1. **Provide significant down payment assistance** to meaningfully expand access to homeownership through a shared appreciation loan, particularly to first-time and first-generation homebuyers;
2. **Support wealth accumulation** for homebuyers who purchase a home, particularly in communities that historically face more systemic barriers to homeownership;
3. **Maximize the number of households assisted** over time with the public funding available; and
4. **Complement existing down payment assistance and first mortgage programs at the federal, state and local levels.**

A well-designed SAL product can not only provide the initial homebuyers with sufficient upfront down payment assistance and access to competitive first mortgage options, as well as enable wealth accumulation through homeownership; it can also revolve the funds to serve new homebuyers at exit. By offering SALs, the CA Dream for All Fund could increase access to homeownership by providing homebuyers a second source of financing, which would reduce the homebuyer's upfront down payment, the first mortgage amount and monthly debt payments.[63 64] The result would be greater access to homeownership. As elaborated in the Introduction and Background section, apart from wealth accumulation, homeownership brings additional benefits to households, including increased financial health and improved educational outcomes for children.[65] A SAL product with loan terms that do not benefit first-time homebuyers and primarily focus on Fund returns would defeat the purpose of the program.

Key Program Terms and Design Considerations

To ensure that the CA Dream for All Fund can meet its goals and priorities, it is critical to contemplate the following set of design considerations that will determine the type of loans made by the Fund. The following section lays out the range of options and considerations for designing the Fund and highlights some of the challenges and opportunities involved.

As the Fund moves through the State's legislative and regulatory processes, *it should balance the mandate to meet a large range of policy objectives without creating disruptive, unintended consequences in an already tight housing market*, particularly as a statewide program. *Once the Fund is set up, it should have its own governance model to be responsive to a wide range of internal and external stakeholders. This will give the program administrator the ability to adjust key terms and the operational plan based on the Fund's performance and market conditions.*

63 "Homeownership is Affordable Housing." Urban Institute, 2021. Retrieved from: https://www.urban.org/sites/default/files/publication/104214/homeownership-is-affordable-housing_0_0.pdf

64 "How does homeownership contribute to wealth building?" Habitat for Humanity., 2021. Retrieved from https://www.habitat.org/sites/default/files/Evidence-Brief_Wealth-building-for-homeowners.pdf

65 "Evaluating Homeownership as the Solution to Wealth Inequality." Federal Reserve Bank of Cleveland, 2021. Retrieved from: https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2021-economic-commentaries/ec-202122-evaluating-homeownership-as-the-solution-to-wealth-inequality.aspx

Shared Appreciation Loan Terms

The degree to which the CA Dream for All Fund can build wealth and protect homebuyers from future price fluctuations in home prices is largely dependent on the following key design decisions.

Loan Amount

RECOMMENDATIONS:
The Fund should enable households to make *at least a 20% down payment* with the opportunity to go up to a 30% down payment for high-cost markets or priority target homebuyer groups.

RANGE OF OPTIONS:
The amount of the SAL available to each individual borrower would determine *who can access* the CA Dream for All Fund, the *location of homes* that can be purchased, and the *level of income* required to support mortgage payments. There are multiple parameters that can be set to limit a homebuyer's loan amount, including the *maximum loan amount, maximum purchase price and debt-to-income ratio*.

Figure 26: Mechanisms to Limit the Loan Amount

Mechanism	Description
Absolute Maximum Loan Amount	An absolute maximum loan limit constrains the Fund's contribution to a single borrower to a fixed amount. Assuming the loan amount represents a fixed percentage of the property value, the higher the absolute maximum, the greater the home value affordable to the borrower. This method lacks flexibility to market conditions and geographic differences in home value.
Purchase Price Cap	A purchase price maximum sets a cap on the home value a borrower may purchase. Limiting the purchase price ensures borrowers are not "over-housed" and select a specific set of homes in the market. While a purchase price limit, places a ceiling on the home value, it does not offer flexibility to market volatility.
Minimum and Maximum Housing DTI	A maximum DTI limits the percentage of monthly income dedicated to making mortgage and other monthly housing payments to ensure a responsible portion of a borrower's income is dedicated to housing payments. The monthly mortgage expense is a function of the property purchase price, first mortgage leverage, and interest rate.
Percentage of Property Value	A cap on the percentage of the property value that can be funded by a SAL limits the Fund's equity stake in a borrower's property. The CA Dream Fund illustrative design restricts the loan amount to 17% of the property value.

Most existing public SAL programs are local, as opposed to statewide, which makes it feasible to set an *absolute maximum loan amount*. Some provide variation based on income level or other borrower characteristics (e.g., occupation). For instance, Alameda County's DPA program has two maximum loan limits based on a homebuyer's income. That is, the loan limit is $210,000 for households earning less than 100% AMI and $160,000 for households earning between 100% and 120% AMI. Similarly, San Francisco's DPA programs offer higher loan limits but also provide additional support for the Dream Keeper Initiative with a loan limit of $500,000 compared to $375,000 for the general DPA program. Another privately funded program sets a loan limit of $300,000 specifically for physicians relocating to Santa Barbara County.[66] An absolute maximum loan amount allows homebuyers to easily determine the potential support from the Fund but does not respond to changing market conditions or regional variation that is necessary at the state level.

The loan amount can also be determined through a *maximum purchase price cap* or a *maximum percentage of purchase price*. For instance, in a Santa Clara County program, SALs are limited by

66 "Resident Salaries and Benefits."Cottage Health, 2022. https://www.cottagehealth.org/medical-professionals/residency-programs/resident-salaries-and-benefits/

both a maximum purchase price of $1,100,000 and a maximum percentage of 17%.[67] Setting both a price and percentage limit offers tighter targeting to specific homebuyers but reduces adaptability to market conditions. This is easier to manage when the program is spread across a single local jurisdiction, rather than at the state level where there are a multitude of variables influencing local markets. If the loan size is too small, a significant segment of Californians, neighborhoods or types of home can be effectively excluded from the CA Dream for All Fund.

Another option is to set a limit on the back-end *debt-to-income ratio (DTI)*, which indirectly limits the loan amount by restricting the purchase price a household can finance given their income. The back-end DTI is the share of monthly income that goes to paying all debt, including mortgage payments. For instance, Alameda County's DPA program has a back-end DTI limit of 43% as well as a minimum expenditure of 25% of income on housing costs. In this case, the DTI limit provides that homebuyers have sufficient resources for other expenses but also requires that homebuyers' housing costs are not fully subsidized by the Fund. DTI limits can help reduce the risk that borrowers are over-leveraged. DTI limits put a cap on homebuyers' leverage compared to monthly income. The first mortgage lender will have strict underwriting guidelines that cap DTI. For instance, Fannie Mae restricts DTI to 36% of monthly income with an exception of up to 45% if the homebuyer has additional reserves or a high credit score.[68] In other words, regardless of the Fund's cap, the first mortgage will set a DTI limit.

Key Considerations for Loan Amount:

1. **A statewide fund will face wide regional variation in home prices, making it impossible to set an effective singular absolute maximum loan amount.** To be useful to potential homebuyers throughout the state the CA Dream for All Fund must accommodate regional variation. For instance, in 2021 the median house price in the San Francisco Bay Area was nearly double those in the Inland Empire.[69] A statewide maximum loan amount or maximum purchase price does not allow for this variation. It would establish a loan amount that was either too low to benefit potential homebuyers in the San Francisco Bay Area or disproportionately high in the Inland Empire.

   In contrast, loan limits based on a percentage of appraised property value at loan origination allows for regional price variation. House prices are growing at different rates across the state, which requires flexibility to accommodate. A universal limit, or other specific regional caps, would not allow the Fund to respond to changing market dynamics. Setting loan value as a percentage of property value will alleviate the administrative burden of adjusting limits and reduce the need to revisit Fund guidelines as economic conditions change.

2. **Establishing a maximum debt-to-income ratio will put borrowers using the CA Dream for All Fund at a disadvantage when they attempt to purchase a home.** First mortgage lenders, in coordination with the secondary mortgage market, establish maximum debt-to-income ratios. If the CA Dream for All Fund established a DTI ratio lower than what first mortgage lenders have set, it would reduce the amount of the first mortgage a household could access. This would undermine the primary benefit of the CA Dream for All Fund: providing financial support to help households purchase homes that could not otherwise afford. As the Fund begins operations and an administrator is selected, they will determine the list of qualified first mortgage lenders who will have their own DTI limits. This process should prevent CA Dream for All borrowers from selecting a high-risk, non-GSE conforming product. By placing the responsibility for setting the DTI limit with the first mortgage lender, the CA Dream for All Fund will increase access to sustainable homeownership and ensure that homebuyers are not entering into overly-risky mortgage products.

3. **Ensuring households reach a 20% down payment provides the greatest financial benefit to households.** A SAL larger than 20% might hinder the borrower's capacity to build wealth through homeownership. As illustrated in the Introduction and Background sections, when the loan-to-value (LTV) on the first mortgage is greater than 80%, the typical homebuyer is required to pay mortgage insurance—a burden that adds to the borrower's monthly housing payment. Therefore, it is critical that the Fund provides sufficient proceeds to enable the borrowers to reach a 20% down payment and eliminate the

67 "Empower Homebuyers SCC." Housing Trust Silicon Valley, 2022. https://housingtrustsv.org/programs/homebuyer-assistance/empower-homebuyers-scc/

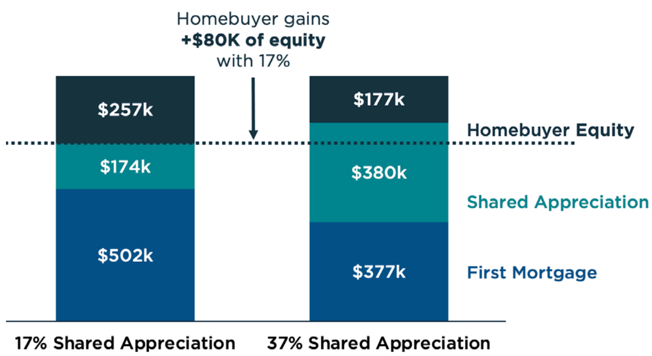
68 "Selling Guide," Chapter B3-6: Liability Assessment. Fannie Mae. https://selling-guide.fanniemae.com

69 HR&A analysis of 2021 California Association of Realtors Median House Price data.

need for any mortgage insurance. It is also in the borrower's interest to maximize their first mortgage closer to 80% LTV, since it offers the fastest route to wealth accumulation through a combination of house price appreciation and loan amortization.

To illustrate, Figure 27 shows that homebuyer wealth accumulation is more than 40% higher with a 17% SAL versus a 37% SAL.[70] In both scenarios, the homebuyer makes a 3% down payment, or $24,000. With an additional SAL of 17%, after 10 years the homebuyer's equity grows to $279,000, or 11.8 times their initial investment. If the SAL increases to 37% of the home price, the homebuyer's equity only grows up to $194,000, or 8.2 times the original amount. As the amount of the SAL increases, the homebuyers might be able to afford higher priced homes, but they also accumulate wealth at a slower pace than they would if they maximized their first mortgage.

Figure 27:Impacts on Homebuyer Equity, Shared Appreciation Loan at 17% vs. 37% of Home Price



Source: HR&A Advisors

4. **A second mortgage that is more than 20% LTV results in support for fewer households through the CA Dream for All Fund.** A 25% increase in the average size of the second mortgage translates directly to a 25% decrease in the number of households assisted. Keeping the target level of assistance at 20% will benefit the greatest number of homebuyers.

5. **For households in high-cost areas or for populations of homebuyers that face bigger barriers to accessing homeownership, larger loans may be required.** In some circumstances, house prices are so out of reach that even with a 20% CA Dream for All Fund loan, homeownership will still be unattainable for either first-time homebuyers in general or for specific target groups. The disadvantage of larger loans, as discussed earlier, is that it takes longer for homebuyers to accumulate wealth and to be able to pay off the SAL. Therefore, loan amounts above 20% should be exceptions that can be granted by the program administrator. The key design insight is that it will be critical that the Fund has the flexibility to review and refine the key terms as implementation experience is gained.

6. **Together, the CA Dream for All Fund loan amount and how appreciated value is distributed determine the degree to which a household can build wealth.** Figure 28 provides examples of the interaction between loan size and the distribution of appreciated value, or appreciation split.[71] A 17% SAL enables the borrowers to realize $279,000 in net equity with a pro rata, or 1:1, appreciation split. With the same loan amount and a 2.5:1 appreciation split, the borrower's net equity reduces to $211,000. Meanwhile, with a 37% SAL, the borrower's net equity is further reduced with an appreciation split of 2.5:1. That is, 92.5% of the appreciated value—or 37% times 2.5—goes to repay the Fund, and the homebuyer's net equity is just $44,000. The effect of this interaction suggests that lower loan amounts coupled with an equal appreciation split are most advantageous to building homebuyer wealth. The mechanics of the appreciation split will be further explored below.

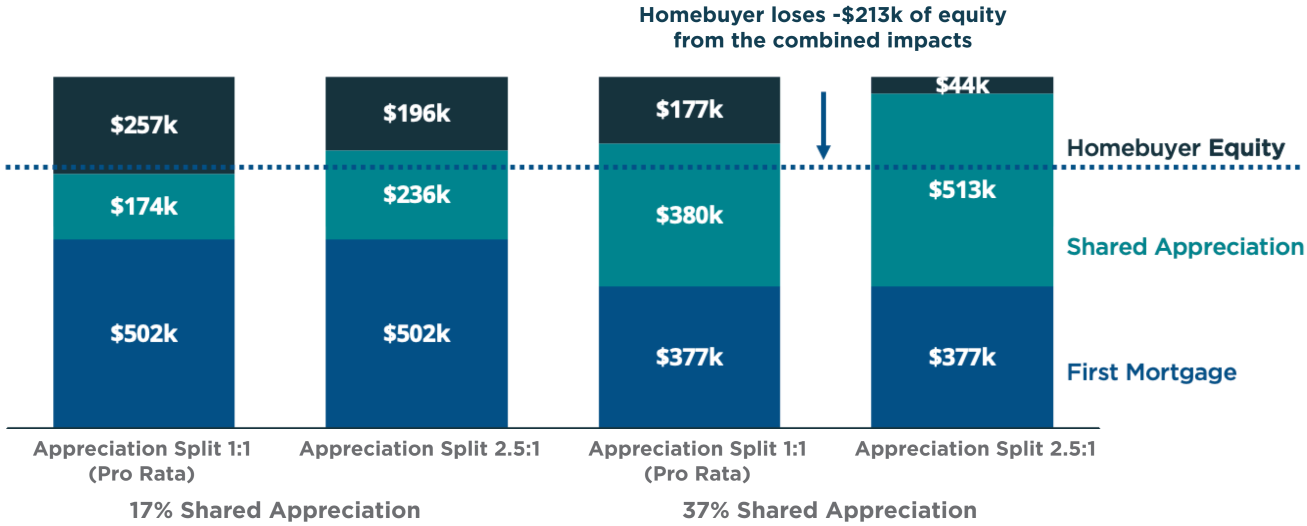
7. **A final consideration is the Fund's compatibility with other down payment assistance programs.** The Fund should not preclude homebuyers from taking advantage of existing programs where possible. For instance, the CalHFA MyHome program could be layered to reduce the CA Dream loan by $15,000.[72] Allowing additional programs to layer into financing could make the Fund more efficient by lowering loan amounts and helping homebuyers cover the full cost of buying a home. Homebuyers should have access to housing counselors to help them navigate compliance between various programs.

70 Assuming the purchase of a median-priced home at $786,275 in California with 3.0% annual appreciation over 10 years and a pro-rata SAL program

71 Assuming the purchase of a median-priced home at $786,275 in California with 3.0% annual appreciation over 10 years and a pro rata SAL program

72 "CalHFA Conventional Loan Programs Matrix." CalHFA. Retrieved from https://www.calhfa.ca.gov/homeownership/programs/archive/2022/20220228/tool-matrix-conventional-02-28.pdf

Figure 28: Combined Impacts on Household Equity from Shared Appreciation Loan Size and Appreciation Split



Source: HR&A Advisors

Borrower Down Payment

RECOMMENDATION:

The CA Dream for All Fund *should not impose additional parameters regarding the amount and sources of down payment* beyond guidelines from the first mortgage lenders. The borrowers will have to follow all closing requirements as dictated by the first mortgage lender. The Fund is intended to remove barriers to homeownership, not create additional ones.

RANGE OF OPTIONS:

Most mortgage loan programs require a cash contribution from borrowers to ensure that homebuyers have "skin in the game" and share the lender's risk. The minimum down payment requirement for first mortgage programs could go *as low as 3.5% for FHA loans,* which are backed by the FHA for borrowers with at least a 580 credit score, and *as low as 3.0% for conventional mortgages* backed by GSEs such as HomeReady and HomePossible or HomeOne programs.[73] [74] There are also special loan programs—such as VA loans that are guaranteed by the VA and USDA loans that are backed by the USDA's Rural Development program—that have *no down payment* requirement. Another common benchmark adopted by conventional loan lenders is a *20% down payment* that does not require borrowers to pay private mortgage insurance.[75]

Figure 29: Minimum Down Payment Requirements for Various Programs

Loan Type	Min. Down Payment	Conditions
USDA / VA	0.00%	Backed by U.S. Department of Veteran Affairs or U.S. Department of Agriculture
PMI Insured GSE	3.00%	Backed by government-sponsored enterprises (GSEs) – Fannie Mae and Freddie Mac; HomeReady and HomePossible programs
FHA	3.50%	Backed by Federal Housing Administration Minimum 580 credit score
Conventional GSE	20.00%	Conventional borrowers are not required to pay PMI if their down payment is above or equal to 20%

73 "97% Loan to Value Options." Fannie Mae, 2022. https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/97-loan-value-options

74 "HomeOne." Freddie Mac, 2022. https://sf.freddiemac.com/working-with-us/origination-underwriting/mortgage-products/home-one

75 Lam, Ken, Robert Dunsky and Austin Kelly. "Impacts of Down Payment Underwriting Standards on Loan Performance – Evidence from GSE and FHA portfolios." Federal Housing Finance Agency, 2013. https://www.fhfa.gov/policyprogramsresearch/research/paperdocuments/2013-12_workingpaper_13-3-508.pdf

Key Considerations of Borrower Down Payment Requirement:

1. Setting down payment requirements will create a major obstacle to homeownership for homebuyers with savings and wealth barriers, particularly in high-cost areas of California.[76] The National Association of Realtors found that first-time homebuyers put down 6% and repeat buyers put down 16% for an average 12% down payment across the country.[77] This implies that a homebuyer would need to put $94,000 down to buy a California median-priced single-family home of $786,000, which is approximately equal to the state's median income at $81,000 as of 2021—and likely much greater than the average savings of a homebuyer. The reality of high prices, particularly in coastal cities, means that adding down payment requirements through the CA Dream for All Fund would heighten existing barriers to homeownership for first-time buyers.
2. Households of color are often disadvantaged by requirements due to pre-existing wealth disparity. Household savings are unequally distributed in the United States and in California. For instance, 60.7% of Latino households and 56.7% of Black households are considered "liquid asset poor," meaning that they have virtually no savings, while the term applies to just 28.2% of White households.[78] As a result of this inequality, Black and Latino homebuyers tend to be less able to make sizable down payments.

Figure 30 shows that Black and Latino households in general purchase lower value homes with smaller down payments. The median down payment from a Black or Latino homebuyer was more than half of that of the median White and Asian homebuyer. Without the wealth for a large down payment, homebuyer's offers are less attractive, which puts them at a disadvantage when attempting to purchase homes. This inequality persists in the distribution of borrowers with FHA loans, where Black and Latino borrowers account for 33% of all borrowers but make up 63% of all FHA loan originations.[79]

Households of color are also less likely to receive financial assistance from family members to help them afford a down payment.[80]

Figure 30: Implied Down Payment by Race

Race	Median Property Value	Median Loan Amount	Property-Loan Difference (Median)	Implied Down Payment
White	$585,000	$475,000	$110,000	19%
Black	$445,000	$415,000	$30,000	7%
Asian	$745,000	$575,000	$170,000	23%
Latino	$425,000	$385,000	$40,000	9%
Total	**$555,000**	**$465,000**	**$90,000**	**16%**

Source: HMDA 2020

76 "An Essential Role for Down Payment Assistance in Closing America's Racial Homeownership and Wealth Gaps." Urban Institute, 2021. https://www.urban.org/sites/default/files/publication/104134/an-essential-role-for-down-payment-assistance-in-closing-americas-racial-homeownership-and-wealth-gaps_0.pdf

77 "2020 Downpayment Expectations and Hurdles to Homeownership Report." National Association of Realtors Research Group, 2020. https://cdn.nar.realtor/sites/default/files/documents/2020-downpayment-expectations-and-hurdles-to-homeownership-report-04-16-2020.pdf

78 "Report: More than a third of California households have virtually no savings, are at risk of financial ruin." The Mercury News. 2017. https://www.mercurynews.com/2017/07/26/more-than-a-third-of-california-households-have-virtually-no-savings-are-at-risk-of-financial-ruin-report-says-3/

79 HMDA. 2020.

80 Stegman, Michael "How the presence and type of down payment assistance affects the performance of affordable mortgage loans." Joint Center for Housing Studies of Harvard University, 2019. https://www.jchs.harvard.edu/blog/how-the-presence-and-type-of-down-payment-assistance-affects-the-performance-of-affordable-mortgage-loans

3. Because down payment requirements do not reduce risk, the program should instead encourage homebuyers to focus on building cash reserves. As an alternative to additional down payment requirements, the CA Dream for All program should explore how reserve saving accounts could be established to increase access to liquid savings. Small but successful programs like Blue Hub Capital's SUN Capital Reserve Accounts could be adapted and scaled.[81] Homeowners should be required to hold liquid savings not only at origination but also over the life of the loan. Instances of default were found to follow losses of liquidity "regardless of the homeowner's equity, income level, or payment burden."[82] To ensure borrowers retain savings specifically for home payments and improvements, some lenders require borrowers to set aside funds in emergency mortgage or home repair reserve accounts. Further, lender restrictions on reserve accounts that ensure borrowers only use funds during periods of personal financial stress or economic downturns can help reduce default rates. Borrowers can also tap into their home equity with mortgage modifications. Modifications that increased liquidity were found to reduce the rate of default while modifications that increased home equity did not have an impact on the default rate.[83]

Appreciation Share

RECOMMENDATIONS:
The Fund should offer a pro rata or 1:1 appreciation split, where the Fund is repaid the same share of the appreciated value as the initial investment, with the ability to increase the split up to 1.5. This maximum appreciation split, 1.5, combined with the maximum loan amount of 30%, ensures that the homebuyer will always have a larger share of the appreciated value than the Fund.

RANGE OF OPTIONS:
There is a wide range of potential appreciation splits between the CA Dream for All Fund and the homebuyer, reflected in the range of terms between existing public and private programs. Most public programs offer a *pro rata or 1:1* appreciation split. A SAL of 17% of the purchase price would result in a repayment of the original loan amount plus 17% of any increase or decrease in the property value from the date of purchase. Meanwhile, private programs tend to take a larger share of the split than their original investment to account for the returns demanded by private investors. For instance, Landed, a shared appreciation program serving mostly "essential professionals," applies an *appreciation split of 2.5:1*, while Unison, a shared appreciation program with more generous eligibility criteria, applies a *4:1 appreciation split*.[84]

Key Considerations of Appreciation Share Split:

1. The appreciation split should balance individual borrower wealth accumulation and the overall impact of the Fund in terms of the number of households served over time. Having a low appreciation split, such as 1:1 or pro rata, allows borrowers to benefit from a greater share of the appreciated value of their home and maximizes borrower wealth accumulation. On the other hand, a relatively high appreciation split will increase the Fund's financial performance and potentially expand the impact of the Fund by recycling more funds per borrower.

   For example, when a borrower makes a 3% down payment with a 17% loan from the CA Dream for All Fund to buy a $786,000 home, after 10 years of 3.0% price appreciation the home would be worth $1,056,000. With a pro rata or 1:1 appreciation split, the household needs to repay the program the original loan amount plus 17% of any increase or decrease in the property value. In this case, the Fund would get $46,000 on top of the original loan amount of $133,000, and the household would receive a net equity of $279,000. If the appreciation split increases to 4:1, the Fund receives 68% of the appreciated value. The Fund would get $184,000 on top of the original loan amount compared to a net equity of $142,000 for the homebuyer. With the higher appreciation split, the Fund can recycle an additional $138,000 and serve more households, but the initial homebuyer would accumulate less wealth.

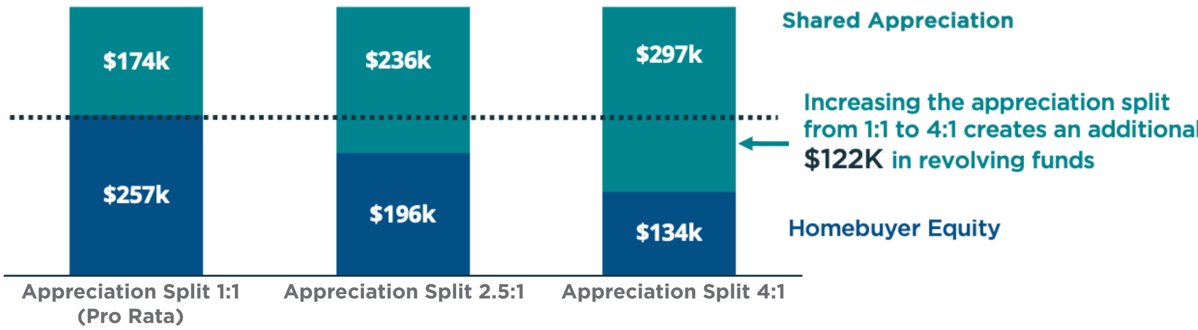
81 "Foreclosure Relief." Blue Hub Capital, 2022. https://bluehubcapital.org/foreclosure-relief

82 "Trading Equity for Liquidity." JP Morgan Chase. 2019. https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf

83 "Market Snapshot: First Time Homebuyers." Consumer Financial Protection Bureau, 2020. https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-first-time-homebuyers_report.pdf

84 Based on information retrieved Landed and Unison website as of May 24, 2022; More detailed terms of public and private shared appreciation loan program are summarized in Appendix E.

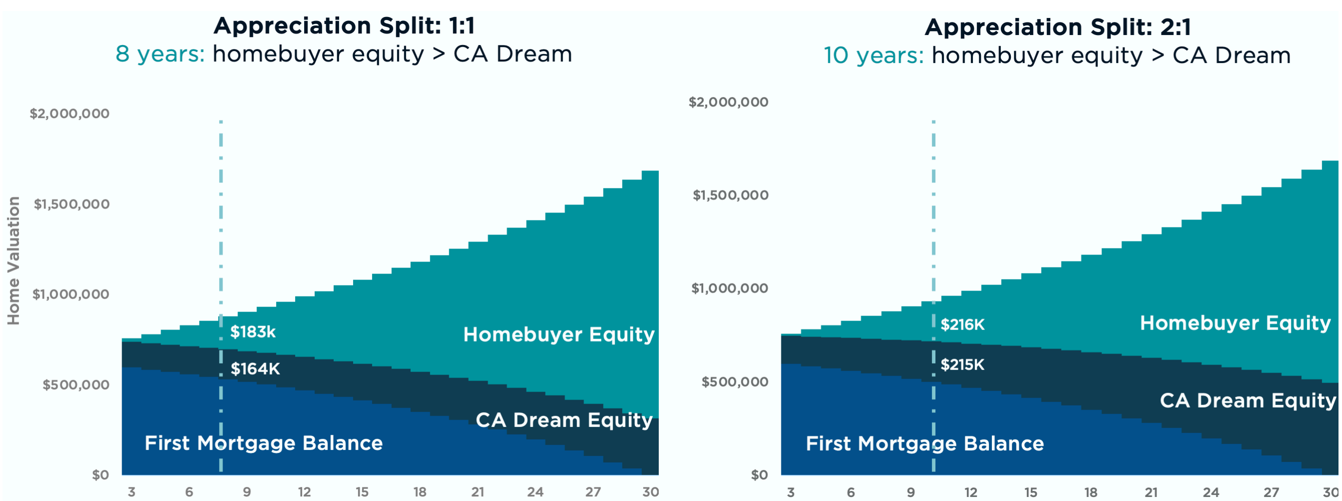
Figure 31: Impacts on Fund Recycling from Appreciation Split



Source: HR&A Advisors

2. The appreciation split directly affects when the initial borrowers have sufficient equity to repay the Fund, which has an indirect impact on their repayment incentives and the amount of recycled funding available for future borrowers. For instance, Figure 32 below shows the expected equity value of the homebuyer versus CA Dream for All equity over 30 years, assuming a purchase of a median-priced home in California with a 3.0% annual price appreciation. Over time, the value of the homebuyer's equity continues to increase compared to the CA Dream for All Fund's equity. When the appreciation split is 1:1, the homebuyer's equity is equal to the value of the shared appreciation loan in seven years. In contrast, when the appreciation split is 2:1, it takes ten years for the homebuyer's equity to exceed that of the Fund.The borrower should have more incentive to repay early if the Fund takes a larger share of the appreciated value. As the Fund is implemented, it will be important to monitor borrower repayment speed to ensure that the loans are revolving at a reasonable rate.

Figure 32: The Impact of Appreciation Split on Homebuyer Equity, CA Dream for All Equity, First Mortgage Balance



Source: HR&A Advisors

3. Appreciation split is a key factor in determining a borrower's effective annual interest. As described in the Introduction and Background section, a relatively low appreciation split, such as 1:1 or pro rata, implies a low effective annual interest rate that is on par with the annual home price growth rate. In this case, homebuyers take a relatively larger share of home price appreciation in a booming real estate market, while also sharing a relatively larger risk in a market downturn. On the other hand, with a high appreciation split, the Fund will be able to relend to more households. A major advantage of a SAL is that the effective annual interest rate moves along with property valuation in different real estate market conditions and provides borrowers with more downside protection in an economic downturn compared with a fixed rate mortgage that has no downside risk sharing at all.

Repayment Events

RECOMMENDATIONS:

Repayment should be due upon sale, transfer, and cash-out refinancing, and there should be no penalties for prepayment. The CA Dream for All program should rely on an informational approach to encourage prepayment, and the program administrator should reserve the authority to establish penalties if SALs are not being repaid on time to serve future Californians.

RANGE OF OPTIONS:

Repayment events are partial or full payments towards the borrower's mortgage principal and interest. Mortgage repayments are typically required when the borrower *1) reaches the end of loan term, 2) transfers the title of the property, typically through a sale, and 3) defaults on any outstanding mortgages.* For public second mortgage programs there are often additional requirements, including *refinancing the first mortgage and having the loss of primary residence status.*

The *term of a SAL* varies based on the goals of the loan program. Most local shared appreciation programs focus on serving low-income first-time homebuyers, so the loan term is set to maximize wealth accumulation and to comply with GSE loans. As a result, they often have *30-year terms* that are subordinated to first mortgages. A few public programs have even removed the loan term entirely to avoid forcing a major repayment event for homeowners who may be on a fixed income or who may have accumulated few other assets to repay the loan (the San Francisco DALP program, for example, recently removed their loan term).[85] In contrast, private shared appreciation programs have a wider range in loan terms depending on their investment goals—*from as short as 10 years to as long as 30 years*.

Some shared appreciation programs stipulate that repayment is also triggered in a cash-out refinancing event, where a borrower refinances for a new loan amount that is greater than the balance of the existing loan and receives the difference in a cash payment.[86] This is different from a rate refinancing event, during which a borrower refinances the first mortgage only to take advantage of a lower rate and reduce monthly mortgage payment but does not take out cash from the refinancing events.

Key Considerations of Repayment Events:

1. **How the Fund approaches first mortgage refinancing has direct implications on a borrowers' ability to build wealth through homeownership and to access that wealth.** The Fund assumes a 30-year loan term to match conventional loan terms, and yet the typical homeowner refinances much earlier—between years 6 and 12.[87] If CA Dream for All Fund borrowers behave similarly to typical homeowners, most will pay back their loan well before the end of the term. However, since there will be no monthly payments on the CA Dream for All Fund loan, some homeowners may choose to repay more slowly and will seek to resubordinate their loan.
2. **A refinance to obtain a lower interest rate is inherently different from a cash-out refinance in terms of risk and public policy benefit.** When a homeowner refinances to obtain a lower interest rate, they are increasing their ability to afford their home and reducing their risk of default. This advances the mission of the CA Dream for All program and reduces the Fund's risk. When homeowners refinance to take equity out of the property, it changes the loan to value and increases the risk to the CA Dream for All Fund. It also indicates that the homeowner can afford to pay for a larger mortgage and pay off some or all of the CA Dream for All Fund second mortgage, which then could be recycled to another household.
3. **There will be hardship cases where households need to be able to access equity without fully repaying the CA Dream for All Fund second mortgage.** One of the advantages of homeownership is building asset value that can be accessed to pay for other needs. In these instances, a borrower may need a cash-out refinance of their first mortgage. Still, a cash-out refinance might

85 Based on interview with city staff administering the San Francisco DALP program

86 "Recent Trends in Enterprise Cash-Out Refinances." Federal Housing Finance Agency, 2021. https://www.fhfaoig.gov/sites/default/files/WPR-2021-008.pdf

87 "Staff Reports: Understanding Mortgage Spreads." Federal Reserve of New York, 2018. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr674.pdf

not generate sufficient capital to repay the full outstanding SAL amount. Forcing the homebuyer to fully repay in these scenarios could add to a household's financial hardship and eventually result in a default. The program will need a process to evaluate requests under these scenarios, and ongoing financial counseling may help to identify these cases and enable alternative solutions.

4. **Prepayment incentives are critical in order to increase the pace of recycling and the overall impact of the Fund.** Encouraging homebuyers to prepay before the 30-year term will enable the Fund to reinvest in new borrowers. Yet given the loan amount under consideration, it is expected that borrower's prepayment speed will be slower than existing DPA programs.[88] Furthermore, first-time homebuyers also have lower prepayment rates than repeat homebuyers.[89]

   As discussed previously, a higher appreciation share split is one option to provide a stronger incentive for borrowers to repay the Fund earlier. A higher split might be viable as long as it ensures that borrowers still maintain a fair share of the home price appreciation and complies with Fannie Mae guidelines. However, a higher appreciation split also increases the amount a household must repay, which will limit the ability of some households to repay faster. Any use of a higher split would need to be carefully evaluated.

   There are international precedents to charge an annual fee or interest rate after a prescribed period to encourage fund recycling. By increasing the minimum required payment over time, borrowers are incentivized to purchase back their equity early and retain more ability to build wealth.[90] A program in the United Kingdom, for example, charges interest after five years in addition to shared appreciation—but because this approach would pose compliance concerns with existing Fannie Mae underwriting guidelines, it has not been recommended.

   We can also encourage prepayment through informational outreach and homebuyer education, although this approach comes with additional administrative costs. Quarterly or annual statements could show the estimated property value compared to outstanding debt to remind homebuyers when there is likely sufficient accumulated equity to repay the loan. These informational incentives will not penalize households, and if used correctly, could help increase prepayment.

5. **Penalty clauses should be a last resort in the event of late payment. The Fund should have a governance model in place to monitor performance and make necessary adjustments.** A clearly-defined penalty clause for late payment might be effective in incentivizing repayment, but it should only be considered after exhausting other repayment incentive options. Any penalty clause consideration should balance the need to enforce repayment, recycle funds and maximize the number of households assisted over time with the Fund's goal to support wealth accumulation through homeownership.

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88 Mayer, Chris, Tomasz Piskorski and Alexei Tchistyi. The inefficiency of refinancing: Why prepayment penalties are good for risky borrowers." Journal of Financial Economics, 2013. https://www0.gsb.columbia.edu/faculty/cmayer/papers/JFE-Mayer-Piskorski-Tchistyi-2013.pdf

89 Stacy, Christina, Brett Theodos and Bing Bai. "How to prevent mortgage default without skin in the game: Evidence from an integrated homeownership support nonprofit." Journal of Housing Economics, 2018. https://homewise.org/wp-content/uploads/page/How-to-prevent-mortgage-default-without-skin-in-the-game-Stacy-Theodos-and-Bai-2018.pdf

90 "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)." Federal Register, 2013. Retrieved from https://www.federalregister.gov/documents/2013/01/30/2013-00736/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z

INTERNATIONAL CASE STUDY

United Kingdom Shared Ownership Model - Prepayment Incentives

In 2016, the United Kingdom initiated "Shared Ownership," a national down payment assistance program with a shared equity model in England. The program offers interest-bearing equity on new construction home purchases for up to 20% of the purchase price, with up to 40% in London, and requires the borrower to make a minimum 5% down payment. The program charges interest on the loan to encourage an earlier property sale and permits partial loan repayments. The interest charged on the loan increases throughout the loan term. There is no interest charged in the first five years, after which the interest rate is 1.75% in year 6, and 1.75% plus inflation tied to the CPI thereafter.[91]

Partial repayments are permitted using the staircasing method. The minimum voluntary repayment is 10% of the market value at repayment and carries an administrative cost.[92] The decision to place a floor on the partial repayment value, a minimum voluntary repayment, is due to the high cost of property appraisal and mortgage restructuring. The borrower is also required to pay outstanding loan fees at prepayment. The borrowers' repayment speed has been faster than expected, with almost 50% of borrowers repaying in the first five years of the mortgage term.[93] Faster repayments reduce the expected return to the program since less interest is charged to homebuyers and appreciation over the longer term is not captured.

91 "Help to Buy scheme – everything you need to know." Moneyhelper.org, 2022. https://www.moneyhelper.org.uk/en/homes/buying-a-home/help-to-buy-scheme-everything-you-need-to-know

92 "Homebuyers' guide to the Help to Buy: Equity Loan." Gov.uk, 2022. https://www.gov.uk/government/publications/help-to-buy-equity-loan-buyers-guide/homebuyers-guide-to-the-help-to-buy-equity-loan-2013-to-2021-accessible-version#:~:text=The%20Help%20to%20Buy%20scheme,less%20than%20when%20originally%20purchased

93 Ward, Benjamin. "Designing a Nationwide Downpayment Assistance Program." Harvard Joint Center for Housing Studies, 2020. https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_downpayment_assistance_ward_2021.pdf

Borrower Eligibility

Eligibility requirements will shape who the Fund serves and the degree to which it meets its goal of expanding access to homeownership among traditionally disadvantaged Californians. In determining these requirements, the program must balance serving those with the greatest needs and serving those with the ability to secure the first mortgage necessary to take advantage of the second mortgage from the Fund.

Eligibility requirements that are too restrictive will leave the Fund with unused resources and fail to serve the most Californians possible. Overly broad eligibility will result in most support going to households who could have accessed homeownership even without the Fund's loan. In order to provide appropriate support to the right populations, level of targeting will have to be actively managed over the life of the Fund.

Income Limits

RECOMMENDATION:
The Fund should target an income level ***up to 100% of Area Median Income (AMI), with the option to go up to 150% of AMI, without any asset tests***. The program administrator should have the authority to adjust the target income up to 150% of AMI and to vary the eligible income level by county in order to reflect diversity across the state.

RANGE OF OPTIONS:
Existing homeownership assistance programs target a range of income levels, with public programs targeting lower-income homebuyers than private programs. Publicly funded homeownership programs often set specific target ranges with additional conditions for income qualification. Several programs target homebuyers with a maximum income of 80% AMI, such as the CalHFA Forgivable Equity Builder Loan program, while others allow up to 150% AMI, such as the CalHFA MyHome program. In general, the more proceeds or subsidies that are offered, the lower the AMI target.

In contrast, many private shared appreciation programs focus on occupation groups, or those that are highly educated but not rich yet ("HENRY") rather than a specific income band. Examples of HENRY borrowers include doctors completing their training, recently-graduated lawyers and other highly-educated job categories. HENRY households typically pose a lower risk of default, and are likely to repay in a relatively short timeframe and buy homes in up-and-coming neighborhoods where appreciation is greater.

Key Considerations of Income Limits:

1. **Targeting homebuyers that are on the cusp of being able to access homeownership will result in the greatest increase in homeownership.** If the income target is set too low, then even with a CA Dream for All Fund loan a homebuyer will not be able to qualify for a first mortgage large enough to make a competitive offer. If the income band is set too high, then much of the CA Dream for All Fund will be used by households that would have been able to purchase a home regardless. Targeting homebuyers with an income up to 150% AMI will create a pool of eligible borrowers who have enough income to qualify for first mortgages but would struggle with down payment, closing costs and high monthly payments involved in current financing options.
2. **The edge of the homeownership market varies greatly across California, and the CA Dream for All program will need to be flexible enough to align with the market.**

In 2020, the lowest income range to be able to access homeownership varied across the state from around 80% of AMI to nearly 150% of AMI, as shown in Figure 33. Regions with high home costs are also those with the most acute affordability challenges. For example, in the Los Angeles region, the median home value is over $788,000; a household would require an income of at least $111,900, or 140% of the AMI, to affordably purchase a home at that price. This suggests that the price of housing in high-cost markets is particularly inflated, even relative to their higher-earning populations. While homeownership is affordable to the median-income household in six regional markets, low-income households still face challenges; except in Sierra Nevada, the income required to purchase a home in these markets exceeds 80% AMI.

A close examination of the mortgage market in California helps to identify who is and is not getting access to mortgage financing, and who is relying on FHA loans. Figure 33 shows that the majority of loans across California are made to borrowers with 100% AMI and above, and that, although lower-income households account for a much larger share of FHA loans than all loans, Californians across the income spectrum rely on FHA loans.

Figure 33: Statewide Mortgage Origination by Area Median Income and Type of Loan (2020)

AMI Level	Conventional	FHA	RHS or FSA	VA	Total
<80% AMFI	30,514	9,906	430	3,913	44,763
80-100% AMFI	26,792	11,034	581	4,529	42,936
100-120% AMFI	29,468	10,678	524	4,449	45,119
120-150% AMFI	39,884	11,355	300	5,511	57,050
>150% AMFI	113,865	11,362	121	9,370	134,718
Total	**240,523**	**54,335**	**1,956**	**27,772**	**324,586**

Source: HMDA 2020

First-Time Homebuyers

RECOMMENDATION:
The program should require that borrowers are first-time homebuyers—but it should adopt a broad definition of "first-time." The program administrator should have the ability to add a preference for first-generation homebuyers in order to further target the CA Dream for All Fund to potential homebuyers who require additional assistance to access homeownership.

RANGE OF OPTIONS:
First-time homebuyers are a natural target population of the program—but although "first-time homeowner" sounds like a straightforward concept, housing programs define the term in a wide range of ways. On the most conservative end, it is defined as having never owned a home. Yet very few housing programs apply this strict definition, because it excludes a large number of households that do not currently own homes and are in need of assistance to access homeownership. The more common definition, set by the Department of Housing and Urban Development (HUD) and used by most programs is, "An individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property."[94] Accordingly, we recommend that the program consider adopting this definition as a starting point.

Creating a first-generation requirement is a newer concept that has only been attempted in a limited number of homeownership assistance programs. The intent is to target households that have never benefited from homeownership and cannot draw on the intergenerational wealth homeownership often creates. The exact definition for first-generation homeowner varies across programs; in some cases, it might mean that none of the homebuyers' parents have previously owned homes, and in others, it might simply mean that one of the parents of the homebuyers is not currently a homeowner. In Massachusetts, the Saving Toward Affordable Homeownership (STASH) program matches borrower savings for homebuyers below the area median income who are "first-time homebuyers whose parents or guardians have never owned a home or owned a home that was foreclosed on."[95] [96] STASH is a "race-conscious" pilot program intending to help those without intergenerational assets to close Massachusetts' acute homeownership and wealth gaps. In the City of Boston, the First-Gen Partnership matches up to $5,000 for savings up to $2,500.

Just as important as the definition of "first generation" is the documentation required to prove it. A variety of documentation requirements are being applied by different programs, and it will be incumbent upon the administrator of the CA Dream for All program to establish a standard that is credible for discouraging false claims but also feasible for those who are not in contact with their parents.

94 "First-Time Homebuyers." HUD HOC Reference Guide, U.S. Department of Housing and Urban Development. Retrieved from https://archives.hud.gov/offices/hsg/sfh/ref/sfhp3-02.cfm

95 Harrington, Elizabeth et al. "Enabling First-Generation Homeownership in Massachusetts." Northeastern University, 2020. https://cssh.northeastern.edu/policyschool/wp-content/uploads/sites/2/2020/07/First-Gen-Presentation_NEU-1.pdf

96 "Saving Toward Affordable Sustainable Homeownership." Massachusetts Affordable Housing Alliance, 2022. https://mahahome.org/STASH

Key Considerations of First-time Homebuyers Requirement:

1. **Serving existing homeowners does not advance the CA Dream for All program's mission to expand access to homeownership to homebuyers who have been marginalized historically.**
2. **HUD's definition of first-time homebuyers is appropriate for homeownership programs,** as it allows for households who went through foreclosure to access the fund and begin building wealth again. The program administrator should also adapt and apply existing carve-outs for individuals who were separated from their spouse and are purchasing a home for the first time as an individual.
3. **Intergenerational wealth has a meaningful impact on homeownership access, but a first-generation only requirement would exclude too many potential homebuyers and limit the impact of the Fund.** In a Bank of America survey, only 37% of first-generation homebuyers received help from their parents (compared to 51% of all first-time homebuyers surveyed in a separate study).[97] [98]With down payments forming one of the greatest barriers to homeownership access, children of non-homeowners may be at a significant disadvantage when searching for one of their own. Still, a focus on only first-generation homebuyers necessarily leads to a significantly smaller pool of eligible households and blunt the program's mission. To remedy this issue, the administrator should be able to create a preference for first-generation homebuyers if given guidance by policy makers to do so.
4. **Restricting borrower eligibility to first-generation homebuyers presents documentation issues.** Not all homebuyers are in touch with their parents, and many cannot offer documentation on their family's ownership history. Furthermore, the documentation process presents additional administrative burdens and can slow down the underwriting process and increase costs. These documentation and administration issues may end up excluding the homebuyers the Fund is intended to target.

PROPERTY TYPE RESTRICTIONS

Given the supply constraints in the California housing market, the Fund should allow for a board range of property types including the following:

Primary Residence: The property should not be an investment property or a second home for the duration of the CA Dream Fund loan. This may imply additional oversight and monitoring costs, but it will ensure that the program serves those with the most need.

New and Existing Properties: Restricting to new properties would create an additional incentive for reducing the supply gap. However, there are a multitude of other issues facing new construction projects that it is not with the scope of the CA Dream for All Program to address. The program would be available to both new and existing properties.

Up to 4 Units: While the vast majority of the housing stock in California is single family homes, recent legislation aims to encourage accessory dwelling unit production. The CA Dream Fund should encourage this type of division and purchasing, even for first time homebuyers. Therefore, the housing types should include detached single family, townhomes and condominiums.

97 "*2021* Homebuyer Insights Report. First-Generation Homeowner Spotlight." Bank of America, 2021.

98 "Affordability Surprises First-Time Homebuyers While Parental Assistance, Savings and Wishlist Compromises Prove Common, Survey Finds." Realtor.com, 2021. https://news.move.com/2021-02-03-Affordability-Surprises-First-Time-Homebuyers-While-Parental-Assistance-Savings-and-Wishlist-Compromises-Prove-Common-Survey-Finds

Priority Communities

RECOMMENDATION:
The CA Dream for All program should have the ability to adjust the terms and requirements of the second mortgage and prioritize specific communities of Californians. The barriers to homeownership vary for different groups of Californians, and to be effective at overcoming those barriers, the CA Dream for All program will need to adjust terms and requirements. To serve those with the greatest need, as determined by policy makers, the program will need to prioritize the allocation of mortgages to them.

Key Considerations to Approach Priority Communities:

Some groups have for decades been unable to meaningfully build wealth because of who they are, where they live or what they can afford. Homeownership can be a powerful means by which to support these households, but policymakers must determine which communities should be prioritized. For the purposes of this report, **low-income households, people of color, environmental justice communities** and **student debtholders** are described as potential priority communities.

Communities of Color

Many of the income-based barriers described above disproportionately impact communities of color. Since the onset of urbanization in the early 20th century, nonwhite households have been repeatedly denied the ability to build wealth. Racial and exclusionary zoning first emerged as legal mechanisms by which to preserve racial segregation, prohibiting landowners from selling, leasing or renting properties to Black and minority households. As this practice peripheralized Black communities to live in disinvested neighborhoods, redlining subsequently denied these households the chance to purchase a home and build intergenerational wealth. Between 1934 and 1968, White households received 98% of all home loans.[99]

Today, communities of color are still underrepresented in mortgage lending. Despite forming 39% and 5% of California's population, respectively, Latino and Black households access just 22% and 3% of all home purchase loans.[100] This may be partly attributed to income disparities rooted in the racial wealth gap; a 2021 report from the Center for Responsible Lending (CRL) found that while median-income White households typically require nine years of savings to afford a 5% down payment, median-income Black and Latino households require 14 and 11 years, respectively.[101]

As a result of these systemic issues, racial disparities in homeownership access persist in California. Across the state, White households are more likely to be able to afford a home than Black households. In the Bay Area, only 5% of Black renters earn sufficient income to afford a median-price home, compared to 21% of White renter households.[102] These disparities persist even after controlling for income; in most regions, the White homeownership rate exceeds the Black homeownership rate even within the same income band. Such disparities signal systemic barriers to homeownership, which limit opportunities for households of color and perpetuate the racial wealth gap.

Environmental Justice Communities

Environmental justice issues pose another major challenge. Many low-income households live in areas that expose them to high levels of pollution and other environmental hazards, including poor air quality, water contamination, lead and chemical waste. Individuals in these areas are also more likely to be characterized by vulnerabilities like pre-existing health conditions, poverty and poor health care access that put them at even higher risk of experiencing health complications arising from pollution exposure. As of 2013, the community of West Oakland suffered from diesel pollution at an average rate 90 times that of the rest of California per square mile; as a result, residents were found to suffer at disproportionately high rates from asthma, stroke and congestive heart failure.[103] [104]

99 Kahlenberg, R.D and K. Quick, K. "Attacking the Black–White Opportunity Gap That Comes from Residential Segregation." The Century Foundation, 2019.

100 "Home Lending to Communities of Color in California." Greenling Institute, February 2022.

101 "Hardship for Renters: Too Many Years to Save for Mortgage Down Payment and Closing Costs." Center for Responsible Lending, April 2021.

102 HR&A Advisors

103 Palaniappan, M., Wu, D., Kohlreiter, J. "Clearing the Air: Reducing Diesel Pollution in West Oakland." Pacific Institute, 2003.

104 "How pollution impacts health in West Oakland." Environmental Defense Fund. https://www.edf.org/airqualitymaps/oakland/pollution-and-health-concerns-west-oakland

The "environmental justice" movement has emerged in an effort to address precisely these harms. As part of this effort, the State has established the CalEnviroScreen tool that scores each California census tract based on environmental hazards and exposures, public health factors and socioeconomic issues. Local governments have followed suit by advancing several strategies to address land use issues in highly-burdened areas, such as by establishing "buffer zones" that distance polluting industries from sensitive land uses like schools and residential neighborhoods.

Homeownership programs can play an important role in this movement, too. By targeting homebuyers living in tracts scoring highly on the CalEnviroScreen index, the State can provide households a chance to move to safer, healthier neighborhoods.

Student Loan Debtors as Homeowners

After mortgages, student loans form the greatest household debt category in the nation, affecting more than 43 million borrowers who owe a collective $1.7 trillion in loan debt.[105] California is no stranger to this issue, as nearly four million borrowers owe a collective debt of $147 billion.[106] Among debtholders, this amounts to an average loan payment of $221.17 per month—the fifth highest of any state in the nation.[107]

As is the case with low-income households, student debt holders may struggle to access mortgage financing and may have difficulty saving for a down payment. Student debt naturally contributes to a household's overall debt portfolio, and missing a monthly loan payment can negatively impact a household's credit score. Given high debt-to-income (DTI) ratios, limited savings and potentially lower credit scores, mortgage underwriters may be less likely to preapprove households with high outstanding debt obligations.

These factors likely underpin the negative impact of student debt on homeownership. A 2020 study from the Federal Reserve found that a $1,000 increase in student loan debt among recent public college graduates was associated with a 1.8% reduction in the rate of homeownership within the same group.[108] In a separate survey conducted by the National Association of Realtors, 60% of non-homeowning millennials claimed that student debt has delayed their ability to purchase a home.[109] While a shared appreciation program may not be able to impact a household's DTI or credit score, it can increase the size of its down payment to increase the odds of mortgage preapproval.

Other Priorities

The terms of the CA Dream for All program can be flexibly designed to accommodate changing needs and priorities. As requirements and preferences change, the State can periodically reassess the terms of the program to ensure that it targets the households in greatest need.

Approach to Prioritization

The program administrator will need to evaluate how best to provide additional support to a specific community, as the barriers they face and thus the support the Fund can offer will vary. Any term in the CA Dream for All program might be adjusted—from eligible income levels, to maximum loan sizes, to appreciation splits. If households with high student debt were selected as a priority, then allowing for a larger loan size—for example, up to 30% of purchase price—might be appropriate. A larger loan amount from the Fund would help offset the smaller first mortgage a household could qualify for as a result of outstanding student debt payments. If the typical appreciation split was set to 1.5:1, the program administrator might allow for a lower split of 1:1 for first-generation homebuyers to help them build wealth faster and offset the lack of intergenerational wealth available.

Besides adjusting the terms of the loan, the Fund could support specific communities by setting aside a portion of total funding for them. For example, of a $1 billion allocation, $100 million might be reserved for households currently living in neighborhoods with environmental contamination. This type of support will be most important if the CA Dream for All Fund receives more demand than it can satisfy with the resources it has available.

105 "Student Loan Debt Statistics." Education Data Initiative, 2020. https://educationdata.org/student-loan-debt-statistics

106 "California DFPI Hosts Webinar to Help Student Loan Borrowers." California Department of Financial Protection and Innovation, 2022. https://dfpi.ca.gov/2022/03/28/california-dfpi-hosts-webinar-to-help-student-loan-borrowers/

107 Brown, Mike. "How Big is the Average Monthly Student Loan Payment in Your State?" LendEDU, 2021. https://lendedu.com/blog/average-student-loan-payment/

108 Mezza, A., Ringo, D., Sherlund, S., Sommer K. "Student Loans and Homeownership." Journal of Labor Economics, 2019.

109 "Student Loan Debt Holding Back Majority of Millennials from Homeownership." National Association of Realtors, 2021. https://www.nar.realtor/newsroom/student-loan-debt-holding-back-majority-of-millennials-from-homeownership

V. FUNDING AND FINANCING

How can the program design outlined in Chapter III be most effectively funded and financed? In particular, how can the State use the key programmatic benefit of shared appreciation mortgages—that loan repayments help keep pace with the cost of assisting subsequent homebuyers—to create an ongoing program for future generations even if prices keep rising dramatically? How can non-taxpayer funds be most effectively leveraged to create a self-sustaining model?

To answer these questions, we:

1. **Defined what any funding approach for such a program would need to do to be successful**, including key requirements and the scale and timing of funding involved;
2. **Evaluated a wide range of funding options** from both taxpayer and non-taxpayer sources to understand their implications for the program, the State, and borrowers;
3. **Outlined a financing approach,** based on this evaluation, that is likely to be practical and efficient both in the short- and long-run, identified potential risks and how they can be mitigated and created and tested a financial model under a range of future economic environments; and
4. **Compared shared appreciation to a fixed interest rate approach** to see the impact on borrowers, the total appreciation they are projected to earn and the efficiency of the State's investment.

Parameters for Funding and Financing to Be Successful

Minimum Requirements for How the Program is Funded

The many possible ways of trying to use taxpayer and non-taxpayer monies for shared appreciation lending make it especially important to **first define the key requirements** for any funding approach. This helps assure that the program drives financing choices, not the other way around.

From AB 140, discussions with the State Treasurer's Office and legislative staff, secondary market sources and experience of first-time homebuyer programs both in California and other states, we identified several **minimum thresholds** for any type of CA Dream for All financing.

- **The funding approach should not limit who the program can help,** such as excluding areas of the state or preventing the program from assisting lower-income borrowers or those who need larger amounts of assistance.
- **The funding approach must be compatible with Fannie Mae and Freddie Mac underwriting requirements** and not prevent borrowers from using GSE first mortgages.
- **The funding approach should provide an ongoing way to help first-time buyers over many years to come,** rather than only helping buyers in the next few years, given future affordability pressures anticipated in California.
- **Investments of taxpayer funds need to be sustainable**, without significantly impacting the State's borrowing capacity, ability to promote housing that is affordable or ability to meet other critical needs.
- **The funding approach should not expose the State to any meaningful future financial risk**—for example, by requiring the Stateto cover shortfalls because of the CA Dream for All portfolio's performance.
- **The State should leverage taxpayer monies with non-taxpayer monies so as to expand the number of borrowers who are ultimately served—consistent with the purposes of the program,** without narrowing who can be helped, violating other minimum thresholds or reducing borrower equity.

These basic minimum thresholds may seem simple, but they operate as extremely important guardrails when evaluating different financial approaches and structures.

Annual Scale

At the heart of determining potential funding needs for the program is estimating a practical and appropriate annual scale for the CA Dream for All program. With limits on taxpayer resources and a risk of inflaming California's housing markets, how many borrowers should the program be designed to help each year? How much annual shared appreciation lending would that involve?

In considering a reasonable potential scale for designing funding and financing options, we took several factors into consideration:

- The importance of CA Dream for All not itself further inflating real estate prices;
- An annual number of loans that would be both meaningful and administratively feasible; and
- The sustainability of State resources for an ongoing multi-year program.

Sizing to Not Inflate Home Prices

Potential demand. There is little limit to the potential demand for a program providing significant SALs. After all, the number of eligible California renter households who could potentially buy homes with a SAL for approximately 20% of the purchase price is vast. The Harvard Joint Center for Housing Studies has estimated that about 12% of all households nationally could purchase a home with significant down payment assistance.[110] Landed has indicated that, in offering shared equity programs through school districts and other essential employers in California, almost 14% of employees showed interest in such down payment assistance.

Limiting impact on prices. The very magnitude of this potential demand shows how important it is to set a reasonable limit on the number of buyers that the CA Dream for All program might serve in a year. The CA Dream for All program is essentially designed to help many potential buyers who are now largely excluded from the market. If it dramatically increases the number of buyers competing for homes in a given region, the CA Dream for All program—like any new product that significantly increases homebuyer purchasing power—could itself affect the affordability it is designed to address.

Number of borrowers. To take this market impact concern into account, we looked at what the program volume might be if the CA Dream for All program was limited to assisting 2% of the home purchase mortgage transactions in a region.

- While 2% might translate into about 5% to 6% of entry-level home purchases in a region, the impact on increasing competition for any given home is likely to be quite modest. For example, in the entire Bay Area, 2% would be about 1,300 home purchases, or about 300 in a given quarter, in a region where more than 60,000 homes were sold in 2020.
- Another way to consider this 2% potential increase in the number of buyers is that much of what has driven the recent escalation of home prices in California and nationally has been a more than 20% reduction in inventory from 2020 to 2021. This extraordinary drop in supply has created a widely-publicized level of buyer competition that has further driven demand and offers, fueling additional price increases.
- The CA Dream for All program, by contrast, would simply make a limited number of additional buyers able to shop for particular homes they look at as part of the general market. Rather than having a highly visible impact on buyer and seller behavior in a concentrated time frame, such CA Dream for All assistance would slightly and gradually expand the number of potential buyers each year.

From a statewide perspective, 2% would mean assisting about 7,700 home purchases per year. We then looked at how this approximate level of sizing might compare with other ways of evaluating program scale.

Sizing to be Meaningful and Administratively Feasible

Relative program scale. A key standard of comparison for a program to help homebuyers in California is CalHFA's existing single-family program. CalHFA's program, which provides first mortgage financing and down payment assistance loans, has served approximately 8,000 homebuyers a year in the last two years (6,557 in 2021 versus 9,372 in 2020).

Thus, a CA Dream for All program designed to help some 7,700 first-time buyers annually would be about the same size as CalHFA's current lending program, and would roughly double the number of buyers that the State is currently helping each year.

CA Dream for All program impact. More important than simply doubling the total number of borrowers is the different impact that the CA Dream for All program would have. CalHFA's current program links first mortgages with down payment assistance loans of 3% to 3.5% of the purchase price (3% on Fannie and Freddie loans, and 3.5% on FHA-insured loans). This limited amount of down payment assistance per borrower makes it difficult to serve borrowers in higher-cost areas of the state. As a result, although CalHFA's program has higher income limits than the proposed CA Dream for All program, it serves relatively few borrowers in coastal California, and is more successful in lending in less expensive parts of the state.

110 Kristin Perkins, et al. "The Potential for Shared Equity and Other Forms of Down Payment Assistance to Expand Access to Homeownership." Joint Center for Housing Studies of Harvard University, October 21, 2019.

Figure 34: Geography of CalHFA lending and of home sales in California

Area	CalHFA lending in 2021	% of CalHFA total 2021 lending	% of homes being sold statewide[111]	Difference in number of homes
Bay Area	234	4%	13%	- 526
Los Angeles County	359	5%	17%	- 862
Orange County	60	1%	7%	- 360
San Diego County	169	3%	9%	- 338
Subtotal	**822**	**13%**	**47%**	**- 2,086**
Kern County	758	12%	3%	+2,274
Fresno, Merced, San Joaquin and Stanislaus Counties	1,455	22%	8%	+2,546
Inland Empire	1,504	23%	18%	+418
Subtotal	3,717	57%	29%	+5,238

The difficulty of helping low- and moderate-income buyers in higher-cost parts of the state reflects the unaffordability of homes in these parts of the state without substantially greater assistance than current programs.

Ultimately, the CA Dream for All program's SALs could not only help approximately double the number of buyers assisted by the State; they could also complement the existing program by enabling the State to help buyers in precisely those areas where it has become extremely difficult.

This comparison suggests that a CA Dream for All program helping roughly as many borrowers as CalHFA's existing program—while relatively modest given the overall homeownership problem in California—would be significant in terms of the impact of State efforts.

Administratively feasible scale. That a new program would be similar in number of borrowers to CalHFA's existing program also makes it easier to gauge the administrative feasibility of operating at this scale. The CA Dream for All program would follow the same basic model as CalHFA's existing program in purchasing first mortgages in the form of AAA-rated mortgage-backed securities together with deferred payment second mortgages.

Sizing to be Financially Sustainable

An important consideration for this program is the level of total funding that would be needed for a SAL program to help this many borrowers, given increases in home prices throughout California.

Annual shared appreciation lending amount. Assuming that SALs average about 20% of the purchase price (with some being smaller and some as much as 30% depending on program targeting), a program assisting in about 2% of home purchases in each region could require about **$1 billion** of SALs a year.

Translated into individual SALs, $1 billion would be able to fund 7,700 loans at an average of 20% of a $650,000 purchase price (this purchase price level, which we have used in our financial modeling for the CA Dream For All program, is slightly above 90% of the statewide median purchase price of $700,000). In terms of total home purchases, such shared appreciation loans and linked Fannie Mae/Freddie Mac first mortgages would help homebuyers purchase about $5 billion of homes a year, or about $25 billion in homes over five years.

Over time, if house prices increase, the average dollar amount of a CA Dream for All loan would need to be higher (and the program would receive appreciation when loans are repaid). Thus, if possible, the program should be designed so that through repayments, the program can keep assisting roughly the same number of borrowers each year.

Geographic allocation. This funding level and number of borrowers assisted assumes the program is designed to assist homebuyers proportionately throughout the state, both in high-cost and lower-cost areas—that is, assisting approximately the same percentage of home sales in each of the regions of the state.

111 "California Home Sale Activity by City." CoreLogic, February 2022 https://www.corelogic.com/wp-content/uploads/sites/4/2022/03/CA-Home-Sale-Activity-by-City-February-2022_.pdf

The program could instead be designed to provide more of its lending in lower-cost areas at a lower average dollar amount per borrower, thereby helping more borrowers with the same $1 billion . However, this allocation would assist borrowers in those regions where there is less of an affordability gap for first-time buyers. Such a program would replicate the same difficulties faced by CalHFA's existing program by working disproportionately in less expensive parts of California.

To meet the unique needs that a California SAL program can serve—providing significant assistance that is repaid in a way that allows the State to help future borrowers regardless of rising prices—we have conservatively assumed a program sizing to help 7,700 borrowers would require about $1 billion of SALs.

Sustainable level of public resources. Along with identifying ways to leverage taxpayer funds with non-taxpayer monies, we wanted to be certain that **even if the program had to rely solely on taxpayer funds** it would involve a level of State funding that could be sustained over many years. To achieve this program sizing, the maximum amount of taxpayer funds invested each year would be $1 billion for SALs, plus 10%, or $100 million, for administrative and servicing costs.

The program is intended to be a multi-year program, with at least the same amount of shared appreciation lending for many years, given the nature of the housing affordability crisis in California. To ensure the program is financially sustainable for the State, program sizing should be evaluated on the assumption that in the most conservative case—without any non-taxpayer funds—the investment of taxpayer funds would total **$1 billion for SALs each year for 10 years, plus an ongoing $100 million per year for administrative and servicing costs.**

This long-term funding cost estimate is not intended to limit future State decisions. The State may, of course, decide to continue funding loans beyond 10 years, or reduce or terminate funding for new loans at any time based on program experience and results. Rather, this level and period is designed to enable legislators, the State Treasurer's Office and the Administration **to determine whether the State can invest in a program of this scale without significantly affecting the State's borrowing capacity, ability to promote housing that is affordable or ability to meet other critical needs.**

Sustainability and future price appreciation. The very purpose of creating a SAL program is to be able to continue assisting first-time buyers each year even though home prices may continue to rise. Over the long run, repayments of SALs (both the original loan principal amount and the program's share of appreciation) are intended to keep pace with home price appreciation. This can only happen, of course, as homes are resold and initial SALs are repaid many years later. In the interim, the number of buyers assisted each year (with ever-larger SALs as prices rise) is likely to drop gradually unless new funding increases.

Rather than try to create a funding plan where new funding increases each year based on unknown rates of future home appreciation, we have conservatively assumed the same $1 billion per year of shared appreciation lending, supplemented by revolving payments as they are received.

Conclusion: Using These Parameters

Given these minimum requirements for what funding needs to achieve and an estimated annual scale of $1 billion a year of funding needed for the CA Dream for All program, we evaluated a range of funding options to see how they might operate in practice.

Funding Options

In order to consider the variety of ways the CA Dream for All program could be funded, we looked at a wide range of approaches in three broad categories:

- Options that are 100% taxpayer funded;
- Options that are funded from a combination of taxpayer and non-taxpayer moneys; and
- Options that use almost entirely non-taxpayer funding of the SALs, together with taxpayer dollars for administrative and other costs.

Our aim was to understand how each of these options might work, their ability to fund the annual scale of SALs, the expected cost of funds, and, most importantly, the extent to which each option would meet key threshold requirements. The aim was to narrow down the options to those that seem most feasible for carrying out the purposes of the program. Figure 40 summarizes the options across these categories.

Figure 35: Funding Options for the CA Dream for All Program

	100% Taxpayer Funded		Hybrid Funding			Limited State Investment
Method	Revolving Fund	Repay Taxpayer Monies	Taxpayer Funds with Revenue Bonds	Blended Taxpayer Funds and Private Capital	Private Fund with Significant State Investment	Private Funds with Limited, Indirect State Assistance
Reason to consider	Endowment for future buyers	Ultimately repay taxpayers, with limited cost to State	Leverage taxpayer monies	Leverage taxpayer monies	Leverage taxpayer monies	Minimize cost to taxpayers
Program	State-run	State-run	State-run	State-run	Privately run	Privately run
Financing	State-run	State-run	State-run with revenue bonds	State-run with blended capital	Private, with significant taxpayer monies	Private with State administrative cost support, tax benefits or risk mitigation
How Funding Works Over Time	Loan repayments are used to make new loans	Loan repayments pay back State General Fund	Loan principal pays down revenue bonds first. Appreciation and subsequent revenue bonds fund new loans. State pays annual interest on revenue bonds	Loan repayments pay back private capital first. Any return to State helps make new loans	Loan repayments pay back private capital first. Any return to State helps make new loans	Loan repayments back private capital. No financial repayment to State

100% Taxpayer-Funded Approaches

By **taxpayer funding**, we mean any source—whether budget appropriations or General Obligation (GO) bonds—that is paid for by, or imposes an obligation on, the State's General Fund. **Non-taxpayer funding** includes all other sources not derived from or backed by the General Fund, from revenue bonds to private debt or private equity.

There are two distinct ways that the State can utilize 100% taxpayer funding.

- The State uses repayments of loans to make future loans. This enables the State, after an initial period of funding loans with State appropriations, to no longer do so. Instead, the program would become self-sustaining up to the level of loan repayments.
- Alternatively, the State would use loan repayments to reimburse the General Fund for monies spent to make those loans (through the debt service on GO bonds or annual appropriations that funded loans directly). This reimbursement would occur many years in the future, as loans are repaid. Once the initially funded loans had been made, the program would no longer make future loans.

In both cases, as outlined in AB 140, long-term "ongoing State support [would be] limited to nominal administrative costs."

These two approaches serve very different purposes and accomplish very different objectives. The revolving fund approach is designed to enable the State to help subsequent borrowers, and to do so in a way that keeps pace with the rate of home appreciation. The reimbursement approach is designed to help the first borrowers, and then to recover the State's investment.

Option 1. Revolving Investment Fund

Purpose of approach. The purpose of this option is to create an ongoing endowment for future first-time homebuyers, with repayments of CA Dream for All loans re-lent to subsequent borrowers. It reflects the way that public shared appreciation programs such as San Francisco's, and down payment assistance programs of CalHFA and many other state housing finance agencies, use repayments to continue making loans to future buyers.

How it would work. The State would create a separate, independent governing body to oversee the Fund and engage a program administrator to implement the Fund's objectives. Examples of such an approach include the various committees established under GO bond acts, which typically include the State's three primary financial and fiscal officers—the Director of Finance, the State Controller and the State Treasurer. These ex officio roles are sometimes supplemented by appointees with specialized subject matter experience, such as the case for bonds sold for the Department of Veterans' Affairs, the High-Speed Rail Authority and the like.

The Fund would receive annual budget appropriations and/or proceeds of State GO bonds authorized by the voters. These monies would be deposited as received in (a) a loan account to purchase SALs, and (b) an administrative/servicing reserve fund to pay all administrative, origination, marketing and outreach, counseling, and servicing costs, with the Program Administrator contracting with outside firms to carry out such tasks. The program administrator would thus be responsible to the board or committee for the efficient use of the funds.

Repayments of principal and of appreciation on all SALs would be redeposited in the Fund, and amounts not needed to replenish the administrative/servicing reserve fund would be dedicated to making new SALs each year.

Precedent. This approach is generally similar to that used by San Francisco for funding its Downpayment Assistance Loan Program (DALP) over the last 40 years, but it would operate on a much larger scale.

Taxpayer investment. An annual scale of $1 billion in SALs would require that amount of funding plus 10%, or $100 million, for origination, administrative and servicing costs.

The program can be envisioned to provide such funding on an annual basis for 10 years, and thereafter rely on loan repayments to provide loans to future buyers. The State could also choose at any time not to continue providing new loan funds, so long as it continues providing funds for ongoing administrative costs for loans already made and those recycled from such loan repayments.

The taxpayer funds can be provided either through the annual budget or through issuance of GO bonds to be repaid by the State, or through a combination of the two options.

Ability to meet programmatic needs. The funding approach would not limit who can be helped, in terms of areas of the state, lower-income borrowers or those needing larger amounts of assistance. The program would receive pro rata appreciation or could set a higher share of appreciation to provide more funds to help future borrowers, but there is no requirement or pressure from any investor to do so. This financing method is thus highly compatible with enhancing borrower household wealth.

Compatibility with Fannie Mae and Freddie Mac first mortgages. Both Fannie Mae and Freddie Mac require that shared appreciation seconds linked with their first mortgages must be publicly funded, so this approach would fully meet their rules.

Ongoing way to help future first-time buyers. This funding approach is designed precisely to help first-time buyers over many years to come.

Sustainable investment for the State. The intent is to set an annual projected scale of State investment that the State expects would not significantly adversely affect its ability to meet other needs or obligations. The State, however, is not obligated to make any new budget appropriation for funding loans or to issue additional GO bonds (but would still need to provide administrative costs).

No future financial risk to the State. There is no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers. The State is never out of pocket beyond the investment it originally made. This approach, if funded from proceeds of GO bonds, would require repayment of such bonds without regard to the success (or lack thereof) of the Program

Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served. This financing approach expands the number of borrowers ultimately served by relending the repayments received from borrowers over many years, rather than utilizing non-taxpayer monies that need to be repaid with a rate of return to investors.

Option 2. Repayment of State Capital

Purpose of approach. This financing method is intended to repay taxpayer money and thus be relatively costless to the State.

How it would work. The State would typically issue GO bonds, providing proceeds to purchase SALs. Origination, servicing and administrative costs would either be paid from bond proceeds or by an annual budget appropriation. The State would pay principal and interest on the GO bonds each year (together with any appropriation for ongoing administrative costs).

Repayments of principal and of appreciation on all SALs would be deposited in the State's General Fund, thus helping reimburse the State for its GO bond payments. (Such amounts could also be used to redeem the GO bonds directly).

Because the timing of loan repayments is uncertain, as is the amount of appreciation, there is no necessary relationship between when funds are received or the amount of funds received each year and the regularly-required payments on the GO bonds. The State will typically be out of pocket for many years since loan repayments are likely to be very slow, depending largely on when borrowers with these large SALs sell their homes.

The long-run objective of this approach is that loan repayments ultimately enable the State to recoup its funds spent on loans and administrative costs. Whether this will happen depends on the rate of home appreciation compared to the interest rate on the bonds, plus what is needed for origination, servicing and administrative costs and any loan losses. In an ideal case, the State might ultimately recover its costs for the program. If the appreciation is less or there are significant loan losses, the State will be unlikely to recover its costs fully.

Precedent. This financing method is similar conceptually to the way State GO bonds have long been used to fund certain CalVets farm and home loans to veterans. However, the Cal Vets loans are regular interest-bearing, fully amortizing loans, so the State is never expected to be out of pocket on its bond payments. A portfolio of SALs is very different, and the State, at best, would be out of pocket for many years.

Taxpayer investment. The State would issue GO bonds, up to a maximum amount authorized by the voters, to fund an annual scale of $1 billion of SALs. The origination, administrative and servicing costs would be funded either by bond proceeds or by the State providing annual budget appropriations.

Ability to meet programmatic needs. As with a revolving fund, this approach would not limit in any way who can be helped, in terms of areas of the state, lower-income borrowers, or those needing larger amounts of assistance. The program could be designed to receive pro rata appreciation, but the intent of this method—to fully recover the cost of the GO bonds—could lead the State to seek a higher share of appreciation.

Compatibility with Fannie Mae and Freddie Mac first mortgages. This funding method would be compatible with Fannie Mae and Freddie Mac requirements.

Ongoing way to help future first-time buyers. This funding approach would **not** recycle any loan repayments into new loans. It would thus only help initial buyers. It does not provide an endowment for future homebuyers.

Sustainable investment for the State. The total authorized amount of the bonds would impact the State's borrowing capacity (even if they are not fully issued for many years). Neither investors nor rating agencies would count on the State receiving loan repayments at the times or amounts needed to repay the bonds, and so would view the bonds as a net cost to the State. Thus, the full amount of the authorization would significantly affect the State's ability to borrow for other purposes.

No future financial risk to the State. The purpose of this funding method is to avoid any long-term cost to the State, and any loan losses will impede the ability to accomplish that goal. In effect, the State will have borrowed funds that may not be fully repaid.

Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served. This financing approach does not leverage taxpayer funds nor recycle them to help subsequent generations of borrowers.

Methods Combining Taxpayer and Non-Taxpayer Funds

These methods are intended to leverage taxpayer monies together with non-taxpayer monies to reduce at least the initial burden on taxpayer funds and/or ultimately help more borrowers with the same amount of taxpayer monies, with the aim, as set forth in AB 140, of "evolving the program over time to be self-sustaining utilizing private investments to create a self-sustaining model."

The most important, and perhaps most surprising finding, however, is that although there is widespread investor interest in participating in the rising prices of housing in California, there are **crucial challenges** to relying on many types of private capital to:

- Consistently help fund the scale of the CA Dream for All Program; and
- Help fund CA Dream for All loans while meeting the program's key requirements.

Understanding the nature of these challenges is important in considering financing options with non-taxpayer monies.

Scale of funding. For more than five years, highly-sophisticated financial technology companies have been working with a wide range of private investors to fund home purchase SALs in California and nationally. They have worked extensively with hedge funds, pension funds, real estate investment trusts, foundations and major banks. These companies have received venture capital for their internal costs, structured offering documents, worked through legal issues, designed securitizations and established a lending track record.

Yet raising significant large-scale amounts of capital to invest in home purchase SALs has been difficult. Landed provides one example. Despite its focus on essential professionals buying homes in high-cost areas, seed capital from the Chan Zuckerberg Initiative, a special waiver from Fannie Mae, partnerships with 143 school districts and other employers and indications of interest from 23,000 potential borrowers, Landed was able to raise a total of $53 million in seven rounds of funding through last September.[112]

As we sought lessons from Landed and other fintech companies, what became clear is that there is a divergence in the market.

- There is extensive investor interest in home price appreciation in many areas of California and elsewhere, as witnessed by the billions of dollars that hedge funds and others have raised to buy and rent out single-family homes.
- But shared appreciation lending, in addition to being relatively new, creates unique challenges for investors. The loans are in second mortgage position and thus are inherently riskier than first mortgages, of course, but it is not the risk of principal loss that makes it difficult to attract investors. Rather, it is the deferred repayment of such loans. The investor does not know, and has no control over, when SALs will be repaid, nor what their return will be. Nor do they receive any ongoing interest or other interim income. These fundamental uncertainties make it very difficult for most investors to value such investments or consider committing large amounts of capital to them.

Even with fintech companies setting their share of appreciation at 2.5 times their percentage of the original purchase price and projecting investor rates of return between 9% and 15%, this basic uncertainty makes it hard to reliably raise the kind of large-scale amounts of capital that the CA Dream for All program would need.

As part of our outreach efforts, we also examined government-sponsored enterprises (GSEs). GSEs are vast participants in the mortgage markets, have enormous amounts of capital, face significant duty-to-serve requirements that the CA Dream for All program can help meet, and could potentially see a CA Dream for All program as a national model for increasing affordability. Federal Home Loan Banks, however, have generally been unwilling to accept even amortizing second mortgages simply as collateral for advances to their member institutions. Discussions with Fannie Mae, Freddie Mac and their regulator, the Federal Housing Finance Agency, indicated that the CA Dream for All program could be highly compatible with their missions. But their interest was limited to GSE first mortgage products that would be used in conjunction with such a program—not in their own investing in a shared appreciation product.

Discussions with major CRA banks also did not indicate any interest in directly investing in a State SAL program. These banks did, however, see a large ongoing market for revenue bonds they could underwrite for such a program at relatively low interest rates—if such bonds were effectively overcollateralized and had a way of assuring interest payments.

112 "Landed." Crunchbase. https://www.crunchbase.com/organization/landed/company_financials

As a result, we believe that at least for the foreseeable future, the most realistic and low-cost way to raise significant amounts of non-taxpayer money for the CA Dream for All program would be through revenue bonds. These investments would be debt rather than equity, offer a fixed interest rate to the investor (rather than a share of home appreciation) and make payment of such interim interest highly predictable. Option 3 shows one way this could be accomplished.

Integrating private capital in the CA Dream for All program. The second challenge in using funds other than revenue bonds is the difficulty in meeting key CA Dream for All objectives. This challenge turned out to be more fundamental and structural than expected.

We started, for example, with the assumption that while different types of private capital might require high rates of return, such monies could be blended with taxpayer monies that would receive a much lower return. For example, if private capital by itself requires receiving a share of appreciation that is 2.5 times its percentage of the purchase price (e.g., for putting up 10% of the home price, the investor receives 25% of the appreciation), we thought such private capital could be used with enough taxpayer monies to charge the borrower pro rata appreciation. The taxpayer monies could in theory take the first risk position, or fund a loan loss reserve, that would lower risks for the private investor.

During discussions with several fintech companies, however, we encountered significant challenges in trying to use monies they might raise together with taxpayer money to meet CA Dream for All objectives. One concern is structural. It would be difficult to structure two tiers of funding for a common pool of loans. More importantly, there are parts of the state—particularly areas with lower population density—where a dearth of home sale data makes it difficult to raise and use any private investor capital at all.

Even more significantly, the private equity model is based on relatively quick repayments of borrower loans, with an expected average life of five years. This may be possible where the amount of the SAL is a relatively small percentage of the purchase price (e.g., 10%) and can potentially be refinanced with the first mortgage. When the SAL is much larger, however—as in the CA Dream for All program—quick repayment is extremely unlikely. Thus, it would be very difficult to use any private equity capital to fund the larger loans that the CA Dream for All program would be designed to make. The problem is not merely that private investors in SALs are seeking a high rate of return; they are making investments that they expect to be repaid quickly.In short, these sources of capital can be thought of as "less patient" and more demanding of certainty of both return and timing.

Implications. For reasons of scale and challenges in integrating taxpayer and non-taxpayer monies to fund a common pool of CA Dream for All loans, we believe that if the State wants to leverage taxpayer monies with non-taxpayer monies, it is most practical to do so with revenue bonds.

A program using revenue bonds can meet some of the objectives of AB 140, "evolving over time to be self-sustaining utilizing private investments" to fund future loans. But ongoing State financial support would not be "limited to nominal administrative costs." To make such revenue bonds marketable, the State would need to provide ongoing State appropriations to assure interest payments on revenue bonds.

From a broader perspective, we recognize that one of the implicit reasons for seeking to use non-taxpayer monies is not only to reduce the taxpayer investment per borrower but to validate the State's efforts—that is, to show that parties other than the State itself are willing to invest in these loans.

Sales of revenue bonds can help do this. But when it comes to private equity capital, the validation may work the other way. Those raising capital for private shared appreciation lending hope that a large-scale CA Dream for All program will help validate and promote the idea of shared appreciation lending in general, including with capital markets, GSEs, lenders and the real estate industry. This seems more likely than the State validating its own program by integrating significant amounts of private equity.

Conclusions

The first of these methods, Option 3, a revolving investment fund with revenue bonds can potentially meet the CA Dream for All program's overall purposes in the way it assists borrowers, and is detailed below. The specifics of the other methods, Options 4 and 5, that have fundamental problems in meeting the needs of the program, are included in Appendix D.

Option 3. Revolving Investment Fund with Revenue Bonds

Purpose of approach. The purpose of this option is to supplement taxpayer funds with revenue bonds to finance SALs.

How it would work. The state agency that would oversee and administer the CA Dream for All Fund would issue revenue bonds backed by the entire pool of SALs made by the CA Dream for All program. In the first several years, all loans would be funded by taxpayer monies; as a portfolio and track record is established, revenue bonds would be issued annually. The net proceeds of the revenue bonds, together with a reduced amount of new taxpayer monies would help fund new loans.

Security for revenue bonds. The total amount of revenue bonds would be limited to a maximum percentage of all CA Dream for All loans. Based on initial discussions with investment bankers, we expect this could be 60% of all CA Dream for All loans. This provides significant overcollateralization for the revenue bonds. All principal recoveries on loans would be used to pay down revenue bonds, enabling further revenue bonds to be issued up to the same percentage limit. The appreciation received would provide revolving taxpayer monies to help fund a portion of the cost of new loans together with new revenue bond proceeds.

Monies for new loans. Under this leveraged approach:

In years 1 through 3, new taxpayer monies would be provided for $1 billion of SALs each year.

In years 4 through 12, the amount needed from new taxpayer monies would drop to $400 million per year. This would be used together with new proceeds from revenue bonds to make loans.

After year 12, no more new taxpayer monies would be appropriated for loans. All future loans would be based on repayments of outstanding loans. Loan principal would pay down revenue bonds, allowing a similar amount of 'replacement' revenue bonds. Such proceeds together with appreciation received on past loans would fund new CA Dream for All loans.

As a result, instead of $10 billion in taxpayer monies for the revolving fund without revenue bonds, the amount of taxpayer monies for SALs would be approximately $6.6 billion ($1 billion per year for three years plus $400 million per year for nine years).

Interest payments on revenue bonds. CA Dream for All loans do not make regular interest payments, but rather are paid off together with appreciation. But since the timing of loan payoffs is many years in the future and uncertain, there must be a mechanism to pay interest on the revenue bonds.

To make the revenue bonds marketable, it is important that the bonds pay regular interest each year (the alternative of using capital appreciation bonds where the interest accretes over the years is unattractive to investors in taxable revenue bonds and rarely used for such bonds. Such bondholders would owe income tax each year on the accreting interest without receiving cash to pay such tax).

In order to pay this interest on an assured and regular basis—without waiting for appreciation to be received on CA Dream for All loans—the legislation for the program would include a pledge to include in each year's state budget proposal the amount needed to pay interest due on such bonds up to a maximum annual limit. While the Legislature cannot bind future state legislatures, this appropriation pledge is commonly used by California and many other states for lease payments and other purposes; such pledge is rated one notch below the State's GO bond rating (which is presently listed as AA- by S&P, Aa2 by Moody's and AA by Fitch).

The total amount of revenue bonds outstanding is thus limited both to 60% of outstanding loans and by the maximum annual interest pledge by the State. We have assumed this pledge would not exceed $380 million per year (which should allow somewhat over $6 billion of revenue bonds to be outstanding at any one time). Interest would be paid up to this limit on all revenue bonds as long as they are outstanding.

Origination, servicing and administrative costs. As with the revolving fund approach in Option 1, the State would appropriate $100 million.

Precedent. Revenue bonds backed by pools of mortgages, including in some cases second mortgages, have long been sold by state housing finance agencies. Deferred payment second mortgages have been collateral for some of these bonds, but we are not aware of revenue bonds where the only collateral is such mortgages. The revenue bonds are intended to have a low investment grade rating. Even if the bonds are unrated, this was true of over $5 billion of housing revenue bonds issued by California joint powers authorities over the last two years for workforce rental housing, whose repayment depended on future rent growth.

Option 3 continued from page 56

The annual appropriation pledge, in this case only for interest payments, has been utilized on many types of state and local financings in California and nationally. One example of its use for housing is Minnesota's State Appropriation Bonds for Housing Infrastructure, which has included 26 series of bonds over the last nine years. New York City recently used such a pledge for infrastructure bonds for its Hudson Yards project.

Taxpayer investment. The total taxpayer investment would be similar to that for Option 1—a revolving fund without revenue bonds—but the timing and types of payment would be different. Although much less taxpayer money would be needed for funding SALs, the State would be appropriating funds each year to pay interest on the revenue bonds as long as they were outstanding.

Ability to meet programmatic needs. The funding approach would not limit in any way who can be helped, in terms of areas of the state, lower-income borrowers or those needing larger amounts of assistance.

The program would receive pro rata appreciation or could set a higher share of appreciation to provide more funds to help future borrowers, but there is no requirement or pressure to do so to make payments on the revenue bonds, since appreciation payments are not used to pay down the revenue bonds. This financing method is thus highly compatible with enhancing borrower household wealth.

Including revenue bonds would, however, limit program flexibility in at least one key way. If the State did not want to set a fixed 30-year maturity on SALs (but instead, like San Francisco, wanted to simply define the "maturity date" as the date of sale, transfer or non-compliance) it could easily do so if all the loan funds are provided by taxpayers. Long-time owners who had not sold their home in 30 years could simply wait to pay off the CA Dream for All loan instead of refinancing it with a new first mortgage. But any use of revenue bonds would require a clear, stated 30-year maturity on CA Dream for All loans.

Compatibility with Fannie Mae and Freddie Mac first mortgages. Since both revenue bonds and direct taxpayer monies are publicly funded, this financing method should meet Fannie Mae and Freddie Mac requirements.

Ongoing way to help future first-time buyers. This funding approach, like the revolving fund itself, is designed to help first-time buyers over many years to come.

Sustainable investment for the State. This option would set an annual projected scale of State investment that the State expects would not significantly adversely affect its ability to meet other needs or obligations. The amount needed for new loans would be significantly below that in Option 1, without revenue bonds. However, the State would be committed to making annual interest payments for many decades to come on all revenue bonds, up to the maximum annual amount of the pledge, as well as providing annual funds for administrative costs.

No future financial risk to the State. There would be no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers. The State is never out of pocket beyond the budgeted appropriations. The State would have no liability to make principal payments on the revenue bonds, which are backed solely by the principal on the CA Dream for All loans themselves. We note that this approach creates the potential for a "moral hazard" to the State. In this circumstance, even in the absence of a legal requirement to apply other State resources to the repayment of the bonds, the political pressure on State leaders to take remedial action could force them into unwelcome choices.

Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served. The total number of borrowers ultimately served is likely to be similar to the number served by Option 1, the revolving fund itself. Including revenue bonds is unlikely to increase the number of borrowers served, so long as the State makes a similar overall investment (in both loans and annual interest payments) as in Option 1.

Methods With Limited State Investment

Finally, we looked at ways that the State could encourage, incentivize and promote the use of private capital to fund SALs that meet CA Dream for All program objectives—without the State itself needing to invest taxpayer monies in funding such loans.

Our analysis suggests this is extremely unlikely. The difficulty is not simply one of the State spending less and getting less in return. Rather, the two challenges of using private capital—of scale and especially of using private capital to meet CA Dream for All program objectives—are even more fundamental when such capital fully funds the SALs.

The State can provide all manner of indirect support to encourage certain types of shared appreciation lending—paying origination, servicing and administration costs, providing relief from state capital gains tax and creating a reserve fund against loan losses. But this will not change the fundamental problem that, given the uncertain timing of loan repayment, investors are looking for early repayments that make it hard to serve those needing larger SALs. In other words, it is impossible to gauge how "patient" the capital must be when it is contributed by private investors.

The benefits that the State would provide may not significantly increase the number of eligible borrowers who actually receive SALs. Indeed, since a significant portion of current borrowers under private SAL programs would meet CA Dream for All program income and first-time buyer requirements, the State would be providing benefits for some borrowers who would have received the same SAL anyway.

While State support may help validate and promote the concept of shared appreciation lending in general, it is unlikely to make much difference in the ability of first-time buyers to purchase homes in California.

Option 6 with limited State investment is detailed in Appendix D.

Funding Options To Consider

Based on this analysis of a wide range of potential funding options for the CA Dream for All program, the two that are most likely to be practical—to raise the annual scale of funds, meet the borrowing and household wealth needs of first-time buyers and provide ongoing lending for subsequent generations of such buyers even as prices continue to rise—are:

- A revolving investment fund (Option 1), and
- A revolving investment fund combined with revenue bonds (Option 3).

Feasible Financial Approach

Comparing Selected Funding Options

How do these two options—a revolving investment fund or a revolving investment fund combined with revenue bonds—compare? Does leveraging revenue bonds enable the State to serve more borrowers?

Projections. In order to determine answers to these questions, we created a long-term financial model to show how these options would perform under a variety of scenarios. These projections include both a conservative "expected" case and a "more conservative" case. They are designed to indicate the projected amount of CA Dream for All loans each year, how many borrowers might be served, the amount of taxpayer monies needed and its timing and the sustainability of the program. The aim is not to predict the future, but to indicate a reasonable range of impacts these funding options may have in order to inform legislation.

Comparison of options. In order to make these options comparable, we modeled each using approximately the same aggregate total present value of taxpayer investment. This approach makes it easier to see the different impacts of these options themselves.

To preview the results, we found that while revenue bonds change the timing of when taxpayer monies are needed and how such monies may be budgeted, there is little difference in the number of borrowers assisted over a 30-year period.

While the successful sale of such revenue bonds would help indicate that investors are willing to join with the State in funding the CA Dream for All program, they bring several disadvantages. They add significant complexity, require marketing a new financing structure at a very large scale and are subject to the interest rates at the time of each bond sale, which rates may turn out to be higher or lower than the ultimate appreciation on the loans they help finance.

Share of appreciation. As part of these projections, we also tested the impact of requiring that borrowers pay 1.5 times the program's percentage of the home purchase price versus pro rata appreciation. This helped show how a higher required repayment would affect the number of future homebuyers the State can assist with the same original amount of taxpayer monies.

Assumptions

Figure 36 shows key assumptions. Differences between the expected and conservative cases are bolded, as are differences introduced by revenue bonds. Some important assumptions are discussed below.

CA Dream for All lending. The analysis is based on the approach to annual scale of CA Dream in the first section of this chapter, including that CA Dream for All loans fund on average 20% of the purchase price. The program lending volume is limited to $1 billion per year plus the increase in the home appreciation rate and is assumed to initially serve approximately 7,700 borrowers per year.

In later years, after the State is no longer providing new taxpayer monies for loans, the dollar amount and number of loans will depend on repayments of outstanding loans.

Figure 36: Key Assumptions under Financial Approaches

	Expected	More Conservative
Average home purchase price in first year of program	650,000	same
Portion financed by CA Dream for All loan	20%	same
Average CA Dream for All loan in first year of program	130,000	same
Borrowers assisted by $1billion of program loans in first full year of program	7,692	same
Max. amount of CA Dream for All loans per year	$1 billion increasing at appreciation rate	$1 billion increasing at appreciation rate
Home price appreciation (annual rate)	4.5%	**3.0%**
Weighted average life of CA Dream for All loans	15.8 years	**17.3 years**
Losses on CA Dream for All loans		
Annual %	0.20%	**3.2%**
Cumulative	0.35%	**6.3%**
Administrative/origination/servicing costs		
Administration	10 million increasing at 3% per year	same
Loan servicing (as % of loan balance)	1.0% annual	same
Loan origination	5% of loan amount	same
Pre-purchase counseling	$1,125 per new loan	same
Post-purchase counseling	250 per outstanding loan per year, counseling increases 3% per year	same
Taxpayer Funding: No revenue bonds		
For new loans	$1 billion per year for 10 years	same
For administrative costs	$50 million start-up, $100 million per year, Increasing at 3% per year	same
Taxpayer Funding: With Revenue bonds		
For new loans	$1 billion per year for **3 years** **$400 mill. for years 4 – 12**	same
For administrative costs	$50 million start-up, $100 million per year	same
For interest on revenue bonds	**$380 million max. per year**	same
Revenue bond assumptions		
Years issued for new loans (plus issued for new loans	years 4 – 12	same
Interest rate	5%	**6%**
Maximum par outstanding as % of loan balance	60%	same
Maximum annual interest cost	$380 million	same

Home price appreciation. We have assumed two different long-term compounding rates of price appreciation on a geographically diversified portfolio of loans throughout the state. The expected case uses 4.5%, slightly below the 4.7% average rate for the last 40 years for homes in California. The conservative case is set about 36% lower, at a 3% annual rate.

The actual rate will, of course, fluctuate from year to year, with price declines as in the Great Recession and periods of very high appreciation as in the last several years. The natural incentives to maximize their own gains on their homes encourages borrowers to wait out periods when prices have fallen, rather than sell into a downmarket, and to sell their homes (and repay SALs) when prices have recovered.

Average life of CA Dream for All loans. We have assumed that CA Dream for All second loans pay off on average in 15.8 years in the expected case and 17.3 years in the conservative case. An analysis of San Francisco's shared appreciation portfolio from 1998 through 2015 showed an average life of slightly over 16 years. These assumptions reflect the fact that borrowers with large SALs are unlikely to be able to refinance them (especially before they have significantly paid down their first mortgage amount) and are generally expected to repay CA Dream for All loans only when they sell or transfer their home.

These average lives on deferred payment loans can generally be compared to 23% PSA prepayment speed* on borrowers' first mortgages (at an assumed loan rate of 5%) in the expected case and 0% PSA prepayment speed* in the conservative case.[113]

Losses on CA Dream for All loans. Loan losses can arise—that is, the program can fail to recover the original principal amount of a CA Dream for All loan—if two things happen together:

- The borrower defaults on the payments due on the first mortgage, leading to foreclosure or forced sale, and
- The proceeds at foreclosure or forced sale are insufficient to pay off the first mortgage, the borrower's original cash down payment and the full original principal amount of the CA Dream for All loan.

In such an event, the program would not fully recover its original investment.

Loss levels. We have estimated the magnitude of this risk under a range of scenarios, by first looking back at public agency deferred payment loan portfolios that went through the Great Recession. In the case of San Francisco's shared appreciation portfolio, the cumulative losses on its 440 SALs made from 1998 through 2015 were 0.3% of the original principal amount (this 0.3% figure assumes conservatively that as with the CA Dream for All program, the loans had been subordinate to the borrower's original cash down payment. San Francisco, in fact, had zero actual losses).

We then looked at the losses on Colorado's deferred payment loan portfolio for loans made from 2003 to 2010, which had among the highest loss experiences on public down payment assistance loans linked to 30-year first mortgages that were conservatively underwritten. The cumulative losses on Colorado's portfolio was 14%. Looked at more closely, we found two key factors that distinguish its portfolio from the kinds of loans that the CA Dream for All program would make:

- The vast majority of the Colorado deferred loans were made in conjunction with FHA first mortgages, on which default rates have generally been two to three times higher than on Fannie Mae or Freddie Mac first mortgages that CA Dream for All program borrowers would be required to use. Fannie Mae and Freddie Mac first mortgages require significantly higher credit scores and much lower front-end and back-end ratios than FHA first mor tgages. Indeed, of the deferred loans made in conjunction with Fannie Mae loans in that period (some 52 loans), far from a 14% cumulative loss, there were zero losses.
- Equally important, the Colorado deferred loans (like those of most down payment assistance programs nationally) were quite small, at approximately $5,000. Thus, there was little reason for the agency to bid at foreclosure or forced sale to protect its position; the cost and effort would not have been worthwhile. On very large second mortgages, like those the CA Dream for All program would provide, it would be worthwhile for a program with a 20% second mortgage to seek to recover half of its principal balance even if there had been a 10% decline in property value.

Taken together, the estimated equivalent cumulative loss for a CA Dream for All portfolio that goes through the same depth of recession as Colorado's program is likely to be about one

113 The standard method of referring to and calculating prepayment speeds of mortgages is the model established by the Public Securities Association, currently the Bond Market Association, or "PSA" model based on an assumed rate of prepayment each month of the then unpaid principal balance of a pool of mortgages.

quarter as severe, or about 3.5%. The conservative case assumption of 6.3% is much higher than this figure.

Borrower incentives. Another feature of CA Dream for All is likely to further reduce borrower defaults that can lead to loan losses. Repayment of the principal amount of the CA Dream for All loan would be subordinate to the borrower recovering his or her original cash down payment. This can make a significant difference in how borrowers deal with their first mortgage debt.

- In a normal high-to-loan first mortgage (for example, 97% of the purchase price), if home prices go down by 5% or more, a borrower who is financially stretched to make the mortgage payment and all other expenses may have little incentive to keep making first mortgage payments. Since the value of home is less than has to be repaid, the borrower may see little point in essentially throwing good money after bad, since there may seem to be little prospect of recovering the borrower's down payment.
- The same logic applies if the borrower has an 80% first mortgage and a deferred payment second mortgage that is not subordinate to the borrower's down payment.
- Under the CA Dream for All approach, however, even if the value of the home is reduced by 20%, the borrower has every incentive to keep making first mortgage payments, since the down payment will not be at risk.
- Thus, the value of the home could drop by **five times as much** as with a typical down payment assistance loan (20% vs. 4%), and the borrower would still have a full incentive to keep making first mortgage payments.

This incentive makes little difference, of course, to a borrower that has no other choice but to default on their first mortgage. But as mortgage lenders found during the Great Recession, loans being underwater had a very strong impact on loan defaults occurring in the first place.

Administrative, origination and servicing costs. Recognizing that the details of how a CA Dream for All program would operate have not been pre-decided, we have made assumptions about what may be adequate amounts to carry out all the functions required.

Administration and setup. We have assumed that administration of the program itself, including setting up the program and annual oversight of third parties carrying out specific functions, would not exceed $50 million in start-up costs, plus $10 million a year, increasing at 3% annually.

Loan origination. For costs of loan origination, we have assumed 5% of the original principal amount of the CA Dream for All loans (e.g., $50 million on $1billion of lending in the first full program year). Third-party functions include tracking loan reservations, marketing and outreach, communications and explanations with borrowers and homebuyer counseling (it should be noted that lenders originating first mortgages and associated seconds, like CA Dream for All loans, cannot receive additional compensation for such seconds under Federal rules).

Homebuyer and homeowner counseling. Counseling is a key component of the CA Dream for All program. We have assumed homebuyer counseling for all borrowers, with a per loan cost of $1,125. Ongoing counseling for borrowers with outstanding loans is assumed to cost $250 per outstanding loan per year. Both of these costs are assumed to increase at 3% per year.

Loan servicing. For loan servicing, we have assumed 1% of the original principal amount of the CA Dream for All loans (since the loan does not amortize, the dollar amount for servicing a loan typically remains the same). The servicing function on these loans can include:

- Quarterly updates to the program and borrowers on not only the principal balance of the loan (so the borrower is fully aware that there is a debt to be repaid) but also of the estimated amount that would be due for appreciation if the home was re-sold (based on automated home value estimates for that geographic area);
- Working with borrowers who may be delinquent on their first mortgage, including making referrals for loan counseling, in order to reduce the chances of default; and
- Dealing with loan repayments.

The 1% figure is similar to what state housing finance agencies have paid for servicing modest-sized amortizing second loan portfolios, where the servicer has to collect monthly payments. It has also been proposed by a fintech experienced in SALs.

Revenue bonds. The revenue bond approach, timing, security and other limits reflect Option 3. Based on input from investment bankers and increasing rates in the current bond market, we have assumed that these taxable revenue bonds could be sold at an average of 5% in the expected case and 6% in the more conservative case. Costs of issuance, including underwriter discount and agency issuance fees, are assumed at 0.75%.

Results and Implications

We have compared Option 1, a revolving investment fund with all taxpayer money that invests $1 billion a year for 10 years, and Option 3, a revolving investment fund that starting in year 3 uses revenue bonds to reduce the amount of taxpayer money needed for new loans in each year. The present value cost of taxpayer monies for these two options is approximately the same, so it is easier to see how this choice affects the program's ability to assist borrowers.

In addition, to see what happens to the long-term sustainability and endowment created by a revolving fund, we also showed the impact of a revolving fund where taxpayer money is invested for an extra five years—15 years in total.

Figure 37 shows high-level results under the expected case. The revolving fund for 10 years is bolded because it provides a baseline against which other financing options can be measured.

Note: This analysis does not include a terminal value of residual assets and liabilities after the 40-year projection period. The borrower share of home appreciation is (a) for loans paid off, the total appreciation on homes at time of payoff minus the appreciation owed to the program, and (b) for loans outstanding at end of 40 years, the total appreciation on homes with loans at that time minus the amount that would be owed to the program if the loan was paid off at that time.

Overall impact. The most important finding from this analysis is that a significant investment in CA Dream for All lending over the first 10 years of the program creates a powerful endowment to help future borrowers.

- By investing $1 billion a year in new loans for 10 years and helping approximately 77,000 first-time homebuyers directly over that period, the State creates a revolving fund that would assist **80,000 additional** first-time buyers over the following 30 years.
- Because these are SALs, the appreciation paid back to the program lets the CA Dream for All Fund provide buyers each year the larger amounts they need to keep pace with rising home prices. The greater the rate of home price appreciation, the more important this is.
- Beyond this initial funding period, the total cost to the State is limited to $100 million per year for administrative, origination and servicing costs.
- The State can, of course, choose to continue funding such a program. By doing so for 15 years, it will increase the number of first-time buyers it supports **from 157,000 to 200,000**.

Figure 37: Expected Case Over 40 Years

	Funding Approach		
	Taxpayer Funding of New Loans for 10 years	Taxpayer Funding with Revenue Bonds for 12 years	Taxpayer Funding Only for 15 years
	Option 1	**Option 3**	**Option 1 plus 5 years**
Taxpayer Funding			
For loans	$10.0 billion	$ 6.6 billion	$15.0 billion
For revenue bond interest	0	5.3 billion	0
For admin, origination and servicing costs	4.1 billion	4.1billion	4.1 billion
Total over 40 years	14.1 billion	16.0 billion	19.1 billion
Present value at 3.0%	10.8 billion	11.4 billion	14.3 billion
CA Dream for All loan originations			
Total over 40 years	47.6 billion	46.5 billion	62.5 billion
Present value at 3.0%	25.3 billion	25.4 billion	32.6 billion
Borrowers Assisted			
Total over 40 years	157,200	159,800	199,700
Average annual	3,930	4,000	4,990
Total over 40 years	133.8 billion	133.2 billion	173.2 billion
Present value at 3.0%	64.2 billion	65.6 billion	81.6 billion
PV of borrower appreciation / taxpayer cost	5.9x	5.8x	5.7x

- After the 40-year period shown in these projections, repayments of CA Dream for All loans would continue to revolve to help future borrowers as well.

Key differences among financing options. A few insights stand out from this comparison of various options:

- A revolving fund program and a revenue bond program with approximately the same present value of taxpayer investment would make about the same dollar amount of CA Dream for All loans and assist a similar number of borrowers over the course of 40 years.
- Including revenue bonds starting in the fourth year changes the timing of taxpayer investment. Instead of $1 billion in taxpayer monies annually from years four through 10 for new loans, this amount drops to about $400 million a year. However, taxpayer monies are needed to pay interest on revenue bonds. The net result is that the total cost to taxpayers is about the same in present value terms.
- The form in which taxpayer money is budgeted is different among these options. To support the interest payments on revenue bonds, State legislation establishes an annual appropriation pledge, building ongoing support for the program into future budgeting. This is separate from the amounts being spent in early years to fund new CA Dream for All loans.
- Revenue bonds introduce an added element of interest rate sensitivity. The more expensive the actual interest rate on a series of revenue bonds, the less the total amount of revenue bonds that can be outstanding at any one time with the same maximum annual appropriation pledge. If revenue bond interest rates are higher, as assumed in the more conservative case, it will reduce the number of borrowers that the CA Dream for All program will ultimately help.
- **If the State wants to expand the number of first-time homebuyers who are ultimately assisted, it can do so not by including revenue bonds in the program but simply by continuing to fund new loans for additional years**.

More conservative assumptions. An important part of this analysis is understanding the sensitivities of these results to different economic environments and prepayment speeds.

- These financing structures have been designed so that there is no unexpected or additional cost to the State depending on the economic environments or prepayment speeds.
- Rather, the result of larger loan losses, slower prepayment speeds, less home price appreciation or higher interest rates is on the number of subsequent buyers the CA Dream for All program can assist.
- The total dollar amount of CA Dream for All loans that would be funded over 40 years in this more conservative case is significantly less—$31 billion compared to $48 billion—but still more than double the amount of taxpayer monies spent on new loans (and interest payments in the case of revenue bonds).
- The number of borrowers in the more conservative case is only slightly smaller (144,000 compared to 157,000). While the lower assumed home appreciation rate means less total appreciation payments to be recycled into new loans, it also means that the amount needed to help new homebuyers is smaller as well. If prices rise much more slowly than they have historically, less money is needed to help the same number of buyers purchase the same homes.
- This analysis shows how a shared appreciation program responds over many years to a variety of future trends, ultimately providing more money to assist new buyers when home prices increase quickly and less money when prices rise more slowly.
- One factor that could significantly reduce the number of future buyers assisted would be a severe reduction in California home values, resulting in larger-than-projected loan losses. In this case, there may be less of a need for CA Dream for All loans to fund as much of the purchase price of homes that first-time buyers are seeking to buy.

Figure 38: More Conservative Case Over 40 Years

	Taxpayer Funding of New Loans for 10 years	Taxpayer Funding with Revenue Bonds for 12 years	Taxpayer Funding Only for 15 years
	Option 1	**Option 3**	**Option 1 plus 5 years**
Taxpayer Funding			
For loans	$10.0 billion	$6.6 billion	$15.0 billion
For revenue bond interest	0	6.8 billion	0
For administration, origination and servicing costs	4.1 billion	4.1 billion	4.1 billion
Total over 40 years	14.1 billion	17.4 billion	19.1 billion
Present value at 3.0%	*10.8 billion*	*12.2 billion*	*14.3 billion*
CA Dream for All loan originations			
Total over 40 years	$31.4 billion	$30.0 billion	$42.0 billion
Present value at 3.0%	*18.1 billion*	*18.1 billion*	*23.6 billion*
Borrowers Assisted			
Total over 40 years	144,000	144,000	188,000
Average annual	3,600	3,600	4,700
Borrower Share of Home Appreciation			
Total over 40 years	61.8 billion	61.3 billion	81.4 billion
Present value at 3.0%	*31.2 billion*	*32.1 billion*	*40.2 billion*
PV of borrower appreciation / taxpayer cost	2.9x	2.6x	2.8x

Note: This analysis does not include a terminal value of residual assets and liabilities after the 40-year projection period. The borrower share of home appreciation is (a) for loans paid off, the total appreciation on homes at time of payoff minus the appreciation owed to the program, and (b) for loans outstanding at end of 40 years, the total appreciation on homes with loans at that time minus the amount that would be owed to the program if the loan was paid off at that time.

Impact on borrower household wealth. In addition to comparing the impact of the program in helping buyers purchase homes, the model provided a way to project the impact on the household wealth generated for such households over a 40-year period.

In the expected case, the net appreciation received or accrued by borrowers over the 40-year period (after subtracting the portion of appreciation due back to the program) is about $133 billion for both the 10-year taxpayer funding and the revenue bond approach. On a present value basis, this is about $65 billion.

This means that for a present value investment of $10.8 billion, the State helps generate about six times that amount in household wealth for low- and moderate-income homebuyers, while still continuing to receive future repayments to assist later borrowers.

In the more conservative case, the net appreciation received or accrued by borrowers over a 40-year period is about $61 billion in the 10-year taxpayer funding and revenue bond approaches. The present value is about half that. Even if appreciation over this period is two thirds what it has historically averaged over the last 40 years, the $10.8 billion present value taxpayer investment in the CA Dream for All Fund will help generate about three times that amount in household wealth.

Figure 39: Projected Borrowers Served Under the Expected Case

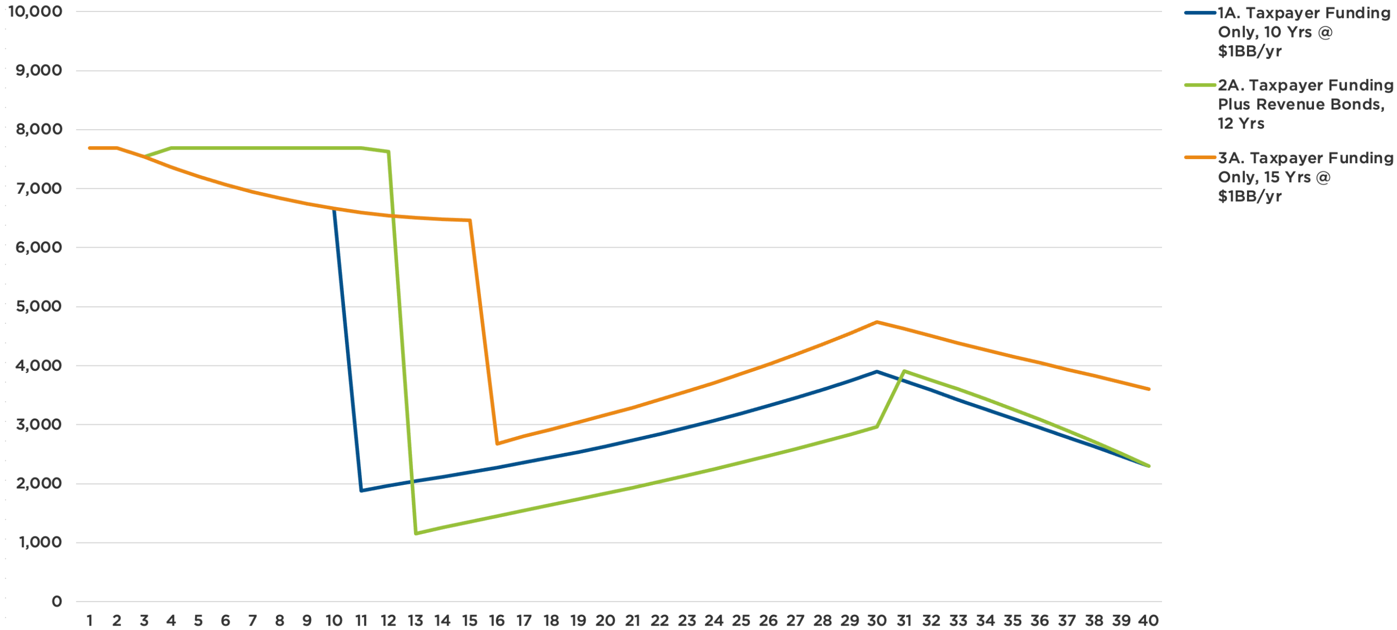


Figure 40: Projected Borrowers Served More Conservative Case

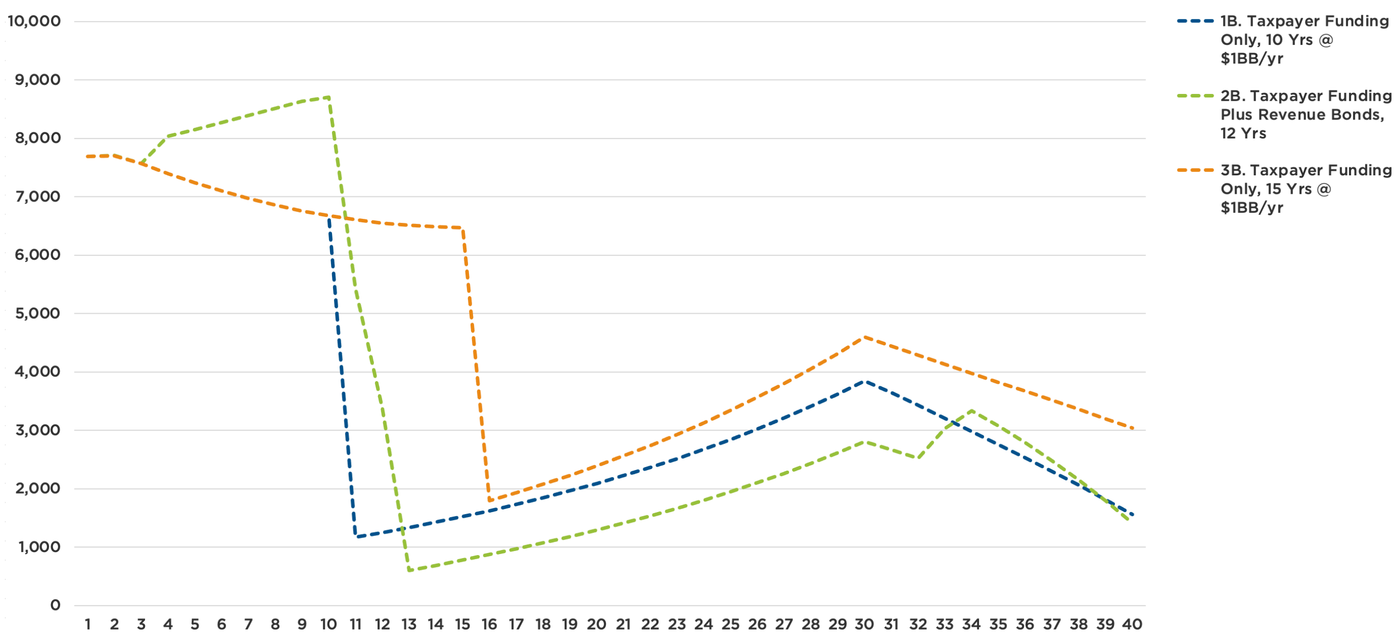


Figure 41: Dollar Amount of Projected CA Dream for All Originations Expected Case (# Billions) Annual

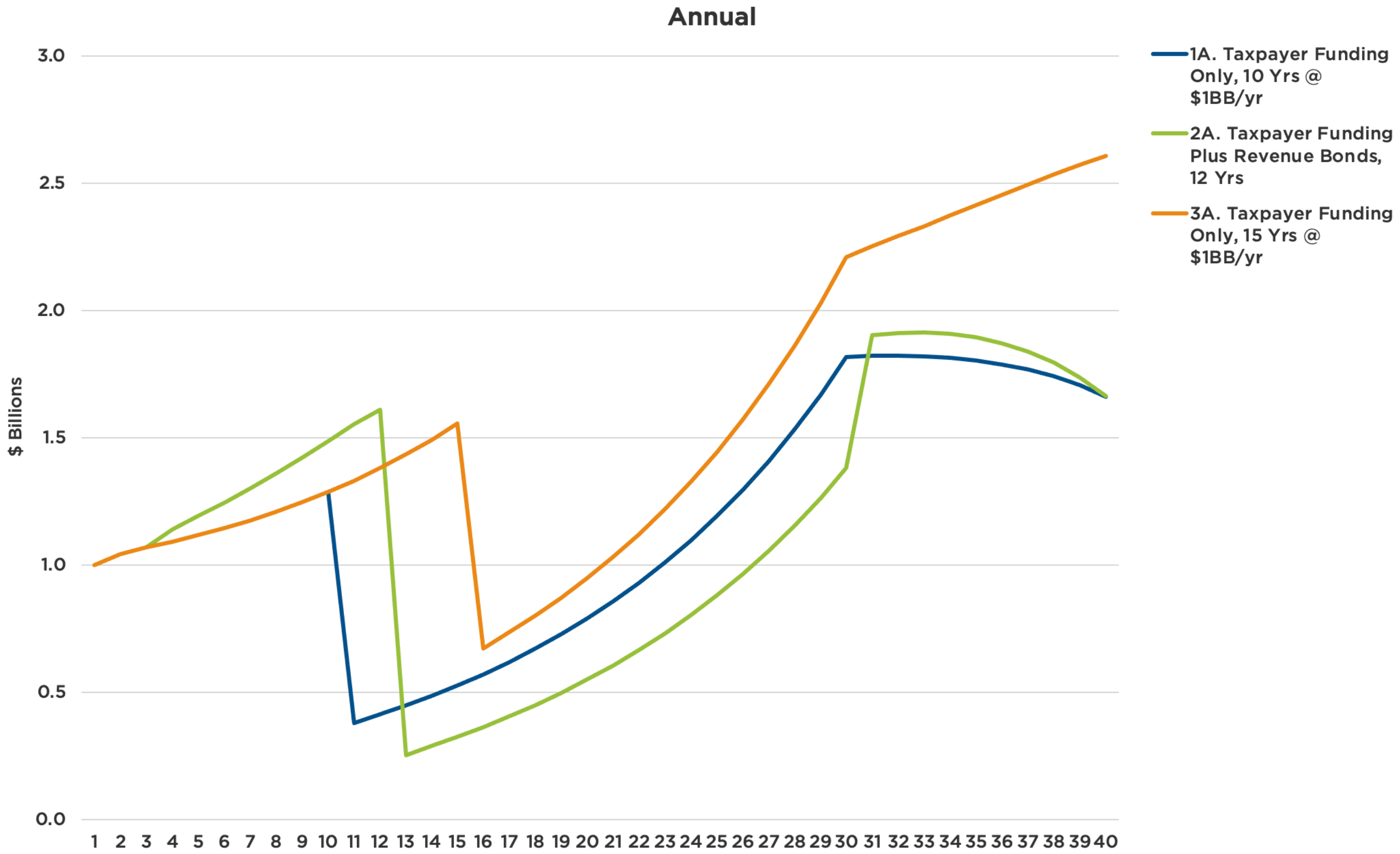


Figure 42: Dollar Amount of Projected CA Dream for All Originations Expected Case ($ Billions) Cumulative

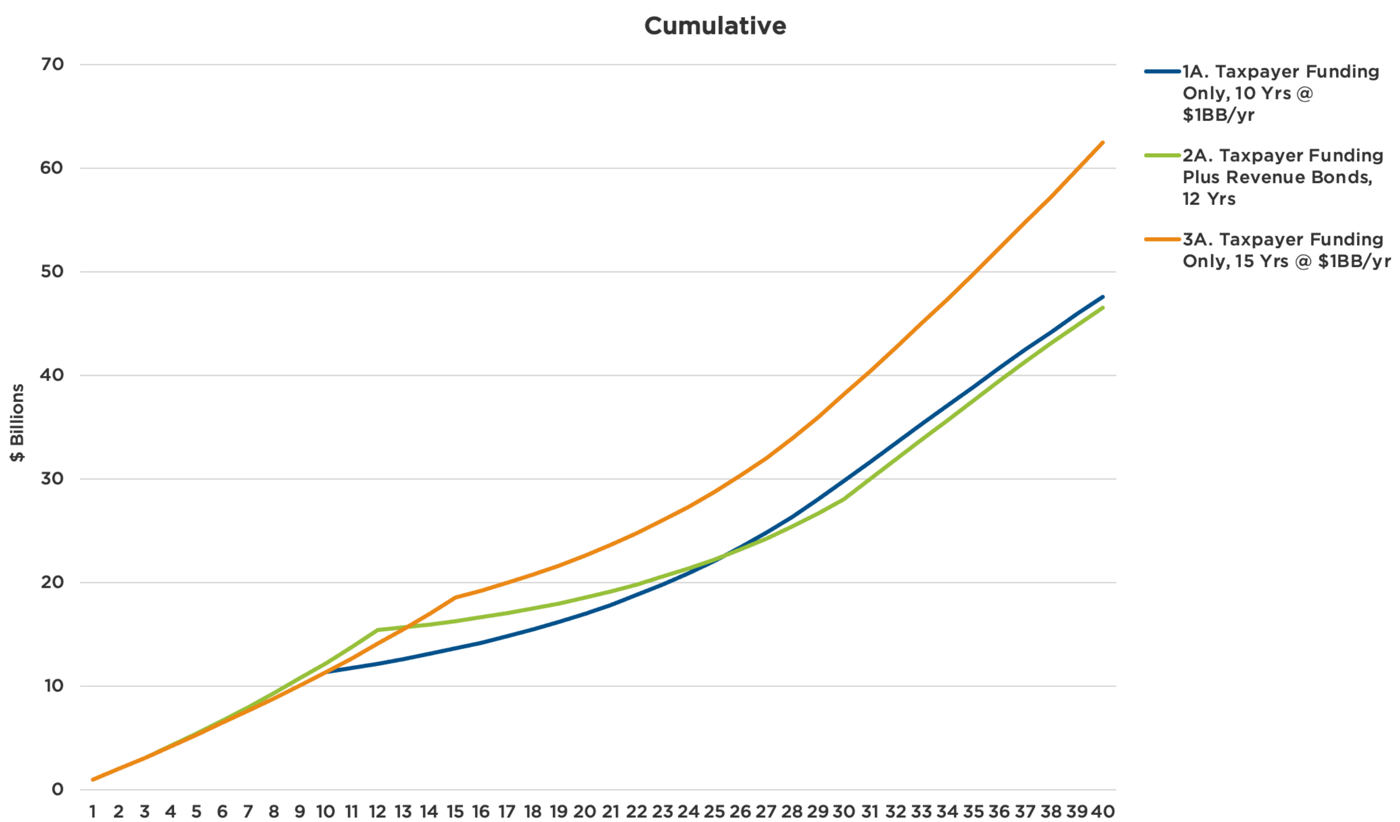


Figure 43: Dollar Amount of Projected CA Dream for All Loan Originations More Conservative Case ($ Billion) Annual

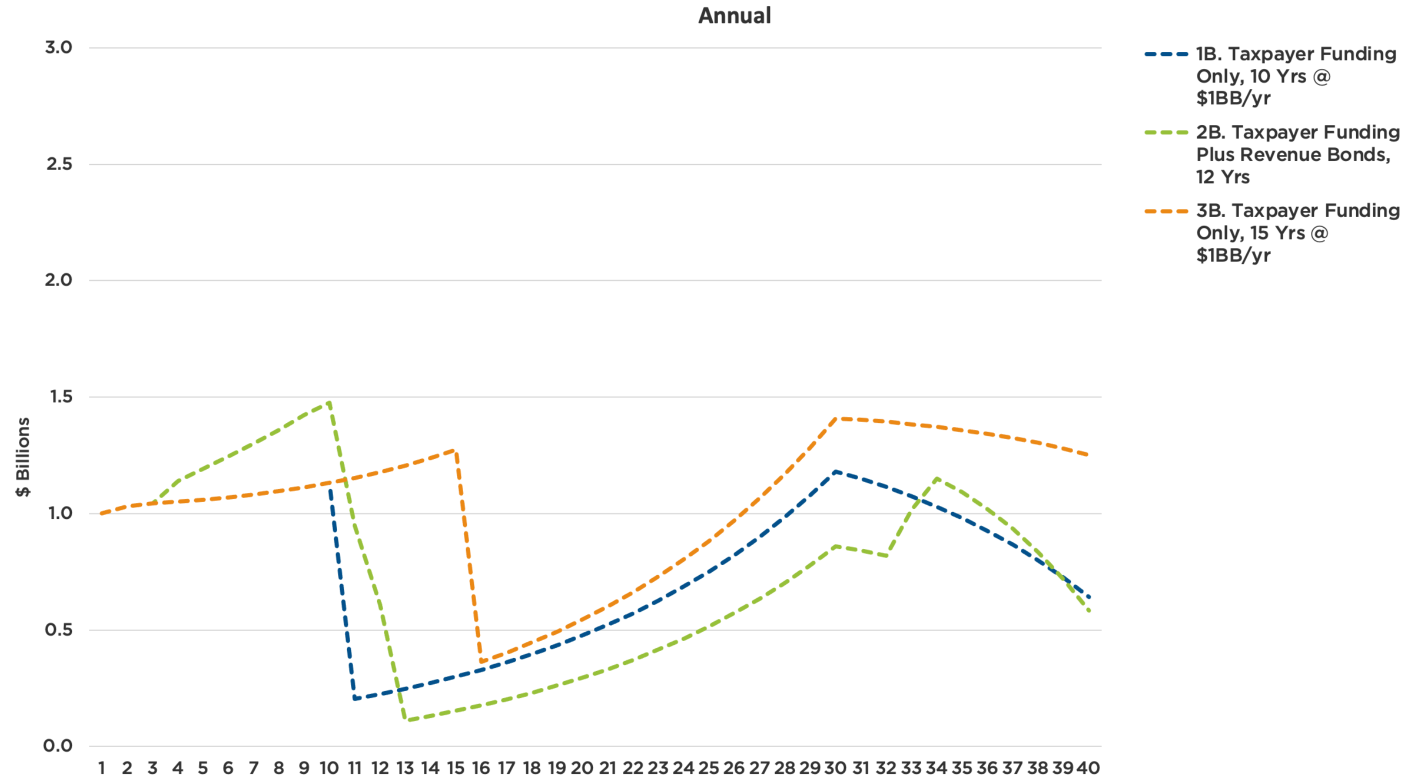


Figure 44: Dollar Amount of Projected CA Dream for All Loan Originations More Conservative Case ($ Billion) Cumulative

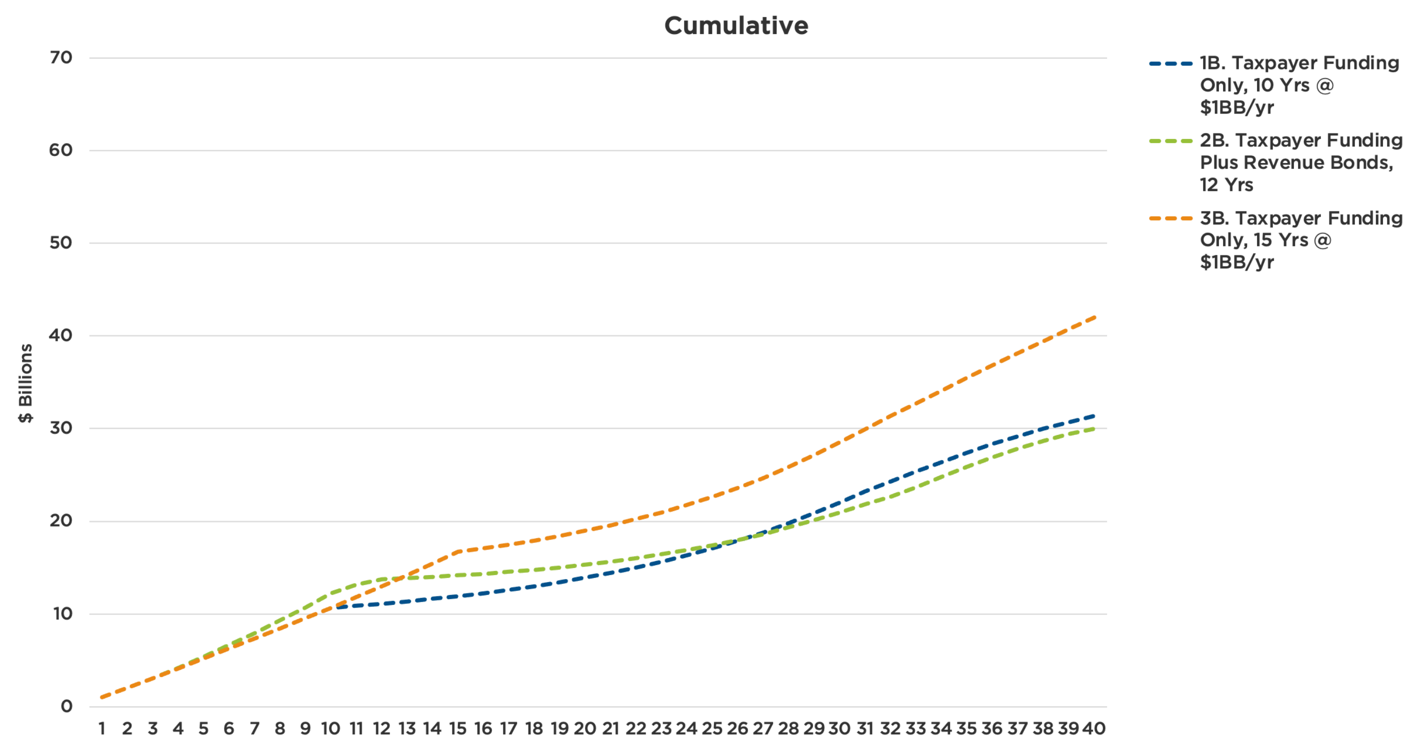


Figure 45: Borrower Share of Home Price Appreciation Expected Case ($ Billions) Annual

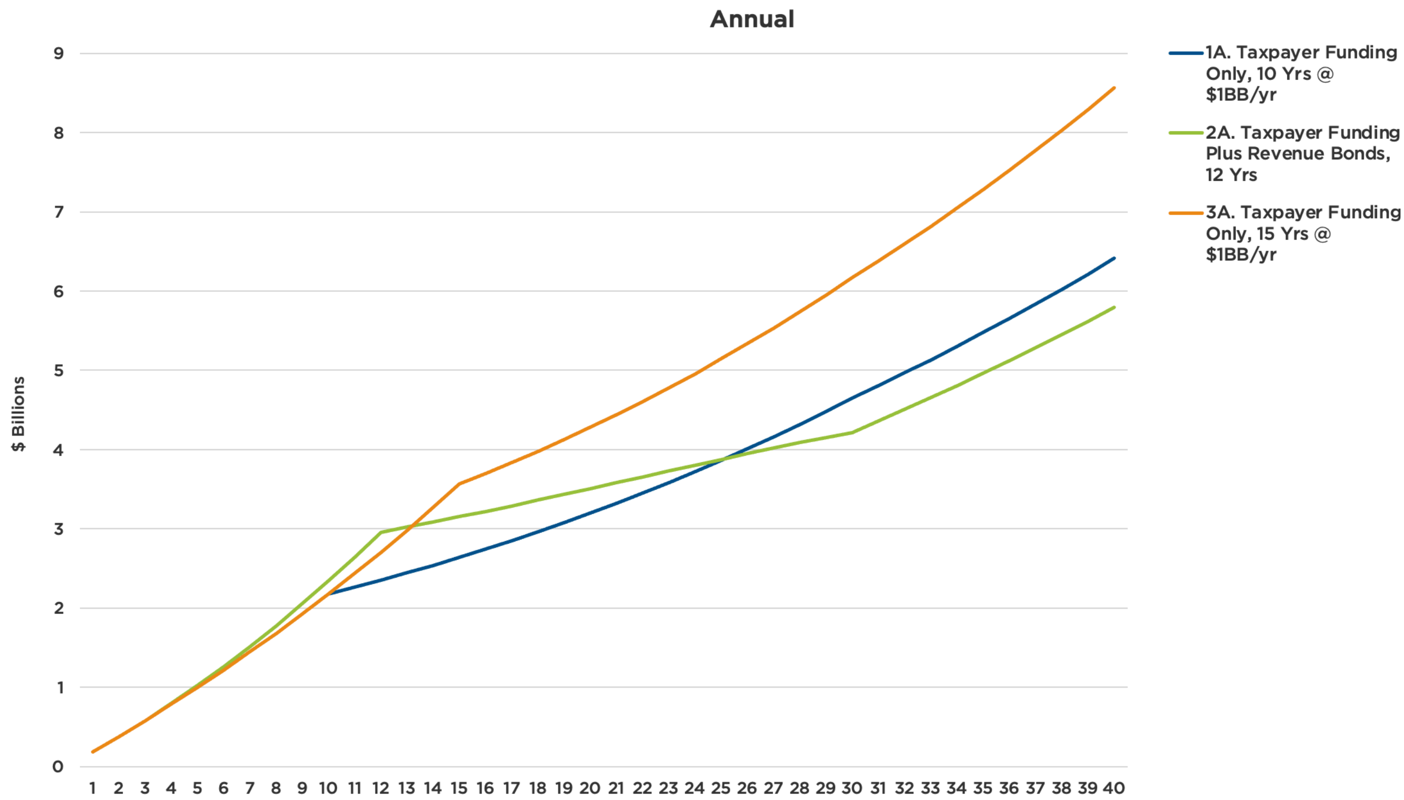


Figure 46: Borrower Share of Home Price Appreciation Expected Case ($ Billions) Cumulative

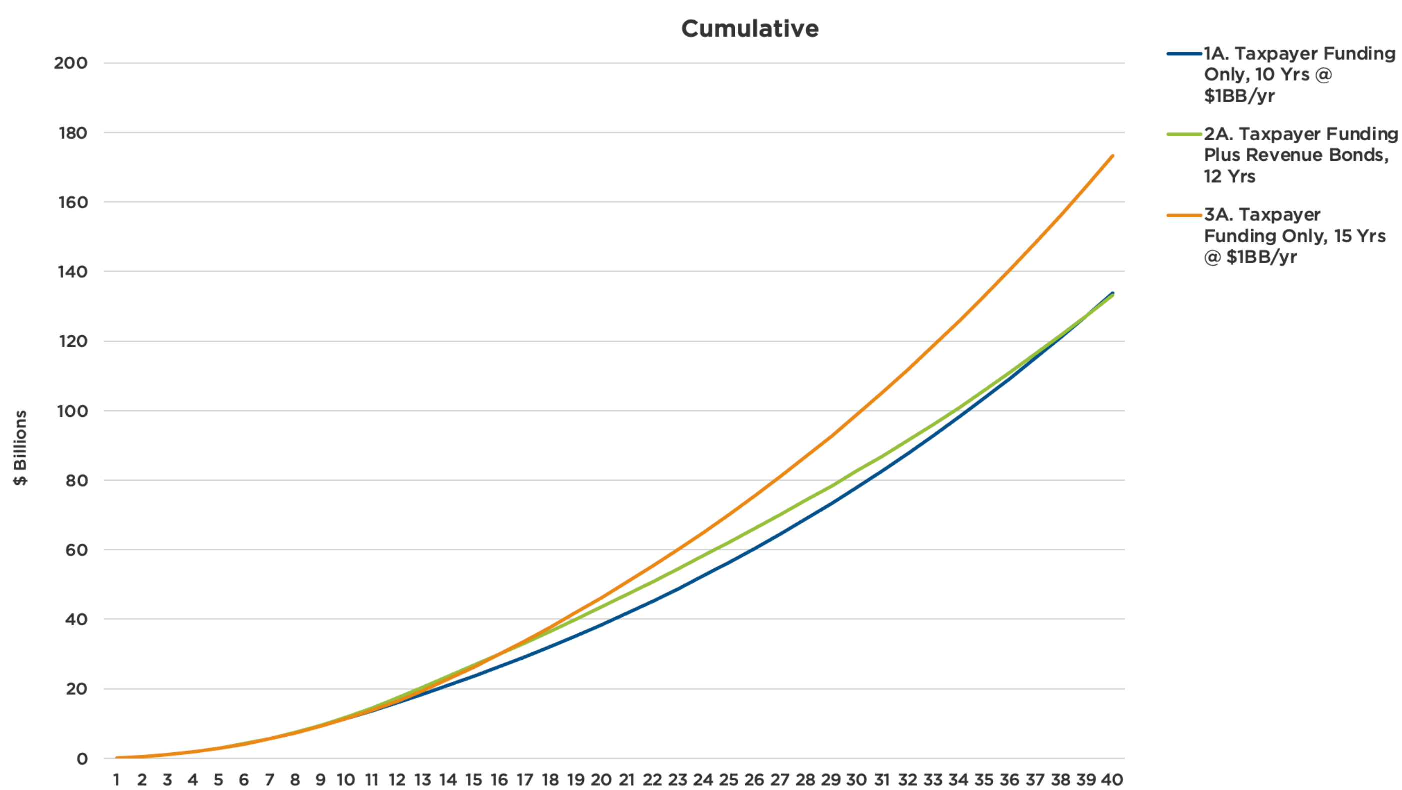


Figure 47: Borrower Share of Home Price Appreciation: More Conservative Case ($ Billions) Annual

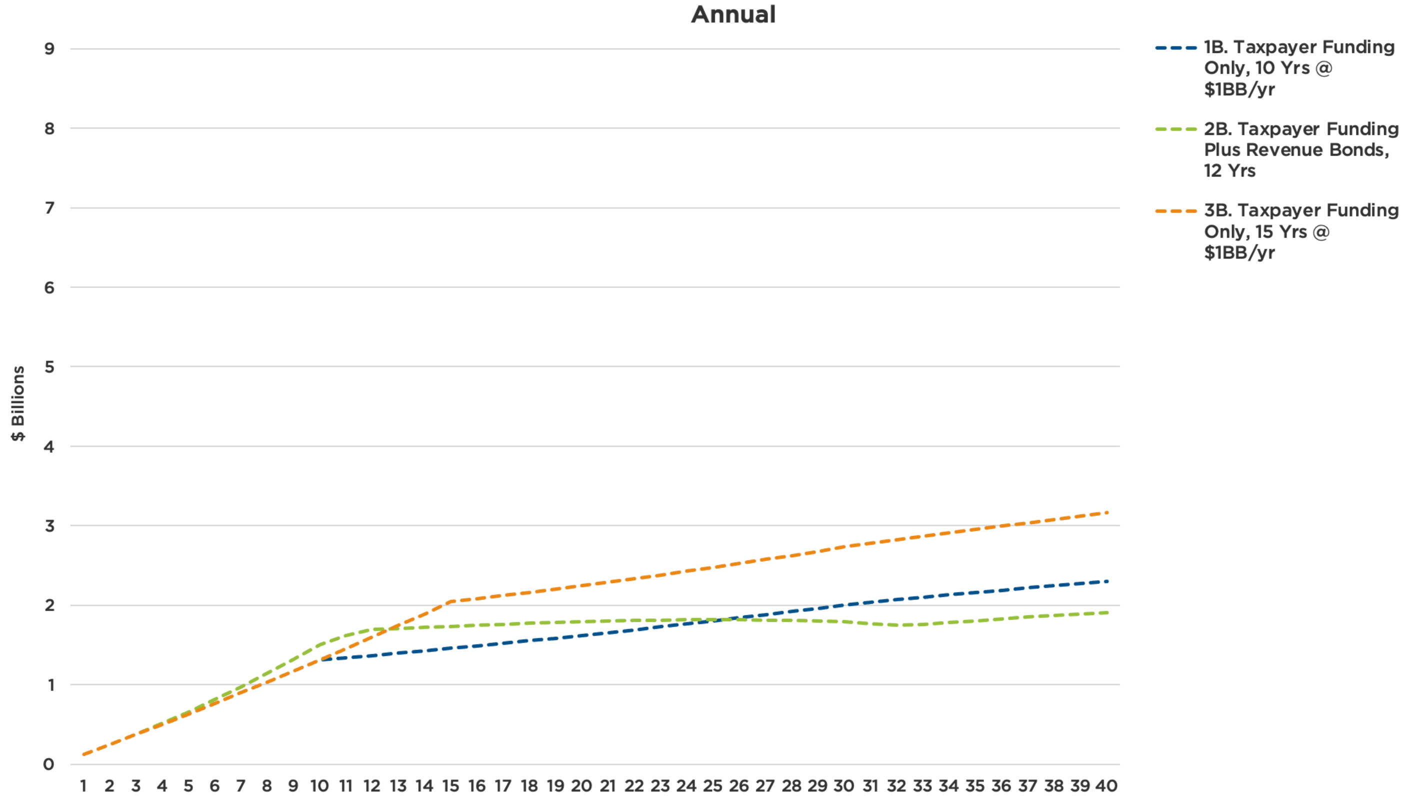
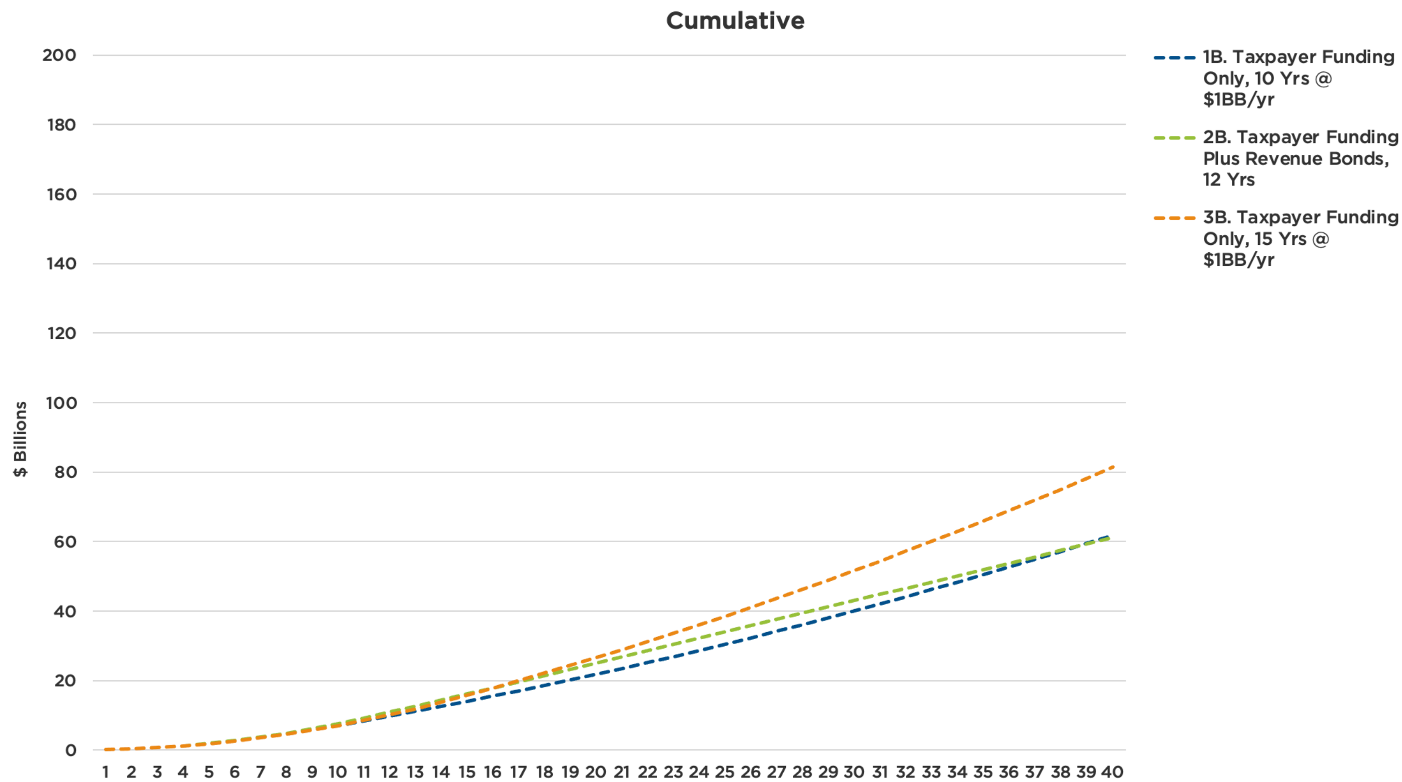


Figure 48: Borrower Share of Home Price Appreciation: More Conservative Case ($ Billions) Cumulative



Impact of requiring higher share of home appreciation. All these analyses have assumed the simplest version of SALs, in which CA Dream for All receives a pro rata share of appreciation. We also looked at what the impact would be if CA Dream for All received 1.5 times pro rata appreciation.

Using the expected case for a basic revolving fund (Option 1), the total number of borrowers helped would likely increase. Instead of 131,000 first-time buyers, CA Dream for All might be able to assist 14% more buyers and increase the dollar amount of loans by about 20%.

Given the relatively modest additional amount of CA Dream for All lending that would result from a higher share of appreciation and the impact on borrower household wealth, we do not think the decision on the share of appreciation should be based on trying to help more borrowers in the future, but rather on policy grounds.[114]

Limiting Financial Risks

A final key dimension for how the program is designed and funded is to limit risks to the State. Since the possibility of any such risks ever arising is ultimately based on what happens on the underlying SALs, it is instructive to consider risks at the individual borrower level.

Borrower risks. The program is designed to avoid creating any risks for buyers beyond those in conventional mortgage lending and homeownership. The most important feature of the program in this regard is that it requires Fannie Mae or Freddie Mac first mortgages. Such mortgages involve a significantly higher standard of loan underwriting, credit scores and front-end and back-end ratios than FHA, VA and Rural Development loans used by the vast majority of first-time homebuyers. This underwriting protects the borrower as well as the mortgage lender (and because a default on the first mortgage is what would trigger a default on the SAL, it protects the program as well).

Because the SAL is deferred and only due upon sale or cash-out refinancing, it does not involve any monthly payments or create any ongoing financial costs or burdens on the homebuyer.

As with any mortgage lending, there is naturally a risk that if the borrower defaults on the first mortgage, the home value may not be sufficient to repay the first mortgage and the second mortgage. To limit such exposure to the homeowner, the CA Dream for All SAL would be designed to provide three protections:

- There is no possible deficiency judgment against any borrower;
- There is no appreciation payment unless the property has increased in value; and
- Even if the property has dropped in value, the CA Dream for All loan is subordinated to the borrower recovering the full amount of their original cash down payment.

The homeowner has every incentive to continue making first mortgage payments and maintenance on the home, since the borrower receives the vast majority of the gain on the property.

One natural question is what happens if the borrower does not sell the home, pays off the first mortgage at the end of 30 years and still owes the SAL. At that point, since the borrower has no monthly payments on the original first mortgage, they can take out a new first mortgage that pays off the SAL. Alternatively, the borrower can always sell the home, pay off the shared appreciation loan and receive the remaining gain on the property.

A further, more basic question is whether the program is putting the borrower at risk by making it possible to buy a larger or more expensive home than would otherwise be possible. Helping overcome the financial barriers to homeownership is, of course, the very purpose of any down payment assistance program, from CalHFA's MyHome assistance to larger SALs. The question is whether being able to access a larger amount of assistance may create a greater risk for the potential buyer, in a way that is not reflected in the loan underwriting. Since the major possible risk is that of unanticipated repairs, one benefit of the CA Dream for All Program is that it enables buyers to have a wider range of choice and thus be able to buy homes with less deferred maintenance or current repair needs.

Risks to the State of California. The program itself and the funding options we have modeled are designed to avoid creating future or unanticipated financial risks to the State. If loan losses are greater than projected, there is no additional financial cost to the State's General Fund. Rather, the amount of future CA Dream for All lending from loan repayments will be reduced.

114 Adding to the uncertainty is that a higher share of appreciation may affect the average life of CA Dream for All loans in ways that are hard to project. Some borrowers may be incentivized to pay off their loans earlier as they see the amount potentially due increase more rapidly. Others, looking at these larger amounts, may decide to live in their house longer.

We recognize that including revenue bonds in the program may raise additional questions about risk. If revenue bonds are included, the principal on them will be payable solely from a senior security interest in a highly overcollateralized level of SALs (and the interest by a state appropriation pledge). As a result, there is no financial or legal risk to the General Fund. Nevertheless, having such a large outstanding amount of such revenue bonds issued by a state agency, ultimately over $6 billion, secured by second mortgage loans brings reputational concerns. Very large loan losses, even if far below the 40% loss level that could affect ultimate repayment of principal, would make it more difficult to sell additional series of revenue bonds and continue funding CA Dream for All loans in this way. For these reasons, and because inclusion of revenue bonds does not increase the number of borrowers who can be assisted with the same amount of taxpayer monies, we advise using taxpayer money to fund the program.

There is a final reputational concern about whether borrowers will clearly understand the nature of the loan obligations they are assuming. The program would need to make an exceptional effort to educate potential buyers about the loan obligation and what is due upon payment, and to inform borrowers regularly about the estimated amount that would be due under their loan if paid off in the current market. The websites and educational efforts of several fintech companies offer models for how this can be done.

Perhaps most important to note in thinking about perceptions by borrowers is to compare SALs with other ways of assisting the same potential buyers. SALs subordinate to the borrower's original down payment pose far less risk to the borrower than a deferred second mortgage with an accruing interest rate, since no appreciation is due if the house does not increase in value, unlike accrued interest at a fixed interest rate.

Finally, SALs provide a way for the State to reduce the risk to itself (and future homebuyers) of being unable to provide resources that keep up with the rate of home appreciation, and to reduce cost of making homes affordable in the future. The funding options described here are based on the State providing the same fixed amount of taxpayer funds each year ($1 billion for new loans during the initial phase of the program and $100 million for ongoing administrative costs), without any increases, while also being in a position to provide larger and larger CA Dream for All loans to buyers as California house prices increase. The program can therefore provide the same level of affordability without requiring more and more taxpayer dollars each year.

Recommended Funding Option

Based on this extensive analysis, the recommended approach for funding the CA Dream for All Program is also the simplest: investing state taxpayer monies in a revolving investment fund, without requiring revenue bonds secured by CA Dream for All loans. This approach would involve the State investing $1 billion per year for new loans for 10 years, together with an ongoing contribution of $100 million per year for administrative costs.

Methods of Funding Taxpayer Investment

There are three funding methods by which the State can provide these taxpayer monies: budget funds for new loans each year, issue GO bonds or issue bonds backed by a state annual appropriation pledge.

State annual budget fund. The Legislature can directly appropriate the monies to fund CA Dream for All loans in each year's budget (for example, by including $1 billion in each year's budget for the first 10 years). This method has the highest annual cost during those years, but avoids requiring the State to pay interest on any bonds.

General Obligation Bonds. The State can request voter authorization of GO bonds to fund CA Dream for All loans. Such bonds could then be issued in the amount needed each year, up to the maximum total amount approved by the voters. Interest on the bonds would be federally taxable. Each series of bonds would typically be issued with annual maturities through a final 20-year maturity. The State would be obligated to fund the annual debt service on these bonds as a GO of the State. This approach spreads out the cost to the State of its investment in each year's CA Dream for All lending over many years.

State appropriation pledge bonds. This method is frequently used to fund state investments by spreading out the cost over many years without requiring voter authorization. California and other states have often issued bonds backed by a state appropriation pledge for capital facilities.

Under this approach, the Legislature authorizes the issuance of state appropriation pledge bonds for the CA Dream for All program and establishes a maximum annual limitation on the debt service that the State will pay on such bonds. The State is committed to making such debt service payments, but only to the extent that they are budgeted and appropriated each year by the Legislature. These bonds are effectively viewed as 'moral obligations' of the State, and are typically rated by rating agencies one notch below the rating on the State's GO bonds.

This type of State pledge is the same as that described earlier for revenue bonds for the CA Dream for All program, but would cover both principal and interest on the bonds. As a result, bondholders would receive scheduled principal payments funded by the State's budget—not from principal repayments of CA Dream for All loans. This is an important distinction in several ways.

This appropriation pledge approach is commonly used for certificates of participation and lease revenue bonds for major projects, and it has been used successfully over the last 10 years by the State of Minnesota for housing infrastructure bonds. The principal and interest on the bonds are paid by the State, and the proceeds are used to make soft second loans for permanent supportive housing and other types of housing projects.

Under the appropriation pledge approach, the Legislature would decide on a maximum annual debt service. For example, if the maximum annual amount was initially set at $480 million, this would enable the State to issue bonds for $1 billion per year of CA Dream for All lending over the course of approximately seven years. In the future, the Legislature could decide to increase the cap amount in order to continue investing in the CA Dream for All program.

Like GO bonds or revenue bonds for the CA Dream for All Program, appropriation pledge bonds would be federally taxable.

Choice of funding method. Any of these methods for investing taxpayer monies could be used for the CA Dream for All Fund. Ultimately, they simply reflect different ways of authorizing and spreading out the cost of the same investment.

Figure 49: Comparison of State Appropriation Pledge Bonds and Revenue Bonds Overcollateralized by CA Dream for All Fund

	State Appropriation Pledge Bonds	Revenue Bonds Overcollateralized by CA Dream for All Fund
Purpose	Fund the full amount of CA Dream for All loans made in a year	Fund a portion of the cost of CA Dream for All loans (together with direct taxpayer monies)
Security for the Bonds	State annual appropriation pledge for both principal and interest	Principal is secured by and depends on borrower repayments of CA Dream for All loans. Bonds must be overcollateralized (e.g., can only be issued for up to approx. 60% of the amount of CA Dream for All loans). Interest is paid by a state annual appropriation pledge
Are Bondholders Affected by:		
Timing of Repayment of CA Dream for All loans?	No	Yes
Losses on CA Dream for All loans?	No	Yes
Would there need to be a fixed 30-year maturity on CA Dream for All loans?	No	Yes
Do bondholders have a lien on repayments of CA Dream for All loans?	No	Yes
Maturity on Bonds	Serial bonds through a final maturity (such as 30 years)	Single term bond in 30 years that would be redeemed earlier from CA Dream for All loan repayments
Rating on Bonds	One notch below California's general obligation rating	Significantly lower, investment grade rating
Is this a type of credit and security that bond investors and rating agencies are highly familiar with?	Yes	No. Deferred payment second mortgage loans have rarely been security for large-scale bond issues

Comparing Shared Appreciation to Fixed Interest

Beyond the funding option itself, we compared the process and impact of using those same taxpayer monies for two different types of second loans to homebuyers:

a) Deferred payment second mortgages with a fixed simple interest rate, such as 3%, and

b) SALs, where there is no interest and the borrower repays a pro rata portion of the appreciation on the home.

In exploring these options, we considered a range of questions, including the differences in risks involved, the total number of households who could buy homes with CA Dream for All loans, the total amount of these loans and the net appreciation received by borrowers.

Risk

Loans that accrue interest at a fixed rate are fundamentally different from SALs. With a fixed interest rate loan, the borrower has to pay t*he same amount* of accrued interest at the loan rate regardless of what happens to the value of the home. The interest that accrues each year is "hard," meaning that it is due regardless of what happens to the value of the home.

Accruing fixed rate loans creates two significant risks compared to a shared appreciation loan. One is a risk to the individual borrower; the other is a risk to the ability of the CA Dream for All program to help future borrowers.

Risk to the Borrower. A fixed interest rate on a CA Dream for All loan creates considerably more risk to individual homeowners if prices don't increase significantly.

Consider a scenario in which a home purchased for $650,000 doesn't increase in value when re-sold 10 years later—for example, during a recession. With shared appreciation, the borrower owes nothing beyond paying back the original CA Dream for All loan principal amount. With a 3% simple fixed interest rate, however, the borrower owes $39,000 in accrued interest, even though there is no gain on the house. This amount is about twice the value of a typical borrower's original down payment.

Risk to CA Dream for All being able to help future borrowers. On the other hand, consider a scenario in which home prices increase dramatically—for example, by 6% a year over the course of 10 years. With shared appreciation, the CA Dream for All Fund would receive enough to help a similar buyer purchase an equivalent home. With a 3% simple fixed interest rate, however, the Fund would be $64,000 short in trying to help a new buyer.

The bottom line is that if home prices increase at a faster rate than that on a fixed rate loan, repayments will not be enough to help subsequent buyers buy equivalent homes.

The last few years have underscored this risk. Between 2018 and 2021, home prices in California increased by 38%. A SAL program would have allowed the CA Dream for All program to keep pace during this time in order to help future first-time homebuyers. Under a 3% fixed interest rate loan program, however, the amount that the CA Dream for All program would ultimately be able to help future buyers would have gone up by only 9% at a time when prices increased by more than four times that amount.

Nature of the risk. Setting a different rate on a fixed interest rate loan does not eliminate these risks. An interest rate of 5% instead of 3%, for example, would increase borrower risk. If a borrower purchases a home for $650,000 and the value has not increased when reselling the home 10 years later, a buyer with a 5% simple interest loan would lose $65,000, reducing their household wealth by $65,000. The same buyer with a shared appreciation loan would not have lost anything, and would recover their initial down payment. Meanwhile, if home prices were to rise faster than the fixed interest rate, the Fund would not be able to help a new buyer afford an equivalent home.

The higher one sets the fixed interest rate in order to assist future buyers, the greater the risk to any individual borrower. The risks created by an accruing fixed interest rate on large deferred payment second mortgage loans are thus fundamental. If appreciation turns out to be less than the fixed rate, the low/moderate-income borrower loses money, compared to shared appreciation. On the other hand, if appreciation turns out to be more than the fixed rate, the CA Dream for All Fund will not have enough to help the next buyer purchase a similar home.

In essence, an accruing fixed rate second loan creates a greater upside and a greater downside for the borrower, while also making it much more difficult for the State's investment in the CA Dream for All program to keep pace with inflation. Shared appreciation creates fewer risks to individual homebuyers and to the CA Dream for All program's ability to help families overall, because it is linked to what actually happens to the price of each borrower's home.

Overall Impact of Fixed Interest vs. Shared Appreciation

Expected case. Figure 50 shows key overall impacts of these two different types of lending, with the same amount of State investment in the CA Dream for All Fund in the expected case.

If homes appreciate at 4.5% per year—slightly less than the statewide average for the last 40 years—a shared appreciation CA Dream for All program will assist approximately 32,000 more borrowers than a 3% fixed interest rate loan program. That number represents 26% more first-time buyers who could purchase homes.

More striking still, a shared appreciation program would provide $15 billion more in CA Dream for All loans—46% more than the fixed rate program. This program would help future borrowers keep up with the increasing price of homes in California, allowing buyers to purchase homes costing a total of $238 billion compared to $163 billion.

Perhaps the most important part of this comparison is the impact on borrower household wealth; that is, how much borrowers receive from the total appreciation of their homes after subtracting what would be owed to the program, either as a share of appreciation or as accrued interest. The aggregate appreciation that borrowers would be able to realize under a shared appreciation program would be $133.8 billion—about 10% more than with a fixed rate loan program.

Why does a shared appreciation program help borrowers realize more total appreciation? After all, any individual borrower in an escalating housing market would be better off owing a low interest rate rather than a pro rata share of appreciation. But because a shared appreciation program helps so many more borrowers, the total borrower share of appreciation the CA Dream for All program can generate over 40 years is significantly greater.

Figure 50: Shared Appreciation and 3% Fixed Interest Loans Over 40 Years: Expected Case

	Shared Appreciation	Fixed Simple Interest 3%	Difference
CA Dream Loan Originations			
Borrowers assisted over 40 years	157,200	124,800	32,400
$ of homes purchased	$238 bill.	$163 bill.	$75 bill.
CA Dream loans	47.6 bill.	32.6 bill.	15.0 bill.
Present value at 3.0%	*25.3*	*19.2*	*6.1*
Borrower Share of Home Appreciation Through Year 40			
Borrower share	$133.8 bill.	$120.6 bill.	$13.2 bill.
Present value at 3.0%	*64.2*	*60.8*	*3.4*

Figure 51: Shared Appreciation v. 3% Fixed Interest Loans Over 40 Years: More Conservative Case

	Shared Appreciation	Fixed Simple Interest 3%	Difference
CA Dream Loan Originations			
Borrowers assisted over 40 years	144,000	133,900	10,100
$ of homes purchased	$157 bill.	$141 bill.	$16 bill.
CA Dream loans	$31.4 bill.	$28.2 bill.	$3.2 bill.
Present value at 3.0%	*18.1*	*16.9*	*6.1*
Borrower Share of Home Appreciation Through Year 40			
Borrower share	$ 61.8 bill.	$ 61.8 bill.	$0 bill.
Present value at 3.0%	*31.1*	*31.6*	*-0.4*

More conservative case. Figure 51 shows the results in the more conservative case, where home prices rise at 3%—the same rate as that on an assumed fixed rate loan program.

If home prices rise slowly—at about the same rate as that on accruing fixed rate loans—there is much less of a difference between shared appreciation and fixed rate programs. In this case, shared appreciation helps about 10,000 more first-time buyers, or about 8% more. There is virtually no difference in the total borrower share of home appreciation over this 40-year period.

This point underscores the very purpose of a shared appreciation program: to be able to keep pace with the changing price of homes and thus reduce the risk that loan repayments will not be enough to help a similar buyer purchase a home.

In the same way that the fundamental purpose of the CA Dream for All program is to help insulate families from rising housing costs, the shared appreciation feature helps insulate the CA Dream for All program from being unable to help future buyers in the kind of escalating market California has experienced for decades.

Residual long-term benefits. The analysis up to this point has only considered the impact on appreciation by borrowers through 40 years.

Perhaps the most significant difference between shared appreciation and fixed interest is in *the residual amount* accrued by the CA Dream for All Fund at the end of 40 years. These are the repayments the CA Dream for All Fund would ultimately receive from loans outstanding at that date.

In the expected case, a shared appreciation program would generate five times more resources from repayments after year 40 than a fixed rate program: $35.8 billion versus $7.6 billion. This difference is the extra amount that a shared appreciation program would have to help subsequent buyers.

In the conservative case, the difference is less but still substantial. A shared appreciation program in this case would generate about 75% more residual resources than a fixed rate program, or about $13.0 billion versus $7.5 billion.

Efficiency of State Investment in Generating Household Wealth

Figure 52 takes into account these various impacts. It envisions the program making loans through year 40, but with any repayments received after that date acting as repayments to the State for its investment.

Figure 52: Present Value Comparison of State Investment in Generating Household Wealth

	State Investment	Residual to State After Year 40	Net State Investment	Borrower Appreciation Through Year 40	Borrower Appreciation Divided by Net State investment
Expected Case					
Shared appreciation	$10.8 billion	$7.5 billion	$3.3 billion	$64.2 billion	19.4x
Fixed interest	$10.8 billion	$1.7 billion	$9.1 billion	$60.8 billion	6.7x
More Conservative Case					
Shared appreciation	$10.8 billion	$2.7 billion	$8.1 billion	$31.2 billion	3.9x
Fixed interest	$10.8 billion	$ 1.6 billion	$9.2 billion	$31.6 billion	3.4x

What this shows is that in the expected case, in present value terms, the State's net investment in a *shared appreciation* CA Dream for All Fund would have been $3.3 billion, and would have generated *more than 19 times that amount in borrower household wealth.* The State's net investment in a *fixed rate* CA Dream for All Fund, on the other hand, would have been $9.1 billion, and would have generated *6.7 times that investment.*

In the more conservative case, the State would generate 3.9 times its investment using a shared appreciation approach versus 3.4 times its investment under a fixed rate approach.

Conclusions: Appreciation vs. Fixed Interest Loans

In all these analyses, a few insights into fixed rate programs stand out.

- If the fixed interest rate turns out to be **lower than the average rate of appreciation** (such as in the expected case, with 3% simple interest vs. 4.5% compounded appreciation), a fixed rate program will help significantly fewer buyers and generate much less household wealth.
- If the fixed interest rate turns out to be **close to the average rate of appreciation**, such as in the more conservative case (e.g., 3% simple interest vs. 3% compounded home appreciation), the differences from shared appreciation are more modest. In the more conservative case, shared appreciation helps about 8% more borrowers over 40 years than a fixed rate program and accrues significantly more resources for helping subsequent borrowers or for repaying the State. It is also somewhat more efficient in generating household wealth.
- If the fixed interest rate turns out to be **higher than the actual appreciation on an individual borrower's home**, there is a significant adverse impact on that borrower's household wealth. Shared appreciation does not pose this risk.

By being linked to what actually happens to borrower homes, shared appreciation can be seen as creating fewer risks both to individual borrowers and to the program's ability to generate household wealth overall.

VI. OUTREACH, EQUITY AND IMPLEMENTATION

Community and Stakeholder Feedback

Summary of Community Comments and Themes

California Community Builders staff spoke to stakeholders throughout the state from January through March of 2022. These stakeholders included housing counseling agencies, community development corporations, mortgage originators, Community Development Financial Institutions (CDFI), real estate brokers and representatives of community land trusts.[115]

Interviewees almost universally supported the program at a high level. In fact, even those who did not think the program would be directly applicable to their organizations and/or target communities were supportive.

Two organizations brought up notable structural questions. One organization asked whether the proposed CA Dream for All program would do enough to prioritize wealth building overall and in all cases—and specifically, whether the CA Dream for All program should ensure that in all cases, including early home sales and cases of hardship, the borrower's financial equity is maximized. On the other end of the spectrum, a separate organization asked whether the program's intended flexibility would protect against highly-educated-but-not-rich-yet borrowers (HENRYs) over-subscribing to the program, and specifically whether the CA Dream for All program would inadvertently over-subsidize borrowers from higher wealth communities that have already historically been able to access homeownership.

These critiques were in the minority, and the program team is confident that an equitable approach informed by community input—as described below—will address these more systemic concerns. The remainder of the feedback primarily addressed smaller-scale program details, and even those interviewees with the strongest concerns did not disagree with the overall concept or argue that a shared appreciation mortgage program should not exist.

Primary Interview Themes

California needs more tools to meet our homeownership crisis. Stakeholders all voiced the need and support for a new tool to address the homeownership crisis.

Equity for disadvantaged communities needs to be prioritized. Stakeholders agreed that historically redlined and other marginalized communities have specific needs and are not well served by the existing mortgage market, while existing down payment assistance programs leave significant room for improvement. It's clear that any new mortgage product must ensure outcomes that maximize accessibility, protection and wealth building for these populations.

Housing practitioners need flexibility and support. Stakeholders agreed that housing professionals need diverse options to serve diverse communities, and that programs with built-in flexibility allow them to serve a variety of unique borrower needs. Housing counselors, who are on the front lines of supporting low- and moderate-income families, need increased resources to ensure maximal help to communities that are often hard to reach, experience language access issues or have little experience successfully attaining homeownership. Stakeholders often remarked during interviews that housing counselors do two to three times more work than they are compensated to perform.

The CA Dream for All program must work within the context of the market as it exists today. Stakeholders continually acknowledged the extreme disadvantage facing low- and moderate-income borrowers in every region of the state, including those considered "low-cost." A successful program will need to ensure that borrowers can compete in the private market efficiently and effectively. Considerations like the timing of funds, ease of execution and competition from borrowers using only private-sector mortgages (as well as all-cash buyers) must be taken into account.

115 A special thanks goes to those experts that agreed to be interviewed for the purpose of this report. These individuals include Blanca Arellano, Hope Through Housing Foundation; Carolyn Patton, West Angeles CDC; Al Abdullah at the San Diego Urban League; Sergio Szyrko at Fairway Independent Mortgage Corporation; Anne Vilagut, Montebello Housing Development Corporation; Maureen Sedonaen, Habitat for Humanity San Francisco; Dennis Santiago, National Asian American Coalition; Hyepin Im, Faith and Community Empowerment; Kaith Berghold, Fresno Metro Ministries; Clemente Mojica, Neighborhood Partnership Housing Services; Leah Miller, Habitat for Humanity Sacramento; Nikki Beasley, Richmond Neighborhood Housing Services; Bertha Garcia, Ventura County Community Development Corporation; Esther Carver, Lowell CDC; Leo Goldberg, California Community Land Trust Network; Farrah Wilder, California Association of Realtors.

Areas of Significant Support

Income flexibility. In general, interviewees were most pleased with the flexibility the program would provide around eligible borrower incomes, since existing programs are very restrictive and often targeted at families at or below 80% AMI. Interviewees felt that this flexibility would either be a tool to serve existing clients or an alternative for those clients that would otherwise have been turned away for having an income that is too high. Further, several interviewees brought up the lack of existing programs to serve 80-120% AMI families.

Student debt relief. Interviewees generally supported a potential set-aside to help borrowers convert expensive student loan debt into low-cost, non-interest-bearing CA Dream for All debt, although the issue was less pertinent for some populations. Several interviewees suggested that student debt could be a constraining factor for their clients. Feedback from down payment assistance administrators in Illinois indicated that adding direct student debt support lowered the average age of their borrowers and brought in more diverse populations.

Average size of a CA Dream for All loan. Most interviewees noted that one of the biggest, most straightforward benefits of the program is that it would remove the need forPrivate Mortgage Insurance (PMI), which would result in significant cost savings for borrowers and a larger overall loan. The size of the CA Dream for All's average loan, approximately 17%, is big enough to ensure that the majority of borrowers avoid an often large and unnecessary cost.

CBO and nonprofit participation. Interviewees thought a program that provided the above benefits and included a significant role for nonprofit community organizations could serve populations and potential homeowners that are not currently well served. Interviewees generally spoke very highly of CalHFA's community collaboration structure and thought a continuation of that approach would be beneficial and necessary for this type of program.

Areas of Concern and Potential Approaches to Address Those Concerns

Complexity. Interviewees flagged the complexity of the program as a potential obstacle to maximizing positive benefits for targeted families. While shared appreciation is relatively simple in some ways (e.g., no interest paid, loan amount is directly tied to purchase price, not payable until sale, etc.), target borrowers will likely come from families where homeownership may not be common. Several interviewees suggested that most borrowers will forget about the second mortgage if they are not paying it, especially after more than 10 years. Perhaps even more importantly, SALs are not widely available, and so borrowers, real estate professionals, housing counselors and administrators will generally be unfamiliar with the structure and concept at the outset of the program.

To address the complexity of this program, the CA FWD team recommends that a CA Dream for All program maximize pre-and post-purchase counseling. During the homebuying process, the program should prioritize clear, simple marketing materials, loan descriptions and documents, and should resource home counseling organizations to provide enhanced support to borrowers. Post-purchase outreach and counseling will be especially critical for inexperienced buyers if problems arise. This should include regular written communications to borrowers indicating that they have a shared appreciation obligation, as well as annual check-ins with housing counselors. It will be useful to contact borrowers periodically (ideally through post-purchase counseling) to ensure this detail is not lost.

First-generation set-aside. The CA FWD team was asked to evaluate a potential set-aside for first-generation homebuyers, or buyers who had not owned a home in the past three years and whose parents had not owned a home in three years. Interviewees were generally neutral or opposed to the first-generation component. Feedback indicated that a first-generation component would be impractical to verify, would further complicate an already complicated program and would not add much value since the majority of first-time homebuyers are already likely to be first-generation.

To address what could be a significant administrative burden for small overall equity impacts, the CA FWD team recommends the CA Dream for All program focus primarily on first-time homebuyers to avoid a logistical quagmire. If a first-generation set-aside is included, it should be structured as a self-certification to reduce the administrative burden.

Down payment and closing costs. Most interviewees mentioned the overall cost of a down payment and closing costs being an impediment, especially in high-cost markets. While a CA Dream for All loan would only leave 3% for a borrower to contribute as a down payment, even this amount could be prohibitive for low-wealth borrowers and communities, considering the average home cost in the Bay Area, Los Angeles and most areas of the state.

To address the remaining down payment cost, the CA Dream for All program should maximize flexibility so that it can be paired with other programs providing down payment assistance and financial support. This could mean educating housing counselors so that they can help potential buyers with all existing subsidy programs for which they are eligible, increasing the size of the CA Dream for All loan up to 30% for lower-income borrowers, or some combination of the two

Marketing and Outreach

The RFP stated that "Outreach efforts to target beneficiaries of the Program will be made to: (1) underrepresented homeownership communities, (2) those who have not returned to homeownership after losing homes in the Great Recession and (3) those with high student debts."

Issues and Needs in Targeting Disadvantaged Communities

Keep in mind lack of experience. Stakeholders, especially housing counselors, emphasized the importance of understanding that first-time homebuyer programs target individuals who have no personal experience in the homebuying process and who likely come from communities that have been formally and informally shut out of homeownership. In addition, many potential borrowers may come from families negatively impacted by the Great Recession, and so their only personal connection to homeownership may be through the lens of foreclosure and its aftermath.

Simplicity will be key. A shared appreciation mortgage is a new concept for most housing professionals, so outreach and marketing to first-time homebuyers (who have almost certainly never heard the term) must use plain language, simple visuals and a clear articulation of the process (including benefits and drawbacks of the program). Resources should be set aside for the design of clear, explanatory visual materials.

Leverage existing networks and nonprofit organizations. A critical component to success will be the program's ability to work with existing organizations and networks that are based in and trusted by disadvantaged populations. To do so, it will be important that these organizations and networks, especially housing counselors, be educated on the program and understand how to relay and guide potential borrowers. Resources must be set aside to help these organizations and their staff learn about the programs.

Cultural competency. A new statewide program—especially one based on targeting disadvantaged communities, non-English speaking communities, communities that have been historically targeted by predatory lenders and those from families that have never owned homes—will need to prioritize cultural competency in marketing and outreach, service delivery and administration of the program. Suggestions to promote this outcome include:

- **Translation services**: A successful CA Dream for All program needs to ensure adequate resources for translation services and prioritize culturally competent marketing and outreach. Language access was a common theme throughout our interviews, especially related to the Asian American and Pacific Islander community. There are numerous economically and culturally diverse communities within the Asian American and Pacific Islander community whose unique language needs often go overlooked.
- **Ethnic media**: Often, first-time borrowers come from communities that are not well served by the mainstream media. It is important that ethnic media—both English and non-English outlets—be incorporated into the outreach and marketing of the CA Dream for All program.
- **Big impact of digital divide**: Digital access and the impact of the digital divide vary greatly across communities. The CA Dream for All program should balance the need for efficiency through digital and online services with the understanding that, for many families, particularly those that come from disadvantaged and formerly redlined communities, these services are not always as readily accessible.

Educate the real estate community on the program. Several interviewees working in the for-profit real estate sector noted that the flexibility built into this program would likely be appealing to brokers and mortgage originators, but that there should still be a concerted effort to reach out to and educate real estate professionals, including real estate brokers. There was consensus that this program could be underutilized and less effective without buy-in from the realtor community.

Marketing and outreach need to be resourced to facilitate effective partnerships. Interviewees consistently noted that without resources dedicated to marketing and outreach, the onus will fall on nonprofit and community-based organizations that are often stretched thin. Interviewees pointed out that some local down payment assistance programs, such as San Francisco's program, include marketing as a reimbursed cost, and recommended that the CA Dream for All program follow that model.

Housing Counseling

Primary Themes We Heard From Counselors

Complexity. All interviewees agreed this would be a very complex program to explain, with borrowers who know less than average compared to the typical buyer. The program needs to maximize outreach, education and support for these borrowers. Participants also emphasized making the program as simple as possible so that buyers who have never purchased a home, and potentially come from families that have never purchased homes, can easily understand and evaluate the program. That said, one interviewee noted that the proposed program is not especially more complicated than other public DPA programs that require repayment and that many of the fundamental issues were the same: lack of general borrower knowledge, excitement to purchase a home obscuring critical issues that need consideration and the likelihood that borrowers will forget the specifics of what they agreed to post-purchase.

Protection against predatory instruments. A number of interviewees noted that, in their experience, families that have recently purchased a home often begin to receive offers for home renovation loans, reverse mortgages and other costly products that do not necessarily benefit the borrower. Interviewees reported that people who are unfamiliar with the process and excited to own a home can be very trusting and overwhelmed with information. Since most housing counselors do not see first-time homebuyer clients again unless they need foreclosure prevention help, new homebuyers are often left without support. Further, since everyone in the real estate industry aside from housing counselors works on commission, there is a real need to protect borrowers. The simplest, most effective way to protect against these predatory financial instruments is for the CA Dream for All program to invest in resource-enhanced, long-term access to housing counselors and homeowner education.

Resources for Housing Counselor Services and Capacity Building. Interviewees consistently noted that the lack of resources for housing counselors is a significant inhibiting factor in the number of families helped and support provided. Stakeholder feedback called for current homebuyer education funds to be significantly increased due to the high-touch nature of the work and inherently inefficient process of working with people who are both low/moderate income and have never purchased a home. Language barriers and the digital divide also require more time and energy to serve clients. Interviewees also called for additional funds for capacity building. Lastly, numerous interviewees mentioned that there should be investment in capacity building for nonprofit organizations serving these populations since the current funding structure is not conducive to helping these organizations grow the infrastructure needed to serve clients in the long term.

Leverage housing counselors, CDFIs, and other community groups beyond just homebuyer education and outreach. The most straightforward way to engage housing groups is through their role in marketing, outreach and homebuyer education, but numerous interviewees also requested that the broader housing community be engaged on issues around administration of the program and given the opportunity to provide feedback on operations through formal administrative channels.

Timing and ease of execution. Real estate is a field full of deadlines, and in almost all markets in California there is no room for error. For the program to work, it must be run by people who understand how these transactions operate and who recognize that delays hurt the people the program intends to help, in addition to harming the program's reputation among real estate professionals.

CA Dream for All must be accepted by the real estate industry to be successful. Several interviewees noted that if the CA Dream for All program does not successfully integrate the realtor community, mortgage originators and other real estate professionals then many families that could otherwise benefit may miss out. There were also examples given of how existing programs were not favored by realtors representing home sellers due to timing inefficiencies, and so families with down payment assistance loans were often left with few options. At least one interviewee stated there should be an incentive for realtors and sellers to work with this program. Interviewee sentiment was that the CA Dream for All program will only reach its maximum potential if it is seen as an effective and efficient program by the real estate community.

Additional Feedback We Received

Interviewees also shared additional observations that did not arise as consistent themes in every interview, but were still valuable and worthwhile to consider as the program is implemented.

- **"Low-cost areas":** Even "low-cost" regions of the state have expensive markets where buyers at 120% AMI have a difficult time finding opportunities.

- **The reality of the market:** Buyers in Los Angeles and other high-cost markets are routinely asked to engage in a bidding war with other buyers. It is important that CA Dream for All borrowers are able to compete effectively in the market as it exists today.
- **Lender participation:** Large banks do participate widely in existing down payment assistance programs, and these programs often have high-cost fees.
- **Reporting:** Reporting can be burdensome on small nonprofits, and streamlining should be prioritized. CalHFA was highlighted as a reasonable reporting agency.
- **Implementation:** For some down payment assistance programs that were not structured well, money does not actually make it out to borrowers and allocated funds are not used.
- **Hardship and mortgage modification:** If a borrower is selling to pay for hardship such as medical debt, the CA Dream for All program could carve out an exception and lower the requirement on some or all of the shared appreciation paid back.
- **Community Land Trusts:** The CA Dream for All program should be structured to ensure that limited equity co-ops and Community Land Trusts can participate fully, including allowances for long term ground leases and other cooperative structures.
- **Prioritizing wealth building:** The CA Dream for All program should strike a balance between providing as much support to families as needed without over subsidizing and eliminating the wealth building potential of the program.
- **Bank participation:** Large bank participation would significantly improve the program's reach, effectiveness and uptake by borrowers. The administrator of the CA Dream for All program should explore ways to ensure large bank participation.
- **Synergy with existing programs:** There are numerous down payment assistance programs at the state and local levels, especially in large cities. The CA Dream for All program should consider how these programs can integrate into its statewide program and add value where possible to borrowers.
- **Multifamily homeownership:** The CA Dream for All program should be flexible in the type of home purchased and be useful for condo and co-op buyers, along with more traditional single-family homes.
- **Geographic awareness:** While a buyer may live in a high-cost market like Los Angeles, many low- and moderate-income borrowers are looking to purchase in lower-cost areas, such as the Inland Empire.

Monitoring and Evaluation

Post-Purchase Counseling

The project team has intentionally designed the CA Dream for All program to be as accessible, affordable and adopted as broadly as possible throughout the state's various regions and communities. Since examples of well-run pre-purchase and outreach counseling programs exist throughout the state, traditional housing counseling is not likely to be especially difficult for the program administrator to institute and run. What may require more time, effort and innovation will be a new post-purchase counseling program that can be a resource for buyers—ideally throughout the life of their CA Dream for All loan.

Housing counselors interviewed reported that most of the financial support for their work was limited to pre-purchase counseling. When available for post-purchase counseling, most resources were limited to pre-foreclosure support or restricted to the first few years after the home purchase. Housing counselors also reported that even for pre-purchase counseling, resources did not cover the full time and energy spent to qualify first-time buyers. One interviewee noted that, once a program ends, borrowers have old phone numbers and emails to reach out to, and often receive no response from the administering agency.

With additional resources, housing counselors can remain a touch point for homebuyers as they navigate the process, especially if there is no additional support from loan servicers.

Trade-Offs of Long-Term Housing Counseling and Support

While long-term, well-resourced housing counseling and borrower outreach can address issues around program unfamiliarity and complexity, they also involve significant financial costs. That said, the driving purpose of the CA Dream for All program is to create wealth through homeownership in a safe and sustainable manner. To truly achieve that primary objective, adequate resources—detailed in other sections of this report—must be set aside for the administration of this program, including all necessary funding for long-term, appropriate counseling and outreach for borrowers who have taken out a CA Dream for All loan.

Additional Efforts to Ensure Equity: HMDA Disclosure and Community Advisory Board

There are additional ways in which a program administrator can ensure equitable implementation of the CA Dream for All program during the monitoring and evaluation phase. First, the project team recommends that the program administrator release an annual report using Home Mortgage Disclosure Data to disclose, in the aggregate, the program's uptake among different geographies throughout the state by ethnicity, gender and income. This information is already collected by mortgage lenders and should not be particularly onerous to aggregate and publish annually, especially considering the overall size and cost of the program. If the annual HMDA data shows that the program is not reaching priority disadvantaged communities, then solutions can be proposed and implemented to address that misalignment.

Second, the CA FWD team strongly recommends the program administrator create a community advisory committee made up of housing professionals—including nonprofit housing counselors, realtors, CDFI professionals and mortgage originators—directly serving low- and moderate-income clients to ensure that the implementation of the program meets its strategic vision and goals. Consistent feedback provided during stakeholder interviews noted that programs are often well designed on paper but do not meet the realities of the housing market in different regions. By creating an advisory council of nonprofit and for-profit organizations, the CA Dream for All program administrator can ensure that feedback from stakeholders essential to the success of the program is given a formal channel to be evaluated and potentially implemented.

Equity Analysis

Building on 2021's successful CA House Resolution 39 (Gipson) – "Equity Impact Analysis of Legislation," the CA Dream for All program can use an equity analysis framework to help ensure it is reducing or eliminating inequities experienced by historically marginalized communities. The equity analysis below, adapted from questions that could also be asked by a committee consultant reviewing potentially enabling legislation, is intended to: provide space to consider specific, structural questions concerning the program and the equity outcomes it could produce; summarize the feedback received from stakeholder interviewees and proposals from the project team into recommendations that will provide a minimum baseline for the project to achieve equitable outcomes; and offer suggestions for the CA Dream for All program that will provide enhanced equity outcomes in excess of what would be accomplished by only adopting the baseline.[116]

***TARGETED SUPPORT:* Will the CA Dream for All program increase opportunities, services or support for low- or moderate-income communities?**

Baseline: The underlying and structural goal of the CA Dream for All shared appreciation mortgage program is to directly target low- and moderate-income communities, including enhanced support for borrowers that struggle with student debt and other significant obstacles to achieving homeownership.

Enhancement: To maximize equity and benefits delivered to disadvantaged communities, the CA Dream for All program administrator should track borrower demographics through annual HMDA demographics information and make that data public. While the unequivocal goal of the program is to support low- and moderate-income communities, the implementation of public policy goals can often fall short. Annual HMDA data disclosures directly tied to the CA Dream for All program would allow for adjustments to be made to the program's targeting and improvements to its overall adoption by target communities.

***WEALTH BUILDING:* If implemented, will this program help close the wealth gap for communities historically impacted by redlining?**

Baseline: The program framework has been structured to maximize wealth building opportunities for current disadvantaged borrowers while still protecting the ability of the program to generate enough returns to serve future borrowers. For instance, the project team has not imposed resale restrictions related to income on CA Dream for All borrowers, which would have limited the homeowner's ability to realize the equity they have built in their home.

Enhancement: To further enhance wealth building, housing counselors should be provided with long-term resources (direct and capacity building) to support buyers in making financial decisions that will most benefit them. Annual contact and long-term relationships between borrowers and housing counselors will mean that homebuyers

116 *Questions adapted from March 26, 2022 "Equity Impact Assessment of Bills" briefing held by PolicyLink/Greenlining/EdTrust West.*

will have at least one resource to call on that is not motivated by profit. This is especially important since the wealth building benefits of the CA Dream for All program accrue slightly more slowly than those of standard fixed interest rate down payment programs, and it is important that homeowners understand the benefits and drawbacks of paying off their CA Dream for All mortgage in the first ten years.

***BORROWER PROTECTIONS:* Are there protections embedded in the program to ensure that borrowers are educated and protected from predatory lending?**

Baseline: Pre-purchase borrower education through accredited housing counselors will be required, and the program has been structured so that it will be limited to lenders approved by the public agency administering the program. As discussed earlier in this report, shared appreciation mortgages ensure that borrowers are also more protected in a market downturn compared to traditional fixed interest rate down payment assistance programs.

Enhancement: In the same way that long-term access to housing counseling can help to maximize wealth creation for CA Dream for All borrowers, long-term counseling can also help to protect borrowers from the type of predatory offers that interviewees indicated often start to appear after a borrower purchases a home. Investing the resources necessary to create a strong, long-term infrastructure of borrower resources and support—primarily through long-term access to housing counselors—will be vital.

***LANGUAGE DIVERSITY:* Will this program have any limitations or negative impacts for households that are predominantly non-English speaking?**

Baseline: No, but there should be resources to ensure cultural competency, including translation services for outreach, counseling organizations and all program materials. Without specific targeted resources for non-English speaking communities, the CA Dream for All program will not be able to reach all Californians, especially those that come from low- and moderate-income communities the program is directly charged with serving.

Enhancement: Maximize the use of ethnic media to advertise and outreach to non-English speaking communities and other communities not well served by mass media outreach strategies, especially those in languages other than English. This approach will not only expand outreach to eligible borrowers; it will also offer Californian communities that are often left out of housing conversations information about the benefits of a shared appreciation mortgage program.

***HEALTH AND QUALITY OF LIFE:* If implemented, will this program reduce health inequities and disparities in quality of life for communities that have been historically impacted by redlining and environmental injustice?**

Baseline: As noted earlier in this chapter, neighborhoods that were previously redlined still have higher poverty rates, less economic mobility for children,[117] reduced housing supply,[118] lower life expectancy, higher incidence of chronic diseases[119] and lower quality broadband access as well as lower house values and homeownership rates.[120] The CA Dream for All program intends to implement special targeting to areas identified by CalEnviroScreen as Disadvantaged Communities, which are defined as areas with higher rates of pollution and illness and lower socioeconomic assets.

Enhancement: Identify additional resources for Disadvantaged Communities that can be used to strengthen the CA Dream for All program, such as additional funds that can be used for environmental remediation or other issues directly related to past environmental injustice.

117 Park, K. A., & Quercia, R. G. "Who Lends Beyond the Red Line? The Community Reinvestment Act and the Legacy of Redlining." Housing Policy Debate 30, no. 1: 4–26, 2020. https://doi.org/10.1080/10511482.2019.1665839. As cited in Reid, Carolina. "Crisis, Response, and Recovery: The Federal Government and the Black/White Homeownership." The Terner Center for Housing Innovation, UC Berkeley, 2021. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/crisis-response-and-recovery-the-federal-government-and-the-black-white-homeownership-gap/

118 Krimmel, J. "Persistence of Prejudice: Estimating the Long Term Effects of Redlining." Working Paper. Philadelphia, PA: University of Pennsylvania., 2018. Retrieved from: https://osf.io/uxeaz/. As cited in Reid, Carolina. "Crisis, Response, and Recovery: The Federal Government and the Black/White Homeownership." The Terner Center for Housing Innovation, UC Berkeley, 2021. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/crisis-response-and-recovery-the-federal-government-and-the-black-white-homeownership-gap/

119 "Redlining and Neighborhood Health." National Community Reinvestment Coalition, 2010. Retrieved from: https://ncrc.org/holc-health/. As cited in Reid, Carolina. "Crisis, Response, and Recovery: The Federal Government and the Black/White Homeownership." The Terner Center for Housing Innovation, UC Berkeley, 2021. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/crisis-response-and-recovery-the-federal-government-and-the-black-white-homeownership-gap/

120 Aaronson, D., Hartley, D., & Mazumder, B. "The Effects of the 1930s HOLC 'Redlining' Maps." Chicago, IL: Federal Reserve Bank of Chicago, 2020. Retrieved from: https://www.chicagofed.org/publications/working-papers/2017/wp2017-12. As cited in Reid, Carolina. "Crisis, Response, and Recovery: The Federal Government and the Black/White Homeownership." The Terner Center for Housing Innovation, UC Berkeley, 2021.. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/crisis-response-and-recovery-the-federal-government-and-the-black-white-homeownership-gap/

Conclusion & Final Recommendations

The stakeholders we interviewed broadly agreed that the CA Dream for All program could fill a critical need in California's difficult housing market, in which 20% down payments have become a nearly insurmountable obstacle for otherwise qualified buyers. Sustainable down payment assistance can make it possible for many who otherwise have no viable path to homeownership to make use of this critical avenue for building wealth and financial security. We discovered considerable consensus around elements the program will need in order to be truly successful and maximize benefits to disadvantaged communities. In brief, these crucial recommendations are:

- **Prioritize disadvantaged communities**, including previously redlined neighborhoods and historically marginalized groups.
- **Support and fund housing counseling and incorporate counseling into every stage of the program.** Because this program revolves around a concept that is unfamiliar to many, participants will need ongoing support and information, not just during the initial purchase but long after. The CA Dream for All program must ensure that counseling efforts are adequately resourced and should work closely with nonprofits and CDFIs.
- **Make marketing and other program materials clear and easy to understand.** Use plain language and clear, straightforward visuals. Ensure that the benefits and drawbacks of participation are explained in a way that is easy to grasp.
- **Emphasize cultural competency.** Use of translation services will be critical, as many in the target audience do not speak or read English as their first language, but that is just a start. Cultural knowledge and awareness will also be crucial. Make use of ethnic media outlets, which may be the most trusted in certain communities and can reach those not well served by the mainstream media. To do all of this properly, marketing efforts must be adequately resourced.
- **Make sure the real estate industry understands and accepts the program.** This goal will require education and outreach. Real estate professionals need to be able to trust that the program will be run efficiently and not cause unnecessary delays in transactions—meaning that administration and operations must be well-planned and adequately resourced. If the program works well, they will use it; if it does not, they will not use it.
- **Build equity analysis into the program and its evaluation.** Following the lead of HR-39, passed in 2021, the program must systematically examine its impact in delivering benefits to disadvantaged communities. Existing data collection and analysis tools such as the Home Mortgage Disclosure Act and CalEnviroScreen can be used to help facilitate this process.

The CA Dream for All program can go a long way toward alleviating one major obstacle to homeownership that has disproportionately impacted marginalized communities, but getting the details right will make the difference between a program that creates a positive impact and a disappointing effort with only marginal benefits. The concerns and recommendations that emerged from these stakeholder interviews provide important guidance to help ensure maximum impact as the program is finalized.

APPENDIX A

Glossary

Acquisition Price: The purchase price of the real property, including closing costs, prepaid costs, and commissions, if paid by the purchaser, but not including the cost of any repairs that the purchaser makes to the property subsequent to acquisition.[121]

Administrative Cost: Costs incurred to support the functioning of a program or fund, but which are not directly related to the production or servicing of a mortgage.[122]

Accessory Dwelling Units (ADUs): Housing options also known as granny flats, in-law units, backyard cottages, secondary units and more. ADUs are an innovative, affordable, effective option for adding much-needed housing in California.[123]

Amortization: Paying off a loan with regular payments over time, so that the amount a borrower owes decreases with each payment. Most home loans amortize, but some mortgage loans do not fully amortize, meaning that a borrower would still owe money after making all of a borrower's payments. Some home loans allow payments that cover only the amount of interest due, or an amount less than the interest due. If payments are less than the amount of interest due each month, the mortgage balance will grow rather than decrease.[124]

Amortizing Loan: An amortized loan is a type of loan with scheduled, periodic payments that are applied to both the loan's principal amount and the interest accrued. An amortized loan payment first pays off the relevant interest expense for the period, after which the remainder of the payment is put toward reducing the principal amount.[125]

Annual Income: Annual income is a factor in a mortgage loan application and generally refers to a borrower's total earned, pre-tax income over a year. Annual income may include income from full-time or part-time work, self-employment, tips, commissions, overtime, bonuses or other sources. A lender will use information about a borrower's annual income and a borrower's existing monthly debts to determine if borrowers can repay the loan. Whether a lender will rely upon a specific income source or amount when considering a borrower for a loan will often depend upon whether a borrower can reasonably expect the income to continue.[126]

Appraisal: An independent assessment of the value of a property. The appraisal gives a borrower useful information about the property, and describes what makes it valuable. It may also show how the property compares in value to other properties in the neighborhood.[127]

Appraisal Fee: The cost of a home appraisal of a house a borrower plans to buy or already owns. In most cases, the selection of the appraiser and any associated costs is up to the lender.[128]

Appreciation: The increased value of a property determined by subtracting the purchase price from the sales price at the time of resale or the fair market value upon other events triggering repayment.[129]

Appreciation Share: The share of the appreciated home value split between a SAL originator and the homebuyer.[130]

Area Median Income (AMI): The Area Median Income (AMI) describes the midpoint of an area's income distribution, where 50% of households earn above the median figure while 50% earn less than the median. The Department of Housing and Urban Development (HUD) defines "area" as a Metropolitan Statistical Area (MSA).[131]

Back-End Ratio: A ratio that indicates what portion of a person's monthly income goes toward paying debts. Total monthly debt includes expenses, such as mortgage payments (principal, interest, taxes, and insurance), credit card payments, child support, and other loan payments. Back-End Ratio = (Total monthly debt expense / Gross monthly income) x 100.[132]

121 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF

122 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.

123 "Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)." California Department of Housing and Community Development. 2021. https://www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml#adu

124 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

125 Cornell Legal Information Institute. https://www.law.cornell.edu/

126 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

127 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

128 Ibid.

129 Ibid.

130 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.

131 "What is Area Median Income?" Planetizen, 2022. https://www.planetizen.com/definition/area-median-income-ami

132 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.

Balloon Payment: A balloon payment is a larger-than-usual one-time payment at the end of the loan term. A mortgage with a balloon payment may charge lower payments in the years before the balloon payment comes due, but a large amount at the end of the loan.[133]

Borrower Share of Appreciation: (or Wealth Accumulation) The portion of the increase in the value of the home that would be retained by the borrower after repaying the Fund's share of appreciation at the particular date of calculation.

CalHFA: The California Housing Finance Agency is an independent state agency within the California Department of Housing and Community Development that provides low-rate housing financing.[134]

California Comeback Plan: An outline of major strategic state investments, including $3 billion towards affordable housing development.[135]

Cash-Out Refinance: A mortgage refinance option that allows homeowners to convert their equity into cash, increasing borrower liquidity and taking out a new mortgage at a higher value than the previous balance.[136]

Capitalization: A property appraisal method that determines property value by dividing annual net operating income by a capitalization rate.[137]

Closing Costs: All of the costs paid at closing. This includes origination charges, appraisal fees, credit report costs, title insurance fees, and any other fees required by the lender or paid as part of a real estate mortgage transaction.[138]

Combined Loan-to-Value (CLTV): The first mortgage principal at origination plus the outstanding principal balance of all subordinate mortgage(s) divided by the Adjusted Value.[139]

Conforming Loan: A mortgage that is below the conforming loan limit established by the Federal Housing Finance Agency (FHFA) and abides by other restrictions of Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Corporation). These agencies reduce the risk to creditors, driving down interest rates for home loans.[140]

Conventional Loan: Any mortgage loan that is not insured or guaranteed by the government (such as under Federal Housing Administration, Department of Veterans Affairs, or Department of Agriculture loan programs).[141]

Conventional Financing: In real estate, mortgage financing that is not insured or guaranteed by a government agency such as HUD, FHA, VA, or the Rural Housing Service.[142]

Cost Approach: A real estate valuation method that estimates the price a buyer should pay for a piece of property is equal to the cost to build an equivalent building. In the cost approach, the property's value is equal to the cost of land, plus total costs of construction, less depreciation. It yields the most accurate market value for when a property is new than through alternative methods.[143]

Credit Score (or FICO Score): A credit score predicts how likely a borrower is to pay back a loan on time. Companies use a mathematical formula—called a scoring model—to create a credit score from the information in a borrower's credit report. There are different scoring models, so a borrower does not have just one credit score. A score depends on a borrower's credit history, the type of loan product, and even the day when it was calculated.[144]

Community Land Trust (CLT): A non-profit organization that holds land and acts as a long-term steward of retaining housing that is affordable in the communities they represent.[145]

Debt-to-Income Ratio: All borrower monthly debt payments divided by their gross monthly income. This number is one way lenders measure a borrower's ability to manage the monthly payments to repay borrowed funds.[146]

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133 "Balloon Mortgage Loans." Fannie Mae, 2022. https://mfguide.fanniemae.com/node/8406

134 California Housing Finance Agency. https://www.calhfa.ca.gov/

135 "California Roars Back: Governor Newsom Presents $100 Billion California Comeback Plan." Office of Governor Gavin Newsom, 2021. https://www.gov.ca.gov/2021/05/14/california-roars-back-governor-newsom-presents-100-billion-california-comeback-plan/

136 Lush, Minnie.*California Real Estate Finance, 9th Edition.* 2016.

137 Ibid.

138 Ibid.

139 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF

140 Cornell Legal Information Institute. https://www.law.cornell.edu/

141 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

142 "Mortgage Loans." Fannie Mae, 2022. https://mfguide.fanniemae.com/node/10711

143 Lush, Minnie.*California Real Estate Finance, 9th Edition.* 2016.

144 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

145 Lush, Minnie.*California Real Estate Finance, 9th Edition.* 2016.

146 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

Deed-Restricted: a provision in a real property conveyance that limits the grantee's use of the property. The beneficiaries of a restrictive covenant obtain rights from such covenants, and this may be the parties who agreed to the restrictive covenant or adjunct property owners who benefit from the restrictive covenant.[147]

Default: The failure to make payments on a mortgage, triggering the remaining loan balance to be due in full.[148]

Delinquent: Late on mortgage payments. A loan can become delinquent when a borrower misses a payment or does not make a full payment by the due date. After a loan becomes delinquent for a certain period of time, a lender or servicer may begin the foreclosure process. The amount of time can vary by state.[149]

Denial Rate: The share of home mortgage applications denied a loan.[150]

Depreciation: A sum representing presumed loss in the value of a building or other real estate improvement, resulting from physical wear and economic obsolescence.[151]

Down Payment: The difference between the sale price of a property and the sum of outstanding loan principal at property acquisition. A borrower puts a percentage of the home's value down and borrows the rest through a mortgage loan. Generally, the larger the down payment a borrower makes, the lower the interest rate received and the more likely a borrower is to be approved for a loan.[152]

Down Payment Assistance: A down payment grant or program typically refers to assistance provided by an organization such as a government or non-profit agency, to a homebuyer to assist them with the down payment for a home purchase. The funds may be provided as an outright grant or may require repayment, such as when the home is sold.[153]

Effective Interest Rate (EIR): An EIR reflects the real percentage rate owed in interest on a loan when the effects of compounding are taken into account. The more frequent the compounding periods, the higher the rate.[154]

Eligible Borrower: A borrower meeting the financial requirements to qualify for a mortgage at the property of their choice.[155]

Environmental Justice: The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.[156]

Equity: Ownership interest in a property. This is the difference between the home's market value and the outstanding balance of the mortgage loan (as well as any other liens on the property).[157]

Escrow: An escrow account is set up by a mortgage lender to pay certain property-related expenses, like property taxes and homeowner's insurance. A portion of a borrower's monthly payment goes into the account. If a mortgage doesn't have an escrow account, a borrower pays the property-related expenses directly.[158]

Essential Professional: Essential professions in the report specifically referred to healthcare professions, municipal employees, education professions that are qualified for a private shared appreciation program, Landed.[159]

Fair Market Value (FMV): The value of property as determined by the marketplace (or objective purchasers) rather than as determined by a subjective individual. This is what an informed and unpressured buyer would pay to an informed, unpressured seller.[160]

Freddie Mac (FHLMC): Also known as the Federal Home Loan Mortgage Corporation, a Government-Sponsor Enterprise which provides a secondary market for savings banks and other institutions.[161]

Federal Housing Administration (FHA): A division of the U.S. Department of Housing and Urban Development (HUD) that insures residential mortgage loans issued by approved lenders against loss through foreclosure. FHA loans have lower down payment and financing requirements and are popular among first-time homebuyers.[162]

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147 Cornell Legal Information Institute. https://www.law.cornell.edu/

148 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.

149 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

150 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/

151 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

152 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

153 Ibid.

154 "Effective Annual Interest Rate." Investopedia. https://www.investopedia.com/terms/e/effectiveinterest.asp#:~:text=What%20Is%20an%20Effective%20Annual,card%2C%20or%20any%20other%20debt.

155 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.

156 Cornell Legal Information Institute. https://www.law.cornell.edu/

157 "Mortgage Loans." Fannie Mae, 2022. https://mfguide.fanniemae.com/node/10711

158 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

159 Landed. https://www.landed.com/

160 Cornell Legal Information Institute. https://www.law.cornell.edu/

161 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

162 "Mortgage Loans." Fannie Mae, 2022. https://mfguide.fanniemae.com/node/10711

Fannie Mae (FNMA): The Federal National Mortgage Association (Fannie Mae) purchases and guarantees mortgages from lending institutions in an effort to increase affordable lending. Fannie Mae is not a federal agency. It is a government-sponsored enterprise under the conservatorship of the Federal Housing Finance Agency (FHFA).[163]

Financial Counseling: A course to help households develop financial literacy skills and establish strong financial habits.[164]

Finder's Fee: A fee paid by a lender or broker for referring a borrower to a certain lending institution or real estate office. [165]

First Mortgage: Also known as the primary loan or senior loan; the first recorded loan. As the primary loan that pays for a property, it has priority over all other liens or claims on a property in the event of default.[166]

Fixed Rate Loans: A type of home loan for which the interest rate is set when a borrower takes out the loan and will not change during the term of the loan.[167]

Forbearance: A loss mitigation measure when the servicer allows a borrower temporarily to pay their mortgage at a lower rate or temporarily to stop paying their mortgage altogether. A servicer may grant a borrower forbearance if, for example, a borrower has suffered a recent job loss, disaster, illness or injury that increased health care costs.[168]

Foreclosure: When the lender or servicer takes back property after the homeowner fails to make mortgage payments. In some states, the lender must go to court to foreclose on a borrower's property (judicial foreclosure), but other states do not require a court process (non-judicial foreclosure). Generally, borrowers must be notified if the lender or servicer begins foreclosure proceedings.[169]

Forgivable Loan: A loan that allows borrowers to partially or completely forgive the balance upon meeting tenure or equity requirements.[170]

Fund Sustainability: The ability of the Fund to continue making new loans without relying on increasing new contributions from the State.

Freddie Mac (FHLMC): The Federal Home Loan Mortgage Corporation (Freddie Mac) is a private corporation founded by Congress. Its mission is to promote stability and affordability in the housing market by purchasing mortgages from banks and other loan makers. The corporation is currently under conservatorship, under the direction of the Federal Housing Finance Agency (FHFA).[171]

Front-End Ratio: A ratio representing the borrower's mortgage payment divided by gross monthly income.[172]

Government-Backed Loan: A government mortgage is a federal, state, or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation (FHLMC, or Freddie Mac), or the Federal National Mortgage Association (FNMA, or Fannie Mae).[173]

Government-Sponsored Enterprise (GSE): A corporate entity created by a law of the United States that—(i) has a federal charter authorized by law; (ii) is privately owned, as evidenced by capital stock owned by private entities or individuals; (iii) is under the direction of a board of directors, a majority of which is elected by private owners.[174]

Gross Income: The broad total of all income sources for the taxable year which above-the-line deductions are subtracted from to get a person's adjusted gross income. Gross income includes essentially all income such as from wages, dividends, alimony, capital gains, and pensions. Many deductible items such as charitable giving must still be included in gross income. Deductions are applied after calculating gross income.[175]

Homebuyer Education: A course to help prospective homebuyers or new homeowners understand the path to homeownership and responsibilities as a homeowner. [176]

Housing Expense Ratio: A calculation of how much of a borrower's monthly gross income is going toward their monthly mortgage payment, including principal, interest, taxes and mortgage insurance. Ideally, a borrower's housing expense ratio should be less than 28%.

163 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
164 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/
165 "Mortgage Loans." Fannie Mae, 2022. https://mfguide.fanniemae.com/node/10711
166 Ibid.
167 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
168 Ibid.
169 Ibid.
170 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/
171 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
172 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/
173 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF
174 Cornell Legal Information Institute. https://www.law.cornell.edu/
175 Ibid.
176 U.S. Department of Housing and Urban Development. https://www.hud.gov/

HUD: The Department of Housing and Urban Development (HUD) is a federal agency that administers national programs aimed at reducing homelessness, providing housing that is safe and affordable to all persons, improving opportunities to access affordable homeownership, and granting subsidize to lower-and moderate-income families to give them equal opportunities in the rental and purchase housing markets. [177]

HMDA: Abbreviated term for the Home Mortgage Disclosure Act, enacted in 1975 to provide home mortgage data to the public to help determine if financial institutions are serving the housing needs of their communities, to help public officials distribute public investments and to identify possible lending discrimination.[178]

Income Approach: A type of real estate appraisal method that allows investors to estimate the value of a property based on the income the property generates. It's used by taking the net operating income (NOI) of the rent collected and dividing it by the capitalization rate. (Investopedia)

Inflation: The rate of change in the price of goods and services resulting from a change in the supply of money and/or cost of resources.[179]

Interest Rate: An interest rate on a mortgage loan is the cost a borrower will pay each year to borrow the money, expressed as a percentage rate. It does not reflect fees or any other charges borrowers may have to pay for the loan. For example, if the mortgage loan is for $100,000 at an interest rate of 4 percent, that consumer has agreed to pay $4,000 each year he or she borrows or owes that full amount.[180]

Junior Mortgage: A mortgage that is subordinate to a first or prior (senior) mortgage. A junior mortgage often refers to a second mortgage, but it could also be a third or fourth mortgage. In the case of a foreclosure, the senior (first) mortgage will be paid down first. (Investopedia)

Lender: An organization or person that lends money with the expectation that it will be repaid, generally with interest.[181]

Leverage: The use of borrowed money or debt to purchase assets or undertake an investment creating the relationship between an owner's equity and total debt on a property. The higher the leverage, the higher the debt in relation to the value of the property. [182]

Lien: A legal hold or claim of a creditor on the property of another as security for a debt. Liens are always against property, usually real property.[183]

Limited Equity Cooperative (LEC): A homeownership model in which a resident purchases a share in a collection of units opposed to an individual unit. LECs often restrict the future sale value of a property to maintain housing affordability.[184]

Liquidity: The measure of readily available assets that can be converted into cash.[185]

Loan Assumption: The lender's approval of a new borrower who takes over an existing loan.[186]

Loan Closing: The time agreed upon by the borrower and lender when the execution of the loan documents by the borrower occurs.[187]

Loan Commitment: An agreement by a commercial bank or other financial institution to lend a business or individual a specified sum of money.[188]

Loan Exit: (or Exit) The termination of a loan agreement often through sale of the asset, refinance, transfer, or default.[189]

Loan Origination: The multi-step process that every individual must go through to obtain a mortgage or home loan. The term also applies to other types of amortized personal loans. Origination is often a lengthy process and is overseen by the Federal Deposit Insurance Corporation (FDIC). [190]

Loan Origination Fee: A charge, usually 1% of the loan, that is intended to compensate the lender for the work involved in the process.[191]

Loan Servicer: A loan servicer typically processes loan payments, responds to borrower inquiries, keeps track of principal and interest paid and manages escrow accounts. The loan servicer may initiate foreclosure under certain circumstances. A servicer may or may not be the same company that originated a loan.[192]

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177 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

178 "Download HMDA Data." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/data-research/hmda/historic-data/

179 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/

180 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

181 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

182 Cornell Legal Information Institute. https://www.law.cornell.edu/

183 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

184 "Limited equity cooperatives." 2021. Local Housing Solutions. https://localhousingsolutions.org/housing-policy-library/limited-equity-cooperatives/#:~:text=A%20limited%20equity%20cooperative%20(LEC,and%20over%20the%20long%20term.

185 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/

186 Cornell Legal Information Institute. https://www.law.cornell.edu/

187 Ibid.

188 Investopedia. https://www.investopedia.com/

189 Ibid.

190 Ibid.

191 Ibid.

192 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

Loan Servicing: Supervising and administering a loan after it has been made. This process involves collecting payments, conducting property inspections, foreclosing on defaulted loans, and all other processes after escrow.[193]

Loan-to-Value Ratio: The loan-to-value (LTV) ratio is a measure comparing the outstanding mortgage amount with the appraised value of the property. The higher the down payment, the lower the LTV ratio. Mortgage lenders may use the LTV in deciding whether to lend to a borrower and to determine if they will require private mortgage insurance.[194]

Loss Mitigation: The steps mortgage servicers take to work with a mortgage borrower in order to avoid foreclosure. Loss mitigation refers to a servicer's responsibility to reduce or "mitigate" the loss to the investor that can come from a foreclosure. Certain loss-mitigation options may help borrowers stay in their homes. Other options may help borrowers leave their homes without going through foreclosure. Loss mitigation options may include deed-in-lieu of foreclosure, forbearance, repayment plan, short sale or a loan modification.[195]

Low-Income Household: Persons and families whose gross income is greater than 50% up to 80% of area median income, adjusted for household size appropriate for the unit.[196]

Market Price: An estimate of what a property would sell for in a competitive market based on the features and benefits of that property (the value), the overall real estate market, supply and demand and what other similar properties have sold for in the same condition.[197]

Maturity Date: The date that an investor's investment is to be paid back in full in accordance with its agreement.[198]

Moderate Income Household: Persons and families whose gross income is greater than 80% and does not exceed 120% of area median income, adjusted for household size appropriate for the unit.[199]

Monthly Mortgage Payments: Monthly mortgage obligations including principal and interest and possibly taxes and insurance.[200]

Mortgage: An agreement between a borrower and a lender that allows a homebuyer to borrow money to purchase or refinance a home and gives the lender the right to seize the property if the borrower fails to repay the money borrowed.[201]

Mortgage Credit Availability Index (MCAI): A barometer on the availability or supply of mortgage credit at a point in time, using criteria from institutional investors who purchase loans through the broker and/or correspondent channels. The MCAI is calculated using several factors related to borrower eligibility (credit score, loan type, loan-to-value ratio, etc.) using data made available by ICE Mortgage Technology.[202]

Mortgage Insurance (MI): Protections for lenders in the event a borrower falls behind on their payments. Mortgage insurance is typically required if a borrower's down payment is less than 20 percent of the property value. Mortgage insurance is typically required on FHA and USDA loans. However, with a conventional loan and down payment less than 20 percent, a borrower will most likely have private mortgage insurance (PMI). [203]

Mortgage Insurance Premium (MIP): The annual premium on an FHA-required mortgage insurance policy required over the life of the loan and equal to ~0.45-1.05% of the loan amount. MIPs protect FHA against higher-risk borrowers who are more likely to default on loans.[204]

Upfront Mortgage Insurance Premium (UPMIP): The upfront fee on an FHA-required mortgage insurance policy equal to 1.75% of the loan amount.[205]

Mortgage Modification: A change made to the terms of a loan because the borrower is unable to meet the payments under the original terms. The modification is a type of loss mitigation. A modification can reduce monthly payments to an amount affordable to the borrower. Modifications may involve extending the repayment term, reducing the interest rate, and/or forbearing or reducing the principal balance.

Mortgage-Backed Securities: Investment securities representing an interest in a pool of mortgages.[206]

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193 Ibid.

194 Ibid.

195 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

196 "Income Limits." California Department of Housing and Community Development. https://www.hcd.ca.gov/income-limits

197 Cornell Legal Information Institute. https://www.law.cornell.edu/

198 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

199 "Income Limits." California Department of Housing and Community Development. https://www.hcd.ca.gov/income-limits

200 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

201 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

202 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/

203 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

204 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF

205 Ibid.

206 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

Mortgage Servicer: The company that sends borrowers their mortgage statements and handles the day-to-day tasks of managing mortgages.[207]

Nominal Interest Rate: Also known as the note rate. The interest rate before taking inflation into account that appears on the mortgage note.[208]

Non-recurring Closing Costs: Costs that are one-time charges paid at the close of escrow. One-time costs include the appraisal fee, title insurance, origination fees, underwriting fee, notary fee, recording fee, and transfer taxes, among other items.[209]

Operating Costs: The recurring owner's expenses to maintain a property in good condition, such as utilities, repairs and replacement of furnishings.[210]

Origination Fee: What the lender charges the borrower for making the mortgage loan. The origination fee may include processing the application, underwriting and funding the loan, and other administrative services. Origination fees generally can only increase under certain circumstances.[211]

Outstanding Principal Amount: The amount of principal due under a loan after taking into account prior payments of principal.

PITI: An abbreviation for principal, interest, taxes and insurance, commonly used when referring to the monthly loan obligation.[212]

Points: Amount paid by the borrower or the seller, with each point equal to one percent of the loan.[213]

Pre-approval: Pre-approval is a bigger step than pre-qualification, but it is a better commitment from the lender. This involves borrowers completing a mortgage application and providing the lender with income documentation and personal records. If the borrower qualifies, the lender can provide the amount of financing, potential interest rate, estimated monthly payment (before taxes and insurance because the property is unspecified.[214]

Pre-qualification: With pre-qualification the lender provides the borrower's qualifying mortgage amount (and the process is usually quick and free) but does not actually qualify a borrower for a mortgage until pre-approval.[215]

Prepayment Penalty: A fee that lenders may charge if a borrower pays off all or part of their mortgage early. A prepayment penalty is agreed upon at closing and not all mortgages have a prepayment penalty. [216]

Primary Mortgage Market: The market where borrowers can directly obtain a mortgage loan from a primary lender. Banks, mortgage brokers, mortgage bankers and credit unions are all primary lenders and are part of the primary mortgage market.[217]

Principal Residence: A dwelling where the borrower maintains or will maintain their permanent place of abode, and which the borrower typically occupies or will occupy for the majority of the calendar year. A person may have only one principal residence at any one time.[218]

Principal: The amount of a mortgage loan that a borrower has to pay back. When a payment is made towards a borrower's principal, the borrower owes less, and will pay less interest based upon a lower loan size. [219]

Private Mortgage Insurance (PMI): A type of mortgage insurance that benefits the lender. Borrowers may be required to pay for PMI if their down payment is less than 20% of the property value on a conventional loan. Borrowers may be able to cancel PMI upon accumulating 22% equity in their home.[220]

Property Taxes: Taxes charged by local jurisdictions, typically at the county level, based upon the value of the property being taxed. Often, property taxes are collected within the homeowner's monthly mortgage payment, and then paid to the relevant jurisdiction one or more times each year. This is called an escrow account. If the loan does not have an escrow account, then the homeowner will pay the property taxes directly.[221]

Purchase Price: A borrower's cost of purchasing the property excluding usual and reasonable settlement or financing costs.[222]

Rate Lock: A lender's written guarantee that allows the borrower to lock in the interest rate on a mortgage for a specified time period at the prevailing market interest rate.[223]

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207 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
208 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/
209 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711
210 Cornell Legal Information Institute. https://www.law.cornell.edu/
211 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
212 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
213 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711
214 Ibid.
215 Ibid.
216 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
217 Investopedia. https://www.investopedia.com/
218 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF
219 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
220 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/
221 Ibid.
222 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.
223 "Mortgage Glossary." Mortgage Bankers Association, 2022. http://mbabluegrass.org/mortgage-glossary/

Real Property: (or Property) A parcel of land and everything that is permanently attached to the land. The owner of real property has all of the rights of ownership, including the right to possess, sell, lease and enjoy the land.[224]

Recycling: Using the proceeds from sales of some properties in a portfolio to finance loans to new borrowers.[225]

Recurring Closing Costs: Repeating expenses paid by the borrower at close of escrow such as tax reserves, hazard insurance, and prepaid interest.[226]

Refinance: When a new loan is taken out to pay off and replace an old loan. Common reasons to refinance are to lower the monthly interest rate, lower the mortgage payment, or to borrow additional money. Upon refinance, borrowers typically pay closing costs and fees. If borrowers refinance and get a lower monthly payment there should be an understanding of what portion of the reduction is from a lower interest rate and because the loan term is longer. [227]

Regulation Z: Federal rule prohibiting compensation to a loan originator based on a mortgage transaction's terms or conditions (except the amount of credit extended) and prohibiting a mortgage originator steering a consumer to a loan that provides greater compensation.

Replacement Cost: Amount required to replace improvements of comparable quality at today's prices.[228]

Second Mortgage: A second mortgage or junior lien is a loan taken out using the house as collateral while another loan is secured by the house.[229]

Secondary Mortgage Market: The purchasing and selling of existing mortgages secured by deeds of trust promoting a constant flow of funds allowing lenders to continue to provide new loans to ready borrowers.[230]

Securitization: The procedure through which an issuer designs a marketable financial instrument by merging or pooling various financial assets into one group. The issuer then sells this group of repackaged assets to investors.[231]

Shared Equity: An arrangement under which a borrower receives a portion but not all of the increased value of the home, whether through terms of the loan or other restriction on the property.

Shortage: The deficit compared to what would be required, such as in housing construction related to demand or to be able to provide an equivalent loan to a new borrower.

Significant Student Debt: Outstanding debt on a prospective homebuyer's student loans such that the aggregate monthly payments exceed an amount specified in the rules for the CA Dream for All Fund, such as $100 per month.

Silent Second Mortgage: A second mortgage loan with no monthly payments that is due upon sale of the property or maturity together with accrued interest (if any) at a fixed interest rate. The second mortgage is called "silent" because the borrower does not disclose its existence to the original mortgage lender.

Single-Family Home: A property with one dwelling unit, whether detached or attached, including a condominium or townhome.

Surplus: The amount beyond what is required, such as to meet statewide requirements or to be able to provide an equivalent loan to a new borrower.

Term: The term of the mortgage loan is how long a borrower has to repay the loan. For most types of homes, mortgage terms are typically 15, 20 or 30 years.[232]

Title Insurance: Insurance written by a legal reserve title company and lenders against losses due to title defects.[233]

Truth in Lending Act (TILA): Title I of the Consumer Credit Protection Act protects borrowers against inaccurate and unfair credit billing and credit card practices. It requires lenders to provide loan cost information so that borrowers can comparison shop for certain types of loans.[234]

Underwriting: In mortgage banking, the analysis of the risk involved in making a mortgage loan to determine whether the risk is acceptable to the lender. Underwriting involves the evaluation of the property as outlined in the appraisal report and of the borrower's ability and willingness to repay the loan.[235]

Underwriting Requirement: Rules and requirements of a lender, secondary market institution (such as Fannie Mae and Freddie Mac) or mortgage insurer for determining if a loan is credit-worthy, such as as maximum loan-to-value or loan-to-price ratio, debt to income ratio, etc.[236]

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224 Cornell Legal Information Institute. https://www.law.cornell.edu/

225 Ibid.

226 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF

227 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

228 Lush, Minnie. *California Real Estate Finance, 9th Edition.* 2016.

229 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

230 "Secondary Mortgage Market." Investopedia. https://www.investopedia.com/terms/s/secondary_mortgage_market.asp

231 "Securitization."Investopedia. https://www.investopedia.com/terms/s/securitization.asp

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233 Ibid.

234 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

235 "Mortgage Loans." Fannie Mae. 2022. https://mfguide.fanniemae.com/node/10711

236 "Underwriting Standards." Investopedia. https://www.investopedia.com/terms/u/underwriting-standards.asp

Upfront Cost: One-time expenses in connection with the purchase of or loan on a property. These out-of-pocket costs, which include a down payment and various closing costs, occur before a home buyer can take title on a piece of property.[237]

Upfront Mortgage Insurance Premium (UPMIP): A one-time payment equal to 1.75% of the base loan amount due when closing on a home that is financed with an FHA home loan. Given the lower down-payment requirements for an FHA loan, UFMIP helps protect lenders if a borrower is unable to repay their mortgage.[238]

USDA Loan: The Rural Housing Service, part of the U.S. Department of Agriculture (USDA) offers mortgage programs with no down payment and generally favorable interest rates to rural homebuyers who meet the USDA's income eligibility requirements.[239]

VA Loan: A loan program offered by the Department of Veterans Affairs (VA) to help servicemembers, veterans, and eligible surviving spouses buy homes. The VA does not make the loans but sets the rules for who may qualify and the mortgage terms. The VA guarantees a portion of the loan to reduce the risk of loss to the lender. The loans generally are only available for a primary residence.[240]

237 "Upfront Cost." Investopedia. https://www.investopedia.com/terms/u/upfront-pricing.asp#:~:text=What%20Is%20Upfront%20Pricing%3F,the%20onset%20of%20the%20relationship.

238 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. https://www.hud.gov/sites/documents/40001GAHSGH.PDF

239 "Mortgage Key Terms." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/

240 Ibid.

APPENDIX B

Case Studies

Case study research on public and private shared appreciation models operating both within the state and beyond provided invaluable context in the design of the fund. Research focused on identifying the general parameters of a shared appreciation program, including underwriting standards, terms of appreciation sharing, investment timeline, maximum investment amount, and property eligibility criteria. On top of desktop research, interviews with relevant public agencies, program administrators, and private firms further supplemented our research.

Private Programs

	Hometap	Unison	Landed	The Point
	(Various locations, U.S.)			
Funding Type	Unknown	Institutional investors, including pension funds and university endowments	Chan Zuckerberg Initiative, others	Endowments, pension funds, insurers, REITs, and investment managers
Fees	3%	2.5%	1.25% of home purchase price if not using a Landed partner agent	3%-5%
Maximum Investment	Between 5% and 30% of home value (up to $600k)	Up to 17.5% of home value (up to $500k)	Up to 15% of home value (up to $120k)	$25k to $500k
Underwriting Standards/ Borrower Eligibility Criteria	• 600+ credit score • Max. 75% LTV	• 620+ credit score • Max. 80% LTV	• 620+ credit score • Max. 95% LTV • “Essential Professionals” (educators, healthcare professionals, government employees)	• 500+ credit score • Max. 80% LTV
Property Eligibility Criteria	Single-family homes and condos. Must be primary residence.	Single-family homes, condos, and townhomes. Must be primary residence.	Single-family homes, condos, townhomes, and duplexes. Must be primary residence.	Single-family homes, condos, townhomes, missing middle (1-4 units) structures. Minimum $155k home value.
Investment Term	10 years	30 years	30 years	30 years
Shared Appreciation Terms	Structured on a case-by-case basis depending on property value and initial investment amount but may range between 13.9 – 16.7% of home value at the time of repayment.	Appreciation split: 4:1	Appreciation split: 2.5:1	Principal investment + ~15% – 40% of appreciation
Program Webpage	https://www.hometap.com/	https://www.unison.com/	https://www.landed.com/	https://point.com/

Public Programs

	Homeownership Opportunities Program	Help to Buy: Equity Loan	Down payment Loan Assistance Program (General)	AC Boost	Empower Homebuyers	Downpayment Assistance Program
	(Pasadena, CA)	(England)	(San Francisco, CA)	(Alameda County, CA)	(Santa Clara County, CA)	(Seattle, WA)
Funding Type	Public: Local funds (redevelopment or inclusionary)	Public: Homes England	Public: local funds	Public: $580 million general obligation bond	Public: Initially funded in 2016 through affordable housing bond	Public: initially funded from federal HOME $, later by affordable housing tax levy, linked with funds from Washington State Housing Finance Commission Shared appreciation feature was used from 2004 – 2017 (funding 3 to 4 loans annually before terminated)
Maximum Investment	Unknown	Varies by region. program will fund up to 20% of the home value (increases to 40% in London)	$375k-$500k	$210K for households <= 100%AMI $160K for households >100% AMI	Up to 17% down payment; Home price up to $1.1 million	Up to $45,000 from Seattle, and $60,000 total Maximum purchase price of 95% of area median (due to HOME requirements)
Underwriting Standards/ Borrower Eligibility Criteria	• First time homebuyer • Income eligible households (income ranges determined by household size)	• First time homebuyer • Min. 5% down payment contribution • 75% mortgage maximum LTV	• First-time homebuyer • Annual income up to 175% AMI • Min. 3% down payment contribution • Min. LTV 50% • 30%-40% front end debt ratio • Max. $300k liquid assets before closing	• First-time homebuyer • Annual income up to 120% AMI • Min. 0-3% down payment contribution to a max. of 50% • Min. LTV 50% • Min. 25% front end debt ratio • Max. $300k liquid assets before closing	• First-time homebuyer • Annual income up to 120% AMI • Min. 3% down payment contribution • 70%-87% LTV • 28%-38% front end debt ratio • >=620 credit score	• First-time homebuyer • Annual income up to 80% AMI • Minimum cash contribution of greater of 1% or $2,500
Property Eligibility Criteria	Unknown	New construction by approved homebuilders	• Single family homes • Condominiums • Townhomes	• Single family homes • Condominiums • Townhomes	• Single family homes • Condominiums • Townhomes	• Single family homes • Condominiums • Townhomes
Investment Term	30-45 years	15 years	Upon sale or transfer (had originally been limited to 30 years)	30 years	30 years	30 years

	Homeownership Opportunities Program	Help to Buy: Equity Loan	Down payment Loan Assistance Program (General)	AC Boost	Empower Homebuyers	Downpayment Assistance Program
Appreciation Sharing/ Repayment Terms	Appreciation split 1:1 (Pro-rata)	Interest free for the first 5 years; then 1.75% interest annually with an increase of CPI plus 2%; Pro-rata at time of sale plus interest on the balance of the equity state.	Appreciation split 1:1 (Pro-rata)	Unknown	Appreciation split 1:1 (Pro-rata)	Borrower owed both: • 3% simple interest, plus • pro rata appreciation (forgiven 1/9 per year over 9 years), With combination not to exceed equivalent of 6% simple interest
Program Webpage	https://www.pasahop.com/	https://www.gov.uk/help-to-buy-equity-loan	https://sfmohcd.org/dalp	https://www.acboost.org/	https://housingtrustsv.org/programs/homebuyer-assistance/empower-homebuyers-scc/	https://www.wshfc.org/buyers/Seattle.htm

STAKEHOLDERS INTERVIEWED

***A special thanks goes to the following individuals that agreed to be interviewed for the purpose of this report.**

ORGANIZATION	INTERVIEWEES
Landed	Alex Lofton, Ian Magruder, Annee Kim and Jack Woodruff
Noah	Rahul Parulekar
City of San Francisco	Aneka Harrell, Cissy Yin, and Tammie Little
The Point	Eoin Matthews
Mortgage Bank Association	Susan Milazzo and Pete Mills
City of Pasadena	Jim Wong and William Huang
Heritage Housing Partners	Charles Loveman
Chan Zuckerberg Initiative	Ruby Bolaria Shifrin
Silicon Valley Housing Trust	Noni Ramos, Julie Mahowald, and Fathia Macauley
Help to Buy: Equity Program	SImon Walley

APPENDIX C

Program Guidelines

Below is a summary of how a CA Dream for All program can provide Shared Appreciation Second Loans. This overview is provided to suggest how detailed program features could be designed.

ILLUSTRATIVE PROGRAM GOALS & TERMS

Program Purpose

The purpose of the program is to make homeownership more accessible and affordable to income-qualified first-time homebuyers in California and promote diversity—and *to do so in such a way that the State can continue to sustainably assist future generations of first-time buyers despite rising home prices.*

Investment: Shared appreciation second mortgage loans are intended to enable the State to invest in affordable homeownership in a way that can help future eligible buyers.

Experience: The shared appreciation approach outlined here reflects and is meant to work with the long-standing requirements of both Fannie Mae and Freddie Mac for publicly funded shared appreciation second mortgages. Shared appreciation second mortgages for first-time homebuyers have been used successfully by San Francisco for almost four decades, and more recently by both Alameda County and Santa Clara County.

How a State Shared Appreciation Program Can Work: These suggested terms are meant as a starting point for decisions on detailed program specifics. They indicate how a shared appreciation program can be used to address homeownership needs, meet secondary market requirements, and can be financially structured.

Shared Appreciation Second Loan Terms

Overview: The program would provide a shared appreciation second loan (SASL) with no monthly payments, paired with a Fannie Mae/Freddie Mac first mortgage.

The SASL would mature and be due when the property is sold or transferred, there is a cash out refinancing, or program requirements are violated.

Upon repayment, the program receives the original principal amount of the SASL plus a share of the property's price appreciation in order to be able to provide SASLs to subsequent first-time homebuyers.

Basic Terms

- **Appreciation Share:** The program's share of appreciation could initially be the program's percentage of the original purchase price (pro rata appreciation). This approach is the simplest to market, explain and administer.
    - After several years of experience with this basic model, the program could consider increasing the percentage on new SASLs, but not to exceed 1.5 times the program's percentage of the original purchase price. The purpose of considering such higher shares would be to enable the State to assist more buyers over time.
    - A single multiple should be applicable to all SASLs being offered.
    - In no case would the program's share of appreciation ever exceed 45% of the total appreciation.
- **Repayment Events:** Repayment will be due upon sale, transfer or cash-out refinancing, or upon violation of program requirements as determined by the program administrator.
- **Prepayment:** The homebuyer may prepay the loan at any time based on a fair market appraisal by the program without penalty.
- **Loan Amount**: The amount of the SASL would be subject to limits established by the administrator. The loan amount for a borrower would not exceed the lesser of:

- The program's maximum specified percentage of the purchase price. This maximum percentage would generally not exceed 17%, but could be increased up to [27%] for borrowers below 100% AMI. We would recommend that these percentages could be increased up to an additional [3%] for borrowers with significant student loan debt.
- The amount needed together with the borrower's minimum down payment and a Fannie/Freddie first mortgage based on a "front-end ratio" of [30%].
- The maximum specified percentage times the median purchase price of homes in the region.

- **Borrower Minimum Down Payment:** The homebuyer must meet Fannie Mae/Freddie Mac requirements for cash down payment and closing costs. The borrower can use local down payment assistance, gifts or other sources permitted by Fannie Mae/Freddie Mac (but not the SASL or other state funds) to meet Fannie Mae/Freddie Mac minimum requirements.
- **Borrower Protections**:
  - Repayment of the principal amount of the SASL is subordinate to the outstanding first mortgage and to the borrower's original cash down payment.
  - There is never any deficiency judgment against the borrower.
  - If the program's share of appreciation is set higher than pro rata, in order to meet Fannie Mae requirement the borrower would receive all of the following before the program receives any share in the appreciation: recovery of the borrower's original down payment, amortization of the first mortgage, and the appreciated value resulting from capital improvements that increased livable square footage by at least 10%.
  - There are no program restrictions on property resale.

Key Considerations

Purpose of SASL Amount: The SASL in combination with the borrower's minimum down payment is intended to allow households to utilize a conforming Fannie/Freddie first mortgage without private mortgage insurance.

Significant Student Loan Debt. Increasing the maximum SASL loan percentage for borrowers with significant student loan debt payments (e.g., more than $100 per month) can help offset the negative impact of this debt on the borrower's maximum first mortgage amount.

Purchase Price Cap: The program does not include a purchase price cap on properties being acquired. However, the program's loan amount restrictions constrain the amount of the SASL.

Repayment: The financing for the program recognizes that many borrowers will only repay the SASL when the home is sold. The program allows non-cash out refinancing to enable borrowers to take advantage of lower-rate first mortgages. The program administrator would also provide access to ongoing mortgage counseling and quarterly updates on estimated potential repayment to ensure that homebuyers are fully aware of the benefits of repaying their SAL.

Program Descriptions and Homebuyer Counseling: Since many borrowers are unfamiliar with SALs, it is essential that all program materials and documents be extremely clear as to the nature of the borrower's repayment obligation. In addition, the program would provide and pay for both pre-purchase and post-purchase counseling for buyers.

ELIGIBLE BORROWERS & PURCHASES

Borrower Eligibility Requirements

To qualify for a shared appreciation loan, the prospective homebuyer would need to meet all of the following criteria:

- **Residency:** The homebuyer has been a resident of the State of California for at least one year.
- **First-Time Homebuyer:** No member of the homebuyer's household has had an ownership interest in a residential property for three prior years (the program will make exceptions for a legally separated head of household who was displaced from a jointly-owned property through the separation process).
- **Principal Residence:** The homebuyer is purchasing the property for use as their principal residence.
- **Income Limit:** The program administrator would set and update the maximum income limits for the program. This could initially be 150% of the median income for each high-cost Region of the state as determined by FHFA and 120% for other Regions. Income could be based on the first mortgage lender's underwriting income and in accordance with a standard existing methodology (such as CalHFA's income methodology for regions of the State).
- **Higher Loan Amounts for Lower-Income Borrowers**. As described under "Loan Amount," the program administrator may set a higher maximum specified percentage of the purchase price for borrowers in lower-income tiers such as those below 100% AMI in order to meet program objectives (target populations, regional/geographic considerations, etc).
- **Homebuyer Education Course:** All homebuyers must participate in and complete a certified homebuyer education program.

Key Considerations

Adjustable Income Limit: The program administrator would have the ability to adjust income limits to meet program targets.

Not Limiting Borrower Assets as Condition for Eligibility: The program would not require borrowers to meet asset limits. Household assets are administratively difficult to assess, and an asset test would both narrow the range of potential homebuyers and serve as a disincentive to saving for low- and moderate-income households.

Priority Homebuyers

Prioritization: The program is designed to allow the program administrator to target support to priority households. These can include such categories as households that are first generation homebuyers, those who have been long-term tenants in historically low-income communities, and those who have high student debt. The program can prioritize households either through the reservation process (described in the reservation process below) and through product terms.

To illustrate how this can work:

- **Long-Term Residents of Low-Income Communities** who have resided for at least five of the last ten years in low-income census tracts could be eligible for a priority set-aside in reservations to help buy in their community or elsewhere as they wish. This provides a way for the program to increase opportunities for households who have lived in areas that have historically faced discrimination (such as red-lined areas).
- **First Generation Homebuyers,** whose parents have not owned a home, could be eligible for a priority set-aside in reservations.
- **Homebuyers with Significant Student Debt** that reduces the amount of the first mortgage for which the borrower can qualify for (e.g., with monthly student debt payments greater than $100) could obtain a larger SASL.

Key Considerations

Future Priorities: While priorities could shift over time, administering and marketing the program benefits from program parameters that remain stable from one year to the next.

Property Eligibility Requirements

To qualify for the program, the property must be a pre-existing or newly constructed one- to four-unit residential property or condominium (under Fannie/Freddie guidelines, borrower cash down payment requirements are higher for purchasing a two to four unit property).

Key Considerations

Housing Unit Limit: Allowing the purchase of buildings up to four units would accommodate AB1550 and incentivize the construction, financing and purchase of small infill homes that increase residential density.

First Mortgage Requirements

Homebuyers must obtain a first mortgage loan that meets the following criteria:

- **Loan Type**: The first mortgage must be a fixed rate, fully amortizing 30-year mortgage, that conforms with Government-Sponsored Enterprise (GSE) requirements and is includable in GSE mortgage-backed securities that can be sold TBA.
- **Loan to Value:** The first mortgage may not exceed 80% of property value.
- **Participating Lenders:** The first mortgage lender must be a qualified lender under CalHFA requirements.

The program can be designed so that both the first mortgage and the SASL are sold to the administering agency and are serviced jointly.

Key Considerations

Program Approval from GSEs: The program will need to be approved by GSEs based on precedents for similar approvals. This is a key step to navigate before finalizing detailed features.

STATEWIDE PROGRAM

Program

The program is designed to be operated across and assist first-time buyers in all regions of the state. The number of borrowers assisted would be approximately the same percentage of mortgage purchase transactions in each region of the state (such as 2%); this will help assure that program lending does not itself inflame housing prices.

To reflect and operate effectively in the wide range of housing markets in the state:

- Income limits would be set as a higher percentage of AMI in high-cost areas of the state.
- By limiting the loan amount to the maximum specified percentage of the median purchase price of homes in each region, the program would reflect the differences in housing prices in regions across the state.

Key Considerations

These features help assure that the program can be useful for borrowers in each region of the state while having a single standard operating system.

REVOLVING INVESTMENT FUND

Program Funding

Overall Design: The program has been structured to be an ongoing sustainable program that would make loans over many years, given the long-term housing affordability pressures in California. It is designed to make loans throughout economic cycles, rather than making all loans at the peak of the market.

Annual Scale: The scale of the program needs to be limited not only because of limitations on State resources but so that it does not itself drive up the prices of homes in California.

For purposes of estimating needed funding sources, it is assumed that the program could provide approximately $1 billion of SASL's in the first full year after a ramp-up period. This amount could help approximately 7,500 households if the average SASL is $130,000. This accounts for a small share of the state's 300,000 mortgage originations per year, but a larger share of the 100,000 mortgages currently originated for households that earn less than 120% of AMI. It is approximately the same number of buyers that CalHFA currently assists, but would provide significantly deeper assistance for borrowers who need it, including in the state's higher cost areas.

Over Ten Years: The program is designed so that the average loan amount can increase by about 4.5% per year, and the annual total amount of SASLs would grow accordingly. Over a 10 year period, this would provide over $10 billion of SASL's, helping first-time buyers who need such assistance purchase approximately $50 billion of homes.

Sources of Money: After extensive analysis, the simplest and effective way to fund a program of this annual scale is from taxpayer funds. These can come from annual state budget appropriations and/or from voter-authorized GO bond issues.

Investment Fund. The State would establish a separate, independent CA Dream for All Fund (such as that used for tobacco securitization). This investment fund would receive annual budget appropriations and/or proceeds of State GO bonds authorized by the voters.

These monies would be deposited as received into:

- A loan account to purchase SALs, and
- An administrative/servicing reserve account to pay all administrative, origination, marketing and outreach, counseling and servicing costs with respect to such SALs.

Repayments of principal and of appreciation on all SALs would be redeposited in the Fund, and amounts not needed to replenish the administrative/servicing reserve fund would be dedicated to making new SALs each year.

It may be up to ten or fifteen years before the program produces a significant reliable stream of repayments to make additional new loans. As a result, it is appropriate to plan for annual state appropriations for 10 years (that could be continued thereafter).

This revolving investment fund is thus a dedicated endowment for assisting future first-time homebuyers in California, and would be held in trust by the State for this purpose.

Key Considerations

Legislation now or in the future could also authorize the potential use of revenue bonds by the administering agency as a way to supplement taxpayer monies—*if this proves able to increase the total future number of borrowers served with no higher present value expenditure of taxpayer monies.* Discussions with a range of major investment banks and other sources suggest that the marketability of such revenue bonds would require over-collateralization (such as by funding SASLs 60% from revenue bonds and 40% from taxpayer monies), and an ongoing assured source of annual interest payments (through a state appropriation pledge, the typical way the state finances lease appropriation bonds). Such revenue bonds—while reducing the taxpayer funds needed directly for making SASLs—would require taxpayer monies for annual interest payments. Detailed modeling does **not** indicate that inclusion of revenue bonds would significantly increase the number of borrowers assisted with the same present value of taxpayer monies. Given the complexity and scale of issuance involved, such an additional approach is not recommended at this time. Such revenue bonds, if any, would be secured by the CA Dream for All Fund.

Administrative Costs

Annual state appropriations would provide funds to be deposited in the administrative/servicing reserve account in order to pay for program administration, start-up, homeowner counseling and servicing. An estimated $100 million would need to be deposited annually on an ongoing basis.

ADMINISTRATIVE PROCESS

Program

Administering Agency: A statewide program administrator would be selected to develop a detailed operating plan for the program, including a detailed program manual and procedures guide for use of Fund resources, a start-up plan, and proposed system and parties for marketing/ outreach, origination of SASLs, homeowner counseling, and servicing of SASLs.

The detailed operating plan would indicate how the overall program would establish priorities and a reservation system to help achieve program objectives; as well a quarterly reporting system on program demographics, operations, SASL performance and use of Fund resources.

Key Considerations

Ongoing Oversight: The program administrator will play a key role in day-to-day oversight of loan reservations to help assure statewide distribution of the program and meeting program targets, so that the program does not end up concentrated in a few markets where it may be easiest to make such loans..

Marketing, Outreach and Homeowner Counseling

Central Importance: Marketing, outreach and clear explanation of shared appreciation mortgages to potential borrowers, lenders and real estate agents is crucial to the success of the program.

State taxpayer funds will provide important funding for such marketing and outreach efforts, including by non-profit groups and housing counselors, who can help prepare potential homebuyers.

Homebuyer education, including a special section on how the shared appreciation mortgage works, will be mandatory for all borrowers. Monies are budgeted for pre-purchase counseling and post-purchase counseling.

Reservation System

Purpose: The reservation system would need to do three things:

- Enable eligible buyers to reserve SASLs in conjunction with related first mortgages so that buyers can move quickly in a highly competitive housing market to purchase a home.
- Make it easy and convenient for lenders to reserve and originate SASLs in conjunction with related first mortgages, with assurance that qualified loans are timely purchased by or on behalf of the program administrator.
- Assure that the Program meets overall priorities and targeting objectives.

One way to accomplish these goals is to have a reservation system that provides set-asides by region of the state, as well as by priority categories, such as first generation homebuyers and long-term residents of low-income areas.

Servicing

In addition to collecting loan repayments, the servicer engaged by the program administrator will provide ongoing information to borrowers about their shared equity mortgage, including estimated amount to be repaid, and how and when it may be in their interest to pay it off sooner if possible.

The program will be designed to work together with other programs for affordable homeownership, including:

- **Below Market Units**: The program can be, but is not required to be, used for the purchase of below-market units, such as those created through inclusionary zoning or Community Land Trusts.
- **Local Down Payment Assistance Programs:** The program can be used with local down payment assistance programs
- **Local Shared Appreciation Programs:** For counties with their own shared appreciation programs (such as Alameda, San Francisco and Santa Clara), the program would pay for up to half of the amount of any county shared appreciation loan that meets program requirements, subject to other loan amount requirements.

APPENDIX D

Regions of Analysis

Evaluating existing conditions at the regional level helps establish a baseline understanding of geographic variations in income, housing tenure, and housing market activity. Differing regional circumstances can inform how a shared appreciation program might be tailored to respond to unique regional circumstances. The analysis and program framework in this report divide the state into 11 regional markets which consist of aggregations of counties. These regions align with those in California Forward's "California Dream Index".

Figure 53: Regions Considered in Analysis

- Bay Area
- Central Coast
- Central Valley
- Inland Empire
- Los Angeles
- Orange County
- Redwood Coast
- Sacramento
- San Diego-Imperial
- Shasta/Cascades
- Sierra Nevada

Source: HR&A Advisors

Financial Analysis

We conducted a comparative analysis of the household and fund level impacts from various financing options as well as home price appreciation rates. The median price of existing single-family homes in California has increased more than 225% over the last 20 years, from $241,800 in 2000 to $786,000 in 2021, which implies a historic compound annual growth rate (CAGR) at 5.8% over the course of the past two decades. Most of the growth occurred in the last 10 years, while the historic CAGR from 2000 to 2010 was only at 2.37%.[241] To be conservative, we utilize the following home price appreciation assumptions for three scenarios.

- Base Scenario: Annual home price appreciation at 3.0%
- Upside Scenario: Annual home price appreciation at 6.0%
- Downside Scenario: Annual home price appreciation at 0.0%

We also looked at the financial tradeoffs for a borrower and the program or fund as the financing structure changes. We analyzed the following structures:

1. **Shared Appreciation:** This structure represents the recommended terms for a CA Dream for All loan with a 17% down payment and a 1:1, or pro rata, appreciation split between the homebuyer and the fund.
2. **Fixed Rate:** The second mortgage with deferred payment carries an annual simple interest rate payment obligation of 3.00% and offers a 17% down payment.[242] There is currently no program with this level of down payment support.
3. **FHA:** This structure reflects the current costs to homebuyers with limited down payment savings, where they are required to make monthly insurance premium payments as well as an upfront mortgage insurance premium.
4. **Conventional:** This structure reflects what is currently available to homebuyers who can make a 20% down payment which eliminates the need for either a second mortgage or monthly mortgage insurance premium payments.

The analysis shows that a SAL has the following tradeoffs compared to other financing options:

- Fixed Rate: There is no difference in the level of income served by either a fixed interest or a SAL because both allow the borrower to avoid mortgage insurance premium and significantly lower monthly payments. Under our baseline growth assumption, homebuyers and the state would receive approximately the same returns, because the assumed interest rate on the loan is equal to our growth rate assumptions. In our upside scenario, homebuyers have a lower rate of return, but the fund would make a sufficient return to be able to support the next homebuyer at the higher prevailing median price. In our downside scenario, the homebuyer has a higher return because they have no interest payment liability while the fund would have sufficient funds to lend on to the next buyer because house prices would be similar.
- FHA: Without the support of any public down payment assistance programs, homebuyers who resort to FHA loans with a minimum down payment of 3.5% carry much higher monthly mortgage payments due to a larger first mortgage loan size and the required FHA mortgage insurance premium. This requires borrowers to have a higher level of income to get income qualified for the mortgage and sustain a healthy debt-to-income ratio. Due to its high leverage, the homebuyer's initial down payment realizes higher return in all scenarios, but at the expense of higher monthly payments. Shared appreciation allows borrowers to put down the same amount of down payment with a much lower monthly mortgage payment.
- Conventional: Homebuyers who put down a 20% down payment without any public down payment assistance program, incur the same monthly mortgage payment as those with shared appreciation since they are no longer required to pay any mortgage insurance premium. There is no difference in the level of income required but a significant difference in the required upfront down payment. Due to its low leverage, the homebuyer's initial down payment realizes the lowest return in all scenarios despite the benefits of lower monthly payments. Shared appreciation provides the down payment funding gap and enables borrowers with limited savings to access median priced homes and achieve a much higher return.

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242 CalHFA's MyHome Assistance Program is a silent second fixed rate program, currently charging 3% simple interest, while the loan size is much smaller, up to 3.5% of the purchase price or appraised value.

Figure 54: Household Level Loan Calculation Base Scenario

California Dream for All – Household Level Loan Calculation

BASE SCENARIO

KEY ASSUMPTIONS	
Property Purchase Price [1]	$786,275
Annual Price Appreciation	3.00%
Cost of Sales	9.00%
California Median Household Income [2]	$77,358
Down Payment Required for Next Borrower	17.00%

MORTGAGE ASSUMPTIONS[3]		
Amortization	360 months	
Conforming Loan Base Rate	4.42%	
Annual Private Mortgage Insurance (PMI)	0.58%	FICO 760+
FHA Loan Base Rate	4.40%	
Upfront Mortgage Insurance Premium (UFMIP)	1.75%	
Annual Mortgage Insurance Premium (MIP)	0.85%	

HOUSEHOLD OPTIONS	1		2		3		4	
	Shared Appreciation	17%	Fixed-Rate Second	17%	FHA		Conventional	
	Multiple	1	Simple Interest	3.00%	Down Payment	3.50%	Down Payment	20.00%
Homebuyer Down Payment	$23,588	3.00%	$23,588	3.00%	$27,520	3.50%	$157,255	20.00%
1st Mortgage Amount	$629,020	80.00%	$629,020	80.00%	$758,755	96.50%	$629,020	80.00%
2nd Mortgage Amount	$133,667	17.00%	$133,667	17.00%	$0	0.00%	$0	0.00%
Upfront Mortgage Insurance Premium					$13,278			
Total Purchase Price	**$786,275**	**100.00%**	**$786,275**	**100.00%**	**$799,553**	**100.00%**	**$786,275**	**100.00%**
1st Mortgage Monthly Payment	$3,157		$3,157		$3,800		$3,157	
Mortgage Insurance Premium	$0		$0		$537		$0	
Total 1st Mortgage Monthly Payment	**$3,157**		**$3,157**		**$4,337**		**$3,157**	
Debt-to-Income Ratio	43%		43%		43%		43%	
Required Household Income	$88,111		$88,111		$121,033		$88,111	
Percent of California Median Household Income %	114%		114%		156%		114%	
EXIT (YEAR 10) - Homebuyer Impact								
Projected Property Sales Price	$1,025,911		$1,025,911		$1,025,911		$1,025,911	
Repayment to First Mortgage	($502,487)		($502,487)		($605,734)		($502,487)	
Repayment to Second Mortgage								
Principal	($133,667)		($133,667)					
Shared Appreciation / Fixed Interest	($40,738)		($40,100)					
Total Second Mortgage Due	($174,405)		($173,767)					
Cost of Sales	($92,332)		($92,332)		($92,332)		($92,332)	
Borrower Net Equity	**$256,687**		**$257,325**		**$327,845**		**$431,092**	
Borrower Equity Multiple	10.9 x		10.9 x		11.9 x		2.7 x	
Borrower Rate of Return (RoR)	27.00%		27.00%		28.10%		10.60%	
EXIT (YEAR 10) - Fund Impact (Second Mortgage)								
Effective Annual Interest Rate	2.70%		2.66%		N/A		N/A	
Funds Recycled	$174,405		$173,767		N/A		N/A	
Down Payment Required for Next Borrower	($174,405)		($174,405)		N/A		N/A	
Surplus/Shortfall	**$0**		**$638**		**N/A**		**N/A**	

Source

1. Median priced existing single-family home in California in 2021 according to data available to the California Association of Realtors
2. U.S. Census Bureau, Median Household Income in California for 2020, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/MEHOINUSCAA646N, June 6, 2022.
3. Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

Figure 55: Household Level Loan Calculation Upside Scenario

California Dream for All – Household Level Loan Calculation

UPSIDE SCENARIO

KEY ASSUMPTIONS	
Property Purchase Price [1]	$786,275
Annual Price Appreciation	6.00%
Cost of Sales	9.00%
California Median Household Income [2]	$77,358
Down Payment Required for Next Borrower	17.00%

MORTGAGE ASSUMPTIONS[3]		
Amortization	360 months	
Conforming Loan Base Rate	4.42%	
Annual Private Mortgage Insurance (PMI)	0.58%	FICO 760+
FHA Loan Base Rate	4.40%	
Upfront Mortgage Insurance Premium (UFMIP)	1.75%	
Annual Mortgage Insurance Premium (MIP)	0.85%	

HOUSEHOLD OPTIONS	1		2		3		4	
	Shared Appreciation	17%	Fixed-Rate Second	17%	FHA		Conventional	
	Multiple	1	Simple Interest	3.00%	Down Payment	3.50%	Down Payment	20.00%
Homebuyer Down Payment	$23,588	3.00%	$23,588	3.00%	$27,520	3.50%	$157,255	20.00%
1st Mortgage Amount	$629,020	80.00%	$629,020	80.00%	$758,755	96.50%	$629,020	80.00%
2nd Mortgage Amount	$133,667	17.00%	$133,667	17.00%	$0	0.00%	$0	0.00%
Upfront Mortgage Insurance Premium					$13,278			
Total Purchase Price	**$786,275**	**100.00%**	**$786,275**	**100.00%**	**$799,553**	**100.00%**	**$786,275**	**100.00%**
1st Mortgage Monthly Payment	$3,157		$3,157		$3,800		$3,157	
Mortgage Insurance Premium	$0		$0		$537		$0	
Total 1st Mortgage Monthly Payment	**$3,157**		**$3,157**		**$4,337**		**$3,157**	
Debt-to-Income Ratio	43%		43%		43%		43%	
Required Household Income	$88,111		$88,111		$121,033		$88,111	
Percent of California Median Household Income %	114%		114%		156%		114%	
EXIT (YEAR 10) - Homebuyer Impact								
Projected Property Sales Price	$1,328,395		$1,328,395		$1,328,395		$1,328,395	
Repayment to First Mortgage	($502,487)		($502,487)		($605,734)		($502,487)	
Repayment to Second Mortgage								
Principal	($133,667)		($133,667)					
Shared Appreciation / Fixed Interest	($92,160)		($40,100)					
Total Second Mortgage Due	($225,827)		($173,767)					
Cost of Sales	($119,556)		($119,556)		($119,556)		($119,556)	
Borrower Net Equity	**$480,525**		**$532,586**		**$603,106**		**$706,353**	
Borrower Equity Multiple	20.4 x		22.6 x		21.9 x		4.5 x	
Borrower Rate of Return (RoR)	35.20%		36.60%		36.20%		16.20%	
EXIT (YEAR 10) - Fund Impact (Second Mortgage)								
Effective Annual Interest Rate	5.38%		2.66%		N/A		N/A	
Funds Recycled	$225,827		$173,767		N/A		N/A	
Down Payment Required for Next Borrower	($225,827)		($225,827)		N/A		N/A	
Surplus/Shortfall	**$0**		**$52,060**		**N/A**		**N/A**	

Source

1. Median priced existing single-family home in California in 2021 according to data available to the California Association of Realtors
2. U.S. Census Bureau, Median Household Income in California for 2020, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/MEHOINUSCAA646N, June 6, 2022.
3. Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

Figure 56: Household Level Loan Calculation Downside Scenario

California Dream for All – Household Level Loan Calculation

DOWNSIDE SCENARIO

KEY ASSUMPTIONS	
Property Purchase Price [1]	$786,275
Annual Price Appreciation	0.00%
Cost of Sales	9.00%
California Median Household Income [2]	$77,358
Down Payment Required for Next Borrower	17.00%

MORTGAGE ASSUMPTIONS[3]		
Amortization	360 months	
Conforming Loan Base Rate	4.42%	
Annual Private Mortgage Insurance (PMI)	0.58%	FICO 760+
FHA Loan Base Rate	4.40%	
Upfront Mortgage Insurance Premium (UFMIP)	1.75%	
Annual Mortgage Insurance Premium (MIP)	0.85%	

HOUSEHOLD OPTIONS	1		2		3		4	
	Shared Appreciation	17%	Fixed-Rate Second	17%	FHA		Conventional	
	Multiple	1	Simple Interest	3.00%	Down Payment	3.50%	Down Payment	20.00%
Homebuyer Down Payment	$23,588	3.00%	$23,588	3.00%	$27,520	3.50%	$157,255	20.00%
1st Mortgage Amount	$629,020	80.00%	$629,020	80.00%	$758,755	96.50%	$629,020	80.00%
2nd Mortgage Amount	$133,667	17.00%	$133,667	17.00%	$0	0.00%	$0	0.00%
Upfront Mortgage Insurance Premium					$13,278			
Total Purchase Price	**$786,275**	**100.00%**	**$786,275**	**100.00%**	**$799,553**	**100.00%**	**$786,275**	**100.00%**
1st Mortgage Monthly Payment	$3,157		$3,157		$3,800		$3,157	
Mortgage Insurance Premium	$0		$0		$537		$0	
Total 1st Mortgage Monthly Payment	**$3,157**		**$3,157**		**$4,337**		**$3,157**	
Debt-to-Income Ratio	43%		43%		43%		43%	
Required Household Income	$88,111		$88,111		$121,033		$88,111	
Percent of California Median Household Income %	114%		114%		156%		114%	
EXIT (YEAR 10) - Homebuyer Impact								
Projected Property Sales Price	$786,275		$786,275		$786,275		$786,275	
Repayment to First Mortgage	($502,487)		($502,487)		($605,734)		($502,487)	
Repayment to Second Mortgage								
Principal	($133,667)		($133,667)					
Shared Appreciation / Fixed Interest	$0		($40,100)					
Total Second Mortgage Due	($133,667)		($173,767)		$0		$0	
Cost of Sales	($70,765)		($70,765)		($70,765)		($70,765)	
Borrower Net Equity	**$79,357**		**$39,257**		**$109,777**		**$213,023**	
Borrower Equity Multiple	3.4 x		1.7 x		4.0 x		1.4 x	
Borrower Rate of Return (RoR)	12.90%		5.20%		14.80%		3.10%	
EXIT (YEAR 10) - Fund Impact (Second Mortgage)								
Effective Annual Interest Rate	0.00%		2.66%		N/A		N/A	
Funds Recycled	$133,667		$173,767		N/A		N/A	
Down Payment Required for Next Borrower	($133,667)		($133,667)		N/A		N/A	
Surplus/Shortfall	**$0**		**($40,100)**		**N/A**		**N/A**	

Source

1. Median priced existing single-family home in California in 2021 according to data available to the California Association of Realtors
2. U.S. Census Bureau, Median Household Income in California for 2020, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/MEHOINUSCAA646N, June 6, 2022.
3. Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

APPENDIX E

Analysis of Alternative Funding Options

Option 4. Blended Taxpayer Funds and Private Capital

Purpose of approach. The aim is to supplement taxpayer funds with private capital to finance SALs.

How it would work. The state agency that would oversee and administer the CA Dream for All Fund would seek to sell participation interests in the pools of SALs it is making. In the first several years, all loans would be funded by taxpayer monies. As a portfolio and track record is established, the state agency would structure and sell senior tranches to investors. The net proceeds received, together with a reduced amount of new taxpayer monies, would help fund new loans.

<u>Security for private investors.</u> Private investors would receive the first return from all loan repayments, including appreciation up to a specified minimum rate of return; additional repayments would be split between the CA Dream for All Fund and investors. If useful in attracting private investors, taxpayer monies could also fund a specific loss reserve fund to cover losses of principal on the loans.

<u>Monies for new loans.</u> Under this leveraged approach:

In years 1 through 3, new taxpayer monies would be provided for $1 billion of SALs each year.

In years 4 through 12, the amount needed from new taxpayer monies would be reduced and used together with private capital to make loans.

After year 12, no more new taxpayer monies would be appropriated for loans. All future loans would be funded from a combination of residual repayments retained by the CA Dream for All Fund and new private equity capital.

<u>Origination, servicing and administrative costs.</u> As with the revolving fund approach in Option 1, the State would appropriate $100 million per year.

Precedent. We are not aware of any precedent for this approach.

Taxpayer investment. The total taxpayer investment would be designed to be similar to that for Option 1.

Ability to raise adequate capital, feasibility and legal concerns. There are little grounds, today, to think that this option can reliably raise significant amounts of capital for the program. There also appear to be fundamental structural issues in seeking to use these two sources together in funding common pools of loans. Finally, there are significant potential risks to the State or state agency in soliciting private equity capital from multiple investors.

Ability to meet programmatic needs. Utilizing private equity capital would significantly limit who can be helped in terms of areas of the state, lower-income borrowers and those needing larger amounts of assistance. Such larger amounts of assistance run exactly counter to investors' need for early repayment of SALs.

The program would need to receive well more than pro rata appreciation in order to provide expected rates of return to the private investors, and it would thus significantly limit household wealth.

The program would have to set and enforce a fixed 30-year maturity on SALs.

The concern is therefore that a program designed to raise private investor funds would still rely heavily on taxpayer monies but would not meet key program needs.

Compatibility with Fannie Mae and Freddie Mac first mortgages. The Freddie Mac Affordable Seconds checklist attached to Section 4204 of the Freddie Mac guide specifically prohibits sharing of appreciation with for-profit entities, and discussion by CSG Advisors with Freddie Mac staff indicates they would not approve such a program. It is unclear if Fannie Mae would approve such a program.

Ongoing way to help future first-time borrowers. The high rate of return required by private investors, and their early time horizon, would significantly reduce the amount of loan repayments that can be used to make new loans. As a simple example, if the rate of home appreciation is 4.5% (similar to the statewide average for the last 40 years) and investors require a 9% return on their investment, that would dramatically reduce the amount of appreciation available to help subsequent buyers.

Sustainable investment for the State. The amount of taxpayer funding would be designed to be sustainable, but the investors' expected rate of return would reduce the ability of the State to help future borrowers.

No future financial risk to the State. There would be no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers.

Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served. The total number of borrowers ultimately served is likely to be less than that of Option 1, given the rate of return needed for private investors.

Option 5. Private Fund with Significant State Investment

Purpose of approach. Taxpayer monies would pay a portion of the purchase price of those loans originated by a private fund which meet CA Dream for All program requirements. The aim is to make it possible for the private fund to provide deeper assistance (e.g., a larger SAL) than it otherwise would if it were operating solely with private capital.

How it would work. The State would enter into a leveraging agreement with a private fund that originates SALs and is raising private capital. State would fund a portion of the loan amount for loans that meet CA Dream for All program requirements.

Consider a fintech company that has a program for California essential professionals, many of whom might meet CA Dream for All program's income limits, but need deeper assistance than the amount that private capital can profitably lend (say 10% of the home purchase price, in return for 25% of the appreciation). Such borrowers might receive additional resources (say another 7%) from taxpayer funds on which they only pay pro rata appreciation.

Security for private investors. Private investors would receive the first return from all loan repayments, including appreciation up to a specified minimum rate of return. Additional repayments would be allocated between the fund manager, the private investors and the State (which would reinvest monies it receives in a subsequent tranche of new loans).

Monies for new loans. Loans would be originated by the private fund. The State would provide funds for a specified portion of those loans that meet CA Dream for All program requirements, up to a maximum annual amount of taxpayer funding.

Origination, servicing and administrative costs. These are incurred by and paid by the sponsoring entity.

Precedent. We are not aware of any precedent for this approach.

Taxpayer investment. The total taxpayer investment is likely to be much smaller than in Option 1, simply because the number of loans would likely be quite small, given the difficulties in raising private capital.

Ability to raise adequate capital, feasibility and legal concerns. There are little grounds, today, to think that this option can reliably raise significant amounts of private capital. There also appear to be fundamental structural issues in seeking to use these two sources together in funding common pools of loans. Finally, while the purpose of the State investment is to help lower-income and other borrowers who need a larger SAL than would be funded by private capital, the use of State funds to make a larger loan would significantly lengthen the expected prepayment. Therefore, it is unlikely that State and private funds could be used together.

Ability to meet programmatic needs. Private equity capital would significantly limit who can be helped, in terms of areas of the state and those needing deeper assistance. Borrowers would pay for more than pro rata appreciation given the private capital utilized. The program would have to set and enforce a fixed 30-year maturity on SALs.

Compatibility with Fannie Mae and Freddie Mac first mortgages. Freddie Mac would not approve such a program, as it specifically prohibits sharing of appreciation with for-profit entities. If the sponsoring entity has a waiver from Fannie Mae rules, it could use that for loans made with taxpayer monies as well as private capital.

Ongoing way to help future first-time buyers. Return on the State's investment would be highly limited and would unlikely be relied on for making new loans. Rather, the State would need to continue to use General Fund monies to purchase its participations in subsequent pools of loans.

Sustainable investment for the State. The amount of taxpayer funding would be designed to be sustainable, but there would be limited return on the State's investment or its ability to help subsequent borrowers.

No future financial risk to the State. There would be no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers.

Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served. Total number of borrowers ultimately served is likely to be less than that of Option 1, given the rate of return needed for private investors.

Option 6. Private Funds with Limited, Indirect State Investment

Purpose of approach. Taxpayer monies, without funding any SALs, would be used to support private shared appreciation lending, so that such lending could help the borrowers that the CA Dream for All program is intended to assist.

How it would work. The State would incentivize private SALs for those borrowers who meet CA Dream for All program income and first-time buyer requirements. It would enter into an agreement with the private shared appreciation entity (fintech, investment bank, hedge fund etc.) under which it provides specified benefits with respect to the amount of loans that meet CA Dream for All program requirements ("eligible loans"). In addition to borrower eligibility, the agreement would specify that the loan's share of appreciation not exceed a certain ratio (such as 2.5 times its share of the purchase price).

These benefits could include:

- Payment/reimbursement of a portion of loan origination, administration or servicing costs (most easily paid as a single up-front payment with respect to the eligible loans made in a given month or quarter);
- A loan loss reserve fund that would cover the first (say 5%) loss on any eligible loan; or
- Tax benefits such as relief to investors from state capital gains tax on the percentage of its investment that was made for eligible loans.

Private shared appreciation entities would raise all monies for all SALs. They would make and service eligible loans in the same way and under the same standards by which it makes other SALs.

Precedent. We are not aware of any precedent for this overall approach. With respect to taxation, New York State provides a business income tax credit to servicers of first-time homebuyer mortgages made by the state housing finance agency.[243] There are many examples of loan loss reserve funds established by local and state governments for second mortgage housing rehabilitation loans.

Taxpayer investment. The total taxpayer investment is limited to the benefits provided under such agreements.

Ability to raise adequate capital. The total amount of private capital raised for shared appreciation lending has been very limited. This ability is unlikely to be significantly affected by State incentives for a subset of such loans.

Ability to meet programmatic needs. Reliance on private equity capital significantly limits who can be helped, in terms of areas of the state, lower-income borrowers and those needing deeper assistance. Borrowers would pay 2.5 times pro rata appreciation, affecting their ability to build household wealth. There would be a fixed 30-year maturity on loans, and, as at present with private shared appreciation lending, concerted servicing efforts to encourage early repayment of loans.

Compatibility with Fannie Mae and Freddie Mac first mortgages. Private shared appreciation loans cannot be used with Freddie Mac first mortgages. If the sponsoring entity has a waiver from Fannie Mae rules, it could use that for eligible loans as well as its broader portfolio of SALs in general.

Ongoing way to help future first-time buyers. Under this approach, the State provides benefits for each year's new eligible loans. The State does not receive any repayments for its benefits, and there is no need for revolving any funds. Loan repayments are used to pay private investors.

Sustainable investment for the State. The amount of taxpayer funding would be designed to be sustainable, taking into account both out-of-pocket costs and tax benefits.

No future financial risk to the State. There would be no financial impact on the General Fund from any defaults or losses on any SALs. If the State were to provide a first loss reserve on eligible loans, actual losses would diminish that reserve. They reduce the total amount of repayments that can be used to make loans to future buyers.

Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served. The total number of eligible borrowers is likely to be modest compared to a State revolving fund (Option 1). Many of those might be ones who would have received the same SAL with or without the State incentives.

243 "Servicing Mortgages Credit." New York State Department of Taxation and Finance. https://www.tax.ny.gov/bus/ct/service_mortgage_credit.htm

APPENDIX F

Detailed Financial Comparison of Shared Appreciation vs. Fixed Interest Second Loans

Borrower's Repayment Obligation.

Before modeling the cumulative effects on the CA Dream for All program as a whole based on these two different lending approaches, it is important to understand the key differences for the borrower between shared appreciation and a fixed interest rate.

With shared appreciation, the borrower repays the original principal amount of the CA Dream for All loan (say $130,000 on a $650,000 home purchase) plus a pro rata share of the gain. If the home is resold in 10 years with no increase in value after sales costs, then a shared appreciation borrower repays only the $130,000 principal of the CA Dream for All loan, since there has been no gain.

With a fixed interest rate loan, the borrower has to pay *the same amount* of accrued interest at the loan rate regardless of what happens to the value of the home. The interest that accrues each year is "hard," meaning that it is due regardless of what happens to the value of the home. If the home resells for $650,000 with no increase in value, the borrower has to repay both the $130,000 principal plus the $39,000 of interest accrued over 10 years, and would thus owe a total of $169,000. Since the home did not increase in value, the borrower's household wealth would be reduced by $39,000, which is double the amount of the typical 3% down payment for the purchase of the home.

If home prices rise dramatically, on the other hand, a borrower with a fixed interest loan still only pays back the same $39,000 in interest while receiving all the appreciation on the home. A borrower with a SAL owes the same share of appreciation on the home, whether that appreciation was small or large.

Comparing Impacts at the Individual Loan Level.

Figure 57 shows how this works under various home price rise situations for borrowers who receive either shared appreciation or fixed interest rate loans and resell their home at the end of 10 years.

What stands out from this simple set of examples is that a fixed interest rate loan creates two types of risks not present with shared appreciation.

Risk to borrower. If a home does not increase in value, the borrower still owes the accrued interest on a fixed rate loan. As proposed for a CA Dream for All SAL, even the recovery of the principal of the loan (e.g., the $130,000) would be subordinate to the borrower recovering their original down payment. This provides significantly more risk protection to the borrower than with a fixed rate loan.

Risk to helping future borrowers. With a SAL, whatever happens to the rate at which homes go up in value, the CA Dream for All Fund has sufficient monies to help a similar new buyer purchase an equivalent home. With a fixed rate loan, if home prices rise more than the fixed rate, the CA Dream for All Fund does not have enough monies to help the next borrower.

Nature of these risks. These two risks are inherent to CA Dream for All Fund investing in fixed rate loans. If appreciation turns out to be less than the fixed rate, the low- or moderate-income borrower loses money, compared to shared appreciation. If appreciation turns out to be more than the fixed rate, the CA Dream for All Fund does not have enough to help the next buyer purchase a similar home. As shown in figure 58, these potential problems cannot be solved by setting a high fixed interest rate.

Figure 57: Impact of Individual Average CA Dream for All Loan of $130,000

	0% home price rise		3% home price rise		4.5% home price rise		6% home price rise	
	Fixed interest	Shared Apprec'n	Fixed interest	Shared Apprec'n	Fixed interest	Shared Apprec'n	Fixed interest	Shared Apprec'n
Original price	650,000	650,000	650,000	650,000	650,000	650,000	650,000	650,000
Resale price	650,000	650,000	874,000	874,000	1,009,000	1,009,000	1,164,000	1,164,000
Total gain	**0**	**0**	**224,000**	**224,000**	**359,000**	**359,000**	**514,000**	**514,000**
Repay to CA Dream for All Principal	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
Int / Apprec'n	39,000	0	39,000	44,800	39,000	71,800	39,000	102,800
Total due	**169,000**	**130,000**	**169,000**	**174,800**	**169,000**	**201,800**	**169,000**	**232,800**
Impact on borrower's household wealth	-39,000	0	185,000	179,200	320,000	287,200	475,000	411,000
Multiple of borrower's down payment	-2x	0x	9.5x	9.2x	16.4x	14.7x	24.3x	21.1x
Amount needed for CA Dream for All to help next borrower buy equivalent home	130,000	130,000	174,800	174,800	201,800	201,800	232,800	232,800
Surplus or shortfall to fund next loan	39,000	All funds required	-5,800	All funds required	-32,800	All funds required	-63,800	All funds required

Figure 58: Impact of Individual Loan Fixed interest at 3% and at 5% vs. Shared Appreciation

	0% home price rise			6.0% home price rise		
	Fixed interest at 3%	Fixed interest at 5%	Shared Apprec'n	Fixed interest at 3%	Fixed interest at 5%	Shared Apprec'n
Original price	650,000	650,000	650,000	650,000	650,000	650,000
Resale price	650,000	650,000	650,000	1,164,00	1,164,000	1,164,000
Total gain	**0**	**0**	**0**	**514,000**	**514,000**	**514,000**
Repay to CA Dream for All						
Principal	130,000	130,000	130,000	130,000	130,000	130,000
Int / Apprec'n	39,000	65,000	0	39,000	65,000	102,800
Total due	**169,000**	**195,000**	**130,000**	**169,000**	**195,000**	**232,800**
Impact on borrower's household wealth	-39,000	-65,000	0	475,000	449,000	411,000
Multiple of borrower's downpayment of $19,500	-2.0x	-3.3x	0x	24.3x	23.0x	21.1x
Funds repaid to CA Dream for All	169,000	195,000	130,000	169,000	195,000	195,000
Amount needed for CA Dream for All to help next borrower buy equivalent home	130,000	130,000	130,000	232,800	232,800	232,800
Surplus or shortfall to fund next loan	+ 39,000	+65,000	All funds required	-63,800	-37,800	All funds required

If the rate is set at 5%, then:

- If home prices are flat, the borrower owes far more accrued interest and risks losing four times their original down payment.
- If home prices increase at 6% per year, the CA Dream for All Fund is still short in helping the next borrower.

In essence, an accruing fixed rate second loan creates a greater upside and a greater downside for the borrower, and makes it much more difficult for the State's investment in the CA Dream for All program to keep pace with inflation. This is especially visible when home prices increase as they have by about 40% in the last two years. A shared appreciation investment would increase in value to help future buyers; a fixed rate investment—whether at 3% or 5%—would not, meaning the CA Dream for All program could help fewer and fewer buyers with each passing year.

Overall Impact of Fixed Interest vs. Shared Appreciation on CA Dream for All's Ability to Help Borrowers

Having seen how fixed interest compares with shared appreciation on the same initial $130,000 investment by the CA Dream for All Fund, we can now look at the cumulative impact on the Fund itself and its ability to assist borrowers.

Time horizon. For helping borrowers overall, the differences between the fixed interest rate and shared appreciation approaches emerge over time.

The differences occur, not when loans are initially made, but as they are repaid with different amounts due back to the CA Dream for All Fund, and the CA Dream for All Fund then uses those repayments to help subsequent buyers. In the first year, the two approaches by definition help an identical number of borrowers; it is the different payoff amounts over time that show what happens to the total number of borrowers helped and to their household wealth.

Figure 59 shows, in the expected case, the impacts of loans made through year 40 (30 years after the 10 years of state funding of initial loans) to see what happens to the CA Dream for All program's ability to help borrowers as loans are repaid.

Figure 59: Overall Impact of Shared Appreciation and Fixed Interest Over 40 Years: Expected Case

	Shared Appreciation	Fixed Simple Interest at 3%
Taxpayer Funding		
For loans	$10.0 billion	$10.0 billion
For administration, origination, counseling and servicing costs for 40 years	4.1	4.1
Total taxpayer funding over 40 years	**14.1**	**14.1**
Present value at 3.0%	*10.8*	*10.8*
CA Dream for All Loan Originations		
Borrowers assisted over 40 years	**157,200**	**124,800**
$ price of homes purchased	**$238 billion**	**$163 billion**
Loans to borrowers	**$47.6 billion**	**$32.6 billion**
Present value at 3.0%	*25.3*	*19.2*
Borrower Share of Home Appreciation Through Year 40		
Borrower share of appreciation through year 40	**$133.8 billion**	**$120.6 billion**
Present value at 3.0%	*64.2*	*60.8*
$ price of homes purchased	**$238 billion**	**$163 billion**
Loans to borrowers	**$47.6 billion**	**$32.6 billion**
Present value at 3.0%	*25.3*	*19.2*
Borrower share of home appreciation thru year 40	**$133.8 billion**	**$120.6 billion**
Present value at 3.0%	*64.2*	*60.8*
Overall Impact		
Residual value of program receipts after year 40 to help subsequent borrowers	**$35.8 billion**	**$7.6 billion**
Present value at 3.0%	*$7.5*	*$1.7*
Net cost to State for 40 years of program	$10.8 - $7.5 =	$10.8 - 1.7 =
Present value at 3.0%	*$3.3 bill.*	*$9.1 bill.*
Net cost to State for investing with borrowers		
Borrower share of appreciation / net cost to State	$64.2 / 3.3 billion =	$60.8 / 9.1 billion =
Each present value at 3.0%	**19.5 x**	**6.7 x**

Borrowers assisted through year 40. In the expected case, shared appreciation helps considerably more borrowers and provides greater assistance than fixed rate seconds. SALs would help 157,200 borrowers compared to 124,800 with fixed interest loans, and would help them buy $238 billion of homes compared to $163 billion.

In the more conservative case (Figure 61 below), the shared appreciation approach helps more borrowers and provides greater assistance than fixed rate seconds, but the difference is less marked. SALs would help 144,000 borrowers compared to 134,000 with fixed interest loans and help them buy $157 billion of homes compared to $141 billion. These smaller differentials reflect the fact that, in the more conservative case, the fixed interest rate is much closer to the appreciation rate.

One perhaps surprising finding is that **the higher the appreciation**, **the fewer the borrowers a fixed interest program can help**. A fixed interest program would help 134,000 in the more conservative case and 125,000 in the expected case. This is because the fixed interest the Fund receives back is the same in the more conservative and expected cases, but the cost of buying a subsequent home in the expected case is much greater. A shared appreciation program, by contrast, is able to help **more** borrowers in the expected case than in the more conservative case.

Borrower appreciation through year 40. The direct impact on household wealth generated through a given time horizon, such as 40 years, consists of (a) the household wealth of borrowers who will have paid off their loans by that date (e.g., their gain after paying the program its fixed interest or share of appreciation) and (b) the accreted wealth of borrowers who have outstanding loans on that date (e.g., what their homes are projected to be worth on that date less the accrued fixed interest or what CA Dream for All Fund's share of appreciation would be as of that date).

In the expected case, shared appreciation generates significantly greater total household wealth during this time period than fixed interest—$134 billion versus $121 billion, or about 11% more. This reflects the much greater number of borrowers that a shared appreciation program helps.

In the more conservative case (where home appreciation is very similar to the fixed interest rate), there is no difference in total household wealth through the 40 year date.

Figure 60: Overall Impact of Shared Appreciation and Fixed Interest Over 40 Years: More Conservative Case

	Shared Appreciation	Fixed Simple Interest at 3%
Taxpayer Funding		
For loans	$10.0 billion	$10.0 billion
For administration, origination, counseling and servicing costs for 40 years	4.1	4.1
Total taxpayer funding over 40 years	**14.1**	**14.1**
Present value at 3.0%	*10.8*	*10.8*
CA Dream for All Loan Originations		
Borrowers assisted over 40 years	144,000	133,900
$ price of homes purchased	$157 billion	$141 billion
Loans to borrowers	**$31.4 billion**	**$28.2 billion**
Present value at 3.0%	*18.1*	*16.9*
Borrower Share of Home Appreciation Through Year 40		
Borrower share of appreciation thru year 40	**$61.8 billion**	**$61.8 billion**
Present value at 3.0%	*31.2*	*31.6*
Overall Impact		
Residual value of program receipts after year 40 to help subsequent borrowers	**$13.0 billion**	**$7.5 billion**
Present value at 3.0%	$2.7	$1.6
Net cost to State for 40 years of program	$10.8 – $2.7 billion =	$10.8 – 1.6 billion =
Present value at 3.0%	*$8.1 billion*	*$9.2 billion*
Net cost to State for investing with borrowers		
Borrower Share of Appreciation / Net cost to State	31.2 / 81 billion =	31.6 / 9.2 billion =
Each present value at 3.0%	**3.9 x**	**3.4 x**

Beyond the borrower appreciation generated through this time horizon, there is a major difference in the ability of CA Dream for All Fund to continue helping borrowers

Resources to help additional borrowers. A shared appreciation program creates far more accrued public resources to help subsequent buyers generate household wealth. The amount of accrued interest or shared appreciation accrued by the Fund at the end of 40 years is a cost to current borrowers—but it is also a resource for helping future first-time buyers.

In the expected case, a shared appreciation program will generate five times more resources from repayments after year 40 to help future buyers than a fixed interest program ($35.8 billion versus $7.6 billion). In the more conservative case, shared appreciation will accrue two times more resources than a fixed interest program.

Why is this important? Whether the State charges fixed interest or shared appreciation, investing alongside borrowers generates a much larger amount of household wealth than the amount of state dollars invested. On a present value basis, the $10 billion initially invested in program loans generates about six times that amount of borrower household wealth over 40 years in the expected case or about three times that amount of borrower household wealth in the more conservative case.

Therefore, the amount due back to the Fund from loans that are outstanding in year 40 is very significant: those monies helps the State assist many more subsequent borrowers generate household wealth **thereafter.**

In a shared appreciation approach, the amount of this residual is five times greater than in the fixed interest approach. In the conservative case, the shared appreciation residual is two times greater than with fixed interest.

This residual impact can be viewed in two different ways:

Efficiency of State investment in generating household wealth. One way is to picture the Fund not making new loans after year 40, but rather paying back to the State what the Fund receives from outstanding loans. The net effect can be considered on a present value basis, as shown in Figure 57 of the body of the report.

Fund continuing to make new loans. Alternatively, one can picture the program continuing after 40 years and making new loans, and compare the household wealth generated under shared appreciation versus fixed interest.

The following charts show the effect on borrower appreciation of the Fund continuing to make loans through year 60. In the expected case, the cumulative impact on borrower appreciation is far greater with shared appreciation. In the more conservative case, there is little difference.

Figure 61: Borrower Share of Home Price Appreciation Expected Case

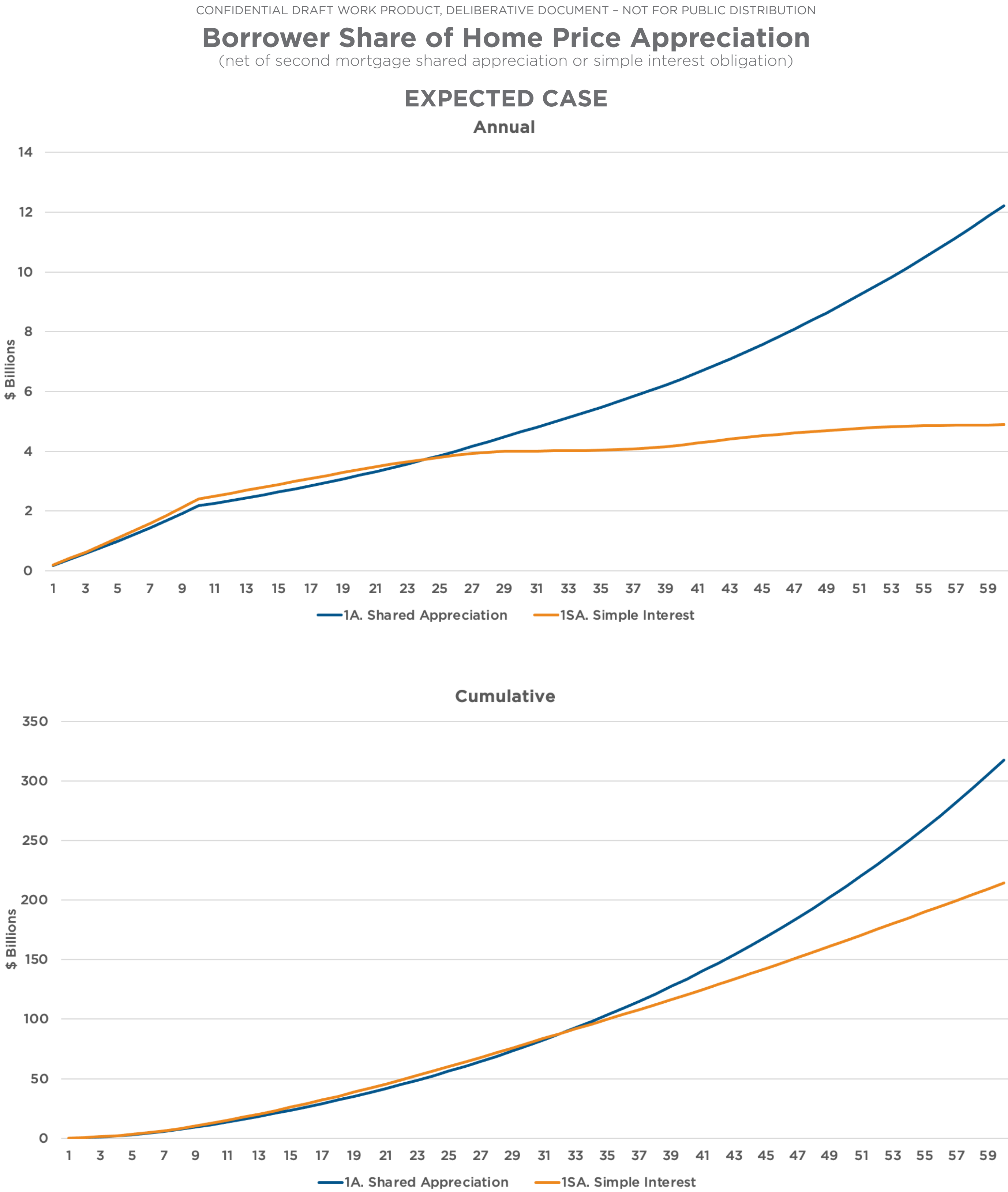
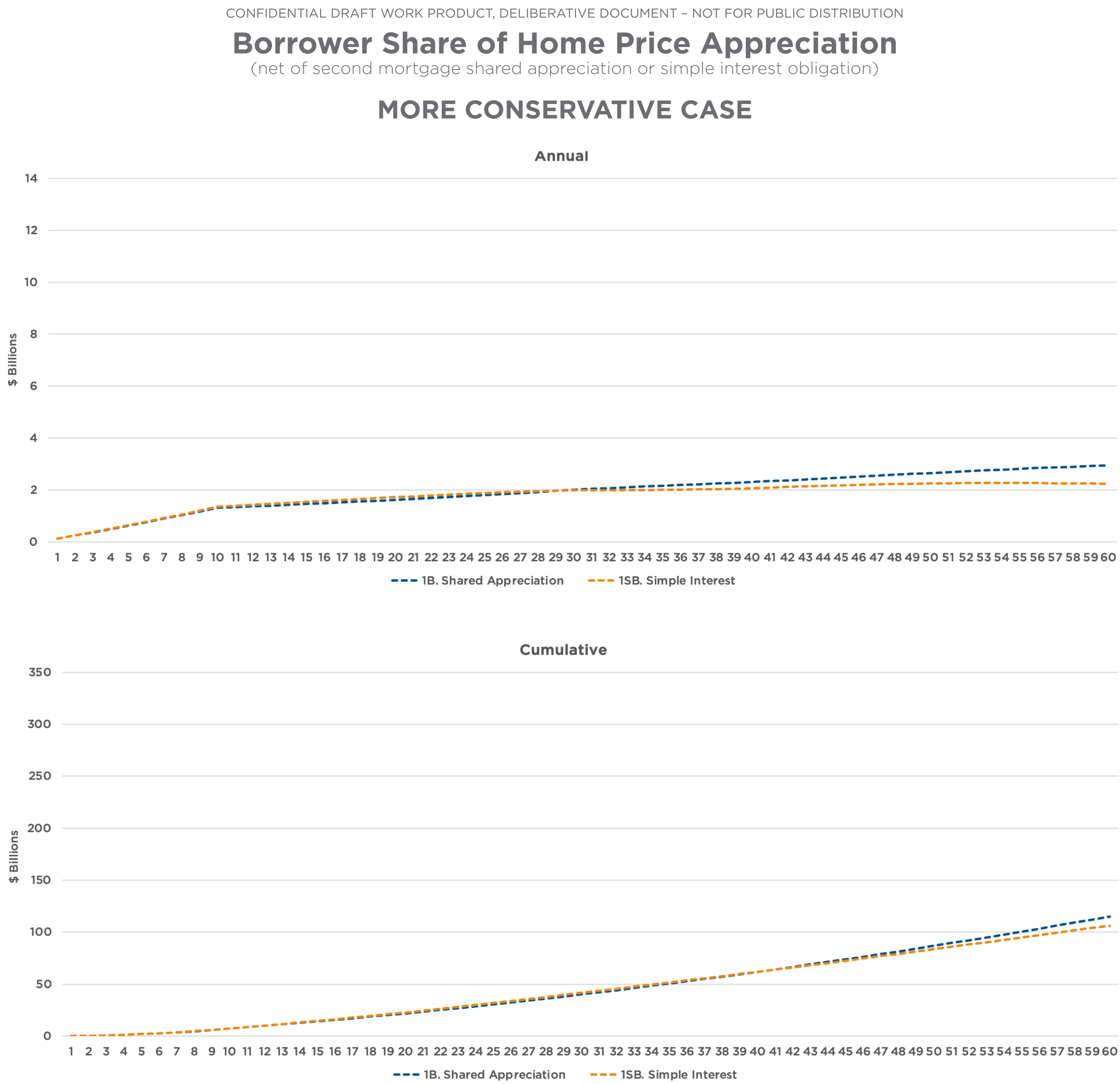


Figure 62: Borrower Share of Home Price Appreciation Conservative Case



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CAFWD.ORG

Measure A1 Oversight Committee Presentation

Measure A1 Down Payment Assistance Loan Program

March 24, 2022

Original Program Framework

The Alameda County Board of Supervisors adopted a policy framework in 2018 which drove the Program Design. The program was designed to:

- Assist First Time Home Buyers to purchase homes in Alameda County
- Serve households earning ≤120% AMI (with ability to go up to 150% AMI)
- Include design features that:
  - encourage Alameda County residents to purchase homes near work or transit that takes them to work.
  - benefit former Alameda County residents that have been displaced.
  - benefit educators and first responders so they may live in the communities in which they work.
- Loan to be structured as a shared appreciation, silent second mortgage.

AC Boost
Alameda County's Down Payment Assistance Loan Program

Equity-Centered Policies

Included in the original program design:

- Tiered levels of assistance based on household income and market-based need
- Multilingual outreach and interpretation services
- Shared appreciation loan to balance wealth-building for individuals with long-term program sustainability
- Robust race data collection throughout the process.

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AC Boost
Alameda County's Down Payment Assistance Loan Program

Measure A1 Funding at Work

Program launched March 2019;
Outcome Data as of March 2022

Measure A1 – Down Payment Assistance Loan Program
AC Boost – $50 million of the total $580 million in Measure A1

Closed Loans:	41.9% in 36 months	$11.41 million (86 homebuyers)
Funds Reserved:		$7.43 million (38 applicants)
Funds Remaining:		$26.16 million*

*Expect remaining funds to be spent within the next three to four years

Funding Cycle 2 Update

Significant policy changes were approved by the Board of Supervisors in April 2021

- Increased loan amounts – up to $160k or $210k
- Reduction in required cash to close
- 1.5% Seasoned Funds no longer required
- Layering with other subordinate loan programs allowed, if approved in advance by the County
- Front-end ratio minimum of 25% waived for Section 8 homeownership voucher recipients

Funding Cycle 2 Update

The 2nd Pre-Application Period opened from July 15th-August 30th, 2021.

6,081 Pre-applications received (*2,294 during funding cycle #1*)

1,000 attendees joined the virtual public lottery held on September 17th, 2021

306 applicants have attended the 5 application workshops we have held to date.

86 full applications have been submitted for underwriting.

36 applicants have been approved for a Reservation of Funds to date

8 applicants are currently in contract to purchase a home.

2 Loans have closed

Policy Changes in Funding Cycle #2

AC Boost
Alameda County's Down Payment Assistance Loan Program

Funding Cycle 1 Analysis

Analysis performed with a goal of increasing the success rates for BIPOC households in Funding Cycle 2.

- Reviewed race data collected at key milestone of the initial Pre-Application.
  - The data suggested that marketing and outreach strategies were highly effective in reaching Black, Asian and Multi-Racial households, with room for improvement for reaching Latinx, American Indian and Pacific Islander households.
  - The data showed significant attrition for Black and Latinx households between attending a workshop and submitting a Full Application.
- Administered Survey to households who attended a workshop but did not submit a Full Application.
- Updated research into the racial wealth gap, disparities in homeownership rates by race, and potential policy solutions.
- Updated analysis of countywide home values, home supply, and necessary loan sizing to ensure AC Boost buyers have access to higher-opportunity neighborhoods.

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AC Boost
Alameda County's Down Payment Assistance Loan Program

Changes to Policy

1. Reduction in the amount of cash savings households need to contribute in order to participate in the program.

- *The maximum combined loan-to-value ("CLTV") increased from 97% to 100% to reduce the Buyer's cash-to-close requirements. The required down payment can now range from 0-3% based on need.*
- *Seasoned funds are no longer required.*
- *The Buyer's contribution is required to cover closing costs which can come from gift funds, grants, lender credits and/or seller credits.*

✓ So far, 6 households have purchased homes with 0% down payment.

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Changes to Policy

2. Increase in the total down payment assistance available to help low- and moderate-income buyers find success.

- *Maximum AC Boost loan amount increased from $100K to $160K for households earning less than 120%*
- *Maximum AC Boost loan amount increased $150K to $210K for households earning less than 100%*
- *AC Boost is now allowed to layer with other subordinate down payment assistance programs*

✓ So far, 9 households have purchased homes with the higher loan amounts.

✓ The program can now be layered with the WISH and NeighborhoodLIFT down payment assistance loan programs and any grant programs.

Changes to Policy

AC Boost
Alameda County's Down Payment Assistance Loan Program

3. Modification to income ratio requirements to ensure AC Boost can help Section 8 homeownership voucher holders find success in Alameda County.

- Waive AC Boost's 25% front-end ratio requirement for buyers who are Section 8 homeownership voucher recipients.

✓ In an effort to increase Section 8 voucher participation, Hello Housing has engaged with the Participating Lender List to identify lenders that are able to provide loans to Section 8 homeownership voucher

✓ Hello Housing is reaching out to Homebuying Counseling agencies to ensure any Section 8 Applicants can receive support with additional lender requirements.

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AC Boost
Alameda County's Down Payment Assistance Loan Program

Changes to Process in Funding Cycle 2

1. Increase marketing & outreach to Latinx, American Indian and Pacific Islander buyers.

   Hello Housing engaged in targeted outreach to get the word out about the Pre-Application period for Funding Cycle #2 to more Latinx, American Indian and Pacific Islander households.

   - ✓ Public health, community service, and faith-based organizations that primarily serve these communities
   - ✓ Presented at an event hosted by the National Association of Hispanic Real Estate Professionals
   - ✓ Program Interview with KSTS Telemundo 48 Bay Area and KDTV Univision 14 in Spanish for their viewers.

2. Provide applicants with more time and more support to complete their application.

   - ✓ Application period was increased from 3 weeks to 4 weeks.
   - ✓ Applicants receive a link to set up one-on-one appointments to speak with program staff directly after the application workshops.

Changes to Process in Funding Cycle 2

3. Provide more support to applicants when choosing a Participating Lender.

✓ Applicants now receive a Lender Outreach Guide and Checklist after the application workshop.

✓ Hello Housing identified Participating Lenders who offer loans to ITIN holders and listed this information on the AC Boost website.

✓ Are collecting information from lenders about their available grant programs

✓ Identifying lenders with Section 8 homeowner voucher experience and loan underwriting ability. This information will be listed on the website once complete.

4. Update the marketing and outreach plan to reflect the impact of COVID on outreach practices.

✓ Hello Housing engaged in a robust social media marketing strategy, which had a sizable impact on the number of pre-applications received (6,081 as compared to 2,294 in the first Funding Cycle).

Changes to Process in Funding Cycle 2

5. Continue, post-pandemic, to offer workshops by Zoom to accommodate the schedules of a diverse applicant pool and to minimize childcare-related barriers.

- ✓ All application workshops are now held on Zoom. If applicants can't attend, they are allowed to reschedule to the following workshop date.

6. Provide approved buyers with additional time to get into a contract for a home.

- ✓ Reservation of Funds period was increased from 90 days to 120 days.

Changes to Process in Funding Cycle 2

7. Increase awareness about program requirements such as potential buyer down payment, closing costs, debt-to-income ratio, lender pre-approval, supporting documents required, etc. sooner in the process.

✓ Hosted 2 Community Roundtable meetings via Zoom during the Pre-Application period, where any interested community members could join to learn about buying a home and how to apply.

✓ Links to informational resources were added to the Pre-Application submission auto-responses and the lottery position notification emails, including:

- Consumer Financial Bureau's Home Loan Toolkit
- 1-page infographic on the AC Boost application process (in 5 languages)
- List of application required supporting documents
- List of homebuyer counseling agencies
- Participating Lender List

Changes to Process in Funding Cycle 2

8. Increase transparency/accessibility of information about the program online.

✓ Posted the current status of lottery positions that have been invited to apply to-date, which is available from the home page - www.acboost.org/lottery-position-status.

✓ Recording of the lottery was posted to the home page of program website - www.acboost.org.

AC Boost
Alameda County's Down Payment Assistance Loan Program

Affirmative Marketing Strategies

Key marketing strategies included:

- Outreach to organizations and public agencies with close ties to communities that include underrepresented homebuyers.
- Partnering with Alameda County to push information through their social media channels which included NextDoor, Twitter, and Facebook.
- Working with diverse realtors, lenders and housing counseling agencies that serve underrepresented homebuyers.
- Working with “connector” individuals and presenting at meetings to encourage meeting participants to become champions of the program.
- Media advertising based on audience demographics in multiple languages (English, Spanish, Chinese, Vietnamese and Tagalog).

AC Boost Outcomes to Date

AC Boost Alameda County's Down Payment Assistance Loan Program

AC Boost by the Numbers

86 homes purchased as of March 2022

Key Statistics	Average	Median
AC Boost Loan Amounts	$132,704	$150,000
Household Size	2.5	2
Percent of Area Median Income	98.12%	97.14%
Based on Median Household Size of 2		*$97,626*

*BOS-adopted program objective was to serve 120% AMI and below which is **$120,550** for household size of 2 in 2021.*

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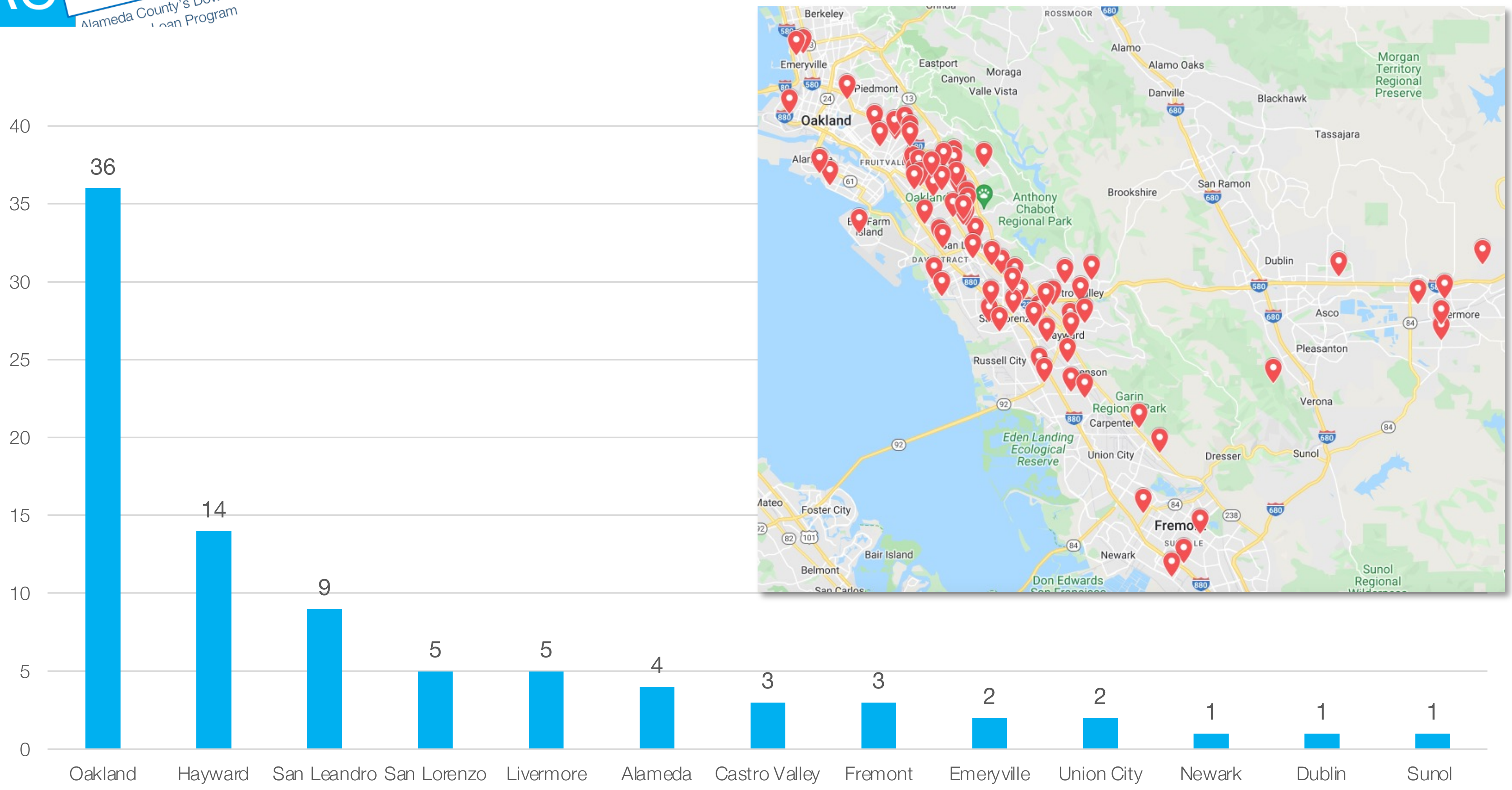
Home Purchase Prices to Date

Purchase Prices	Condo	Single-Family
Lowest (BMR)	$290,029	$475,000
Lowest (Market Rate)	$332,000	$410,500
Median	$457,500	$552,500
Highest	$750,000	$860,000

Program launched March 2019;
Data as of March 2022

AC Boost
Alameda County's Down Payment Loan Program

Locations of Purchased Homes*



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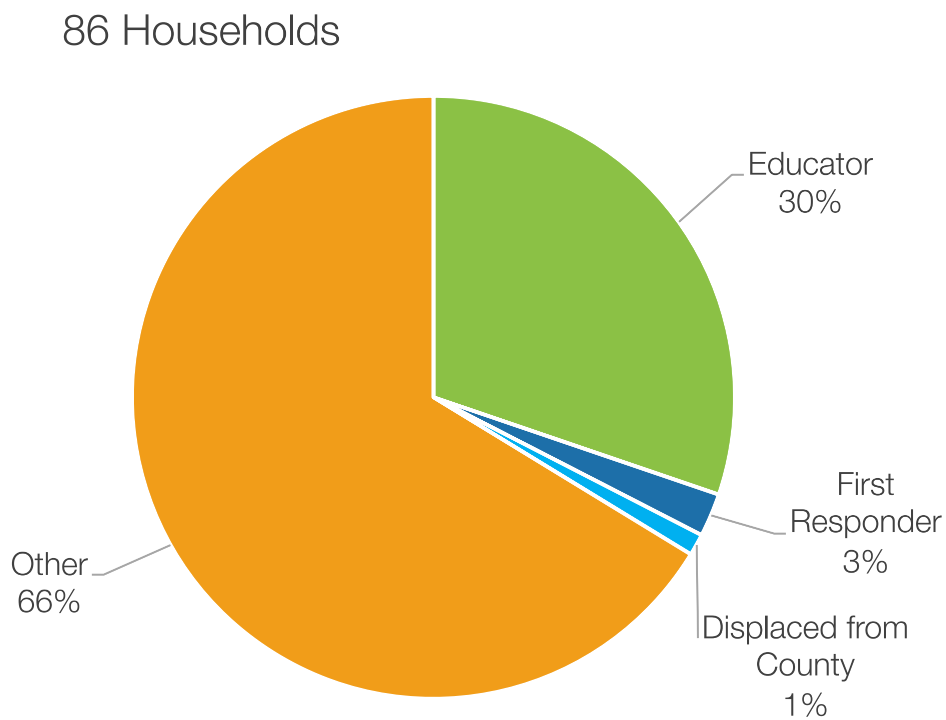
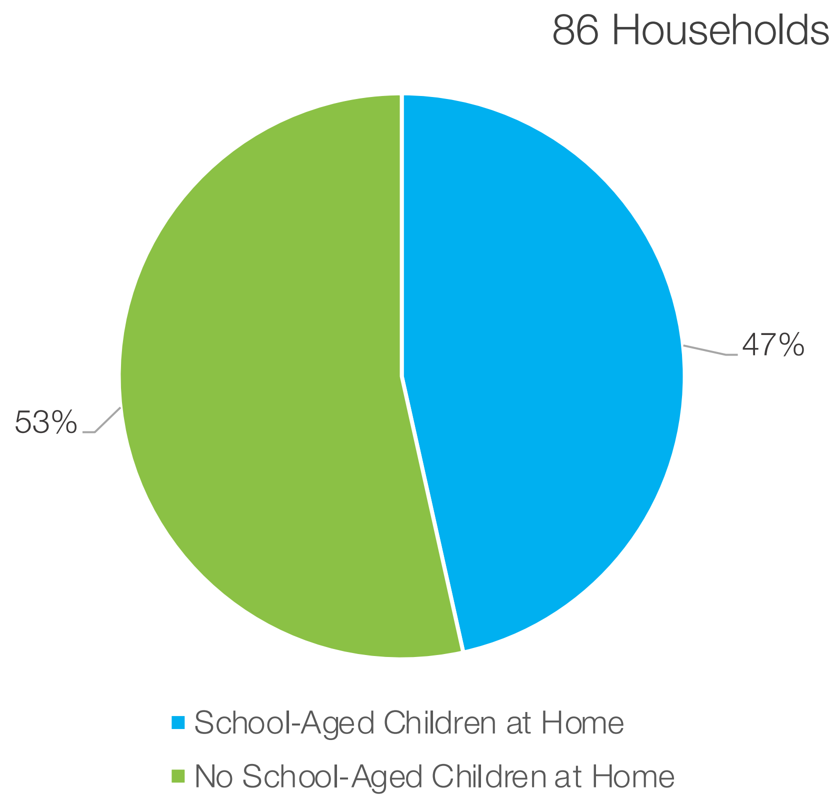
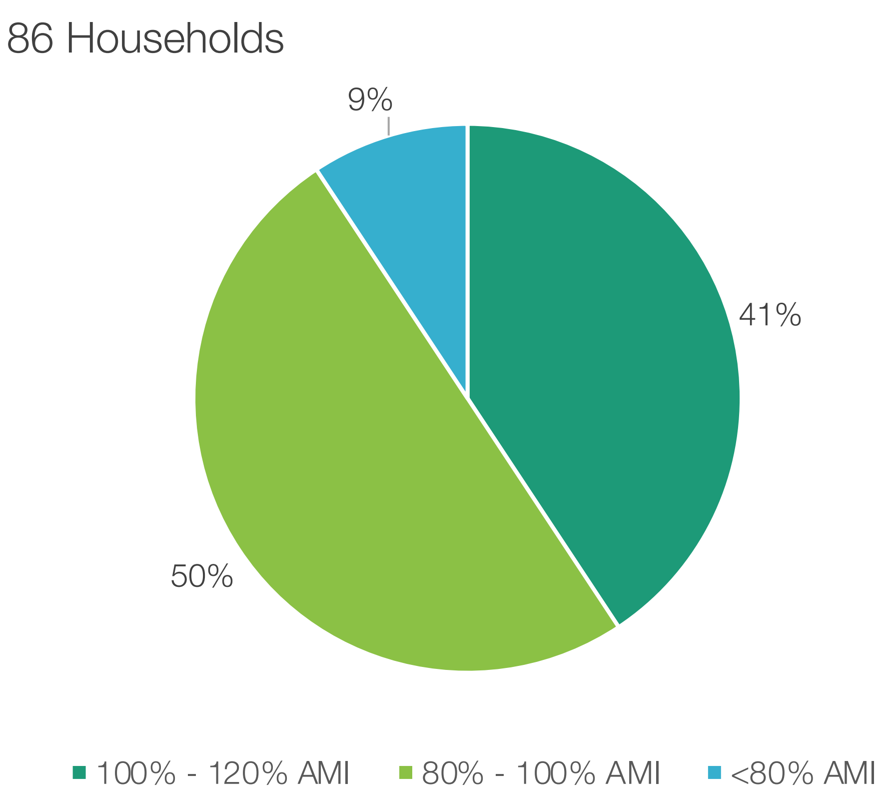
* No purchases yet in Albany, Berkeley, Piedmont, and Pleasanton.

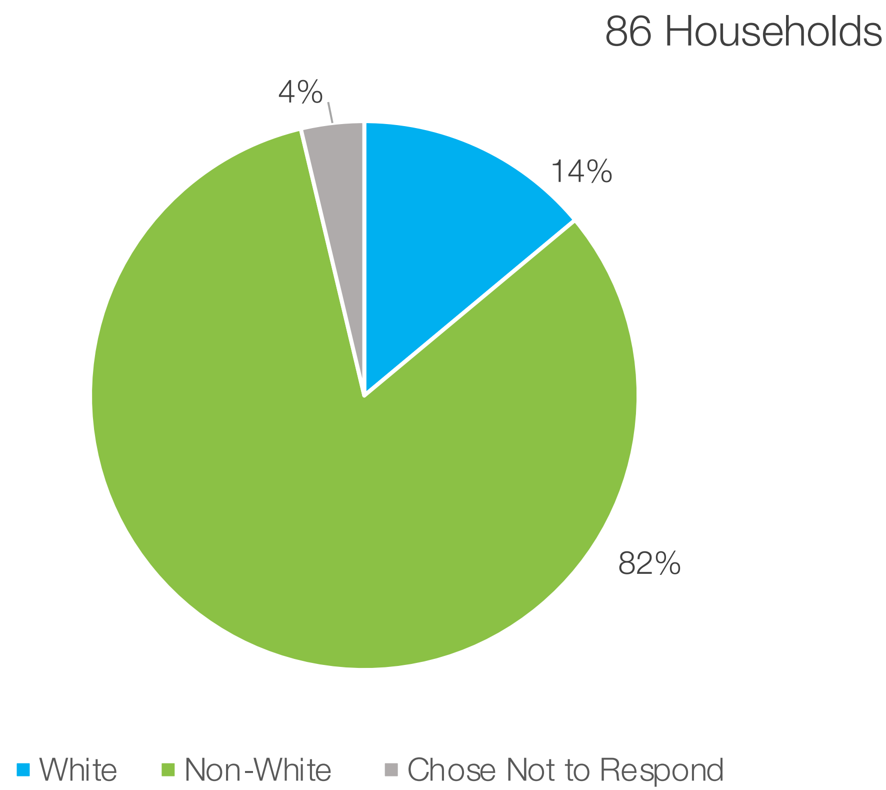
Household Composition of Successful Purchasers





Household Composition of Successful Purchasers





AC Boost
Alameda County's Down Payment Assistance Loan Program

Race composition of Pre-Applicants

compared to Alameda County 2021 Data

Race	Funding Cycle 1: Submitted Pre-Application*	Funding Cycle 2: Submitted Pre-Application*	Funding Cycle 1: Submitted Pre-Application*	Funding Cycle 2: Submitted Pre-Application*	Compared to Alameda County General Population
	Raw Numbers		By Total %		
Total Households	2294	6081			
Asian	1365	3483	22.13%	23.54%	32.3%
Black or African American	1750	4302	28.38%	29.08%	11.0%
White	643	1268	10.43%	8.57%	30.6%
Multi-Racial	849	2172	13.77%	14.68%	5.4%
Latinx	1064	2577	17.25%	17.42%	22.3%
American Indian	29	66	0.47%	0.45%	1.1%
Pacific Islander	69	176	1.12%	1.19%	0.9%
Middle Eastern or North African	86	275	1.39%	1.86%	N/A
Other Race	N/A	7	N/A	0.05%	N/A
Chose Not to Respond	312	469	5.06%	3.17%	N/A

*Race data reported at the individual level. This includes 6,167 household members for Funding Cycle 1 and 14,795 household members for Funding Cycle 2.

AC Boost
Alameda County's Down Payment Assistance Loan Program

Funding Cycle 2 Next Steps

- Application Workshop #6 to be held on 3/30
- Additional monthly application workshops
- Approximately $12 million in loan funds anticipated to be disbursed
- Sign up for our Stay Connected newsletter to receive updates - www.hellohousing.org/stay_connected

Hello Housing

Buyer Testimonials

"Before AC Boost, **we could not imagine being able to afford a 3-bedroom home in the Bay Area.** Everything was just too expensive. **My wife and I considered moving out of the area** so we could afford to leave our cramped 1-bedroom apartment, but she's a healthcare worker and there are more jobs here. **Thanks to AC Boost, our mortgage payment is less than many families pay to rent a 2-bedroom apartment.** We are so happy that this program is here to help first time homebuyers like us."

"Before AC Boost, **I was renting** and unexpectantly the owner passed away. The new **property management out of the blue tripled my rent.** I had to move out and was couch surfing with my daughter for a while. We were uncomfortable. **A friend encouraged me to apply to AC Boost and so I did.** The process was scary, but in retrospect only because it was an unknown for me. I had to trust the process, and the victory was in the end when we got our keys. **I had reservations about purchasing a home as a single mother, but I am so happy that I did.** I am grateful for AC Boost, not only because of the funding but also because the program's structure made homeownership less daunting and a possibility for my daughter and I".

"**I applied for the AC Boost Down Payment Assistance Loan Program to be both competitive and a smart homebuyer.** I'm a first generation college graduate have dedicated himself to work that reflects my values. However, **becoming a homeowner in Alameda County in recent years felt like a distant dream. Being able to set down roots has given me an incredible sense of stability – a stability that has allowed me to plan for my family and career long term.** It feels incredible knowing the relationships and memories I have cultivated in Oakland will be a permanent part of my life. I love Oakland, and being able to set roots here kinda feels like Oakland loves me too".

AC Boost
Alameda County's Down Payment Assistance Loan Program

Hello Housing's AC Boost Team

Florence Szeto
Loan Closing Specialist

Jennifer Duffy
President

Karen Khomsonerasinh
Loan Underwriting and Compliance Specialist

Paxcelli Flores
Special Projects Manager

Sarah Shimmin
Senior Program Manager

If you have any questions or suggestions, please email our team at ACBoost@hellohousing.org or call (510) 500-8840.

Hello Housing

Frequently Asked Questions

Black Wealth Builders Fund

A component fund of the Richmond Community Foundation (RCF Connects), established by Arlington Community Church.

What is the Black Wealth Builders Fund?
The Black Wealth Builders Fund is a Donor Fund established at RCF Connects by Arlington Community Church (UCC), to support homeownership opportunities for Black/African American first-time home buyers.

How does the fund support homeownership?
Home ownership is one way to build wealth and preserve it for future generations. A major barrier to home ownership is the lack of funds required for a down payment or closing costs. The fund will provide a no-interest loan of up to $15,000.00 for closing costs, down payment assistance, or other financial needs to ensure the close of escrow on a buyer's first home.

Where can I purchase my home?
The Black Wealth Builders Fund will provide funds for first time home buyers purchasing homes in Alameda and Contra Costa Counties

How can I apply for the funds?
The first step is to register for the first-time home buyer program with one of our partner agencies:

- Neighborhood Housing Services: (510) 237-6459 x 1601

Once you complete the program and have an accepted offer on your first home, our partner agency will submit an application to RCF Connects on your behalf to close any gaps you might have in your financing package.

Do I have to pay back the funds I receive?
Yes, you will have to repay the funds, but only when you sell or refinance your home in the future. At that time, the loan will be repaid in full (remember, no interest is charged) so that we can recycle the funds and provide this opportunity to the next group of first-time home buyers.

How can I get more information?
Contact one of our partner agencies or call **RCF Connects** at 510-234-1200.

BEN BARTLETT
CITY COUNCILMEMBER, DISTRICT 3

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Budget Referral: Commitment to La Peña Cultural Center

RECOMMENDATION
Refer to the AAO#1 Budget Process $150,000 to support the recovery and renovations of La Peña Cultural Center, a cultural hub and historic community building space within the city of Berkeley.

BACKGROUND/CURRENT SITUATION
La Peña Cultural Center (La Peña) is a nonprofit 501(c)3 organization located in South Berkeley that has served as a multicultural hub for diasporic communities since 1975. La Peña uplifts underrepresented artists and art forms, promotes arts education, and supports community-led social justice movements. The word "Peña" refers to community gatherings centered around music, food, drink, and culture that foster dialogue around current issues. La Peña employs over 40 people, including teaching artists, sound engineers, light technicians and other event staff, administrative staff, interns, and contractors. Through this array of employment opportunities, La Peña focuses on creating job pipelines for its community, which includes many Berkeley residents of color. Through its tenant restaurant program, La Peña provides further job opportunities for small business entrepreneurs and restaurant workers. For the past 8 years, La Peña has leased its restaurant space to Los Cilantros, a family-owned restaurant spearheaded by Chef/Owner Dilsa Lugo, a West Berkeley resident for over a decade.

La Peña has reopened and revitalized its programming after closing during the COVID-19 pandemic. La Peña used the time it was closed to buckle down, dig deep, and improve its internal infrastructure to create a more resilient organization that can weather future storms. Due to this work, La Peña is in a period of recovery and growth; however, it has hit a roadblock in its reopening journey and is asking for the city's support.

La Peña owns its 7,000-square-foot building, with four primary areas: the restaurant space, lounge, community room, and main theater. The building is quite old and in need of multi-phase repairs. La Peña successfully fundraised to update its roof in 2019. Since then, it has been fundraising for the next phase of critical repairs to bring its kitchen up to code. This phase also supports seismic retrofitting in the restaurant area to ensure the safety of the staff and patrons. If La Peña cannot break ground on this project this year, the negative economic impacts on La Peña, its employees, its tenant restaurant, its artists, and the community it serves will be disastrous. Not only would the inability to make repairs cause permanent layoffs of the Los Cilantros staff, but it would also force La Peña to substantially cut its programming. Such decreases in programming would greatly lower the number of economic opportunities La Peña offers the hundreds of artists of color that teach and perform there.

Over the past year and a half, La Peña has organized a reputable project team consisting of an architect, a general contractor, and a project manager. La Peña has worked with the project team to build out its scope of work and budget to renovate the space. La Peña's comprehensive budget for this project consists of professional fees, the general contractor's scope of work, equipment costs, permit fees, soft costs and a 10% contingency. The total cost is broken down by category below for reference:

La Peña Renovation - Cost Breakdown by Category	
Category	**Cost**
General Contractor's Bid	$435,000
Equipment Costs	$100,000
Soft Costs	$36,500
Contingency	$63,500
Total	**$635,000**

La Peña has fundraised twice to keep up with the rising costs of supplies and labor due to COVID-19 and inflation. Thus far, La Peña has raised $435,000 towards its necessary renovations and secured the permits to break ground this year. La Peña's most recent bid came in this month at over 45% higher than the estimated amount just months ago, bringing the project cost to $635,000. La Peña is working with a highly recommended general contractor in the area, Cookline, which specializes in building and renovating restaurants. Because La Peña is a nonprofit with limited resources, Cookline has compared the bids from multiple subcontractors and asked for discount rates or donated time when possible. Additionally, La Peña's project manager, Bright Street, has reviewed and approved all bids, confirming that the rising costs align with the cost increases experienced throughout the construction industry. This $635,000 bid is thus La Peña's best offer and covers only the necessary work.

Having already raised $435,000, La Peña has exhausted its fundraising sources for this project from its network of funders and donors, and is thus asking the City of Berkeley to contribute the remaining $150,000. With the City's aid, La Peña can begin the necessary repairs and thrive again in this post-pandemic environment.

RATIONALE FOR RECOMMENDATION
La Peña's restaurant space is a critical revenue stream for the organization's financial security. These renovations will ensure that La Peña can continue to fulfill its mission: operating a thriving restaurant space that employs Berkeley community members, primarily people of color and immigrants. La Peña is a family business that serves as a pipeline for young people to gain experience in the hospitality industry and grow their careers. Over the years, La Peña's restaurant partners have worked in tandem with La Peña's diverse multicultural programming to support the community and unite people in art, activism, and movement building. La Peña is a historic multicultural hub rooted in the Latinx diaspora and serves as a bridge-building and advocacy center. La Peña relies on its restaurant space to create a table where people can gather and break bread while attending events, dancing, enjoying live music, or learning at a lecture series.

In conclusion, these renovations must happen as soon as possible if La Peña is to operate at its full capacity and preserve a vital portion of its income. These renovations are necessary to maintain safety, comply with health codes, and ensure efficiency. They are not merely for beautification. These upgrades must be undergone to keep the restaurant operating and keep La Peña afloat. La Peña serves underrepresented communities in the Bay Area. By supporting this project, the City of Berkeley would be directly supporting those communities.

FINANCIAL IMPLICATIONS
$150,000 from revenue allocations through the AAO#1 process.

ENVIRONMENTAL SUSTAINABILITY
Not applicable

CONTACT PERSON
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James Chang jchang@cityofberkeley.info
Kyle Tang ktang@cityofberkeley.info

BEN BARTLETT
CITY COUNCILMEMBER, DISTRICT 3

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett and Mayor Jesse Arreguín (Authors)
Subject: Budget Referral: Commitment to the Completion of Affordable Housing at 1638 Stuart Street

RECOMMENDATION
Refer to the AAO#1 Budget Process $50,000 to support the Completion of Affordable Housing at 1638 Stuart Street so it can complete exterior renovations and continue to provide eight units of permanently affordable housing for households earning less than 80% of area median income.

BACKGROUND/CURRENT SITUATION
In 2022, the 1638 Stuart Street Apartments project restored eight long-vacant apartments. The McGee Avenue Baptist Church (McGee) and the Bay Area Community Land Trust (BACLT) partnered to lead the project. McGee has served the South Berkeley community by providing religious services and community services at this location since the 1930s. BACLT has been preserving affordable housing in Berkeley since 2005.

The project restored one studio apartment and seven one-bedroom apartments, one of which is an ADA-compliant, wheelchair-accessible unit. BACLT marketed the apartments in June and July 2022 and leased up all units by September 1, 2022. The property currently serves eight adults and two children, with household incomes ranging from 30-80% of the area median income (AMI).

The recent lease-up of this project attracted attention and celebration from across the region, including news coverage by KQED, KCBS, Berkeleyside, The Daily Cal, and the Berkeley Times. KQED's article "'Yes, in God's Backyard': Berkeley Church Spearheads New Approach to Affordable Housing" highlighted a new resident, Ms. Betty Gray, whose two-year-long struggle to find affordable, accessible housing in Berkeley has also been covered by Berkeleyside. Ms. Gray said, "for people to go out of their way to be kind to help you … it's new, and it makes you feel wanted and not hopeless." "[Ms. Gray] said she feels a sense of community with her neighbors. The proximity of the church has allowed her to benefit from church services, like food and plant drives."[1]

However, due to unexpected physical rehabilitation challenges, unexpected delays due to the COVID-19 pandemic, and unplanned cost inflation, the project went over time and exceeded the budget by nearly $100,000. BACLT has raised private donations to cover a portion of the financial gap and is requesting $50,000 from the City's excess revenue allocations to cover the remaining gap to complete the project's exterior components. These components include exterior landscaping, walkways, and a driveway. The driveway includes a parking pad for the apartment's shared electric

[1] Anaïs-Ophelia Lino, *'Yes, in God's Backyard': Berkeley Church Spearheads New Approach to Affordable Housing*, KQED (Sep. 15, 2022), https://www.kqed.org/news/11925690/yes-in-gods-backyard-berkeley-church-pioneers-new-approach-to-affordable-housing.

vehicle–donated by the Berkeley Rotary Club–which will provide transportation access to lower-income households which otherwise could not afford it.

RATIONALE FOR RECOMMENDATION
The cost to preserve these eight units was $3,324,000 (about $415,500 per unit), which is about 40% of the cost of building new affordable units. Recent data from the CA Department of Housing and Community Development show that the average cost of building an affordable housing unit in the Bay Area is over $1,000,000 per unit. The Stuart Street project received $2,054,000 from the City's Small Sites Program (62% of total project costs). BACLT is requesting $50,000 to ensure it can cover the final costs of exterior concrete and landscaping. The original City investment was approximately $257,000 subsidy per unit. An additional $50,000 ($6,250 per unit) would bring the total City investment to $263,000 per unit. All eight units are permanently affordable for households earning less than 80% AMI.

The City's additional funding commitment would enable the project to be completed as envisioned, with plans to convert it into a permanently affordable housing cooperative in which lower-income residents will have stability and pride. Additionally, this project will serve as a regional model for other community partnerships between faith-based organizations and affordable housing developers.

FINANCIAL IMPLICATIONS
$50,000 from excess revenue allocations through the AAO#1 process. The City of Berkeley stands to benefit from the completion of eight permanently affordable housing units at 1638 Stuart Street.

ENVIRONMENTAL SUSTAINABILITY
Not applicable

CONTACT PERSON
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02a.31

Kate Harrison
Vice Mayor, District 4

REVISED AGENDA MATERIAL
for Supplemental Packet 2

Meeting Date: **October 11, 2022**

Item Number: **22a**

Item Description: **Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

Submitted by: **Vice Mayor Harrison**

Revised ordinance chapter from 13.110 to 13.102. Chapter 13.110 is already taken by the COVID-19 Emergency Response Ordinance.

DRAFT 7/7/2022
DRAFT 7/7/2022

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

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

Section 1. That Berkeley Municipal Code Chapter ~~13.110~~13.102 is added to read as follows:

CHAPTER ~~13.110~~13.102
FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

~~13.110~~13.102.010	**Purpose and Intent**
~~13.110~~13.102.020	**Definitions.**
~~13.110~~13.102.030	**Applicability.**
~~13.110~~13.102.040	**Waiver through Collective Bargaining**
~~13.110~~13.102.050	**Advance Notice of Work Schedules.**
~~13.110~~13.102.060	**Notice, Right to Decline, and Compensation for Schedule Changes.**
~~13.110~~13.102.070	**Offer of Work to Existing Employees.**
~~13.110~~13.102.080	**Right to Rest.**
~~13.110~~13.102.090	**Right to Request a Flexible Working Arrangement.**
~~13.110~~13.102.100	**Notice and Posting.**
~~13.110~~13.102.110	**Implementation.**
~~13.110~~13.102.120	**Enforcement.**
~~13.110~~13.102.130	**Retaliation Prohibited**
~~13.110~~13.102.140	**Retention of Records.**
~~13.110~~13.102.150	**City Access.**
~~13.110~~13.102.160	**No Preemption of Higher Standards.**
~~13.110~~13.102.170	**Severability.**

~~13.110~~13.102.010 Purpose and Intent

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

~~13.110~~13.102.020 Definitions

As used in this chapter, the following terms shall have the following meanings:

(a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.

(b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.

(c) "City" shall mean the City of Berkeley.

(d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section ~~13.110~~13.102.030.

(e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.

(f) "Employee" shall mean any person who:

(1) In a calendar week performs at least two hours of work within the geographic boundaries of the City of Berkeley for an employer;

(2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section 1197 and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and

(3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.

(g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.

(h) "Franchise" shall have the meaning in California Business and Professions Code Section 20001.

(i) "Franchisee" shall have the meaning in California Business and Professions Code Section 20002.

(j) "Franchisor" shall have the meaning in California Business and Professions Code Section 20003.

(k) "Good faith" shall mean a sincere intention to deal fairly with others.

(l) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.

(m) “Hotel” shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(n) “Manufacturing” shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(o) “Predictability pay” shall mean wages paid to an employee, calculated on an hourly basis at the employee’s regular rate of pay as that term is used in 29 U.S.C. Section 207 (e), as compensation for schedule changes made by a covered employer to an employee’s schedule pursuant to Section ~~13.110~~13.102.060, in addition to any wages earned for work performed by that employee.

(p) “Restaurant” shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(q) “Retail” shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

(r) “Shift” shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

(s) “Warehouse services” shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

(t) “Work schedule” shall mean all of an employee’s shifts, including specific start and end times for each shift, during a calendar week.

~~13.110~~13.102.030 Applicability

(a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley that is:

(1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or

(2) primarily engaged in the restaurant industry, and employs 10 or more employees in the city of Berkeley and employs 100 or more globally; or

(3) is a franchisee primarily engaged in the retail or restaurant industries employing 10 or more employees in the city of Berkeley and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.

(b) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs 100 or more employees globally.

(c) In determining the number of employees performing work for an covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(d) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in

Section ~~13.110~~13.102.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise. .

(e) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section ~~13.110~~13.102.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(f) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section ~~13.110~~13.102.040.

(g) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

~~13.110~~13.102.040 Waiver through Collective Bargaining

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

~~13.110~~13.102.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one of the following:

(1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or

(2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

~~13.110~~13.102.060 Schedule Changes.

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule:

(1) with less than 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

(c) Scheduling Exceptions. The requirements of this section shall not apply under any of the following circumstances:

(1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;

(2) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification; or

(3) To accommodate the following transitions in shifts:

(i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(d) Operational Exceptions. The requirements of this section shall not apply under any of the following circumstances:

(1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;

(2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;

(3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;

(4) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production; or

(5) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

~~13.110~~13.102.070 Offer of Work to Existing Employees.

(a) Subject to the limitations in this chapter, before hiring new employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours. .

(b) A covered employer has discretion to distribute the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have 24 hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The24 hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace or electronically where notices to employees are customarily posted.

~~13.110~~13.102.080 Right to Rest.

(a) An employee has the right to decline work hours that occur:

(1) Less than 11 hours after the end of the previous day's shift; or

(2) During the 11 hours following the end of a shift that spanned two days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half times the employee's regular rate of pay for any hours worked less than 11 hours following the end of a previous shift.

~~13.110~~13.102.090 Right to Request a Flexible Working Arrangement.

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. Notwithstanding any obligations under Section ~~13.110~~13.102.060, an employer may accept, modify, or decline the employee's request. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

~~13.110~~13.102.100 Notice and Posting.

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

~~13.110~~13.102.110 Implementation.

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

~~13.110~~13.102.120 Enforcement.

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be $1,000 for each employee retaliated against.

(2) A fine of $500 may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than24 hours advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of $50 to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.
2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of $50 to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

~~13.110~~13.102.130 Retaliation Prohibited.

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within 120 days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

~~13.110~~13.102.140 Retention of Records.

Each employer shall maintain for at least three years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

~~13.110~~13.102.150 City Access.

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

~~13.110~~13.102.160 No Preemption of Higher Standards.

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

~~13.110~~13.102.170 Severability.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

DRAFT 7/7/2022

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

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

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

CHAPTER 13.110
FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

13.110.010 Purpose and Intent

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

13.110.020 Definitions

As used in this chapter, the following terms shall have the following meanings:

(a) “Building services” means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.

(b) “Calendar week” shall mean a period of seven consecutive days starting on Sunday.

(c) “City” shall mean the City of Berkeley.

(d) “Covered employer” shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.030.

(e) "Department" shall mean the City Manager’s Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.

(f) “Employee” shall mean any person who:

(1) In a calendar week performs at least two hours of work within the geographic boundaries of the City of Berkeley for an employer;

(2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section 1197 and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and

(3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.

(g) “Employer” shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.

(h) “Franchise” shall have the meaning in California Business and Professions Code Section 20001.

(i) “Franchisee” shall have the meaning in California Business and Professions Code Section 20002.

(j) “Franchisor” shall have the meaning in California Business and Professions Code Section 20003.

(k) “Good faith” shall mean a sincere intention to deal fairly with others.

(l) “Healthcare” shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.

(m) “Hotel” shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(n) “Manufacturing” shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(o) “Predictability pay” shall mean wages paid to an employee, calculated on an hourly basis at the employee’s regular rate of pay as that term is used in 29 U.S.C. Section 207 (e), as compensation for schedule changes made by a covered employer to an employee’s schedule pursuant to Section 13.110.060, in addition to any wages earned for work performed by that employee.

(p) “Restaurant” shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(q) “Retail” shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

(r) “Shift” shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

(s) “Warehouse services” shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

(t) “Work schedule” shall mean all of an employee’s shifts, including specific start and end times for each shift, during a calendar week.

13.110.030 Applicability

(a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley that is:

(1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or

(2) primarily engaged in the restaurant industry, and employs 10 or more employees in the city of Berkeley and employs 100 or more globally; or

(3) is a franchisee primarily engaged in the retail or restaurant industries employing 10 or more employees in the city of Berkeley and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.

(b) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs 100 or more employees globally.

(c) In determining the number of employees performing work for an covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(d) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in

Section 13.110.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise. .

(e) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section 13.110.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(f) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section 13.110.040.

(g) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

13.110.040 Waiver through Collective Bargaining

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

13.110.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one of the following:

(1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or

(2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

13.110.060 Schedule Changes.

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule:

(1) with less than 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

(c) Scheduling Exceptions. The requirements of this section shall not apply under any of the following circumstances:

(1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;

(2) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification; or

(3) To accommodate the following transitions in shifts:

(i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(d) Operational Exceptions. The requirements of this section shall not apply under any of the following circumstances:

(1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;

(2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;

(3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;

(4) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production; or

(5) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

13.110.070 Offer of Work to Existing Employees.

(a) Subject to the limitations in this chapter, before hiring new employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours. .

(b) A covered employer has discretion to distribute the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have 24 hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The24 hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace or electronically where notices to employees are customarily posted.

13.110.080 Right to Rest.

(a) An employee has the right to decline work hours that occur:

(1) Less than 11 hours after the end of the previous day's shift; or

(2) During the 11 hours following the end of a shift that spanned two days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half times the employee's regular rate of pay for any hours worked less than 11 hours following the end of a previous shift.

13.110.090 Right to Request a Flexible Working Arrangement.

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. Notwithstanding any obligations under Section 13.110.060, an employer may accept, modify, or decline the employee's request. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

13.110.100 Notice and Posting.

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

13.110.110 Implementation.

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

13.110.120 Enforcement.

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be $1,000 for each employee retaliated against.

(2) A fine of $500 may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than24 hours advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of $50 to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.
2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of $50 to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

13.110.130 Retaliation Prohibited.

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within 120 days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

13.110.140 Retention of Records.

Each employer shall maintain for at least three years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

13.110.150 City Access.

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

13.110.160 No Preemption of Higher Standards.

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

13.110.170 Severability.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

Kate Harrison
Vice Mayor, District 4

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: **April 12, 2022**

Item #: **40a.**

Item Description: **Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110**

Submitted by: **Vice Mayor Harrison**

Recommendation:

1. Delay Council consideration of the Fair Workweek Ordinance to a date certain: the May 24, 2022 Council meeting, to provide HHCS staff with additional time to consider staffing needs with regard to enforcement.
2. Submit to the June 2022 Budget Process of approximately $104,863 in General Funds with additional benefits to hire another Community Development Project Coordinator to assist with enforcement of this ordinance and other labor laws and regulations.

Background:

Vice Mayor Harrison originally submitted this ordinance to the Labor Commission in 2018. Due Council consideration and enactment of this ordinance continues to be a top priority for workers within across the city, including within the City Departments.

While the pandemic has been extremely challenging for businesses, workers have also suffered greatly. Indeed, the fight for worker rights has received renewed attention during the pandemic and following high profile unionization efforts at Starbucks and Amazon. It is in the public interest for the City of Berkeley to finish the work its started in 2018 and finally stand in solidarity with part-time workers whose schedules are precarious and uncertain. The proposed Fair Work Week Ordinance, modelled on ordinances in neighboring cities and those across the nation, would bring predictability and added compensation to part-time workers.

Vice Mayor Harrison's office respectfully disagrees that this ordinance should be referred to a Council Policy Committee for up to another 120 days. This ordinance was already duly considered by the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week in 2018. In addition, the Labor Commission considered the ordinance closely for nearly four years and submitted its updated version of the ordinance for Council action.

In consulting with the Deputy City Manager and the Director of the Health, Housing & Community Services Department, it is prudent to delay consideration of the ordinance for one month to the May 24, 2022 Council meeting to provide staff with additional time to consider enforcement and staffing needs to effectively implement the ordinance. This compromise avoids further and unnecessary delays and provides workers and the community with timely consideration and possible action.

This supplemental also includes an initial budget referral to hire an additional Community Development Project Coordinator to assist with enforcement of this ordinance and other labor laws and regulations.

NBER WORKING PAPER SERIES

THE EFFECTS OF THE EMERYVILLE FAIR WORKWEEK ORDINANCE ON THE DAILY LIVES OF LOW-WAGE WORKERS AND THEIR FAMILIES

Elizabeth Ananat
Anna Gassman-Pines
John Fitz-Henley II

Working Paper 29792
http://www.nber.org/papers/w29792

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The Effects of the Emeryville Fair Workweek Ordinance on the Daily Lives of Low-Wage Workers and their Families
Elizabeth Ananat, Anna Gassman-Pines, and John Fitz-Henley II
NBER Working Paper No. 29792
February 2022
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ABSTRACT

Emeryville, CA's Fair Workweek Ordinance (FWO) aimed to reduce service workers' schedule unpredictability by requiring large retail and food service employers to provide advanced notice of schedules and to compensate workers for last-minute schedule changes. From a 1-in-6 sample of Emeryville retail and food service workers with young children (58 percent working in regulated businesses at baseline, the rest in the same industries in firms below the size cutoff for regulation), this study gathered daily reports of work schedule unpredictability and worker and family well-being over three waves before and after FWO implementation (N=6,059 observations). The FWO decreased working parents' schedule unpredictability relative to those in similar jobs at unregulated establishments. The FWO also decreased parents' days worked while increasing hours per work day, leaving total hours roughly unchanged. Finally, parent well-being improved, with significant declines in sleep difficulty.

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Even prior to the COVID-19 pandemic, low-income families were grappling with a work landscape that had changed dramatically over the last half century. Pressures of globalization and trade, and automation, led to job destruction in many industries, particularly those such as manufacturing that in the past led to stability for less-educated workers. In their place came service work, with lower wages and more unstable employment and hours (Autor, Dorn et al. 2013). At the same time, earnings volatility increased across socio-economic levels, most markedly among lower-income people (Gottschalk and Moffitt 2009, Dynan, Elmendorf et al. 2012, Morduch and Schneider 2017). These features of work left families with high and increasing levels of instability and unpredictability in work and earnings.

Even among stably employed service-sector workers, working parents faced additional forms of uncertainty. Managerial innovations have changed the daily operations of retail and food service firms such that service workers experience great daily uncertainty in both pay and hours. For example, the managerial tactic of "on-call scheduling," in which employers facing variable customer demand minimize labor costs by requiring workers to be available for work but not compensating them for their availability if they are not needed, introduces significant unpredictability into workers' days. By increasing uncertainty, on-call scheduling practices, in addition to last-minute schedule changes and shift cancellations, may increase parents' difficulties in balancing work and family demands. That type of schedule unpredictability has been shown to be very common among low-wage workers (Lambert, Fugiel et al. 2014, Schneider and Harknett 2019, Ananat and Gassman-Pines 2021). Previous work has also established that, conditional on family fixed effects, days with schedule unpredictability lead to worse worker health than days in which work schedules go as expected (Ananat and Gassman-Pines 2021).

Partially in response to concerns about the harms to workers and families from schedule unpredictability, in the last 10 years governments at various levels across the United States have begun considering new regulations to limit unpredictability and compensate workers when it occurs. This paper, based on data collected prior to the pandemic, builds on the emerging research on the effects of such policy changes by examining the effects of the 2017 Fair Workweek Ordinance (FWO) in Emeryville, CA, on working parents' work schedules, and worker and family well-being. While the context of low-wage work has shifted in the wake of the pandemic, understanding the challenges families were facing prior to its onset can help us understand how to restructure employment policies going forward.

We focus on a highly policy relevant group of workers: parents with young children. In so doing, this study is the first to provide evidence of the effects of a local policy aimed at deterring work schedule unpredictability on working parents' schedules and on worker and family well-being. To do so, this study used a novel sample recruitment strategy with an innovative survey data collection protocol, daily surveys using short message service (SMS) text messages, over three waves of data collection. This study is also the first to investigate this type of policy change in Emeryville, adding to ongoing work in Seattle and Oregon to build the base of knowledge about how schedule stability laws affect working families.

We recruited nearly 100 Emeryville hourly service workers with young children, a 1-in-6 sample of the universe of affected workers, using venue-time sampling, and surveyed them daily for 30 days over each of three study waves, all prior to the onset of the pandemic (2017-2018). This approach allowed us to identify how the work and family experiences of affected workers changed after the FWO, relative both to their experiences at baseline and to the experiences of workers who were otherwise similar but worked for Emeryville businesses that fell below the FWO's size thresholds.

Work Schedule Unpredictability

Recent surveys of U.S. workers underscore the ubiquity of a variety of different types of schedule precarity, including schedule instability and unpredictability, among low-wage workers. For example, using the NLSY, researchers found that 41 percent of workers receive notice of their schedules only one week ahead of time or less (Lambert, Fugiel et al. 2014). Fluctuations in work hours are also substantial, with almost 75 percent reporting fluctuations in the number of hours they worked per week over the last month. Similarly, a survey of hourly workers in large retailers found that 60 percent of workers have variable hours and that 60 percent of workers have less than two weeks' notice of their work schedules (Schneider and Harknett 2019). In Emeryville, the vast majority, 87 percent, of a representative sample of parents with young children reported some unanticipated work schedule change during a one-month period, with 58 percent of parents reporting at least one canceled shift (Ananat and Gassman-Pines 2021).

Estimates suggest that about one in six hourly workers has a young child (Schwartz, Wasser et al. 2015), and prior research has established that schedule unpredictability is associated with worse worker and family well-being. Surveys of low-wage workers at a single point in time have shown that those with more unstable schedules report more psychological distress, worse sleep quality, and more parenting stress (Schneider and Harknett 2019). Unstable and unpredictable work schedules are also correlated with lower-quality parent-child interactions (Henly, Shaefer et al. 2006) and increased work-life conflict (Luhr, Schneider et al. this volume, Henly and Lambert 2014).

Research focusing on day-to-day variation in work schedules underscores the negative effects on workers and their families from unanticipated work schedule changes. In Emeryville, instances of work schedule unpredictability on any given day were related to worse daily mood and sleep quality for working parents (Ananat and Gassman-Pines 2021). Similarly, research has shown that on days when parents are "on-call" for work hours, they reported increased daily negative mood (Bamberg, Dettmers et al. 2012, Dettmers, Vahle-Hinz et al. 2016) and worse daily sleep quality (Härmä, Karhula et al. 2018, Sprajcer, Jay et al. 2018) than days when they are not "on-call."

Fewer prior studies focused on day-to-day variability in work schedules have examined the effects of work schedule unpredictability on other aspects of daily family wellbeing beyond parent mood and sleep quality. However, a related literature shows that daily parenting behaviors and child well-being were affected by daily nighttime work hours, with nighttime hours related to less daily parent time spent together with adolescent children, and harsher interactions between parents and children in early childhood (Gassman-Pines 2011, Lee, Davis et al. 2017). Increased parental nighttime work also led to less positive daily child behavior among preschool-aged children (Gassman-Pines 2011).

The findings from studies examining daily variation in work schedules are consistent with those from cross-sectional studies. Those examining daily variation, however, are able to use family fixed effects to control for all measured and unmeasured stable differences between families that might be related to both work schedule unpredictability and family wellbeing. The research focused on within-family variation from day to day cannot be biased by between-family differences, such as parental personality or motivation. Thus, taken together, the evidence suggests that schedule unpredictability is not only correlated with worse outcomes for workers and their families, but actually causes worse well-being.

Policies to Regulate Service Workers' Schedules

Regulation and legal standards played a large role in shaping today's workplaces, e.g. through minimum wages and workplace safety requirements, and led to current U.S. norms around schedules, such as the 8-hour workday. But in recent years, labor-market regulation has paid little attention to schedules, despite dramatic shifts in the nature of scheduling practices. While earlier schedule regulations focused on preventing employers from extracting too much labor from workers, many workers today instead fear unpredictability in work and the instability in earnings that results. In response to research demonstrating links between unpredictable work schedules and harm to workers, and due to concerted labor organizing efforts (Ananat, Gassman-Pines et al. 2020), policymakers in localities and states have passed new regulations related to service workers' schedules. These policies represent an innovational shift for local labor regulation and have been passed in Emeryville, CA, Chicago, New York City, Philadelphia, San Francisco, Seattle, and the state of Oregon. Each of the policies are unique but largely share the same general features. In particular, they require large employers to provide advanced notice of work schedules to their hourly workers and to compensate workers if schedules subsequently change.

Emeryville, CA's Fair Workweek Ordinance

Passed in early 2017, the Emeryville Fair Workweek Ordinance (FWO) aims to stabilize schedules of hourly retail and food-service workers with several provisions. First, hourly workers must receive two weeks' advanced notice of their schedules. Second, workers have the right to decline previously unscheduled hours without retaliation if they are given less than two weeks' notice of hours. Third, workers are eligible for compensation for schedule changes that occur within two weeks and, in particular, for "stability pay" of up to 4 hours or half of a shift paid when a shift is cancelled, with the amount of pay increasing the closer to the shift the cancellation is made. Fourth, the FWO gives workers the right to decline hours if they are within 11 hours of the previous shift, and workers are to be paid time and a half for shifts that fall within 11 hours of each other (so-called "clopenings").

The provisions of the Emeryville FWO apply to "large" retail and food service employers, defined as more than 55 employees globally for retail employers and both more than 55 employees globally and 20 or more employees in Emeryville for food service employers. These cutoffs mean there is some arbitrariness to which firms are treated: the large international sandwich chain Subway, for example, has fewer than 20 Emeryville employees and is untreated, while some local, single-location stores and restaurants have more than total 55 employees and are treated.

The Emeryville FWO was implemented in two phases. Beginning on July 1, 2107, the ordinance officially became effective and the city initiated a so-called "soft roll-out." During the soft roll-out, the city investigated complaints but did not impose fines against employers who were not compliant. They also held employer- and employee-focused forums to educate stakeholders on the ordinance's provisions and created and disseminated written educational materials. Beginning on January 1, 2018, the city began the full enforcement of the ordinance, including fines for non-compliance. Enforcement of the ordinance is primarily conducted via an employee-driven complaint system. If employers are found to have violated the ordinance, they can be fined up to $500 per violation and $1,000 for each employee retaliated against.

Preliminary Evidence on Effects of Scheduling Policies

Emerging research from Seattle and Oregon sheds light on the effects of such policies on workers, as well as the role of managers in policy implementation. In terms of effects on workers, an evaluation of workers with a range of family statuses showed significant changes in workers' schedules after the implementation of the Seattle policy. In particular, in the first year of implementation, the Seattle policy increased the share of workers receiving advanced notice of their work schedule and the share of workers receiving predictability pay when their hours were changed (Harknett, Schneider et al. 2019). In the second year of implementation, addition benefits were observed, including a reduction in last-minute schedule changes and improved worker well-being as measured by increases in overall happiness and self-reported sleep quality (Harknett, Schneider et al. 2021). Consistent with the Seattle findings, an evaluation of the early implementation of Oregon's statewide policy also revealed that the majority of workers received advance notice of their schedule (Loustaunau, Petrucci et al. 2020).

These results generally align with studies that have focused on front-line managers as the conduits for policy implementation on behalf of employers. One year after policy implementation, managers in Seattle, for example, largely reported giving workers the required 14 days advanced notice of their shifts and following rules around shift cancellations, suggesting that implementing some of the Seattle law's provisions were relatively straightforward (Haley and Lambert 2021). Employers struggled, however, with implementing other aspects of the law: Managers reported lower levels of compliance with rules around extending shifts and offering additional hours to current employees before hiring new ones. Similar patterns of results were reported by managers in Oregon (Loustaunau, Petrucci et al. 2020). In Oregon, an additional provision enabling managers to maintain voluntary waitlists facilitated frequent last-minute changes, making implementation easier for the employer but reducing the law's reach from employees' perspectives. Although the full set of costs and benefits to employers of these types of scheduling regulations is not yet known, related research suggest that employers could expect to see improvements in worker productivity and sales. A randomized experiment of a schedule stability intervention in retail stores showed such improvements in productivity and sales (Williams, Lambert et al. 2018, Kesavan, Lambert et al. 2020). Other research also suggest that improved work hours predictability leads to increased productivity (Hashemian, Ton et al. 2020).

The Current Study

With only a limited set of localities passing scheduling regulations, evaluations of policy change in each locality are crucial to building the base of knowledge about how such regulations affect workers and families. This study addresses this need by providing evidence on the effects of the scheduling regulations implemented in Emeryville, CA and by focusing on a highly policy-relevant population that has not been the focus of work investigating the effects of scheduling regulations in other jurisdictions, parents of young children.

Identification

Our main identification strategy is a difference-in-difference approach that compares over-time changes in outcomes for workers in "treatment" jobs—i.e. jobs at businesses that meet the size requirements to be regulated under Emeryville's Fair Workweek Ordinance—to changes in outcomes for workers employed at similar jobs in businesses that fall short of the size requirements. Difference-in-difference designs rely on the assumption of parallel trends: the identifying assumption of our approach is that in the absence of the FWO's implementation, the over-time changes in outcomes of workers in treatment and control jobs would have moved in parallel, and therefore any deviation in treated workers' outcome trends from trends for workers in control jobs can be attributed to the effects of the FWO. Workers can and do hold multiple jobs; for outcomes that are defined at the worker-day level, such as sleep quality and interactions with the focal child, we define a worker as "treated" if they held at least one "treatment" job, even if they also held one or more control jobs. In robustness checks, we have defined treatment continuously, based on the share of hours worked at baseline in a treatment job; results are substantially similar (results available upon request).

A threat to the parallel trends assumption would occur if workers endogenously switch jobs in response to the FWO—that is, if treated jobs become more (or less) desirable due to the regulation, then workers with more advantages, e.g. those with better mental health, might switch sectors in response. Under those circumstances a simple difference-in-differences strategy, such as the type conducted using repeated cross-sectional surveys to evaluate policy changes, would inaccurately conflate compositional changes in the treated workforce due to the FWO with changes in individual worker outcomes due to the FWO. However, our panel structure avoids this problem by allowing us to combine the strengths of a difference-in-differences identification strategy with the complementary strengths of an individual fixed-effects approach: because we follow the same workers over time, we are able to include worker fixed effects and identify only changes in individual worker outcomes over time.

Another potential threat to the parallel trends assumption would occur if regulated versus unregulated businesses faced different shocks during the evaluation period, beyond those induced by the

FWO. The somewhat arbitrary and complex size cutoff for regulation—which does not coincide with thresholds for other regulations in Emeryville or with other meaningful market distinctions—makes it relatively unlikely, however, that treated and untreated firms will face different shocks (for example, to consumer demand or to credit access) on other dimensions over the implementation period.

METHOD

Sample recruitment

Individuals were eligible for this study if they worked in an hourly position in Emeryville and had a child between ages 2 and 7. Recruitment occurred in May 2017, after the passage of FWO but prior to its enactment. We used a venue-based sampling approach to recruitment. For this purpose, we secured from the City of Emeryville a complete list of retail and food service businesses in the city. Using this list, we constructed a sampling frame of venue (business) day-time units (VDTs), randomly selected VDTs, and identified and recruited eligible individuals present in those VDTs (Muhib, Lin et al. 2001). We approached workers at each business, determined their eligibility, and asked those workers to direct us to any other currently present employee with a young child. Across VDTs, we entered each business in the area at least once, talking with over 600 workers, including at least one from each retail or food establishment in the city. We estimated, based on recent surveys of hourly retail and food service workers (Schwartz, Wasser et al. 2015), that about 15 percent of the 3,743 Emeryville hourly retail and food service workers have a young child, suggesting an eligible population of 561 workers. Of these, we talked with 170, an estimated 30 percent of eligible workers. We successfully recruited 96, or 56 percent, of the eligible workers we contacted. Our sample, although small in absolute size, reflects a substantial 1-in-6 sample of the universe of Emeryville retail and food workers with a young child. Importantly, the initial sample was balanced across: 1) retail and food firms that meet threshold local and global employment levels and are subject to regulation from the FWO and 2) otherwise similar control firms below those thresholds, which are exempt from the FWO.

Procedure and analysis sample

At the beginning of the study, respondents were asked about their demographics, health and well-being, work history, each job's hourly wage and whether it is tipped, and reports on children. Then, every day for 30 consecutive days, respondents reported on that day's work and family experiences via SMS text message. Daily survey completion rates among participants in the initial wave were very high: 61 percent of participants completed 100 percent of the daily surveys and 89 percent completed the majority (i.e. more than 15), providing substantial within-person variation for analysis.

We contacted the sample again two times: in the Fall of 2017 during the "soft roll-out" enforcement phase of FWO implementation (wave 2) and in the spring of 2018 during the full enforcement phase of FWO implementation (wave 3). Of the initial 96 participants, 76 participated in wave 2; 71 participated in wave 3. At each wave, we gathered information about changes in workers' jobs and job characteristics and then again collected reports on the day's work and family experiences via SMS text message for 30 consecutive days. In wave 2, daily participation was higher than in wave 1: 74 percent of participants completed 100 percent of the 30 daily surveys and 98 percent completed the majority of the daily surveys. In wave 3, daily participation was higher than in wave 1 or wave 2: 80 percent of participants completed 100 percent of the daily surveys and 99 percent completed the majority.

Participant compensation was structured to incentivize completion of all 30 daily surveys within each wave. In waves 1 and 2, participants received $1.00 for each survey completed, with bonuses of $7 and $10 offered for each week with 7 completed surveys, respectively. In wave 3, participants received $1.20 for each survey completed with a bonus of $12 for each week with 7 completed surveys. An additional completion bonus for those who answered all 30 daily surveys was also offered: $20 in wave 1, $25 in wave 2 and $30 in wave 3.

Our analysis sample for this study included all individuals who participated in at least one of the post-FWO implementation follow-up waves (N = 78 parents; N = ~6,000 person-days for analysis). On average, our analysis sample provided 86 days of survey responses across the waves of data collection.

All survey materials used for this study were available in both English and Spanish. All aspects of this study were approved by the Duke University Institutional Review Board (protocol #2017-0053).

Measures

Daily schedule unpredictability was characterized along a number of dimensions. We asked a series of questions about up to three jobs per respondent, based on the number of jobs reported at the initial interview for each wave. For each job, respondents were asked whether they worked that day, and if so: when they started and stopped working and whether their hours worked were their originally scheduled hours. If not, they provided their originally scheduled hours. Thus, for each day that a respondent worked at a given job, <u>we measure whether their hours worked deviated from their originally scheduled hours at that job</u>. Further, if respondents did not work at a given job on a given day, they were asked if they were originally scheduled to work. Thus, for each day we measure <u>whether a respondent had a shift cancelled at that job</u>. For both changes in work hours and shift cancellations, respondents were asked when they found out about the change: *less than one hour before the shift start time; more than one hour before the shift start time, on the day of the shift; the night before;* or *earlier.* Those who gave any response other than *earlier* about either a change in hours or a shift cancellation were coded as having a last-minute work schedule change at that job on that day.

To find surprise shifts, we looked at responses to the question about originally scheduled hours. In that space, many respondents offered context, stating that they were off, weren't scheduled for that day, or offering hours on the next day (e.g. on Monday saying that they were scheduled to work Tuesday). In any of these cases, we classified this as a surprise shift, rather than a change in hours. Finally, surprise shifts, along with changes in hours and canceled shifts, were combined to create an additional measure that indicates whether the respondent had any kind of schedule change at that job on any given day.

Because information was provided about each job on each day, it was possible to examine work schedule unpredictability both by job and by day. For all outcomes discussed above, the unit of analysis was the person-job-day.

Daily family and child well-being outcomes were measured as described below. Daily mood was measured with an item that asked respondents how much of the time they felt fretful, angry, irritable, anxious, or depressed on a three-point scale from *all of the time* to *none of the time*. This question was modified from a question with a four-week recall period from the Health Utilities Index (HUI) (Furlong, Feeny et al. 2001, Horsman, Furlong et al. 2003). The single item has been validated as a daily measure of negative mood as it is positively correlated with daily stressors, including daily food insecurity (Gassman-Pines and Schenck-Fontaine 2019) and daily work schedule disruptions (Ananat and Gassman-Pines 2021); it increased substantially when COVID-19 restrictions were put into place (Gassman-Pines, Ananat et al. 2020). A dichotomous indicator was created equal to 1 for those who answered *Some of the time* or *All of the time* and 0 for those who answered *None of the time*.

Daily perceived negative sleep quality was measured with a single item used in other daily survey studies (George, Rivenbark et al. 2019), asking: "How well did you sleep last night?" Answers were on a 10-point scale from *really badly* to *really well*. We treat self-reported sleep quality as a measure of daily well-being, as perceived sleep quality is associated with daily affect (Bower, Bylsma et al. 2010). The sleep quality measure was reverse-coded so that higher numbers indicated worse perceived sleep quality. This measure has been validated, as it is correlated in expected directions with negative and positive daily mood, daily self-esteem (George, Rivenbark et al. 2019) and daily work schedule disruptions, a daily stressor (Ananat and Gassman-Pines 2021).

Daily parent-child interactions was measured with two questions: "Did you punish your child today?" and "Did you lose your temper with your child today?" Dichotomous indicator variables were set equal to 1 if the parent responded *Yes* and 0 if the parent responded *No*. Both of these measures have been validated as they were both positively correlated with daily disruptions to school and care during the COVID-19 pandemic (Gassman-Pines, Ananat et al. 2021).

Finally, daily child behavior was measured with two items. Daily child uncooperative behavior was measured with a single item asking: "How much was your child uncooperative today?" Answers on a four-point scale included: *Not at all, Just a little*, *Some,* and *A lot.* This question was modified from an item in the Inattention/Overactivity with Aggression Conners Rating Scale (Loney and Milich 1982), which asks parents to rate how much the adjective describes their child "at this time." Daily child worry was measured with a single item asking: "How much did your child appear to be sad or worried today?" Answer choices on a four-point scale included: *Not at all, Just a little*, *Some,* and *A lot.* This question was modified from an item in the Preschool Behavior Questionnaire (Behar and Stringfield 1974), which asks parents to rate how much the child exhibits each behavior.

For both child behaviors, prior research has demonstrated the reliability and validity of multi-item scale versions adapted for measuring daily externalizing and internalizing behavior problems (Gassman-Pines 2015). In the current study, single items were used to reduce respondent burden and attrition. Dichotomous indicator variables were set equal to 1 if the parent responded *Some* or *A lot* and 0 if the parent responded *Not at all* or *Just a little*. These single-item measures have been validated as they were both positively correlated with daily disruptions to school and care during the COVID-19 pandemic (Gassman-Pines, Ananat et al. 2021).

Job type (e.g., treatment vs. control) was categorized as follows: for each of up to 3 jobs reported by a respondent, a job was coded as a "treatment" job if it was an hourly position at a venue listed by the City of Emeryville as regulated under the FWO. A job was coded as a "control" job if it was at a retail or food establishment in Emeryville that was listed by the City as not covered under the FWO, or if it was outside of Emeryville or outside of retail and food. Workers were categorized as in the treatment group if they had at least one treatment job; otherwise, they were classified as in the control group. All respondents had at least one hourly position in food service or retail in Emeryville, but respondents could also have additional jobs outside of Emeryville, outside of food or retail, and/or paid other than hourly.

Analytic strategy

To evaluate the job-experience relationships of interest, i.e. effects on schedule unpredictability, the following equation was used:

$$Y_{ijt} = \beta_0 + \beta_1 * Treat_{ij} * After_t + \beta_2 * After_t + \beta_3 * Treat_{ij} + \psi_{ij} + \tau_t + \epsilon_{ijt}$$

for outcome *Y* for person *i* in job *j* on day *t*, where ψ represents a vector of individual-by-job fixed effects and τ is an indicator for whether day *t* falls on a weekend. Previous research shows that both work and home experiences differ dramatically between weekends and weekdays for workers in these types of jobs (Ryan, Bernstein et al. 2010, Shrout, Bolger et al. 2010, Gassman-Pines 2011, Gassman-Pines, Ananat et al. 2020, Ananat and Gassman-Pines 2021). Because of idiosyncratic variation in individual start days, respondents experience different numbers of weekend days, which would, if we simply averaged across days within person and wave, lead to greatly increased noise in our estimates.

$Treat_{ij}$ is an indicator variable equal to one if job *j* was at a treated firm subject to FWO regulations, and zero otherwise. We measure job-experience outcomes (hours changes, surprise shifts, and cancelled shift) at the person-job-day, rather than person-day, level because the variation in those outcomes exists at the person-job-day level. For example, we measure canceled shifts at the person-job-day level because a worker with two jobs might have had a shift canceled at one job on a given day, while on the same day their shift at another job was not canceled. As we are interested in whether the policy affects scheduling practices such as this, and as the policy can, in some cases, affect one of a respondent's jobs but not the other, examining job outcomes separately is scientifically appropriate. Note, however, that most respondents have only one job (Table 1), so this has only a minor effect on our sample size.

$After_t$ is an indicator variable equal to one if day *t* falls during the post-implementation period, and zero otherwise. The definition of the post-implementation period is somewhat ambiguous because Emeryville began implementation with a "soft roll-out," as discussed above. To accommodate this ambiguity, our main results include three separate approaches to defining pre- and post: (1) base estimates only on pre-implementation (Wave 1) and full enforcement (Wave 3) data, with full enforcement Wave 3 observations defined as post-implementation; (2) include all observations and define both soft roll-out and full-enforcement observations as post-implementation; and (3) include all observations, and estimate:

$$Y_{ijt} = \beta_0 + \beta_1 * Treat_{ij} * Wave2_t + \beta_2 * Wave2_t + \beta_3 * Treat_{ij} * Wave3_t$$
$$+\beta_4 * Wave3_t + \beta_5 * Treat_{ij} + \psi_i + \tau_t + \epsilon_{ijt}$$

This specification allows us to estimate the effect of the FWO during the soft roll-out (represented by the estimated value of the coefficient β_1) separately from the effect of the FWO during full enforcement (represented by the estimated value of the coefficient β_3), and we report the estimates for both effects in our main results.

Worker and family well-being (worker sleep quality and mood, parenting behaviors, and child behavior) exist only at the person-day level, evaluated using the following equation:

$$Y_{it} = \beta_0 + \beta_1 * Treat_i * After_t + \beta_2 * After_t + \beta_3 * Treat_i + \psi_i + \tau_t + \epsilon_{it}$$

for outcome Y for person i on day t. $Treat_i$ is equal to one if person i had at least one treatment job, and equal to zero otherwise. All other variables are as defined above, and a parallel specification shift was made to estimate our third approach to modeling soft roll-out and full enforcement effects.

In addition to fixed effects for each respondent, we cluster our standard errors at the person level, to reflect the fact that observations for a given respondent across jobs, days, and waves are not independent of one another. Clustering of standard errors relaxes the assumption that errors are independent and identically distributed and allows for errors within a cluster (in this case, a person) to instead be arbitrarily correlated. With 78 respondents in our analytical sample, we have a large enough sample to estimate person-fixed effects, use our average of 86 observations per respondent to estimate standard errors clustered on person, and then to estimate effects of the policy.[1]

RESULTS

Descriptive Results

Table 1 reports descriptive results at baseline for the analysis sample, overall and separately for the treatment and control groups (defined at Wave 1). Respondents were, on average, 30 years old, with

[1] Our highly racially diverse sample means, however, that we have a small number of respondents of each race-ethnic identity. Estimates with fixed effects and clustering, regardless of how large their total N, do not exhibit large-sample properties when they include only a small set of clusters (Angrist & Pischke 2009), meaning our sample is unfortunately not adequate to estimate such models.

11.7 years of education, and had their first child at age 24. The majority, 86 percent, of the sample identified as female. Just under 30 percent had ever been married. They were racially and ethnically diverse: 31 percent were Hispanic (of any race); 45 percent were non-Hispanic Black; 8 percent were non-Hispanic White; 8 percent were non-Hispanic Asian-American; 1.2 percent were non-Hispanic Native American; and 7.1 percent were non-Hispanic multiracial. On average, they held 1.13 jobs. Respondents' household income averaged $2,795 per month. The majority of respondents lived with at least one other adult: 58 percent lived with a romantic partner, and 21 percent lived with a parent. On average respondents had 1.8 children. Fifty-eight percent held at least one treatment job.

Financial strain was common among respondents. Over one in five reported generally not having enough money to make ends meet, with another half reporting generally having just enough. Nearly two-thirds of respondents doubted they could access funds to pay for a $1000 emergency. About the same number had to borrow from friends or family in the past year to make ends meet, while 37 percent had applied for government assistance.

Not surprisingly given all these stressors, respondents reported mental health challenges as well. More than one in four reported finding it "often or always" difficult to relax, and one in ten "often or always" felt downhearted or blue. Similarly, 21 percent of respondents reported that their focal child was often "somewhat or very" worried, and 10 percent that their focal child was often "somewhat or very" unhappy, depressed, or tearful.

Across most characteristics, baseline characteristics were well-balanced across treatment and control. Among 24 characteristics, two were significantly different between the groups at the 10 percent level, consistent with chance. This balance suggests that, among hourly service workers with young children, there is little selection on observables into treatment (larger firm) versus control (smaller firm) jobs.

The exception to this balance was differences in child care arrangements, with those in treatment jobs less likely to access formal childcare and more likely to instead rely on relative care, and for more hours per week. We interpret these differences as a reflections of the jobs themselves rather than selection into them; as shown in Figure 1, at baseline treatment jobs were more unpredictable, which, as documented in other work (Luhr et al., this volume) makes use of formal childcare more challenging. Note, however, that even if the difference in childcare suggested imbalance on unobservables between the treatment and control groups, difference-in-difference designs do not require baseline equality between treatment and control; rather, we instead rely on the much weaker assumption of parallel trends.

Table 2 summarizes all daily work and well-being outcomes across people, jobs, and waves. Because there were significant differences in these measures across race, we report both overall means and means for non-Hispanic Blacks, non-Hispanic Whites, non-Hispanic Asian-Americans, and Hispanics (of any race). Overall, some type of schedule change was made on nearly 11 percent of job-days, with a significantly greater share of days with a change among Asian-American respondents (17 percent) and a significantly lower share among White respondents (8 percent). The majority of schedule changes were last-minute, with less than 24 hours' notice; White respondents were less likely to experience changes at the last minute (4.7 percent of days versus 7.0 percent for the sample overall).

Among the types of schedule changes, a change in work hours was the most common, occurring on 5.4 percent of days on average but at almost twice that frequency, 10.3 percent of days, among Asian-Americans. Surprise shifts were the least common type of schedule change, occurring on less than 1 percent of days, with no differences across groups. Across all waves, respondents worked on about 55 percent of job-days; Asian-Americans and Hispanic respondents were more likely than average to work on a given day. The average shift length on any given work day was 7.1 hours, but was higher for Whites, at 7.4 hours, and lower for Asian-Americans, at 6.7 hours.

Finally, in terms of family well-being outcomes, negative mood was fairly common, with respondents overall reporting negative mood on 42 percent of days. White respondents reported significantly more days with negative mood (60 percent of days), while Hispanic respondents reported fewer (32 percent). Sleep difficulties were greater among Whites and lower among Asian-Americans; harsh parenting behaviors were higher among Whites and Asian-Americans than among the population overall. Black and Asian-American parents reported more days with child uncooperativeness and child worry than did the sample overall. Child behavior problems were relatively infrequent across all groups.

Impacts of the Emeryville FWO

Table 3 reports effects of the FWO on schedule disruption outcomes; given small sample sizes, we were not able to separately estimate effects of the FWO by race and ethnicity, as discussed above. Across all models, results showed that the FWO led to a decrease in any schedule change overall, with point estimates ranging from 2.5 percentage points to 5.5 percentage points, though not all point estimates reached conventional levels of statistical significance. Results from model three suggest that decreases in schedule changes occurred right away, in the soft-roll out phase of enforcement. The estimates from our third model are also presented in Figure 1, which shows that treatment jobs had more frequent schedule changes than control jobs in the pre-period, but that rates of schedule changes for the treatment jobs declined to the same level as the control jobs once the FWO was implemented. As shown in Table 3 and Figure 1, the same pattern of results was found for last-minute changes: the FWO reduced last-minute schedule changes. Again, although not all estimates reached conventional levels of statistical significance, the pattern of findings is consistent with a decline in last-minute changes following FWO implementation for the treatment jobs relative to the control jobs.

Among the types of schedule disruptions considered, we found that surprise shifts were most strongly affected by the FWO, while point estimates for changes in work hours follow a similar, but not statistically significant, pattern (Table 3). Shift cancellations were not affected by the FWO. As shown in Figure 1, treatment jobs had more frequent surprise shifts in the pre-period but rates of surprise shifts for the treatment jobs declined once the FWO was implemented, and were lower than rates in control jobs by the full-enforcement phase.

Table 4 reports effects of the FWO on daily work and hours outcomes. Results show that the FWO decreased the likelihood of working in a treatment job on any given day. The effect size was substantial, with decreases in wave three of about 12 percentage points. As shown in Figure 1, the likelihood of working in a treatment or control job on any given day were very similar prior to the implementation of the FWO. During the post-period, the likelihood of working in a control job on any given day increased slightly while the likelihood of working in a treatment job decreased.

At the same time, however, results also showed that the FWO increased the length of shifts on work days. By the full enforcement phase, the increase in work hours was about .4 hours, on average. When combining the two effects by considering average work hours including zeroes for non-work days, the FWO did not significantly affect hours worked within a job. Workers do not appear to have increased work in non-regulated firms in response to changes in their treatment jobs, given that average work hours across all jobs were also not significantly affected by the FWO.

Finally, Table 5 reports effects of the FWO on parent and child outcomes. Considering parental well-being, the FWO decreased sleep difficulty (defined by reverse-coding and then normalizing the sleep quality responses that had been gathered using a 1-10 scale), though not all estimates reach conventional levels of statistical significance. In wave 3, sleep difficulty decreased by nearly .28 *SD* for those in treatment jobs, relative to those in control jobs. As show in Figure 1, those in treatment jobs experienced more sleep difficulty than those in control jobs prior to the implementation of the FWO, with sleep difficulty decreasing substantially during the full enforcement phase. Effects on daily parental negative mood were also in the negative direction, but did not reach statistical significance. We did not find any effects of the FWO on either parenting behaviors or child behavior.

Robustness Checks

We conducted a variety of robustness checks (all results available on request). First, we ran all models on a balanced panel of participants who participated in all waves, rather than only in at least one post-implementation wave. Results were substantially similar to those reported here. Second, we ran all models using initial treatment status at the person-level only. Results were in the same direction and of similar magnitude to those described here but were less precisely estimated. Third, we ran all models using a continuous definition of treatment status defined by the share of total work hours worked at a treatment job at baseline; results were substantially similar. Fourth, we ran models of hours worked dropping observations for which hours information was incomplete and had to be imputed; results were substantially similar. Fifth, we estimated all models for demographic subgroups defined by race, ethnicity, gender, and education; unfortunately, sample sizes became too small for interpretation.

DISCUSSION

Low-income families in the 21st century, especially those working in the service sector, faced high levels of unpredictability in work hours and pay, even prior to the onset of the COVID-19 pandemic and its disruptions to the labor market. Anecdotally, there seems to be little possibility that the pandemic and its related economic dislocations have improved predictability. Local regulations aimed at reducing unpredictability in work schedules are a new innovation in labor policy that were gaining traction in many localities, and one state, in the United States prior to the pandemic, but little is known about such policies' effects and, therefore, whether predictability for low-income families will be improved by encouraging more localities to adopt such policies going forward. Emeryville, CA is one of only a handful of localities that has passed such an ordinance. This paper, thus, addresses a gap in the literature by being the first to examine the effect of Emeryville's Fair Workweek Ordinance on working parents and their families.

We find that the Fair Workweek Ordinance (FWO) succeeded in reducing schedule unpredictability for workers with young children, particularly changes in start and end times of shifts and surprise shifts. The FWO also decreased the number of workdays significantly for treated workers in our sample, while increasing the hours worked on workdays and leaving total work hours insignificantly affected. It is possible that these changes were concentrated among those, like our sample, with caregiving responsibilities, and represent a re-assignment by employers of short, unpredictable, or otherwise difficult shifts from such workers to workers without caregiving responsibilities, for whom such marginal shifts are less costly. Future work should examine effects of schedule predictability legislation on different populations of workers.

The regulatory success of the FWO translated into some health benefits for workers in regulated jobs, in particular, improved sleep quality. Thus, even with a relatively small sample size, this paper thus presents important initial evidence that this type of policy change can affect work schedule unpredictability among working parents, and can do so by impacting individual workers rather than merely by shifting sector composition.

These findings are notable in the context of the remarkable changes in work in the last half century, with increasing instability and unpredictability in employment, hours, and pay, especially for workers with less access to formal higher education. Historically, regulations played a large role in shaping today's workplaces, for example through minimum wages and anti-discrimination policy, and also created the current U.S. norms around scheduling, including the 8-hour workday and the weekend. But in recent years, regulation of the labor market has focused little attention on scheduling, despite the fact that the nature of work schedules has been shifting dramatically. In particular, while the earlier generation of scheduling regulation concentrated on preventing employers from extracting *too much labor* from workers, many of today's workers fear instead *too much variability and unpredictability* in work and pay. That is, recent concerns focus on employers shifting the risk of variable customer demand from themselves to their employees, by giving workers neither hours nor pay when demand is unexpectedly low. Indeed, the Emeryville ordinance studied in this paper was passed in response to such concerns.

Our results show that the Emeryville FWO decreased schedule changes and, in particular, last-minute schedule changes. These impacts are notable because these are the dimensions of schedule changes that our own prior research has shown to be particularly costly for working parents and their families, in terms of reduced parental well-being (Ananat and Gassman-Pines 2021). These findings are also consistent with those from an evaluation of Seattle's secure scheduling law that examined all workers (rather than focusing on parents) and found that Seattle's law also decreased last-minute schedule changes (Harknett, Schneider et al. 2021). This convergent evidence suggests that local schedule regulations can be a fruitful path for addressing unpredictability in work schedules for low-income families. Importantly, we observe these changes immediately after the law was passed, during the "soft roll-out" phase of enforcement. Although the City only began fining non-compliant businesses during full enforcement, our results suggest that simply having a law go into effect is a powerful change that leads at least some firms to comply, even if they are not at risk of being fined or penalized.

We also find that changing scheduling practices through this local ordinance leads employers in covered firms to reduce the number of shifts that employees work. However, the FWO leads to increased hours for parents on the days when they do work, leaving no significant changes in average hours worked. Given the fixed costs of working on a given day, including making child care arrangements and commuting, it is plausible that on net these scheduling changes made workers better off. Consistent with this possibility, the net effect of the Emeryville FWO was to improve workers' well-being as proxied by subjective sleep quality. Working parents, in particular, are likely to place a high value on the stability of work schedules, as stable work schedules make balancing the demands of work and family easier (Henly 2004, Henly and Lambert 2014).

The evidence related to the effects of scheduling regulation on worker sleep quality is notable for several reasons. First, these results are highly similar to those found in the Seattle evaluation; Seattle's ordinance also improved subjective sleep quality (Harknett, Schneider et al. 2021). This converging evidence underscores the role for scheduling regulation in improving workers' sleep quality. Second, service sector workers emphasize sleep disruptions and poor-quality sleep as consequences of schedule unpredictability (Human Impact Partners and Center for Popular Democracy 2016), and our own prior work in Emeryville showed these effects on a daily level (Ananat and Gassman-Pines 2021). Reductions in work schedule unpredictability may improve sleep quality for a number of reasons, including: by helping to stabilize daily routines; by facilitating circadian rhythms, which can be disrupted by unstable and unpredictable work schedules; and by reducing job strain, each of which has been linked to sleep quality (Eriksen, Bjorvatn et al. 2008, Moss, Carney et al. 2015, Kecklund and Axelsson 2016). Other aspects of work life, such as commute time, may also play a role in exacerbating links between unpredictable work schedules and worse sleep quality, as longer commutes themselves are associated with worse sleep (Petrov, Weng et al. 2018); the shift to longer work hours on fewer days may have thus contributed to better sleep by reducing total commute time.

Finally, subjective sleep quality is also a marker of well-being and an important input into both physical and mental health (Brewster, Billy et al. 1993, Bower, Bylsma et al. 2010). Worse sleep quality, for example, is related to both heart disease in the adult population (Cappuccio, Cooper et al. 2011) and depression among parents (Park, Meltzer-Brody et al. 2013). Poor sleep quality is associated with more harsh parenting behavior (Kelly, Erath et al. 2021), and worse daily sleep quality has been found to exacerbate the effects of chronic and daily stressors on daily negative parental mood (da Estrela, Barker et al. 2018, Lillis, Hamilton et al. 2018, Mihaila and Hartley 2018). Thus, improvements in sleep quality may have the potential to lead to longer-term improvements in family functioning and child wellbeing, such as more positive parent-child interactions, reduced parental stress, and improved child behavior. Future research should investigate the mechanisms connecting unpredictable work schedules to worse sleep quality, the family well-being consequences of improved sleep quality, and moderation by other aspects of work, such as commute time. While the small population of Emeryville means we were underpowered to detect downstream effects on children's well-being even in a 1-in-6 probability sample, the implications are conceptually clear, as children are influenced and constrained by their parents' lived experiences in the labor market (Ananat, Gassman-Pines et al. 2017). Links between parental well-being and child adjustment are well established (Cummings and Davies 1994, Cummings, Keller et al. 2005, Cummings, Davies et al. 2020). Parents who are experiencing psychological distress tend to have more difficulty acting as sensitive caregivers, which can lead to increased behavior problems and other difficulties for children (Dix, Gershoff et al. 2004).

We note that our sample included only working parents with young children, a group that is particularly strongly affected by work schedule unpredictability but is not representative of all workers in the treatment firms. It is possible, for example, that workers without young children (the majority of workers) may have experienced an increase in work shifts due to the Emeryville FWO, if they were willing to add shifts on short notice. Our results are not meant to generalize to all Emeryville retail and fast food employees, but only to employees with young children, a group of *a priori* concern due to both their vulnerability and their relevance to public policy.

Our methodological approach, pioneered in this study, has several strengths that enhance the contribution of this work. First, although small, our use of a venue-time sampling strategy resulted in a sample that is representative of Emeryville workers in retail or food service with a child between the ages of two and seven. Given that such a population is unrostered and difficult to enumerate, implementing a representative sampling strategy was a major innovation. Second, we followed our sample longitudinally, which avoids bias from compositional changes in the workforces of firms after they become regulated. Therefore, our results cannot be explained by, for example, covered businesses becoming more attractive to workers with better mental health after FWO implementation. Finally, work schedule disruptions were measured via daily surveys, which avoids recall bias, a problem we have shown in previous work to be sizeable in reporting the frequency of schedule changes (Ananat & Gassman-Pines, 2021).

We do note, however, that despite our ability to follow the same representative sample longitudinally, it is still possible that endogenous sector-switching in response to time-varying worker characteristics could be driving some of our results. For example, if employment in covered businesses became more attractive post-FWO implementation, and therefore workers who experienced changes (such as becoming newly partnered and therefore better able to manage child care) that made them more desirable employees became more likely to switch into the covered sector than they would have been in the absence of the FWO, that could threaten the validity of our findings if these same changes also had direct impacts on worker well-being. The waves, however, were fielded only a few months apart, so any changes in employee characteristics, subsequent changes in employee desirability, and resulting changes in employment would have had to unfold quite quickly.

Additionally, our small overall sample size prevented us from examining subgroup effects. Understanding the heterogeneity in effects of schedule regulations for workers with different characteristics is important for future study, and will be facilitated by research with larger sample sizes. Finally, examining effects on employers was outside the scope of this study. Emerging literature would suggest that employers likely faced some challenges in implementing the law’s provisions, but also that they may have benefited in terms of enhanced worker productivity and sales. Additional research should investigate effects on employers to understand the comprehensive impacts of scheduling regulations.

SUMMARY AND CONCLUSION

To summarize, our results show that the Emeryville Fair Workweek Ordinance (FWO) reduced schedule unpredictability for working parents of young children, a group that has particular difficulty balancing work and family and is of policy concern. The FWO also decreased the number of work shifts, but increased shift length, leaving total work hours unchanged. The FWO also improved one measure of well-being: sleep quality. This is important initial evidence that secure scheduling policy changes can affect work schedule unpredictability among working parents, and, ultimately, these parents' well-being.

Parents working in the service sector face a myriad of challenges in balancing their work and family demands, which have plausibly only worsened in the wake of the COVID-19 pandemic. Work schedule unpredictability is a particularly salient and ongoing challenge that has been highlighted by workers, labor organizers, and social science scholars. Emeryville's law improved schedule predictability and well-being for working parents, suggesting that such laws could provide a pathway towards increasing predictability for low-income families.

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Table 1. Sample characteristics at baseline

Respondent Characteristics	Overall	No treatment job (C)	1+ treatment job (T)	Significant difference between T and C
Age (mean)	29.6	30.9	28.45	+
Female	86.2%	86.7%	85.4%	
Education (mean years)	11.7	12.2	11.4	
Has 12 or more years of education	73.4%	76.9%	71.8%	
Age at First Birth (mean)	23.5	23.8	23.1	
Ever married	28.2%	36.4%	20.0%	+
Race/Ethnicity:				
Hispanic (of any race)	30.6%	31.8%	30.0%	
African-American (non-Hispanic)	44.7%	43.2%	45.0%	
Caucasian (non-Hispanic)	8.2%	4.5%	12.5%	
Asian (non-Hispanic)	8.2%	11.4%	5.0%	
Native American (non-Hispanic)	1.2%	0.0%	2.5%	
Multi-racial (non-Hispanic)	7.1%	9.1%	5.0%	
Household Characteristics				
Number of children (mean)	1.80	1.84	1.77	
Respondent currently married or living w/ partner	58.3%	61.4%	56.4%	
Respondent lives with a parent	21.4%	23.3%	17.5%	
Focal Child Characteristics				
Age (mean)	3.6	4.0	3.2	
Female	54.4%	61.4%	44.1%	
Care arrangements:				
enrolled in Head Start	35.4%	52.3%	11.8%	**
enrolled in daycare	50.0%	62.8%	32.4%	**
enrolled in afterschool	17.9%	20.9%	14.7%	
receives care from non-respondent parent	46.8%	39.5%	55.9%	
receives care from other relative	40.0%	26.2%	59.4%	**
Total hours of non-respondent care per week (mean)	38.2	30.0	47.8	**
Work situation				
at least one treatment job covered by FWO	57.7%	0.0%	100.0%	
# of jobs held by respondent (mean)	1.13	1.10	1.19	
Monthly household income (mean)	$2,795	$2,945	$2,633	
Respondent Mental Health				
Often or always found it difficult to relax	26.3%	23.3%	31.3%	
Often or always felt down-hearted or blue	10.5%	7.0%	15.6%	
Focal Child Mental Health				
Often somewhat or very worried	21.5%	15.9%	29.4%	
Often somewhat or very unhappy, depressed, or tearful	10.1%	9.1%	11.8%	

N = 78; + *p<.10*

Table 2. Daily Outcomes Across Waves

Person-job-days	Overall	Non-Hispanic Black	Non-Hispanic White	Non-Hispanic Asian-American	Hispanic (any race)
Share with any schedule change	0.106	0.105	0.078	0.173	0.100
	(0.004)	(0.006)	(0.011)	(0.015)	(0.007)
Share with last minute change	0.700	0.073	0.047	0.086	0.076
	(0.003)	(0.005)	(0.009)	(0.011)	(0.006)
Share with achange in work hours	0.055	0.051	0.054	0.103	0.051
	(0.003)	(0.004)	(0.009)	(0.012)	(0.005)
Share with a cancelled shift	0.041	0.043	0.017	0.064	0.040
	(0.002)	(0.004)	(0.005)	(0.009)	(0.005)
Share with a surprise shift	0.010	0.012	0.007	0.006	0.010
	(0.001)	(0.002)	(0.003)	(0.003)	(0.002)
Share worked today	0.547	0.509	0.503	0.613	0.603
	(0.006)	(0.009)	(0.021)	(0.019)	(0.011)
Mean hours worked on work days	7.12	7.15	7.39	6.73	7.17
standard deviation	2.01	2.02	1.62	2.00	1.99
	(0.03)	(0.05)	(0.10)	(0.10)	(0.06)
Mean hours worked including non-work days	3.83	3.49	3.70	4.08	4.11
standard deviation	3.84	3.84	3.87	3.64	3.85
	(0.05)	(0.07)	(0.16)	(0.14)	(0.09)
N	6,945	3,107	575	671	1,875
Person-days					
Share parent had negative mood	0.422	0.423	0.598	0.447	0.361
	(0.006)	(0.010)	(0.020)	(0.020)	(0.012)
Raw Sleep Difficulty (1-10 scale) (mean)	2.9	2.8	3.8	2.6	2.8
standard deviation	2.21	2.2	1.92	1.45	2.48
	(0.03)	(0.04)	(0.08)	(0.06)	(0.06)
Share lost temper	0.092	0.097	0.078	0.113	0.093
	(0.004)	(0.006)	(0.011)	(0.013)	(0.007)
Share punished child	0.084	0.071	0.134	0.108	0.077
	(0.004)	(0.005)	(0.014)	(0.013)	(0.007)
Share child was uncooperative most/all of the day	0.139	0.159	0.137	0.187	0.099
	(0.004)	(0.007)	(0.014)	(0.016)	(0.007)
Share child was worried most/all of the day	0.054	0.063	0.045	0.087	0.032
	(0.003)	(0.005)	(0.009)	(0.011)	(0.004)
N	6,059	2,610	575	611	1,653

Standard errors in parentheses.

Table 3. Effect of Emeryville Fair Workweek Ordinance on daily work schedule disruptions

	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects
Outcome: Any schedule change			
Policy impact[a b]	-0.037	-.042+	-0.025
	(0.029)	(0.024)	(0.028)
Wave 2 policy impact			-.055*
			(0.025)
Outcome: Last-minute schedule change			
Policy impact[a b]	-0.032	-.034+	-0.029
	(0.022)	(0.019)	(0.021)
Wave 2 policy impact			-.039+
			(0.020)
Outcome: Change in work hours			
Policy impact[a b]	-0.031	-0.027	-0.021
	(.022)	(.021)	(.024)
Wave 2 policy impact			-0.031
			(.022)
Outcome: Canceled shift			
Policy impact[a b]	0.012	0.002	0.014
	(.015)	(.011)	(.014)
Wave 2 policy impact			-0.008
			(.012)
Outcome: Surprise shift			
Policy impact[a b]	-.019*	-.017*	-.019*
	(.007)	(.007)	(.007)
Wave 2 policy impact			-.016*
			(.008)

[a] Treatment x Wave 3 for Models 1 and 3

[b] Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 4. Effect of Emeryville Fair Workweek Ordinance on daily work and work hours

	Model 1: Wave 3 only as Post	Model 2: Waves 2 and 3 as Post	Model 3: Waves 2 and 3 unique effects
Outcome: Worked today			
Policy impact[a b]	-.128*	-.098*	-.118+
	(.064)	(.048)	(.058)
Wave 2 policy impact			-0.082
			(.052)
Outcome: Hours worked on work days			
Policy impact[a b]	.509*	0.185	.393+
	(.250)	(.254)	(.233)
Wave 2 policy impact			0.009
			(.316)
Outcome: Hours worked including non-workdays			
Policy impact[a b]	-0.474	-0.433	-0.381
	(.515)	(.401)	(.479)
Wave 2 policy impact			-0.475
			(.437)
Outcome: Hours worked across all jobs (including non-work days)			
Policy impact[a b]	-0.698	0.441	-0.623
	(.743)	(.666)	(.734)
Wave 2 policy impact			1.372+
			(.818)

[a] Treatment x Wave 3 for Models 1 and 3

[b] Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 5. Effect of Emeryville Fair Workweek Ordinance on daily family well-being

	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects
Parental well-being	Outcome: Parent negative mood			Outcome: Parent sleep difficulty		
Policy impact[a b]	-3.740	-0.869	-3.839	-.281*	-0.196	-.282*
	(5.397)	(4.172)	(5.228)	(0.137)	(0.124)	(0.136)
Wave 2 policy impact			1.738			-0.118
			(3.991)			(0.142)
Parenting behaviors	Outcome: Lost temper			Outcome: Punished child		
Policy impact[a b]	-2.306	-1.693	-2.564	2.507	1.820	1.864
	(1.976)	(1.684)	(1.886)	(2.319)	(1.846)	(2.269)
Wave 2 policy impact			-1.031			1.699
			(2.216)			(1.999)
Child well-being	Outcome: Child uncooperative			Outcome: Child worried		
Policy impact[a b]	-1.328	-2.168	-2.014	0.893	0.087	0.211
	(4.319)	(3.242)	(4.161)	(2.383)	(1.878)	(2.355)
Wave 2 policy impact			-2.539			-0.147
			(3.166)			(1.811)

[a] Treatment x Wave 3 for Models 1 and 3

[b] Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 6. Intent-to-Treat Analysis of Effect of Emeryville Fair Workweek Ordinance on daily work schedule disruptions

	Wave 3 only as Post	Waves 2 and 3 as Post	Waves 2 and 3 unique effects
Outcome: Any schedule change			
Policy impact[a b]	-0.129*	-.042+	-0.025
	(0.064)	(0.024)	(0.028)
Wave 2 policy impact			-.055*
			(0.025)
Outcome: Last-minute schedule change			
Policy impact[a b]	-0.032	-.034+	-0.029
	(0.022)	(0.019)	(0.021)
Wave 2 policy impact			-.039+
			(0.020)
Outcome: Change in work hours			
Policy impact[a b]	-0.031	-0.027	-0.021
	(.022)	(.021)	(.024)
Wave 2 policy impact			-0.031
			(.022)
Outcome: Canceled shift			
Policy impact[a b]	0.012	0.002	0.014
	(.015)	(.011)	(.014)
Wave 2 policy impact			-0.008
			(.012)
Outcome: Surprise shift			
Policy impact[a b]	-.019*	-.017*	-.019*
	(.007)	(.007)	(.007)
Wave 2 policy impact			-.016*
			(.008)

[a] Treatment x Wave 3 for Models 1 and 3
[b] Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Table 7. Intent-to-Treat Analysis of Effect of Emeryville Fair Workweek Ordinance on daily work and work hours

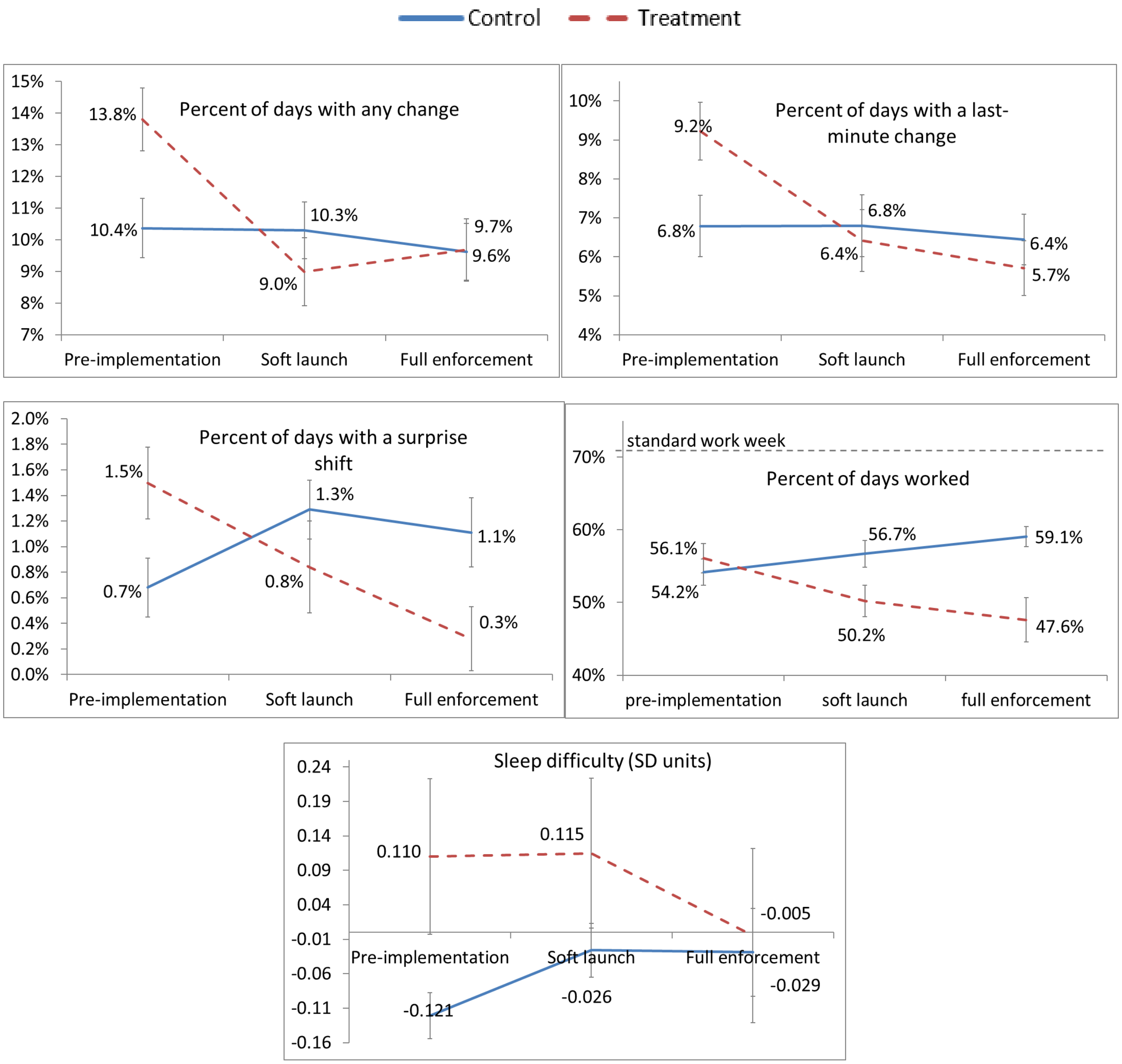
	Model 1: Wave 3 only as Post	Model 2: Waves 2 and 3 as Post	Model 3: Waves 2 and 3 unique effects
Outcome: Worked today			
Policy impact[a b]	-.129*	-.098*	-.118+
	(.064)	(.048)	(.058)
Wave 2 policy impact			-0.082
			(.052)
Outcome: Hours worked on work days			
Policy impact[a b]	.509*	0.185	.393+
	(.250)	(.254)	(.233)
Wave 2 policy impact			0.009
			(.316)
Outcome: Hours worked including non-workdays			
Policy impact[a b]	-0.474	-0.433	-0.381
	(.515)	(.401)	(.479)
Wave 2 policy impact			-0.475
			(.437)
Outcome: Hours worked across all jobs (including non-work days)			
Policy impact[a b]	-0.698	0.441	-0.623
	(.743)	(.666)	(.734)
Wave 2 policy impact			1.372+
			(.818)

[a] Treatment x Wave 3 for Models 1 and 3

[b] Treatment x post (Wave 2 and 3) for Model 2

+ $p < .10$; * $p < .05$

Figure 1.


Control
Treatment
Percent of days with any change
15%
14%
13%
12%
11%
10%
9%
8%
7%
13.8%
10.4%
10.3%
9.0%
9.7%
9.6%
Pre-implementation
Soft launch
Full enforcement
Percent of days with a last-minute change
10%
9%
8%
7%
6%
5%
4%
9.2%
6.8%
6.8%
6.4%
6.4%
5.7%
Percent of days with a surprise shift
2.0%
1.8%
1.6%
1.4%
1.2%
1.0%
0.8%
0.6%
0.4%
0.2%
0.0%
1.5%
0.7%
1.3%
0.8%
1.1%
0.3%
standard work week
Percent of days worked
70%
60%
50%
40%
56.1%
54.2%
56.7%
50.2%
59.1%
47.6%
pre-implementation
soft launch
full enforcement
Sleep difficulty (SD units)
0.24
0.19
0.14
0.09
0.04
-0.01
-0.06
-0.11
-0.16
0.110
0.115
-0.005
-0.121
-0.026
-0.029

Commission on Labor

ACTION CALENDAR
November 3, 2022
(Continued from October 11, 2022)

To: Honorable Mayor and Members of the City Council

From: Commission on Labor

Submitted by: Michael Berne, Chairperson, Commission on Labor

Subject: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110

RECOMMENDATION
Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.110.

POLICY COMMITTEE RECOMMENDATION
On September 22, 2022, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Hahn/Taplin) to forward the Commission on Labor's item to Council with a positive recommendation to adopt the version of the ordinance dated "7/7/22" that was presented to the Committee at the July 11, 2022 meeting. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION
This ordinance provides for both private enforcement and enforcement by the City. Comparable jurisdictions report a small number of complaints annually, but additional staffing may be required to investigate complaints and hold enforcement hearings. Temporary staffing and one-time mailing costs will be required to conduct outreach to covered employers. The Commission anticipates that these cost projections will be quantified in a companion staff report.

SUMMARY
Key features of the proposed ordinance include:

Scheduling Notification and Requests
- Schedules must be given 14 days in advance
- Employees must be provided with an initial estimate of hours
- Employees have the right to decline hours they are given with less than 14 days notice
- Employees shall have the right to request flexible and predictable schedules to accommodate childcare, education, second jobs etc.
- Employees have the right to decline any shift that either occurs less than 11

hours after the end of their previous shift; if accepting such a shift, will be compensated at 1½ times their regular rate of pay.

Predictability Pay

- Employees will receive predictability pay equal to a specified number of hours at their hourly rate of pay as compensation for schedule changes, ranging from 1 hour of pay for a shift scheduled less than 14 days in advance but at least 24 hours up to 4 hours of pay or hours equal to the amount of hours lost when a shift is canceled or reduced

Offer of Work to Existing Employees

- Before hiring new employees, employers must offer additional hours to existing part-time employees for any new hours available
- Employees shall have 24 hours to accept additional hours

Applicability

- In general, employers in Berkeley with 50 or more employees globally engaged in the following industry sectors: building services, healthcare, hotel, manufacturing, retail, or warehouse services;
- Restaurant employers with at least 100 employees globally and 10 or more in Berkeley;
- Franchisees associated with a network of franchises employing 100 or more employees globally and 10 or more; and
- The City of Berkeley as an employer.
- Specifically **excluded** are nonprofit organizations with fewer than 100 employees globally (which includes most arts organizations).

BACKGROUND

The City Council referred to the Commission on Labor in 2018 to draft an Ordinance to establish regulations governing the scheduling and hiring practices of qualifying businesses in Berkeley.

The City Council's referral observed that:

Even with sick pay and strong minimum wage laws, workers in Berkeley, particularly shift workers, still face unfair and exploitative work practices. Since the passage of the Affordable Care Act, a frequent issue that has arisen is the practice of businesses keeping their employees below 30 hours a week to avoid having to provide them health care. Workers may be forced to take "clopening" shifts, where an employee covers the closing shift one day and the opening shift the next day, giving them little time for rest. Shift workers frequently have shifts added or removed hours before they are set to begin, making scheduling impossible and creating financial difficulties for those with children who need child care.

At the time of the City Council's referral, multiple jurisdictions had introduced or enacted measures to address these inequitable conditions, including the Cities of Emeryville, San Jose, San Francisco, and New York, and the State of Oregon, with the strongest at the time being the City of Emeryville. The referral directed the ordinance to be based on the City of Emeryville, strengthened with the following principles:

- The right to refuse "clopening" shifts, the right to request a flexible work arrangement, and a prohibition on refusing hours to prevent the application of benefits should apply to all employers and employees
- The right to at least two weeks notice of work schedule, to decline additional hours, and to "predictability pay" if changes are made to the schedule after the 2 two week deadline should apply to all businesses of at least 25 employees
- The requirement that new shifts first be offered to all qualified existing employees until they have at least 35 hours of work per week on average should apply to all Retail, Hotel, and Restaurant firms with at least 25 employees
- All requirements of the ordinance apply to the City of Berkeley and the Berkeley Rent Stabilization Board.

Since the referral, several of the above-mentioned jurisdictions passed the introduced ordinances, in addition to the City of Chicago. Sectoral coverage in the proposed ordinance is generally modeled after Chicago, while firm size is generally modeled after Emeryville.

After many deliberative meetings before the full Commission and a dedicated subcommittee, and considering input from stakeholders including affected employers and workers, the Commission developed a proposed ordinance taking into account the Council's direction. At its November 17, 2021 meeting, the Commission on Labor voted to appoint Commissioners Katz and Botello to draft the Fair Workweek Council report recommending adoption of the draft ordinance and to send to Council without further action from the commission. (M/S/C: Katz/Osborne. Yes: Scantlebury, Harlow, Botello, Jones, Berne. Noes: None. Absent: Medak, Schriner.) By passing this ordinance, Berkeley has the opportunity to be at the forefront of worker protections and to support the essential workers that have gotten us through this pandemic.

The Commission found many of the workers employed in the retail, restaurant, and hospitality industries suffer from low wages and unpredictable schedules, while needing to work multiple jobs just to get by. Volatile scheduling leads to difficulty in managing multiple jobs, school work, and childcare. Following the model adopted by the City of Chicago, the proposed ordinance would cover building services (including janitorial and security), healthcare, manufacturing, and warehouse services.

In response to input received by stakeholders, the proposed ordinance applies only to employers employing fifty or more employees globally (similar to Emeryville), but for restaurants or franchises would apply if the employer employed at least ten employees in the City of Berkeley and at least one hundred globally. This attempts to balance an interest in achieving the broadest coverage of any ordinance or law in the United States, while avoiding coverage of locally owned businesses that do not have the human resources support of a franchisor.

The strengthening elements requested by the City Council are mostly incorporated, except for the applicability thresholds based on our deliberative process, compliance with federal laws as applicable, the requirement for new shift offers reflects a fourty-hour workweek, and the Rent Stabilization Board employees are presumed incorporated within City of Berkeley employees.

The City Council may wish to consider a delayed effectiveness date, such as until the beginning of the following calendar year, for private sector employers to allow for the time necessary for staff to provide outreach and education to affected businesses. While private sector employers should be provided a reasonable amount of time to set up systems to ensure compliance with the ordinance, the subcommittee recommends that the City of Berkeley as an employer can and should implement the new procedures promptly.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
None.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
This action is not expected to have any impact on the environment and is exempt from CEQA.

RATIONALE FOR RECOMMENDATION
Enactment of workplace protections. See background discussion.

ALTERNATIVE ACTIONS CONSIDERED
The Commission recognizes the labor standards benefits of applying the right to refuse “clopening” shifts, and refusal of hours to prevent employees from attaining thirty hours per week to all employers, and applying the two week notice and predictability pay to all sectors of the economy. The right to request a flexible working arrangement remains applicable to all employers that employ ten or more employees under the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, adopted in 2017. The proposed ordinance’s focus on uniform application to the seven sectors covered in Chicago’s model reflects (a) the expected education and outreach required for compliance, (b) the sectors where working conditions require intervention the most, and (c) that the employers covered by the proposed ordinance are in the best position to comply with its provisions in the near term, and does not preclude broadening coverage in the future.

CITY MANAGER
See companion report.

CONTACT PERSON
Margot Ernst, Commission Secretary, 510-981-5427

Attachments:
1: Ordinance
    Exhibit A: Fair Workweek Ordinance

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS; ADDING BERKELEY MUNICIPAL CODE CHAPTER 13.110

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

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

CHAPTER 13.110
FAIR WORKWEEK EMPLOYMENT STANDARDS

Sections:

13.110.010 Purpose and Intent

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

13.110.020 Definitions

As used in this chapter, the following terms shall have the following meanings:

(a) “Calendar week” shall mean a period of seven (7) consecutive days starting on Sunday.

(b) “City” shall mean the City of Berkeley.

(c) “Covered employer” shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.030.

(d) "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

(e) “Employee” shall mean any person who:

(1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City of Berkeley for an employer;

(2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section 1197 and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and

(3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.

(f) “Employer” shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.

(g) “Firm” shall mean a business organization or entity consisting of one (1) or more establishments under common ownership or control. In the case of a franchise, the franchisor shall be considered the firm.

(h) “Franchise” shall have the meaning in California Business and Professions Code Section 20001.

(i) “Franchisee” shall have the meaning in California Business and Professions Code Section 20002.

(j) “Franchisor” shall have the meaning in California Business and Professions Code Section 20003.

(k) “Good faith” shall mean a sincere intention to deal fairly with others.

(l) “Predictability pay” shall mean wages paid to an employee, calculated on an hourly basis at the employee’s regular rate of pay as that term is used in 29 U.S.C. Section 207(e), as compensation for schedule changes made by a covered employer to an employee’s schedule pursuant to Section 13.110.060, in addition to any wages earned for work performed by that employee.

(m) “Shift” shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

(n) “Work schedule” shall mean all of an employee’s shifts, including specific start and end times for each shift, during a calendar week.

(o) “Building services” means the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services.
(p) “Healthcare” shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.

(q) “Hotel” shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(r) “Manufacturing” shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(s) “Restaurant” shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(t) “Retail” shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

(u) “Warehouse services” shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

13.110.030 Applicability

(a) All sections of this chapter shall apply to: the City of Berkeley as an employer, and all employers in the City of Berkeley who are primarily engaged in any of the following industries:

(1) building services;

(2) healthcare;

(3) hotel;

(4) manufacturing;

(5) restaurant;

(6) retail; or

(7) warehouse services.

(b) Notwithstanding subdivision (a), this chapter shall apply only to an employer that

(1) is not a restaurant and employs fifty (50) or more employees globally;

(2) is a restaurant operator employing ten (10) or more employees in the city of Berkeley and employs one hundred (100) or more globally; or

(3) is a franchisee employing ten (10) or more employees in the city of Berkeley and is associated with a network of franchises employing one hundred (100) or more employees globally.

(c) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs one hundred (100) or more employees globally.

(d) In determining the number of employees performing work for a covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(e) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer under this chapter. Separate entities will be considered an integrated enterprise and a single employer under this chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

(1) Degree of interrelation between the operations of multiple entities;

(2) Degree to which the entities share common management;

(3) Centralized control of labor relations; and

(4) Degree of common ownership or financial control over the entities.

There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this chapter as long as (i) the separate legal entities operate substantially in separate physical locations from one another, and (ii) each separate legal entity has partially different ultimate ownership.

13.110.040 Waiver through Collective Bargaining

To the extent permitted by law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this chapter.

13.110.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours.

(1) Prior to or on commencement of employment, a covered employer shall provide each employee with a good faith estimate in writing of the employee's work schedule.

(2) Prior to or on commencement of employment, the employee may request that the covered employer modify the estimated work schedule provided under subsection (a)(1) of this section. The covered employer shall consider any such request, and in its sole discretion may accept or reject the request; provided, that the covered employer shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two (2) Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two (2) weeks' notice of their work schedules by doing one (1) of the following: (1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or (2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees. If the covered employer changes an employee's work schedule after it is posted and/or transmitted, such changes shall be subject to the notice and compensation requirements set forth in this chapter.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.

(a) A covered employer shall provide an employee notice of any change to the employee's posted or transmitted work schedule. The covered employer shall provide such notice by in-person conversation, telephone call, email, text message, or other electronic communication. If the Employee accepts the additional shift via a verbal conversation, the Employer shall immediately follow up with written confirmation to document the agreement and when it was accepted. This notice requirement shall not apply to any schedule changes the employee initiates, such as employee requested sick leave, time off, shift trades, or additional shifts.

(b) Subject to the exceptions in subsection (d) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than fourteen (14) days.

(c) Subject to the exceptions in subsection (d) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule: (1) with less than fourteen (14) days' notice, but twenty-four (24) hours or more notice to the employee: one (1) hour of predictability pay; (2) with less than twenty-four (24) hours to the employee, (i) four (4) hours or the number of hours in the employee's scheduled shift, whichever is less, when hours are canceled or reduced; (ii) one (1) hour of predictability pay for all other changes. The compensation required by this subsection shall be in addition to the employee's regular pay for working that shift.

(d) Exceptions. The requirements of this section shall not apply under any of the following circumstances:

(1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;

(2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;

(3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), war, civil unrest, strikes, or other cause not within the covered employer's control;

(4) Mutually agreed-upon work shift swaps or coverage arrangements among employees.

(5) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification.

(6) To accommodate the following transitions in shifts:

(i) If an employee works past the end of a scheduled shift to complete service to a customer, which service would entitle the employee to receive a commission, tip, or other incentive pay based on the completion of that service, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(7) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production.

(8) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

13.110.070 Offer of Work to Existing Employees.

(a) Subject to the limitations herein, before hiring new employees or contract employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, and if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section requires covered employers to offer to part-time employees only up to the number of hours required to schedule a part-time employee forty (40) hours of work in a calendar week. In order to facilitate communication with current employees who may be interested in additional work, an Employer may specify how employees may in advance communicate their interest of additional work and which positions and hours of work employees would be interested in covering.

(b) A covered employer has discretion to divide the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a the granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have twenty-four (24) hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The twenty-four (24) hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace where notices to employees are customarily posted. Covered employers may post the notice electronically on an internal website in a conspicuous location and which website is readily accessible to all employees. The notice shall include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the covered employer anticipates requiring coverage of the additional hours, and the process by which part-time employees may notify the covered employer of their desire to work the offered hours.

(e) The covered employer shall retain each written offer no less than three (3) years as required under Section 13.110.140.

(f) This section shall not be construed to require any covered employer to offer employees work hours paid at a premium rate under California Labor Code Section 510 nor to prohibit any covered employer from offering such work hours.

13.110.080 Right to Rest.

(a) An employee has the right to decline work hours that occur:

(1) Less than eleven (11) hours after the end of the previous day's shift; or

(2) During the eleven (11) hours following the end of a shift that spanned two (2) days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half (1-1/2) times the employee's regular rate of pay for any hours worked less than eleven (11) hours following the end of a previous shift.

13.110.090 Right to Request a Flexible Working Arrangement.

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

13.110.100 Notice and Posting.

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

13.110.110 Implementation.

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

13.110.120 Enforcement.

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be one thousand dollars ($1,000.00) for each employee retaliated against.

(2) A fine of five hundred dollars ($500.00) may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than twenty-four (24) hours' advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars ($50.00) to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.
2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of fifty dollars ($50.00) to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

13.110.130 Retaliation Prohibited.

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within one hundred twenty (120) days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

13.110.140 Retention of Records.

Each employer shall maintain for at least three (3) years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

13.110.150 City Access.

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

13.110.160 No Preemption of Higher Standards.

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

13.110.170 Severability.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

02a.32

Housing Advisory Commission

ACTION CALENDAR
November 3, 2022
(Continued from October 11, 2022)

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Libby Lee-Egan, Chairperson, Housing Advisory Commission

Subject: Harriet Tubman Terrace Tenant Support

RECOMMENDATION
Recommend City Council take the following actions:

- Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
- Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and
- City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.

FISCAL IMPACTS OF RECOMMENDATION
Staff time to research, investigate, report and enforce with ongoing follow up, making sure that tenants experience continued safety, protections, reparations and compliance from the contractors, vendors, management and all responsible parties.

CURRENT SITUATION AND ITS EFFECTS
At the Housing Advisory Commission (HAC) meeting on July 7, 2022 the Commission heard and took 2 actions on an item regarding an ongoing situation at Harriet Tubman Terrace (HTT) affecting the low income seniors and disabled tenants residing there. At the meeting the Commission heard testimony and watched video evidence that showed appalling treatment and neglect of HTT's tenants by staff and subcontractors. Residents and community members created a video of the conditions at HTT that was presented at the July 7, 2022 HAC meeting. The video is available at the following link: bit.ly/HTT-Renewal. A Dropbox account is not required to view the video (if prompted).

At the July 7, 2022 meeting, the HAC took the following actions:

Action: M/S/C (Potter/Mendonca) to send a letter to the City Council requesting the following:

- City Council review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
- City Council directs the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace;
- City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs; and
- Council request Harriet Tubman Terrace owners/management and tenants report back to the Housing Advisory Commission in September to report progress with addressing the grievances identified by tenants.

Vote: Ayes: Lee-Egan, Mendonca, Potter, Rodriguez, and Sanidad, and Noes: None. Abstain: None. Absent: Calavita (excused), Fain (excused), Johnson (unexcused), and Simon-Weisberg (unexcused).

Action: M/S/C (Mendonca/Potter) to recommend City Council take the following actions:

- Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
- Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and
- City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.

Vote: Ayes: Lee-Egan, Mendonca, Potter, Rodriguez, and Sanidad, and Noes: None. Abstain: None. Absent: Calavita (excused), Fain (excused), Johnson (unexcused), and Simon-Weisberg (unexcused).

BACKGROUND

Staff and contractors associated with Harriet Tubman Terrace (HTT) have been relocating residents and remodeling individual units since September 2021. The residents at HTT are low income, elderly, and many are disabled. The construction work requires residents to move out of their unit with their possessions, move to another unit in the building while their original unit is under construction. Once construction is complete they are then ideally moved back into their original move-in ready unit. Relocation professionals have been hired to complete this work but accounts from residents have revealed that almost every step of this process has been handled poorly, which has caused undue stress on these elderly residents, many of whom are also disabled.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
The residents of Harriet Tubman Terrace represent multiple constituencies who need protection: all are low income and elderly but many are also disabled and people of color. People in these groups can become disenfranchised and exploited by those with more power. The hope is that the investigation recommended in this report will correct and repair all violations and act as a force that will put an end to these types of abuses in our community and a disgrace to our humanity and our society's legal structures.

ALTERNATIVE ACTIONS CONSIDERED
Commission discussion included other avenues HTT's tenants have to address these issues. Supplemental communication from HTT management referred to a grievance process but tenants' testimony implied multiple barriers for disenfranchised residents to use that effectively.

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

Staff recognize the importance of ensuring the residents of Harriet Tubman Terrace are well-supported and maintain a high-quality of living. Staff also appreciate the Commission's work to understand and take action regarding the tenant concerns identified in an effort to improve the living conditions for vulnerable seniors. The following information is intended to provide additional context for Council's consideration of this matter.

Harriett Tubman Terrace is an affordable development subject to requirements from the U.S. Department of Housing and Urban Development and California's tax exempt bond program. However, it is not funded by the City through the Housing Trust Fund or other affordable housing funding and regulatory program. This means that the property is not in the Department of Health, Housing, and Community Services' Housing and Community Services Division (HHCS/HCS) monitoring portfolio and HHCS has no oversight authority.

Following notification to the HAC of the building's condition, HHCS/HCS immediately contacted the City's Building Services' Housing Code Enforcement Program, and the property ownership, Foundation Housing, to receive an update. Building Services reported that Foundation Housing complied with all of the designated City inspections and permits for the scope of rehabilitation work taking place at the property.

The Housing Code Enforcement program also indicated they conducted inspections on 17 units and the common area at this property since 2019 (Foundation Housing acquired the property in 2021 from a housing investment group that purchased the property in 2019). At the time of writing this report, there are two open cases and the remainder are closed, meaning Housing Code Enforcement found the property to be in compliance with code requirements and /or building permits related to the complaints filed. The latest request for service was received on March 2022 for Unit 401. No housing violations were observed during the inspection and the case was closed.

The two open cases are for Units 503 and 603 (both opened on July 2020) and have been assigned to a Housing Inspector. For both units, the Housing Inspector has directed the owner to correct an inoperable exhaust fan and the required building permit has been issued.

HHCS/HCS coordinated Foundation Housing representatives attendance at the July 7, 2022 to provide the HAC, Harriet Tubman Terrace residents, and public with direct updates on their work and the responses to tenant claims. Following the July meeting, Foundation Housing representatives (based in Washington, DC) flew out to visit the site and meet directly with tenants, advocates, and HAC commissioners. At the time of writing this report in August 2022, Foundation Housing representatives indicated they will attend the September 1, 2022 HAC meeting to provide additional updates on their rehabilitation work and efforts to support residents. A statement from Foundation Housing is included as Attachment 3.

All investigations into health and safety violations fall under the purview of the City's Planning and Building Services Department. Council may endorse the HAC's recommendation for HTT to provide tenants with an advocate but this is not an action HHCS/HCS has the authority to implement or enforce. Staff are encouraged by the actions taken by property ownership to correct the tenant complaints. Tenants may also seek out mediation and other services from the Rent Board if they feel their rights are not honored or treatment is discriminatory. At the time of writing this report in August 2022, HHCS/HCS is coordinating with HHCS/Aging Services to conduct outreach to HTT residents to connect them with City services and opportunities for support.

<u>CONTACT PERSON</u>
Mike Uberti, Secretary, Health, Housing and Community Services, (510) 981-5114

Attachments:
1: HAC Supplemental Communication 2022.07.07.pdf
2: HAC Letter to council July 2022.pdf
3: Statement from Foundation Housing

Date:	July 6, 2022
To:	Housing Advisory Commission
Submitted By:	Cassandra Palanza, Foundation Housing on Behalf of Harriet Tubman Renewal LP (the "Owner") of Harriet Tubman Apartments (the "Property")

To Whom It May Concern:

We submit this for the Housing Advisory Commission ("HAC") to have in its record in response to the recommendations made by Ms. Mendonca of District 8. We welcome open communication with any organization but ask the specifics are provided in order for us to respond appropriately. Many of the responses below are being done based on speculation of specific things we have resolved in the last few months with acknowledgement of some unresolved matters since much of the memo supplied, only intimates at things with no specificity. We hope that resources that can be spent on serving our residents are not mired in "investigations", that we strongly believe will be unfounded based on the amount of time doing our own investigation and research in response to any previously raised issues. We recognize that sometimes, resident populations go to their local officials whom they have a relationship with and they trust. We encourage that. All we ask is that information is immediately reported to us so we may address it with as specific as possible details to ensure full resolution. Management cannot respond in generalities. We strongly feel we have a team in place that is responding to a myriad of circumstances at the Property and working with the residents is and will remain to be one of our top priorities. Our hope is over the next several weeks with additional resources being added, the residents will begin to feel more at ease with all the improvements and management of the Property.

Regarding many of the allegations, first and foremost, we take allegations of violating health and safety seriously. Any tenant that lives at Harriet Tubman that feels their life is in danger should report such danger to the police. Any tenant that experiences a grievance or is displeased with something, may submit a grievance in accordance with the Properties grievance policy attached hereto for reference. Any intimation that our residents are having crimes committed against them, specifically elder abuse, by anyone in Management or Ownership is categorically false and if a perceived crime is believed to be committed it should be reported immediately for a full investigation. Allegations of elder abuse are not taken lightly and deemed a serious matter.

Residents should feel safe in reporting anything they are displeased with and if they feel strongly about these allegations then they should be written up and provided to a trusted person who can work with Ownership on any allegations. Again, to date, we have no reported cases of elder abuse that are being investigated by any channel of authority over such matter and our hope is with continued communication the relationship between management and the residents will continue to improve, which we feel has in the last several weeks.

Violations that may exist are from the Planning and Development Department (the "PDD"). As violations are received, they are addressed. There are currently two open violations that we are aware of. We have confirmed that these matters are being repaired during the construction work and completion will be submitted to the PDD. All tenants are encouraged to report all matters to management. In order for things to be addressed timely, management should be the first point of contact. Absent substantive violations to which we can respond, which we are happy to do so, we are not aware of the allegations alleged by Ms. Mendonca in the first paragraph of her memo.

Additionally, we are in receipt of a video produced and submitted to HAC regarding the ongoing construction work at Harriet Tubman Apartments. The scope of work for the accessibility units meet the federal standard for accessibility and have been signed off on by local and state officials through our application process for Bonds and LIHTC's. We are happy to provide the City Inspection Log wherein these units were inspected ,passed, and deemed suitable for occupancy. If a resident has a mobility impairment or need for something outside the scope of their apartment or an accessible designed apartment, they should submit a Section 504 reasonable accommodation ("RA") request to management for management to carry out. Reasonable accommodations can be made at any time and if a resident cannot fill out the paperwork or does not want to, management will assist them. Please be aware, since this video was submitted to Management and some of the residents intimate in the video that they may or may not need accommodation, Management will reach out to them to see if we can assist in any RA request they may need. This is not a retaliatory action but required by management when a resident asserts a need for an accommodation.

Rodent, roaches and filth should absolutely be reported to management immediately. We have pest control services that can mitigate these issues. Pest control is the second Friday of the month and as needed or requested by management. We are going to schedule a 100% walk with pest control and some residents have requested frequent pest control in their units. We will continue to monitor the pest situation and if additional services are warranted we will provide them. If residents follow the grievance policy on reporting things for habitability matters and they are not resolved to the resident's satisfaction, the regulators of our property will ensure oversight so that matters are responded to. We cannot stress enough the importance of reporting all things to management first. They are our first line of defense for fixing and maintaining habitability. In addition to the Grievance Policy, if residents feel they are not being heard, at the end of this response is a communications tree for residents to work with which includes all of the contact information of management up to an owner's representative throughout the duration of construction. This does not circumvent the Grievance Policy but rather provides additional points of contact for residents to try and expedite their requests. It should be noted, while Owner is committed to rectifying all issues, if residents do not go to management first, then there could be continued delay of resolving their concerns.

To date, we have received inquiries from CAHI regarding asbestos abatement and security matters. Below is our official response to CAHI regarding asbestos concern:

> "With respect to your inquiry – asbestos testing was completed prior to the work commencing. During the rehab work that is ongoing, whenever the scope of work being performed includes disturbing asbestos containing materials the work is only performed after the resident has been temporarily relocated to another unit. While the asbestos abatement work is being performed, the unit is closed and sealed off – please see attached photos. In situations in which the asbestos containing materials or suspected asbestos containing materials ("ACMs") being disturbed are classified as "friable" ACMs, the units have air clearance testing completed by a licensed 3rd party environmental services provider prior to the containment being removed and the unit reoccupied. All ACM abatement work is being performed by contractor licensed to do this work

in CA. The abatement contractor posted all of the required notices with the state, local jurisdiction and residents prior to the abatement work at the property. Attached for your reference is the notice that was posted prior to the asbestos work beginning (please note that in this word document the date is set to automatically update to the current date on the day the document is opened)."

With respect to security in the building, Owner does not provide a security company. The building is controlled by controlled fob access and there are plans to improve the camera system within the building. Simultaneously with the issuance of this response, we are working on response to CAHI regarding security.

We empathize with the disruption that construction can cause. It can be very taxing for residents and we understand that, truly we do. We have, for the duration of construction, funded a relocation coordinator and moving company. Residents should feel that, while an inconvenience, they are only temporarily relocating to another apartment for the duration of their in-unit work. We did this plan because this property in particular has many residents with extreme quantities of contents in their apartments and it would have been challenging for our construction team to work in the units with all the belongings in there. We have consistently evaluated our relocation plan and if it makes sense to adjust it, we do. We have evaluated in recent weeks and recognize there were some hiccups and construction delays. Our accessible units, which were the most complicated to construct, were renovated first and we incurred numerous delays that we should not have going forward. Additionally, there were cosmetic issues that were not satisfactorily completed (ie. Toilet paper holder, mirror, blinds, etc) prior to returning a resident to their unit. We acknowledge and apologize for this. We have high standards for our community and strive to meet them every day. While I thought we were moving on from some of the displeasure we recognize some of the residents may still be upset or unhappy and we will work to foster that trust with more communication to them and in person meetings over the following weeks to discuss.

While we cannot address every item in the video in a written response to the Commission, at this time, we can highlight a few items that we know residents were upset with and work on a list of responses if the Commission would like additional matters answered. The electrical chord noted in the video is a cosmetic issue and not a safety issue. We are working with our construction team on a solution that limits the visibility of any chord. There is no electrical or fire hazard with respect to the chord mentioned in the video. We will communicate to residents that a solution to the chord in the kitchen light is still being figured out to provide for the best cosmetic 5oluteon this week via an FAQ that we are putting together for our residents. Management also maintains a binder of all notices sent to residents during construction and we are happy to show anyone all of the notices communicated to residents.

Blinds and screens – everyone will return to their unit with blinds. Due to shipping delays, a resident may return to their unit with their existing blinds. We have been working to have all materials stored and available at each unit being constructed but may have to return to install the blinds. Screens have been ordered and arrived damaged and are being reproduced. Again, we know this is frustrating and going forward, while not ideal, no resident will return to their unit without blinds installed. While many of these are inconvenient and hassles residents should not have to deal with, we have put processes in place with management and relocation actively communicating with our residents. We are walking units prior to each resident moving back and creating a pre-inspection report to address any concerns prior to a resident moving back as well as managing expectations. Our relocation coordinator and management agent have been empowered to push back and not accept units if they are not acceptable as well as work with our contractor to determine if there are items residents are not happy with are in the scope or routine maintenance items that should be added to the scope of work.

Additionally, we have weekly meetings with the following positions relevant to Harriet Tubman where we discuss all things construction and relocation:

Foundation Housing:	Asset Manager, Director of Asset Management, Project Manager (Cassandra Palanza)
Development Partner:	Pennant Housing Group (2-3 individuals)
Precision Construction:	Superintendent, General Contractor, Project Manager
FPI Management:	Community Director, Portfolio Manager, Senior Director and Relocation Coordinator

Our hope is the amount of staff committed to the completion of this project and its future preservation is not lost in a residents pursuit of "justice" for their concerns. Below is the contact information of personnel here to serve and respond to our residents through the duration of construction. The below team will reach out to the residents in the video supplied and confirm that all of their issues highlighted in the video are resolved. Cosmetic issue or things that a reasonable person who saw them should think to fix them (under the bathroom holes, backboard of the sink) will be addressed.

LaTonya Glover, Property Management, FPI Management
harriettubmanterrace.cd@fpimgt.com, 510-843-0134

Brandon Heezen, Portfolio Manager, FPI Management
Brandon.heezen@fpimgt.com

Brandi Hutchinson, Senior Director, FPI Management
brandi.hutchinson@fpimgt.com

Tamara Couto, Relocation Specialist, Advanced Relocation Services
advancedreloll@gmail.com / 559-903-3800

Jordan Bobb, Asset Manager, Foundation Housing
jordanb@foundationhousing.com

Cassandra Palanza, Project Manager and Landlords Representative, Foundation Housing
Cassandra@foundationhousing.com /

Lastly, we are beginning to implement some things to try and assist our residents further with communication and supportive services during the rehab and after conclusion of the rehab. We have approved a TV monitor for updates and important information for residents. We are putting our resident services under review to see how many additional hours of resident services we can add to the property to give our residents additional support. We are ordering computers for a computer center for the residents to utilize. We are trying to see if we can add the layout to our scope but the approval to order these computers was granted and we look forward to giving residents access to these as soon as possible. In addition to moving assistance during the rehab, we are offering appointments with assistance for residents to go through their things and eliminate/donate unwanted items. See attached flyer. This service is completely voluntary but we recognize that there are many of our residents who lack the capability or physical strength to resolve the building amount of contents in their homes. To date, we have had three residents utilize the services and will look to establish this as an annual or semi-annual event. Rounding out all of the things we continue to work on, Management is sending out a survey to residents asking for feedback. It is voluntary and vital that we hear from everyone. Despite some of the challenges we also have many residents who are pleased with the progress this community is making and as we move forward we feel it is important to share all the information so that those stake holders involved can make informed decisions.

We recognize that in elderly populations, packing, moving, moving, unpacking is stressful. We are working to find additional resources for additional packing assistance and unpacking. No resident is asked to move anything except for their things they consider extremely valuable (jewelry, passport, documents and any other valuables that they do not want touched). If a resident feels they are not getting the assistance they need, then they should immediately notify the relocation coordinator. If the responsiveness is not there then Management should be notified followed by the Owners Representative.

To date we have completed 22 units. As of July 6, we have 5 tenants who have been temporarily relocated to other units. These residents are scheduled to return to their homes Friday, July 8, subject to management inspection and approval.

Thank you for your time. We look forward to completing this project and the residents being able to enjoy their improved community in a peaceful manner.

Management Relations

Grievance Procedures

Our goal at this apartment community is to provide outstanding customer service, responsive management and build good resident/management relations.

On occasion a dispute or problem may arise between a resident(s) and management. If there is a dispute, a discussion is encouraged on a one-to-one basis. If discussion does not provide a resolution, a resident may use the Grievance Procedure outlined in an effort to provide resolution.

The Grievance Procedure is designed to ensure that there is a fair and equitable process for addressing resident concerns and to ensure fair treatment of residents in the event that an action or inaction by a management representative adversely affects the resident of this apartment community.

Individuals, who feel they have been treated unfairly, may submit a grievance to management. Management will respond to valid requests involving concerns about conditions or quality of life at the apartment community. An informal review of issues and concerns will be conducted.

In order to clearly understand the issues, management will request a written statement of the issue for all parties to review. Management may need to obtain written statements from witness or other outside parties to fully review the concerns. An informal meeting will then be scheduled to review the concerns in an attempt to resolve the conflict. If this process does not resolve the matter, the resident may seek resolution through the process outlined below.

Example of Complaint Process

<u>Step 1</u>. Resident notifies Community Director/Manager to discuss complaint, provides complaint in writing (Form available), (Reasonable Accommodations may be made for persons with disabilities) and discusses possible solutions.	**<u>Step 2</u>**. Community Director/Manager discusses matter with resident and replies in writing to complaint within 10 working days. If dispute is not resolved, proceed to the next step.	**<u>Step 3</u>**. Resident appeals to Portfolio Manager in writing within 5 working days of the receipt of the written response. (Reasonable Accommodations may be made for persons with disabilities). Portfolio Manager will contact parties within 10 working days of receiving appeal. If dispute is not resolved, proceed to the next step.
<u>Step 4</u>. Portfolio Manager will discuss grievance with resident and within 10 working days, provides decision and written statement on the grievance and take any necessary action. If dispute is not resolved, proceed to the next step.	**<u>Step 5</u>**. Resident appeals to the Contract Administrator within 10 days. Contract Administrator responds to the Resident. If dispute is not resolved, proceed to the next step.	**<u>Step 6</u>**. Resident appeals to the HUD office within 10 days. HUD responds to the Resident

<u>Contact Information</u>

Step One & Two	***Step Three & Four***	***<u>Step Five</u>***	***<u>Step Six</u>***
Community Director/Manager: La Tonya Glover Community Director of Harriet Tubman Terrace 2870 Adeline Street, Berkeley, CA 94703	**Management Agent:** **FPI Management, Inc.** **Regional Portfolio Manager** **800 Iron Point Road** **Folsom, CA 95630**	**Contract Administrator:** California Affordable Housing Initiative (C.A.H.I.) 505 14th Street #650 Oakland, CA 94612	**HUD** HUD Account Executive (AE) Lorraine.S.Satterwhite

I hereby acknowledge that I have received a copy of the Grievance Procedure and understand the process described above. I also understand that a Complaint Form is available in the Rental Office and Community Bulletin Board.

Resident Name	Resident Signature	Date
Resident Name	Resident Signature	Date
Management Representative	Date	

EQUAL HOUSING OPPORTUNITY

Libby Lee-Egan (Chairperson) & Mari Mendonca (Vice Chairperson)
Berkeley Housing Advisory Commission

July 15, 2022

Mayor Arreguín and Berkeley City Councilmembers,

We write to you today to express deep concern and inspire urgent action on an issue affecting some of Berkeley's most vulnerable residents. At the Housing Advisory Commission (HAC) meeting on July 7, 2022 we heard and took action on an item regarding an ongoing situation at Harriet Tubman Terrace (HTT) affecting the low income seniors and disabled tenants residing there. For reference, see item #5 on the agenda and supplemental communication here. At the meeting the Commission heard testimony and watched video evidence that showed appalling treatment and neglect of HTT's tenants by staff and subcontractors.

Most of the grievances were related to relocation to/from and construction in individual units. Commissioners and members of the public expressed distress at what these seniors were being subjected to, including:

- Inadequate relocation services. The video shows the home of a disabled tenant whose possessions were not unpacked from their boxes and equipment necessary to help him move about his home was not installed.

- Shoddy construction and poorly-planned improvements ill-suited to each home's resident. The video shows a tenant whose newly-remodeled bathroom has a hole in the wall where a toilet paper holder should be and a bathtub that is not usable for her as someone who has had a hip replacement.

- Overall lack of trust between staff and tenants. It was clear from testimony and video that tenants do not feel comfortable submitting complaints or requests. There are many reasons for this discomfort, including fear of retaliation. This is the primary reason for our 3rd recommendation below for a tenant advocate to assist the HTT residents.

Members of the HAC also received supplemental communication and heard public comment from HTT's project manager/landlord representative which insufficiently addressed some of these concerns.

During the meeting on July 7, the Commission voted unanimously to send this letter, requesting the mayor and City Councilmembers take action:

1. Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;

2. Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace;

3. Request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs; and

4. Request Harriet Tubman Terrace owners/management and tenants report back to the Housing Advisory Commission at our regular meeting in September to report progress with addressing the grievances identified by tenants.

At the same meeting, the Commission also unanimously approved a motion to put together an official recommendation on this matter. This report is under development right now and is forthcoming. Staff advised that this could take time for this to get on the council's calendar and because these Berkeley residents need help *now*, the HAC opted to send this letter before the report is finished.

If you have any follow up questions or require any additional information, please do not hesitate to reach out to the submitter of the item and Vice Chair Mari Mendonca (marimendonca71@gmail.com) and Chair Libby Lee-Egan (libbyco@gmail.com).

Sincerely,

Libby Lee-Egan
Housing Advisory Commission Chairperson

Mari Mendonca
Housing Advisory Commission Vice Chairperson

Links:
Agenda: bit.ly/HAC7722-Agenda
Supplemental Communication: bit.ly/HAC7722-SuppComm
Video: bit.ly/HTT-Renewal

The following update from Foundation Housing was provided by to HHCS staff via email on August 24, 2022.

The Landlord [Foundation Housing] continues with the renovations in accordance with local, state and federal guidelines and does not have open code violations as it pertains to any of the renovations.

Landlord, in response to tenant input has addressed, in landlords opinion, most items. Where landlord and tenant(s) differ we continue to work through those matters on an individual basis with each tenant. Landlord has added services including but not limited to more than doubling the resident services contract that will begin in September, changed the cleaning contract of the building and had the building deep cleaned twice with daily cleaning occurring in all common areas and public spaces, done a 100% unit pest inspection and begun regular pest control of units identified with housekeeping issues, offered residents 2 hours of cleaning of their apartments by a cleaning company at landlords expense, offered decluttering and unloading of residents items they do not want or want to dispose of (at landlords expense), paused relocation with the exception of deemed necessity in August, hired a new relocation coordinator (AutoTemps) set to resume tenant relocation in September and continued to focus on the completion of the much needed renovations of the building.

An open item that we acknowledge and realize is not resolved is the matter pertaining to the stoves in the one bedrooms and resolution is still pending on that item. Construction continues to experience supply chain issues and we continue to accommodate as necessary to make sure units are delivered completed with little to no disruption upon returning home. The screens to the windows arrived in early August and began installation on all newly installed windows. Approximately 40% of the apartment homes are completed. Landlord and management will be available on the next Housing Advisory Council call [September 1, 2022] to take questions and give additional updates on the status of things at Harriet Tubman Apartments.

02a.34a

[Commission Name]

ACTION CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Weldon Bradstreet, Vice Chairperson, Disaster and Fire Safety Commission

Subject: Measure FF Budget Recommendation - Expanded Fire Prevention Inspection Program

RECOMMENDATION

Summary. With the risk of catastrophic wildfire steadily increasing due to climate change, the Disaster and Fire Safety Commission (DFSC) recommends prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department's Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). In addition, the Fire Code would be strengthened as needed to require removal of hazardous vegetation on the entirety of properties beginning in FY 25. The program would provide for City vegetation management crews to clear vegetation where property owners opt into the program or fail to comply, with no-interest liens placed upon properties to recover direct costs upon transfer. Special emphasis should be placed on eucalyptus groves due to their high flammability and potential to create spot fires.

Funding for this expanded program, together with the Fire Department's existing home inspection program, which is focused on creating defensible space around structures, would be supported by devoting 21 percent and 26 percent of Measure FF revenues for FY 23 and FY 24, respectively. (See table below.)

Description. The Fire Department's existing home inspection program is focused primarily on ensuring 30 feet of defensible space around structures in Fire Zones 2 and 3. Consistent with Berkeley's and California's regulations, the DFSC recommends that the program be expanded to routinely require defensible space within 100 feet of any structure, particularly on any portion of a slope, including the removal of particularly fire-prone vegetation. The City should develop additional regulations to require removal of highly fire-prone vegetation on the entirety of properties beginning in FY 25. Highly fire-prone vegetation is widely recognized to include eucalyptus, Monterey pine, juniper, and limited other species.

The DFSC also recommends that the City expand its capability, possibly in conjunction with the Parks and Recreation Department, to clear brush and remove trees as necessary to meet existing regulations where property owners fail to comply, with liens placed upon properties to recover direct costs upon transfer, as provided under BFC Sec. 4907.2.2. As a City program is likely to provide economies of scale, other efficiencies, and expert guidance, and as the health and safety of Berkeley residents is promoted by facilitating compliance, property owners should be allowed to opt into the City's vegetation clearance program with cost-recovery provided through property liens. In either case, no interest should be assessed on direct costs, given the public benefits and the availability of Measure FF funds to carry the cost.

This proposed program is consistent with the recommendations of the Hills Emergency Forum, of which the City is a member along with other East Bay authorities, to thin and remove hazardous vegetation on private property as well as public property.[1] The initial phase of the program (FY 23) would be focused on requiring removal of debris build-up on the ground, loose bark to 8 feet above ground, tree limbs to 10 feet above ground, and saplings and subordinate trees that could ignite upper canopy throughout each property. The second phase (planned in FY 23, implemented beginning no later than FY 24) would require removal of hazardous trees and other hazardous vegetation, provide for any necessary erosion control measures, and encourage revegetation with native, fire-resistant species. Beginning in FY 25, property owners would be required to properly maintain their entire property, adding or clarifying Fire Code provisions as necessary that the Fire Department and the DFSC would develop in consultation with the City Attorney for Council's consideration. The proposed budgets may include a program manager, additional inspectors, expert consultants, and crews as needed.

Three additional elements of the program should include: (a) removal of trees and vegetation on private and City property to meet existing regulations that require unobstructed 20-foot clearance for emergency egress and emergency vehicle access[2]; (b) removal of hazardous trees and vegetation on City property as needed,[3] and (c) removal of large trees posing public safety hazards on private property that have been identified outside of the VHFSZs, included in this program as an equity measure, if possible.[4] The cost of clearing City property could be funded through Measure FF as needed.

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[1] *See* Hills Emergency Forum (http://www.hillsemergencyforum.org/MgmtRecmdtn.html).

[2] Cal. Code Regs. tit. 14 § 1273.01.

[3] The City's Parks and Recreation Department is currently addressing these hazards in city parks and may largely complete the effort in FY 22.

[4] Consultation with the City Attorney as to the ability to expend Measure FF funds on trees posing safety hazards other than wildfire is advised.

RECOMMENDATIONS - EXPANDED INSPECTION PROGRAM		
	FY 23 $	FY 24 $
Continue current (FY 22) spending on Inspection Program, recurring) (Estimated)	$ 1,000,000	$ 1,080,000
Expanded Program*	$ 770,000	$ 1,140,000
Develop new fire safety regulations as needed	$ -	$ -
Total	**$ 1,770,000**	**$ 2,220,000**
Measure FF Annual Revenue	**$ 8,500,000**	**$ 8,500,000**
TOTAL % FF Funds	**21%**	**26%**
* Cost of fuel removal, where necessary, to be recovered via property liens		

FISCAL IMPACTS OF RECOMMENDATION

This DFSC recommendation addresses the prioritization of Measure FF funds and will have no impact on General Funds. However, by prioritizing the reduction of flammable vegetation throughout Berkeley's VHFSZs, these recommendations will reduce the likelihood of wildfire and the intensity and severity of any wildfires that occur in the City, which would destroy homes and other property and have other far-reaching negative fiscal impacts, including exacerbation of the existing housing crisis.

The Fire Department recently abandoned an application for a CalOES/FEMA grant to address hazardous vegetation due to competing priorities, disqualifying events, costs and disproportionate commitment of staff time needed for grant application and performance.[5]

CURRENT SITUATION AND ITS EFFECTS

At the April 27 Special Meeting, the commission passed a motion to recommend prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department's Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). M/SC: (Stein, Bradstreet) Ayes: Bradstreet, Rader, Cutler, Stein, Simmons; Noes: Bedolla, Abstain: None; Absent: Dean, Degenkolb.

The Fire Department's existing home inspection program is generally limited to addressing a 30-foot radius around structures in Fire Zones 2 and 3, and removal of hazardous vegetation (e.g., eucalyptus and junipers) is generally not required.

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[5] BFD Monthly Report to the DFSC, March 23, 2022.

Therefore, the inspection program does not address major areas of vegetation build-up and hazardous trees on private land. Such vegetation is widely recognized to contribute to the likelihood, severity and speed of a wildfire and thus poses an immediate wildfire threat to the City. As discussed below, however, California's and Berkeley's regulations provide for more aggressive inspections and enforcement.

BACKGROUND

Measure FF passed on November 3, 2020, with a 74.2 percent "yes" vote and generates approximately $8.5 million annually. Among other important objectives, including improvements to the 9-1-1 dispatch system, training facility improvements, and funding of new ambulances and technicians, the measure supports wildfire prevention and preparedness activities including vegetation management. In a 2020 community survey, a tax for wildfire prevention received 69 percent approval from residents and was the most popular rationale for a new tax to support fire and emergency services.[6]

Measure FF funds have been used in part to create a home inspection program housed in the Fire Department, which is aimed primarily at creating 30 feet of "defensible space" around structures. "Defensible space" means the area adjacent to a structure where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.[7] Slope is a primary factor that increases an area's susceptibility to wildfire.[8] Berkeley's Fire Department inspectors may require additional treatments within 100 feet of any property,[9] however this is the "exception rather than the rule."[10] State law, however, requires 100 feet of defensible space for all properties in wildfire-urban interface areas,[11] and most of Fire Zones 2 and 3 is on slopes. Given the threat of wildfire and given that many private property areas within Berkeley contain dense and hazardous vegetation that will go untreated under current practice, Berkeley should fully enforce state requirements, which are consistent with Berkeley's Fire Code that requires maintenance of an effective firebreak by "removing and clearing away flammable vegetation and combustible growth." Flammable vegetation is widely recognized to include eucalyptus, Monterey pine, juniper and limited other species.[12,13]

Berkeley has many areas of vegetative fuel build-up that are beyond 30 feet of any structure. Examples of large such areas include numerous concentrations of eucalyptus

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[6] See p. 5 of the supplemental material for item 13 on the June 2, 2020 Council meeting: https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/City_Council__06-02-2020_-_Regular_Meeting_Agenda.aspx.

[7] See Cal. Gov. Code Sec. 51177(a) and BFC Sec. 4907.2.1. https://berkeley.municipal.codes/BMC/19.48.020.

[8] See CalFire, Prepare for Wildfire – Defensible Space, https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/defensible-space/.

and other hazardous vegetation that exist throughout Fire Zones 2 and 3, including canyons with creeks, such as Cerritos Creek and Codornices Creek canyons, and areas between homes on the long slopes between tiered streets that are often untended and overgrown. Eucalyptus trees are a particular hazard, due to their high fuel-loading per acre, ease of ignition, fire intensity and flame length.[14]

The Hillside Fire Safety Group has identified seven eucalyptus groves of 15 trees or more on 103 private properties and three groves of 15 trees or more in three City parks (Remillard, Cragmont Rock and Glendale-La Loma). Smaller groups or single trees have also been found on 16 private properties and on seven other City properties (Two parks and 5 Right-of-Ways). In total, Eucalyptus trees have been found on approximately 119 private properties and 10 City locations. The 10 groves private and City property account for most of the approximately 717 eucalyptus trees north of the UC Berkeley and Berkeley Lab campuses.[15] When one adds the approximately 415

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[9] Berkeley Fire Department, "Fire Prevention Inspection Report, Wildland-Urban Interface Area" (Rev. 05/2020) (included in June 1, 2021, Berkeley Fire Department mailing to Berkeley property owners).

[10] According to Chief May of the BFD, "State law technically makes a property owner responsible for providing defensible space on their property out to a distance of 100 ft. from structures. However, the same law allows for varying intensity of vegetation management between 0 ft. – 30 ft. and 30 ft. – 100 ft. from structures. Based on our local lot size and geometry the Berkeley Fire Department is concentrating on the space 0 ft. – 30 ft. from structures as well as within 10 ft. of road and street frontages. There may be some circumstances where [defensible space] greater than 30 ft. is necessary and achievable, but these will be exceptions rather than the rule. There is no requirement to 'groom hillsides' (i.e., to cut/trim vegetation just to cut vegetation). Vegetation management is required where conditions in one of the defensible spaces around a structure or other target area require it." (Response to October 18, 2021, questions posed by DFSC Commissioner Rader.)

[11] See CalFire, "Homeowners Checklist" (2009). https://www.readyforwildfire.org/wp-content/uploads/Homeowners-Checklist.pdf

[12] See notes 13, 14, 22, and 28 *infra*.

[13] Flammable vegetation expressly does not include "[s]pecimens of trees, ornamental shrubbery or similar plants which are used as ground cover, if they do not form a means of rapidly transmitting fire from the native growth to any building or structure." BFC Sec. 4907.2.

[14] See East Bay Regional Park District, "Blue Gum Eucalyptus: A Wildfire Threat" (http://www.hillsemergencyforum.org/docs/EucTreatment.pdf); Russell and McBride, 2002, Agree et al., 1973, and Chenny, 1981, as cited in J.R. McBride's Fuel Management Proposal for Claremont and Strawberry Canyons, 2019. (Available at https://www.claremontcanyon.org/fuel-management-proposal.)

[15] Hillside Fire Safety Group presentation to the DFSC (February 23, 2022), plus Cragmont Rock Park and additional groves and trees in areas north of Marin Avenue.

Eucalyptus trees along the northern boundary of the UC Berkeley and Berkeley Lab campus, the total number of Eucalyptus trees in north Berkeley is 1,132. This does not include the Eucalyptus trees further to the south inside the UC Berkeley and Berkeley Lab campuses.

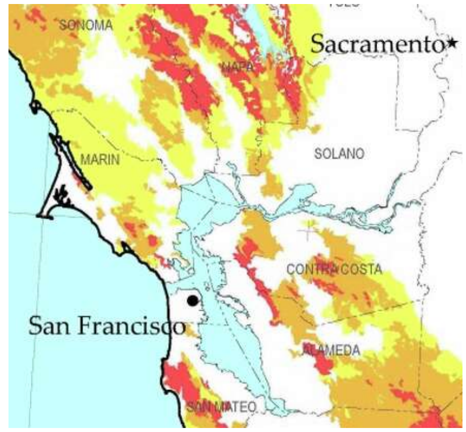
A significantly smaller number of additional hazardous trees exist in Fire Zone 3 (Panoramic Hill) and in the Fire Zone 2 area south of campus (areas of which burned in the 1991 Tunnel Fire). Many, if not most, of these areas require clean up. Better fuel management can also enable firefighters to assemble and more safely undertake fire suppression activities.[16]

The consultant recently hired by the Fire Department to prepare its Community Wildfire Protection Plan (CWPP) has explained the "unparalleled" potential of burning eucalyptus embers to create spot fires, which create some of the most destructive wildfires. The consultant noted that "[p]revention of crown fire in eucalyptus in the Berkeley/Oakland hills, and elsewhere in the East Bay *is of paramount importance to the fire safety of a very large population*."[17] For this reason, eucalyptus groves should be prioritized in the City's inspection program.

[16] Note 14 *supra* (McBride 2019).

[17] Carol Rice, Wildland Res Mgt, UC Berkeley Wildland Vegetative Fuel Management Plan at pp. 25-27 (July 2020 Draft). Emphasis added.

It is well understood that ladder fuels can carry fire from ground fuels to tree crowns where it can become a devastating fire that quickly spreads.[18] Within its "State Responsibility Area," CalFIRE has embarked on many programs to reduce fuel loads and create horizontal and vertical fuel breaks to protect California's most wildfire-vulnerable communities.[19] CalFIRE is not responsible for densely populated areas, however, which falls to local governments such as Berkeley. (See Figure at right.) While CalFIRE addresses fuel loads in areas near or adjacent to vulnerable urban areas, it is obviously at least equally important to address fuel loads *within* dense urban areas to reduce the likelihood and impacts of catastrophic wildfire.



CalFire map shows Northern California's fire severity zones, with red areas, including the Berkeley hills, signifying very high risk. Much of the very-high-risk areas shown have burned in

The California Constitution generally prohibits "gifts of public funds" to any public or private person; however, such gifts are allowed for a public purpose, and that public purpose is to be liberally construed.[20] The city and state have numerous programs that spend public funds on private property for the purposes of disaster preparedness and public safety.[21] Using public funds to reduce fuels that significantly contribute to the risk of wildfire would likely be considered a public purpose, particularly given the limited

[18] See CalFIRE, Fire and Fuels Treatment: https://www.fire.ca.gov/programs/resource-management/resource-protection-improvement/wildfire-resilience/forest-stewardship/fire-and-fuels-treatment/.

[19] See, e.g., CalFIRE's Fuel Reduction Guide (2021) (https://www.fire.ca.gov/media/4jqerfjh/fuels-reduction-guide-final-2021-interactive.pdf).

[20] See League of California Cities, "Gift of Public Funds (Spoiler Alert: It's Illegal)" at p. 1. Available at: https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual_Forbath_Gift-of-Public-Funds_Spoile.aspx.

[21] Several City of Berkeley programs provide public funds for private benefit, including a FEMA-funded seismic retrofit program providing grants of up to $150,000 (see https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Building_and_Safety/RetrofitGrants_ProgramRules.pdf), and a free fuel chipper and debris bin program, funded through a refuse bill surcharge (see https://www.cityofberkeley.info/fire_fuel_program/). Alameda County offers grants of up to $10,000 per homeowner to abate lead hazards (see https://www.achhd.org/programs/leadfunding.htm).

incidental benefits that would accrue to landowners. Berkeley's City Attorney should confirm this view.

ENVIRONMENTAL SUSTAINABILITY

Acting on these recommendations will reduce the likelihood, intensity and severity of a wildfire in the City, potentially avoiding devastating and far-reaching human and environmental impacts in our City. Burnt landscapes can be slow to recover and can lead to polluted water sources, erosion or landslides, and health impacts from airborne ash.[22]

The proposed City-run crews would promote the replacement of flammable, non-native tree and shrub species with natural, more fire-resistant native species that provide superior habitat for many insect, avian, and mammal species, compared with eucalyptus.[23] To prevent regrowth of eucalyptus, City crews should rely on non-pesticidal, manual sprouting control for several years following eucalyptus removal, if stumps are not removed. In drafting expanded or clarified portions of the Fire Code, the City should consider requiring property owners to employ manual sprouting control and revegetation with fire-resistant native species that also promote erosion control as necessary. The Hills Emergency Forum, of which the City is a member along with other East Bay authorities, has developed best management practices (BMPs) to reduce potential environmental impacts of fuel reduction projects and to comply with various laws and regulations which may be consulted.[24]

The revegetation component of the program is expected to partially mitigate the carbon impact of removing hazardous trees. The City could mitigate remaining carbon impacts by using additional Measure FF funds to supplement the City's existing program to plant trees in northwest and southwest Berkeley.[25]

[22] Cartier, K. M. S. (2022), U.S. fires quadrupled in size, tripled in frequency in 20 years, *Eos*, 103, https://doi.org/10.1029/2022EO220188. Published on 08 April 2022.

[23] See: California Native Plant Society East Bay (https://ebcnps.org/conservation/balancing-fire-safety-with-native-ecosystem-protection-2022-02/); Hills Emergency Forum (http://www.hillsemergencyforum.org/MgmtRecmdtn.html); East Bay Regional Park District, "Blue Gum Eucalyptus: A Wildfire Threat" (http://www.hillsemergencyforum.org/docs/EucTreatment.pdf);

[24] See Hills Emergency Forum, Best Management Practices Working Paper, 10/17/08 (http://www.hillsemergencyforum.org/docs/BMPs.pdf).

[25] See *Berkeleyside*, "Berkeley residents can request free saplings to combat tree inequity" (March 8, 2022) (https://www.berkeleyside.org/2022/03/08/trees-make-life-better-berkeley). Also see: https://www.cityofberkeley.info/tree_planting/.

Permits are not required to prune or remove any tree on private property, with the exception of coast live oak[26] (which is not fire-prone).

Land use projects that require trees to be cut down are often not considered significant environmental effects under the California Environmental Quality Act (CEQA).[27] While the City may nevertheless find "detriment" under the City's zoning ordinance for impacts not considered significant, the environmental and public safety benefits of removing hazardous vegetation more than outweigh any such detriments, particularly given the revegetation element of the program.

RATIONALE FOR RECOMMENDATION

The geography, weather patterns, drought conditions and dense vegetation in the East Bay create ideal conditions for wildfire, which could have devastating consequences to Berkeley. Reducing these fuels wherever they exist has been identified as a high priority in the CWPPs of other East Bay jurisdictions[28] that have identified eucalyptus and Monterey pine as a particular hazard "due to their rapid growth, height at maturity, dense foliage, shallow root structure, flammability, breakability or invasiveness."[29] "[E]ucalyptus … are subject to torching and crown fires with potential high ember flight rates into residential areas."[30]

UC Berkeley (UCB) has also recognized the threat, having cleared eucalyptus trees in Claremont Canyon.[31] UCB is currently in the process of removing eucalyptus and other trees and ladder fuels in the hills behind UCB along the Jordan Fire Trail, as part of a larger plan entailing the widespread removal of eucalyptus trees.[32] LBNL is currently seeking $2.9 million from CalFire to remove all 1,500 eucalyptus trees on its property.[33]

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[26] See City of Berkeley, Tree Pruning and Removal (https://www.cityofberkeley.info/pruning_removal/).

[27] See City of Berkeley, General Information on CEQA (https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Environmental_Review_(CEQA).aspx).

[28] See the CWPPs of El Cerrito-Kensington, Contra Costa County, Alameda County and others available at the website of the Diablo Firesafe Council, www.diablofiresafe.org. Also see EBRPD, note 5 *supra.*

[29] See *El Cerrito - Kensington Wildfire Action Plan*, p. 1.7. Also see *Contra Costa County Community Wildfire Protection Plan Update*, p. 2.5 and *Sunol Wildfire Action Plan* at 4.2.

[30] Ibid.

[31] See https://www.dailycal.org/2021/01/19/uc-berkeley-project-removes-claremont-canyon-trees-for-evacuation-route/#:~:text=In%20a%20project%20spearheaded%20by%20UC%20Berkeley%2C%20eucalyptus,November%202020%2C%20according%20to%20campus%20spokesperson%20Janet%20Gilmore.

[32] See https://www.berkeleyside.org/2021/09/06/popular-cal-trail-closes-fire-safety-work/.

The areas containing the greatest mass of hazardous fuel build-up in Berkeley exist on private property beyond 30 feet of any structure (or 100 feet on slopes) and are not currently being routinely addressed by the Fire Department's residential vegetation management inspection program. Removal of hazardous vegetation is the most effective and timely means available to the City for reducing the severe risk of wildfire. In addition, tall trees posing public safety hazards have been identified outside of the VHFSZs and should be included in this program if possible.

The City could pattern the program after the Parks & Recreation's vegetation removal program (or expand the program), where Parks conducts competitive bidding and issues umbrella contracts to several firms that are then called upon for specific jobs. Parks may also have procedures to cost share where private property is involved.

The DFSC estimates that all of Berkeley's hazardous vegetation could be removed by continuing this program for an additional one to three years beyond FY 24, depending on the rate of homeowner opt-in to the City's clearance program and compliance failure rates, the actual cost of removing trees and revegetating, and the timeliness of any necessary changes to the Fire Code.

Adopting this recommendation will ensure that the City immediately reduces the extreme risk of wildfire, reduces the likelihood of ignition of homes and other structures in the event of wildfire, and meets the City's obligations under Measure FF.

ALTERNATIVE ACTIONS CONSIDERED

The DFSC considered and rejected an alternate proposal that would have used Measure FF funds to pay for the removal of hazardous vegetation, rather than requiring property owners to do so at their own expense or via placement of liens.

The Fire Department may have alternative proposed recommendations for the expenditure of Measure FF funds.

CITY MANAGER
See Companion Report

CONTACT PERSON
Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508

[33] Personal correspondence between Jennifer Tang, Director of Community Relations, Lawrence Berkeley National Laboratory and Henry DeNero, Hillside Fire Safety Group, January 2022.

02a.35

Energy Commission

ACTION CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council
From: Energy Commission
Submitted by: Bentham Paulos, Chairperson, Energy Commission
Subject: Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024

RECOMMENDATION

The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.

POLICY COMMITTEE RECOMMENDATION

No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

SUMMARY

In this memo, the Energy Commission (which disbanded March 31, 2022, and was merged with the Community Environmental Advisory Commission in April 2022) provides details on specific budget and funding priorities for: staffing an Electric Mobility Coordinator and the Green Buildings Program Manager; fully funding the Building Electrification and Just Transition pilot project (especially to avoid risking loss of state funding); accelerate funding for the City's delayed fleet replacement with electric vehicles, residential electric vehicle charging infrastructure, and electric bike parking infrastructure; expanding public engagement and outreach; leveraging street maintenance budgets to incorporate and promote low-carbon mobility; and adopting policies and creating incentive programs to advance transportation and building electrification such as using the Transportation Network Company (TNC) User Tax General Fund revenue to fund bike and pedestrian projects and using a portion of the Transfer Tax to create an incentive program for residential building electrification.

FISCAL IMPACTS OF RECOMMENDATION

The specific fiscal impacts are detailed in the budget recommendations below. At least one of our priority budget recommendations – to fully fund the Building Electrification and Just Transition pilot – is urgent and time-sensitive and cannot wait until the June budget process. Any delay risks Berkeley losing access to substantial state funding that could support this pilot.

CURRENT SITUATION AND ITS EFFECTS

Berkeley has been a world leader on climate change and building electrification, as well as on zero waste. The City has already adopted an ambitious climate action plan and greenhouse gas (GHG) emission reduction goals.[1] Between our Building Emissions Savings Ordinance[2], 2019 ban on gas in new construction, the 100% renewable option with East Bay Community Energy, and the Existing Buildings Electrification Strategy[3] (BEBES), approved by the Council last year[4], we continue to lead the world with our thoughtfulness and action.

However, the task in front of us is daunting. With 60% of the City's emissions coming from the transportation sector and 36% from the building sector,[5] we must redouble our efforts to reduce climate emissions from transportation and buildings through electrification of buildings and transportation, sustainable low- and zero-carbon transportation modes, and other efforts. With the upcoming budget processes, we have ample opportunity to take necessary next steps to reach our zero emissions goals.

The Energy Commission has identified the following priority items related to climate, buildings, and transportation in the City's Fiscal Year (FY) 2023 budget to ensure that

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[1] In 2006, voters overwhelmingly passed ballot Measure G and established Berkeley's goal to *Reduce our entire community's greenhouse gas emissions by 80% below 2000 levels by 2050*. Since then, the City has adopted a Climate Action Plan (2009).

On June 12, 2018, the Council passed item 30 which adopted a resolution establishing the goal of becoming a Fossil Fuel-Free City. Of the recommendations in the resolution, one was that "All future City government procurements of vehicles should minimize emissions and set a goal of transitioning the city's vehicle fleet to all electric vehicles."

Also, on June 12, 2018, the Council passed item 49 "Declaration of a Climate Emergency" which refers "to the Energy Commission to study and report back to Council on a path for Berkeley to become a "Carbon Sink" as quickly as possible, and to propose a deadline for Berkeley to achieve this goal" ideally by 2030.

[2] https://www.cityofberkeley.info/BESO/

[3] https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Existing%20Bldg%20Elect%20Strategy_Final_102021.pdf

[4] https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Item_06_Minutes_for_Approval.aspx

[5] https://www.cityofberkeley.info/Clerk/City_Council/2022/02_Feb/Documents/2022-02-08_Presentations_Item_17_Pres_Planning_pdf.aspx

the budget aligns with the City's adopted climate action plan and greenhouse gas (GHG) emission reduction goals.

At least one of our priority budget recommendations – to fully fund the Building Electrification and Just Transition pilot – is urgent and time-sensitive and cannot wait until the June budget process. Any delay risks Berkeley losing access to substantial state funding that could support this pilot.

At its meeting of February 23, 2022, the Energy Commission voted to send this recommendation to the City Council by a vote of 6-0-0-1 [Moved Tahara, Second Paulos. Ayes: Paulos, Wolf, Tahara, Moore, Guliasi, Zuckerman. Noes: None. Abstain: None. Absent: de Tournay Birkhahn].

Budget Priorities Recommended by the Energy Commission

I. Budget Priorities to Increase Staff Capacity to Implement the City's Established Climate, Transportation, and Clean Energy Policies and Priorities

1. **Fund and Hire Staff to Implement the Electric Mobility Roadmap**. The City had previously approved the hiring of an Electric Mobility Coordinator within the Public Works Department[6] to assist with implementation of the Berkeley Electric Mobility Roadmap adopted in July 2020[7]; but, at the time of writing, no position has been posted, now a year and a half after approval of the Roadmap.

   The Council has been a leader in adopting resolutions acknowledging the need for a prompt transition away from fossil fuels and strategies for how to do so.[8] But, without additional staff capacity, and exacerbated by recent staff departures and necessary pandemic re-assignments, the City has not been able to make adequate progress on implementing initiatives to reduce global warming pollution from the transportation sector, which is the largest emitter of global warming pollution in Berkeley.[9] Existing staff's capacity is simply inadequate to lead implementation of the groundbreaking, transformative Roadmap in addition to their current responsibilities, and relying only on existing staff to implement will continue to cause unacceptable delays. **To**

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[6] Budget Referral from Councilwoman Harrison, March 30, 2021. The Energy Commission's understanding is that this position was included in the FY21-22 Budget to commence half-way through the fiscal year or as an "unfunded council referral," which was supposed to be funded via savings from other cuts or delayed expenses.
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-30_Item_25_Budget_Referral_Allocate_Funding.aspx

[7] On July 21, 2020, the Council passed item 1, adopting the Berkeley Electric Mobility Roadmap.

[8] *Ibid.*

[9] 59% of GHG emissions in Berkeley come from transportation, followed by 39% from buildings..
https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx (July 21, 2020).

implement the Electric Mobility Roadmap, it is critical that the City fund and hire additional staff beginning in the FY 2023 budget.[10]

2. **Increase Staff Necessary to Implement the Berkeley Existing Buildings Electrification Strategy, and Ensure Durable Funding for Critical Staff Positions.** In addition to the Electric Mobility Coordinator position, the Energy Commission believes it should also be a priority for the City to enhance staff capacity for implementing other climate and clean energy initiatives, such as, but not limited, to the Berkeley Existing Building Electrification Strategy[11] and Climate Equity Action Fund.[12]

   City staff has and continues to do impressive work with limited staff. However, the scope of the task ahead of us is massive. As laid out by the BEBES, there are no fewer than 57 policy actions (Table 3-5, BEBES) that the City should take in order to decarbonize the building sector by 2045, let alone by 2030, which the science demands of comparatively wealthy municipalities such as ours. Many of these actions involve substantial education and regulatory initiatives, which can only be achieved with the addition of dedicated, skilled staff.

   Although we defer to staff with respect to the specifics of what additional positions might be most useful, some critical actions include:

   - Ensuring durable, long-term funding for the Green Buildings Program Manager. Although hiring has only recently begun, this role was approved as part of the 2019 gas ban,[13] and its extension will be critical in helping to develop future code

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[10] This single staff person will have an outsized impact, as they will be responsible for establishing and coordinating the Electric Mobility Roadmap Implementation Working Group as called for in the Roadmap. This Working Group was supposed to be convened within six months of the Roadmap's approval, but in the absence of staff capacity, it still has not been done. The Working Group's mandate includes tracking and evaluating Roadmap implementation progress. Without the Working Group, there is no accountability for the City to deliver against its stated electric mobility plans.

[11] On November 30, 2021, the Council passed item 13, adopting the Berkeley Existing Building Electrification Strategy. Phase 1 (2021-2025) actions for the Berkeley Existing Building Electrification Strategy will lay the groundwork to support wide-spread transition to electrified buildings in Berkeley. Policies included in Phase 1 will involve continued community engagement, pilot projects, education campaigns to demonstrate the benefits and feasibility of electrification, collaboration with labor and workforce organizations to advance inclusive high road jobs, alignment of existing programs and incentives, and the development of additional incentive programs as well as larger scale funding and financing programs such as tariffed on-bill financing. The City of Berkeley will work with partners such as East Bay Community Energy and Pacific Gas & Electric to develop larger scale Phase 2 projects. There will also be a need to collaborate with regional and State partners to align State policies to support Phase 2 actions. (Berkeley Existing Building Electrification Strategy, p. 95.)

[12] The City recently issued an RFP for the Climate Equity Action Fund. but existing staff do not have the capacity to maximize program impact and collect lessons learned from this innovative fund.

[13] https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-03_Supp_2_Reports_Item_24_Supp_Arreguin_pdf.aspx

amendments and help to reduce permitting overhead, improve compliance, and address the myriad other regulatory questions identified in the BEBES.

- Supporting and expanding staffing across the City for programs related to tenant protections and anti-displacement, such as those listed in Appendix C of the BEBES. As we electrify our existing building stock, we will need to evolve and augment our existing policies to protect marginalized communities at risk of displacement (CC-9, BEBES). We cannot afford for these policies to lag behind the pace and scale of electrification measures in the city.
- Supporting and expanding OESD staff to facilitate updates to the 2009 Climate Action Plan as appropriate and programs to facilitate Berkeley's ambitious new greenhouse gas limit goals. For example, last year the Council passed a Resolution establishing a 2030 emission reduction target that reflects Berkeley's fair share of the 50% global reduction in CO2e – 60.5% from 2018 levels by 2030.[14] Council is also actively considering more stringent and binding targets across its sector-based and consumption inventories. These new initiatives will have significant implications for the City's approach to building decarbonization. While we fully support these ambitious targets, efforts to implement them have been largely unfunded and understaffed. Achieving these targets will require a significant expansion of the City's climate staff capacity.

II. Budget Priorities to Advance Clean Transportation in Berkeley

1. **Fund City Fleet Electrification and Charging**. On June 29, 2021, the City adopted item 25 approving the recommendations in the City Auditor's report "Fleet Replacement Fund Short Millions"[15], which directed staff to adjust the fleet replacement funding model and budget, ensuring that the City's transition to electric vehicles (EVs) aligns with its adopted GHG emissions goals. On September 14, 2021, the Council adopted the recommendation from item 27 "Recommendations for Fleet Electrification Policy and Financing",[16] made by the Energy Commission, which referred to the City Manager to update the Municipal Fleet Electrification Assessment and EV charging funding priorities to respond to the City Auditor's Report and align with the objectives stated in the Electric Mobility Roadmap and prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility where feasible.

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[14]https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-30_Item_14_Cities_Race_to_Zero_Campaign__2030_emission_reduction_target.aspx

[15] Fleet Replacement Fund Short Millions, Berkeley City Auditor, June 29, 2021. https://www.cityofberkeley.info/Clerk/City_Council/2021/06_June/Documents/2021-06-29_Supp_2_Reports_Item_25_Supp_Auditor_pdf.aspx.

[16] Recommendations for Fleet Electrification Policy and Financing, From Energy Commission, Sept 14, 2021. https://www.cityofberkeley.info/Clerk/City_Council/2021/09_Sep/City_Council__09-14-2021_-_Regular_Meeting_Agenda.aspx - Item 27

The Fleet EV Plan identified 32 vehicles to replace with EVs in FY 2021, requiring an estimated $1.16 million; but, as of June 2021, Public Works had only $747,000 to replace 29 vehicles scheduled to be replaced with EVs in FY 2021. The Energy Commission's recommendation noted that delaying replacement of these vehicles in 2021 would result in greater GHG emissions:

> "For example, per the Fleet EV Plan, if the City does not replace light-duty internal combustion cars with EVs as scheduled in 2021, it will produce an estimated additional 10.6 MT of GHG emissions in 2021; if not replaced as planned in 2022 an additional 19.5 MT of GHGs would be emitted in 2022; and so on." (page 4).

It is the Energy Commission's understanding that East Bay Community Energy (EBCE) has offered to provide substantial investments in the City of Berkeley for EV charging infrastructure, which would support progress on the City's fleet electrification and free up City funds that would otherwise have been spent on EV charging infrastructure. The Energy Commission urges the Council to resolve the budget gaps identified in the Auditor's report and explore additional funding sources so that the City can accelerate its purchases of EVs and the associated EV charging infrastructure in FY 2023.

A global microchip shortage resulting in prolonged supply chain delays and long wait times for the delivery of EVs is compounding the necessity for the City to take immediate action on fleet replacement. These delays are being exacerbated by the recent surge in demand for EVs. As more municipalities similarly pass electrification plans, Berkeley will see increasing competition for the same vehicles. The City must thus plan and order ahead if it wants to have a smooth fleet transition. The City should also commence its purchase of e-bikes for the years ahead, as replacements to existing City vehicles where appropriate. E-bikes are both highly cost effective and may not face the same supply chain delays as electric cars and trucks. The Energy Commission recommends that the Council prioritize these municipal fleet EV replacements, along with the associated EV charging infrastructure, in the FY 2023 budget.

2. **Expand Infrastructure for Residential EV Charging and E-Bike Parking.** The City should prioritize funds to address solutions for residential curbside EV charging. The City's Residential Curbside EV Charging Pilot Program[17] sunset in 2020. The development model the pilot used – private ownership of a charger on the side of a public street – was not successful. While 62 residents applied for the program, only four on-site and seven curbside chargers were installed - high permitting fees, restrictive engineering requirements, lack of control of the parking space adjacent to

[17] https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Manual%20with%20attachments%2012-1-14.pdf

the charger, and poor access to electrical supply resulted in high costs.[18] Given the number of Berkeley residents who do not have access to a driveway or garage, the Electric Mobility Roadmap identified as a high priority the need to deploy curbside charging for electric cars, particularly in neighborhoods with high rates of multifamily and rental housing. The next phase of curbside charging will incorporate lessons learned from the Pilot, investigate alternative strategies, identify state and federal funding sources, and explore partnerships with EBCE and EV charging companies.

The City should also investigate the potential to provide public secure parking for other types of fossil fuel-free vehicles, namely e-bikes and cargo bikes, for apartment dwellers. E-bikes and cargo bikes tend to be larger and heavier than regular bicycles, making them difficult to carry up steps. A paid, public parking system, such as the BikeLink lockers at BART stations, may be adapted to street parking near apartment buildings.

The Council should allocate funds in the budget for an electric mobility staff person who would oversee new projects — research other cities' approaches, evaluate Berkeley's codes, standards, and permitting processes, and conduct feasibility studies — along with funds for the pilot projects themselves.

3. **Incorporate Low-Carbon Mobility into Street Maintenance Budget.** While Council is considering a bond measure that would make capital investments in our transportation system, the City should also revisit how the maintenance budget can be used to promote low-carbon mobility.

   The Council has approved multiple plans to promote safe, equitable, and low-carbon mobility for all. These "complete streets" concepts are captured in the Bicycle Plan, Pedestrian Plan, Vision Zero Action Plan, and analysis of Safe Routes to School.[19] But many of the measures in these plans have been implemented slowly, if at all. The Council should direct the Public Works Department to follow these plans to the letter, and integrate all low-cost and rapidly deployable concepts from the plans into their ongoing maintenance. The timing of deploying higher cost measures may necessarily depend on funding.[20]

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[18] https://www.cityofberkeley.info/Clerk/City_Council/2018/02_Feb/Documents/2018-02-27_Item_16_Residential_Curbside_Electric.aspx

[19] See Bicycle Plan, Pedestrian Plan, Vision Zero Action Plan, Safe Routes to School.

[20] A related concept is that the Council should consider giving a more formal policy status to Bicycle Boulevards. While the Boulevards serve as a useful wayfinding tool for cyclists, their designation does not give the streets a meaningful status, and no prioritization when it comes to City planning or operations. For example, places where Bicycle Boulevards cross busy streets, such as at California/Dwight or Channing/San Pablo, face years of delay before safe crossing solutions can be implemented. Numerous Bicycle Boulevards suffer from extremely poor pavement condition. Stop signs often favor cars instead of the Boulevards, and lighting can often be sub-standard. All of these factors undermine achievement of City plans, threaten public safety, and lock in carbon pollution. Direction from the Council to staff could

On January 18, 2022, the Council adopted item 19, referring a budget item to use Transportation Network Company (TNC) User Tax General Fund revenue to build and maintain protected bicycle lanes and crossings, pedestrian street crossings, and quick-build public transit projects under the Street Repair Program. The Energy Commission recommends that the Council follow through on its plan to use this revenue to benefit transportation projects in Berkeley.

III. Budget Priorities and Financial Incentives to Advance Building Decarbonization in Berkeley

1. **Fully Fund the Building Electrification and Just Transition Pilot Project.** In the December 2021 Annual Adjustment Ordinance (AAO) budget process, the Mayor declared, and the Council approved, that the Building Electrification and Just Transition pilot ("the pilot")[21] be a first priority to be funded in the May 2022 AAO.[22] Consistent with the City's "targeted universalism" approach to building electrification,[23] the pilot intends to kick-start electrification among affordable housing and low income (LMI) communities through incentives, and develop high-road jobs through labor standards and contractor prequalification.

   Funding for this item in the May AAO is critical, and cannot wait until the June budget process. Any delay risks losing access to substantial state funding that could multiply the reach and impact of the pilot. The California TECH initiative, an $120 million initiative established by SB 1477, recently began offering incentives for heat pump space and water heating that can defray nearly $10,000 of cost per home,[24] including the cost of an electric panel upgrade. These incentives are accessible to contractors via the BayREN Home+ programs, which will simplify administration of the pilot due to its use of pre-qualified contractors.

   There is additional urgency as well. The Bay Area Air Quality Management District (BAAQMD) is looking at phasing out the sale of NOx-emitting appliances by the end of the decade,[25] which will significantly affect the availability of non-electric space

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take the form of a formal designation of the Boulevards as a category of street, just as Public Works delineates "arterials" and "collectors" when it comes to planning and operations.

[21] https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/City_Council__11-30-2021_-_Regular_Meeting_Agenda.aspx

[22] https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Supp_2_Reports_Item_44_Supp_Mayor_pdf.aspx

[23] According to the BEBES: "Targeted Universalism is the practice of setting a universal policy goal...while identifying targeted strategies and actions specifically for marginalized communities to ensure that those communities can benefit from the policy goal."

[24] For single-family homes (up to 4 units), including "enhanced" incentives for HPWH. See: https://energy-solution.com/wp-content/uploads/2021/12/TECH-Single-and-Multifamily-Incentives.pdf

[25] https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances

and water heating. However, BAAQMD recognizes that such a rule can only be effective if there is sufficient financial support for disadvantaged communities and a robust installer network (things the BEBES also calls out) so that everyone can reap the benefits of zero-pollution appliances without facing substantial costs. **These costs cannot be borne by cities alone, but Berkeley can lay the groundwork to leverage state and federal money with its pilot and thus significantly contribute to the regional effort to improve air quality and GHG emissions.**

2. **Use Transfer Tax Revenues to Provide Incentives for Electrification.** With soaring home prices, the transfer tax represents a durable source of funds that the City should leverage to accelerate our building electrification goals. There are two potential models to consider.

   First, would be to model a rebate program after the Seismic Retrofit Refund Program[26] that would rebate a percentage of the transfer tax with a value up to the cost of a typical electrification package for electrification measures completed within one year of transfer. This would incentivize electrification at a time when there is large access to capital, and could lay the groundwork for an ultimate requirement to retrofit at time of sale. OESD staff have already provided Council with a draft ordinance and indicate that each year on average 800 units would qualify through this mechanism.[27]

   The Energy Commission recommends that Council move forward with this ordinance but with a cap on the amount of eligible homeowner rebates per year. These rebates are critical to the City's long-term strategy of phasing in potential electrification mandates as feasible.

   At the same time, as a diverse and majority renter city, it is critical that electrification subsidies are also available for units occupied by rent controlled or below market rate tenants. As a second model option, a percentage of the transfer tax refund program (for example, the difference between the reserved and actual rebate amounts) might be simultaneously allocated to expand electrification work among those LMI and minority communities most affected by inequality, pollution, climate change, or at risk of displacement. This could come in the form of expanding the Building Electrification and Just Transition pilot and Climate Equity Fund to reach more households, or other incentive programs targeted at those same communities.

3. **Adopt Policies to Promote Implementation of Low-cost, Partial Electrification measures**. In addition to enacting full retrofit programs, we recommend that the Council consider low-cost, partial electrification measures to maximize the

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[26] https://www.cityofberkeley.info/Finance/Home/Real_Property__Transfer_Tax_Seismic_Refunds.aspx

[27] https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_03_Referral_Response_Ordinance_pdf.aspx

immediate climate and health impacts of electrification measures. For example, a requirement that any AC installation instead be a heat pump (TR-7, BEBES) could be coupled with a subsidy for LMI communities to pay for the cost difference between an AC and an equivalent heat pump model, which is estimated to be between just $200 and $500 wholesale.[28] An installer subsidy of $676 alone could be enough to nearly double heat pump market share even absent a mandate[29]. Other low-cost measures might include the purchasing and distribution of portable heat pumps to provide cooling to households on our increasing number of hot days (newer inverter models offer substantial energy savings over traditional portable ACs[30]), portable induction units as both a gateway into electric cooking and a mechanism to reduce indoor NOx pollution that has been demonstrated to cause asthma in small children,[31] as well as weatherization work to make homes safer, more comfortable, and to reduce energy use. Council might also consider rebates for electrification at time of replacement, or provide access to equipment purchased under bulk purchasing agreements as part of the Building Electrification and Just Transition pilot program.

IV. Budget Priorities to Educate and Engage Berkeley Residents in Implementing Transportation and Building Electrification

1. **Expand Sustainability Outreach Events.** In conjunction with implementation of the Electric Mobility Roadmap and Existing Building Electrification Strategy, it is appropriate for the City to continue and expand public engagement on alternative transportation and green building solutions.

   Increasing electric mobility awareness and education is a key strategy in the Electric Mobility Roadmap for achieving the City's zero net carbon goals. Berkeley has already organized four highly successful annual Ride Electric events, which brought the public together to learn about and, in certain cases, test drive EVs and e-bikes. The City has also partnered successfully with other local groups to organize in-person and virtual green building tours that feature clean energy, energy and water conservation, gray water, electric appliances, and garden features.

   As technologies and incentives evolve, more members of the public consider adopting electric mobility and building electrification technologies, and as the City increases its e-mobility expertise through additional staffing, these events can and should continue to play an important role in getting Berkeley residents to transition away from fossil fuels. The Roadmap states that the City will expand electric mobility

[28] https://www.clasp.ngo/research/all/3h-hybrid-heat-homes-an-incentive-program-to-electrify-space-heating-and-reduce-energy-bills-in-american-homes/
[29] ibid
[30] https://www.midea.com/us/air-conditioners/portable-air-conditioners/midea-duo-smart-inverter-portable-air-conditioner-map12s1tbl
[31] https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310879

education and outreach activities, with a goal of increasing awareness of electric mobility options and incentives.[32] To deliver on this commitment, the City must allocate funds for these events in its next budget.

With its recent adoption of the Existing Building Electrification Strategy, the Council must expand funding for sustainability outreach events to also address needs identified in the Strategy. For example, the Strategy identified a need for education to address the steep learning curve and cultural sensitivity around cooking with electric stoves, as cooking is a cultural asset and many feel strongly about cooking with gas stoves.[33] While the City has hosted building electrification events, including loan programs for residents to try out electric induction cooktops, it will need to do more to engage residents in adopting electric heat pumps, induction stoves, and other technologies.

BACKGROUND

The City has existing mandated climate goals and emissions reductions commitments, and already-adopted strategies, such as the Electric Mobility Roadmap and the Existing Buildings Electrification Strategy. Furthermore, the City has already approved certain staff positions and investments, such as an Electric Mobility Coordinator position and commitments to replace the City's vehicle fleet with electric vehicles on a schedule. The City is falling behind in hiring and filling needed positions and in executing on needed investments. The budget recommendations proposed by the Energy Commission in this memo seek to ensure the City stays on track to meet its goals.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

If the Council further delays investments or doesn't include our recommended priorities in the upcoming budget, it puts at risk the health and safety of Berkeley's residents, the City's achievement of its adopted and mandated climate, clean energy, and transportation goals, and its national and global leadership on addressing climate change in innovative ways.

RATIONALE FOR RECOMMENDATION

The Energy Commission commends the Council for its many years of leadership to reduce Berkeley's global warming pollution and to advance clean energy solutions for the transportation and building sectors. Our budget is a declaration of our values. We have a tremendous opportunity to accelerate building decarbonization while improving equity through targeted universalism, and we must seize the moment to secure a safer, healthier, more resilient future.

However, if the Council further delays investments in staffing, fleet electrification and electric vehicle charging infrastructure, building maintenance and retrofits, and public

[32] Berkeley Electric Mobility Roadmap, p. 43.

[33] Berkeley Existing Building Electrification Strategy, p. 42.

education in the FYE 2023 and 2024 budget, it puts at risk the health and safety of Berkeley's residents, the City's achievement of its adopted and mandated climate, clean energy, and transportation goals, and its national and global leadership on addressing climate change in innovative ways. The Energy Commission thus urges the City Council to incorporate the above stated priorities into its FYE 2023 and 2024 budget.

ALTERNATIVE ACTIONS CONSIDERED
We did not consider excluding these items from the budget.

CITY MANAGER
The City Manager recommends that the content and recommendations of the Commission's Report be referred to the budget process.

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

02a.36

Rashi Kesarwani
Councilmember District 1

ACTION CALENDAR
November 3, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Referral to Conduct an Automatic Traffic Calming Review for the Area Immediately Surrounding the Project at 1201-1205 San Pablo Avenue

RECOMMENDATION
Refer to the City Manager to conduct an automatic traffic calming review for the area immediately surrounding the streets of the project located at 1201-1205 San Pablo Avenue within six (6) months of the building's occupancy reaching 90 percent of its capacity with the intent of expediting the traffic calming process for neighbors impacted by the development of this project.

The traffic calming review should include the following intersections:
Gilman and Kains
Gilman and Stannage
Harrison and San Pablo
Harrison and Kains
Harrison and Stannage

CURRENT SITUATION AND ITS EFFECTS
The City's Traffic Calming Process is lengthy, requiring significant time and effort from residents. The typical process for initiating traffic calming measures in residential areas entails several requirements just to determine eligibility for a traffic survey:

- A neighbor living in the petition area submitting a Neighborhood Request for Traffic Calming Study identifying both the specific location of the area in question and the type of concern by the annual December 31 deadline for the following review cycle;
- Satisfying the minimum criteria to qualify for traffic calming:
  - Any residential street and a petition showing that 50% + 1 of households within the petition area defined by City staff support the proposal. AND,
  - At least one of the conditions noted below:
    - Where the 85th percentile speed profile is greater than 5 mph over the speed limit; OR

- Where there is a proximity to school or park (within two blocks), or senior center (within one block) combined with 85th percentile speed profile greater than 3 mph over the speed limit; OR
- Where the traffic calming measure would mitigate a documented collision pattern (bike, pedestrian, motor vehicle); OR
- Where there is a documented problem of a significant or inappropriate number of "through" motor vehicles on the street or in the neighborhood, per ITE (Institute of Transportation Engineers) volume guidelines for neighborhood streets.

- Evaluation by City staff ensuring compliance with minimum criteria.[1]

After these steps, a traffic survey is conducted within the petition area to validate problems of significance that, if appropriate, could lead to a traffic study to determine a list of identified solutions. If the area qualifies for traffic calming, community meetings are called to engage the neighbors to select a solution. In the final step, staff prepare the cost estimates and integrate the project into the City's Capital Improvement Plan (CIP). The entire process of the review cycle, from the beginning of the calendar year when staff review the newly collected applications to the preparation of cost estimates and prioritization for inclusion within the CIP takes an entire calendar year. Construction of any traffic calming mitigations begins the next calendar year – at a minimum 13 months from the date of the initial submission of the Neighborhood Request for Traffic Calming Study application.[2]

Neighbors in close proximity to the 1201-1205 San Pablo Avenue project site have been in the appeal process since spring of 2021 and are deeply concerned about the traffic impacts of adding a 66-unit building. This referral requests an expedited traffic calming review process to address any increase in traffic impacts once the new development is nearly at full capacity. As numerous residents of the neighborhood have already made clear in their appeal letter included within the appeal packet[3] and through numerous communications sent directly to City Council, a traffic study will be needed to help identify and potentially mitigate traffic related safety concerns. The regular traffic calming process can be expedited for this group of residents by circumventing the initial stages of the review process by allowing them to skip the application and signature gathering phase, shortening the lengthy process by several months.

BACKGROUND

On May 11, 2021, Trachtenberg Architecture submitted an application for Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units and 1,680 square feet of commercial space. In December of that year, the Zoning Adjustment

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[1] See City of Berkeley website: Request Traffic Calming

[2] See this Timeline for Neighborhood Traffic Calming, found on the City of Berkeley Request Traffic Calming webpage:https://berkeleyca.gov/city-services/livable-neighborhoods/request-traffic-calming

[3] See pages 72 - 82 of the September 29, 2022 Appeal Packet for ZAB Appeal 1201-1205 San Pablo Avenue Use Permit #ZP 2021-0070 for the September 29, 2022 City Council Meeting, item #7

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Board (ZAB) conducted a public preview and provided a preliminary review of the project. In January, 2022, the Design Review Committee (DRC) conducted a Preliminary Design Review (PDR) of the project and continued the discussion to a second meeting. On March 29, 2022, the DRC conducted a second PDR meeting and forwarded a favorable recommendation for the project to the ZAB with conditions and recommendations for Final Design Review (FDR). On April 18, 2022, Councilmember Kesarwani met with the neighbors to hear their concerns and answer questions related to this project and several new housing laws. On April 28, 2022, the ZAB conducted a public hearing for the use permit application. After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 7-0-2-0 (Yes: Duffy, Matthews, Kim, Olson, Sanderson, Gaffney, Tregub; No: None; Abstain: Sheahan, Thompson; Absent: None). On May 5, 2022, staff issued the ZAB Notice of Decision.

On May 19, 2022, the City Clerk received an appeal filing from two residents living in close proximity to the proposed development: Yvette Bozzini, resident at 1110 Harrison Street, and Dan Hayes, resident at 1116 Harrison Street. On September 15, 2022, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council hears the appeal on Thursday, September 29th, 2022.

<u>FISCAL IMPACTS</u>

There are no direct fiscal impacts of expediting the traffic calming review process as this work is part of the standard process available to all residents throughout the City.

<u>ENVIRONMENTAL IMPACTS</u>

Traffic mitigation measures could slow down traffic and discourage the use of single-occupancy vehicles, thus decreasing greenhouse gas emissions.

<u>CONTACT</u>

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BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Budget Referral: No Right on Red Signs

RECOMMENDATION
That the City Council refers to the City Manager the implementation of "No Right on Red" signs to all intersections with traffic lights. Refer the necessary appropriations of $135,000 to the 2022 November Annual Appropriations Ordinance.

FISCAL IMPACTS
An estimated $250 per sign at a total of 135 intersections with four signs per intersection.

CURRENT SITUATION AND ITS EFFECTS
In living memory, the fundamental character of transportation planning and urban design of the United States has been the prioritization of the ease of travel of personal automobiles. From the way we design our roads to the rules we set for them, cars are given priority in the public right of way at the express detriment to pedestrians and cyclists. One such example is the de facto right given to cars to turn "Right on Red" at signalized intersections. This allows cars to drive through pedestrian crosswalks to make their turn in the same signal phase when pedestrians are directed to cross the street. On a daily basis, most drivers will yield to pedestrians before making their right turn and no harm occurs. This rule, however, puts pedestrians at immense risk nonetheless.

Right on Red was illegal in many parts of the country up until the gas crisis of the 1970's, when the rule was adopted in part to reduce car idling at intersections and promote fuel efficiency.[1] The repercussions for pedestrians and cyclists occurred almost immediately. In the 1980's, allowing Right on Red was found to cause an increase in pedestrian crashes by 60% and an increase in bicycle crashes by 100%.[2] This is a stark jump in injuries, especially when compared to the supposed benefits, which came out to between 1 and 4.6 seconds of saved driving time in a 1981 study.[3] Many cities have

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[1] https://www.energy.gov/articles/right-turn-red
[2] https://usa.streetsblog.org/2018/05/15/its-time-for-cities-to-rethink-right-turns-on-red/
[3] https://www.energy.gov/articles/right-turn-red

begun the process of limiting Right on Red in the name of their Vision Zero goals. This has taken the form of restricting the turn at specific intersections, such as in Seattle and Washington D.C., as well as an outright ban in New York City.

Berkeley had 133 signalized intersections as of the 2020 Pedestrian Plan, with two more added since.[4]

Berkeley can join these cities in taking a new approach to achieving its Vision Zero goals by eliminating the ability of cars to turn right on red at all signalized intersections. Beyond the construction of new pedestrian and cyclist infrastructure and the slowing down of car traffic, policies like eliminating Right on Red are smart and easy ways to begin the process of deprioritizing car use in Berkeley and placing lives about driver convenience.

BACKGROUND

Section 14.16.20 of the Berkeley Municipal Code states as follows:

A. The City Traffic Engineer is authorized to determine those intersections at which it shall be unlawful for the operator of any vehicle to make a right, left, or U-turn, and shall

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[4] https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/2020%20Pedestrian%20Plan%20Chapter%202%20adopted.pdf

place appropriate signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours in which event the same shall be plainly indicated on the signs.

B. Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, it is unlawful for the operator of any vehicle to disobey the directions of any such sign. (Ord. 3262-NS § 4.1, 1952)

ALTERNATIVES CONSIDERED

The City Council could approach Right on Red injuries by way of an explicit ban on such turns. However, given that Section 21453(b) of the California Vehicle Code allows such turns "except when a sign is in place prohibiting a turn"[5], the City is likely preempted from implementing a ban of its own. Considering this, a policy of placing signs prohibiting turns at lighted intersections is proposed in this item.

ENVIRONMENTAL IMPACTS

Establishing a network of safe streets for pedestrians and bicycles incentivizes nonautomobile travel, reducing greenhouse gas emissions. The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.[6] By encouraging alternatives to car transportation by making pedestrian and cyclist infrastructure safer and more accessible, this policy stands to lower the emissions from our community's dominant source of carbon emissions.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

[5] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH&sectionNum=21453.

[6] https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx

02a.38

Kate Harrison
Vice Mayor, District 4

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison

Subject: Resolution and Referral Supporting Local Implementation of SB 379: Online Instant Solar Permitting Process For Residential Solar And Solar-Plus-Storage Energy Systems

RECOMMENDATION
1. Adopt resolution supporting local implementation of SB 379 requiring cities to adopt online instant solar permitting process for residential solar and solar-plus-storage energy systems; and
2. Refer to the City Manager and Planning Department, consistent with SB 379 and climate goals, to explore and move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION
Consistent with prior state law, the City of Berkeley approves administratively within one day applications to install solar energy systems through the issuance of low-cost building permits or similar non-discretionary permits for small residential rooftop solar energy systems. However, the new SB 379 law requires permits to be approved instantly by next year using an online and automated permitting platform that verifies code compliance and issues permits in real time. Non-competitive state grant monies are now available to help Berkeley with the transition, and it is in the public interest to apply for these grants and swiftly comply with the new law consistent with the City's ambitious climate goals.

BACKGROUND
Berkeley is committed as part of its Climate Action Plan and related policies to reduce greenhouse emissions, including through deploying renewable electric technology locally. Local clean and reliable energy is key to a more resilient electric grid in the face of increasing power shutoffs and electricity shortages. Berkeley's electric load is expected to increase significantly as a result of vehicle and building electrification policies and trends.

California State Senate Bill (SB) No. 379, signed into law on September 16, 2022, requires every city to implement an online, automated permitting platform that verifies code compliance and issues permits in real time for a solar energy system that is no

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E-Mail: KHarrison@cityofberkeley.info

larger than 38.4 kilowatts alternating current nameplate rating and an energy storage system paired with a solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating.

The goal of the law is to decrease approval times for residential solar and solar-plus-storage systems, cut permitting costs for local governments and homeowners, and help California meet its greenhouse gas emission reduction goals.

The law prescribes a compliance schedule for satisfying these requirements, with cities with populations greater than 50,000 required to satisfy the requirements by September 30, 2023. The law also requires cities to report to the California Energy Commission (CEC) when it is in compliance with specified requirements, and to self-certify their compliance with the law’s provisions when applying for certain funds from the CEC.

In 2020, the National Renewable Energy Laboratory (NREL), a division of the U.S. Department of Energy, released free software called SolarAPP+ that cities and counties can adopt to process permits for residential solar energy systems. In addition, the CEC is operating a program as part of the June budget to deploy $20 million in non-competitive grants to help cities and counties adopt and integrate online automated permitting systems such as SolarAPP+ into existing Berkeley permitting systems like Accela, thereby streamlining compliance and recordkeeping.

Jurisdictions such as Pleasant Hill, San Ramon, Sonoma County, Stockton, and Benicia have successfully deployed SolarAPP+ and San Jose, Los Angeles, Alameda County and Vacaville have adopted similar automated permitting software and reduced permit review time.

It is in the public interest to move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems consistent with SB 379. This item includes a resolution in support of this objective and a referral to staff to apply for non-competitive grants as appropriate.

FISCAL IMPACTS OF RECOMMENDATION
Staff time will be needed to complete the referral, but costs may be offset by non-competitive CEC grants.

ENVIRONMENTAL SUSTAINABILITY
Supporting expeditious permitting of local renewable energy is key to achieving the City’s greenhouse gas reduction goals.

CONTACT PERSON
Vice Mayor Kate Harrison, (510) 981-7140

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

SUPPORTING LOCAL IMPLEMENTATION OF SENATE BILL NO. 379, ONLINE INSTANT SOLAR PERMITTING PROCESS FOR RESIDENTIAL SOLAR AND SOLAR-PLUS-STORAGE ENERGY SYSTEMS

WHEREAS, Berkeley is committed as part of its Climate Action Plan and related policies to reduce greenhouse emissions, including through deploying renewable electric technology locally; and

WHEREAS, local clean and reliable energy is key to a more resilient electric grid in the face of increasing electric shutoffs and electricity shortages; and

WHEREAS, Berkeley's electric load is expected to increase significantly as a result of vehicle and building electrification policies and trends; and

WHEREAS, state law requires cities to approve administratively applications to install solar energy systems through the issuance of low-cost building permits or similar non-discretionary permit and develop a streamlined permitting process for the installation of small residential rooftop solar energy system; and

WHEREAS, California State Senate Bill (SB) No. 379, signed into law on September 16, 2022, requires every city to implement an online, automated permitting platform that verifies code compliance and issues permits in real time for a solar energy system, as defined, that is no larger than 38.4 kilowatts alternating current nameplate rating and an energy storage system, as defined, paired with a solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating; and

WHEREAS, the law prescribes a compliance schedule for satisfying these requirements, with cities with populations greater than 50,000 required to satisfy the requirements by September 30, 2023; and

WHEREAS, the law requires cities to report to the California Energy Commission (CEC) when it is in compliance with specified requirements, and to self-certify their compliance with the law's provisions when applying for specified funds from the CEC, as specified; and

WHEREAS, In 2020, the National Renewable Energy Laboratory (NREL), a division of the U.S. Department of Energy, released free software called SolarAPP+ that cities and counties can adopt to process permits for residential solar energy systems; and

WHEREAS, the CEC is operating a program to deploy $20 million in non-competitive grants to help cities and counties adopt and integrate online automated permitting systems such as SolarAPP+ into existing Berkeley permitting systems like Accela, thereby streamlining compliance and recordkeeping; and

WHEREAS, jurisdictions such as Pleasant Hill, San Ramon, Sonoma County, Stockton, and Benicia have successfully deployed SolarAPP+ and San Jose, Los Angeles, Alameda County and Vacaville have adopted similar automated permitting software and reduced permit review time; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it hereby refers to the City Manager and Planning Department to move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems consistent with SB 379.

02a.39

CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Kate Harrison (Co-Sponsor), and Councilmember Ben Bartlett (Co-Sponsor)

Subject: Parking/Towing Fines & Fees Reform

RECOMMENDATION

1. Adopt an Ordinance amending BMC 14.72.080 to allow otherwise eligible individuals to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Refer to the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
   a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
   b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
   c. Develop a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
3. Refer $383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

BACKGROUND

The fines and fees reform movement is growing across cities in the United States, including here in the Bay Area. Punitive fines and fees levied by governments — and the enforcement actions taken when they go unpaid — can create a cycle of economic hardship for the most vulnerable. In addition to the monetary consequences, the towing of a car or the loss of a license or vehicle registration can upend one's life. This drives economic inequality and facilitates a breakdown of trust between community and government.

Instead of punishing people for being unable to pay their parking tickets, the City should look at expanding payment options, identifying alternative budget strategies to replace unnecessarily punitive fees, and moving away from enforcement strategies that disproportionately impact low-income people.

These reforms align with the direction given by the Reimagining Public Safety Taskforce. In their report presented to Council in March 2022, the Taskforce recommends a "review of transportation laws, fines and fees to promote safety and equity." The relevant section reads:

> *"Another issue is the matter of how Berkeley approaches fines and fees for violations issued. One example relates to our penalties for parking tickets, which can be devastatingly expensive to those experiencing poverty. While the city does offer an Indigent Payment Plan for Parking Citations where late fees are waived and payments can be spread over time, there are substantial administrative hurdles to jump through to apply to this program and there are still fees to be paid. In instances in which a vehicle is towed, the spiraling fines and fees could lead to the loss of a car or license, and this loss of mobility can further lead to loss of access to employment, education, or medical care. Ensuring that cars are parked properly often does have an important public safety component, but not always, and punitive fines and fees certainly do not improve public safety."*[1]

The City Manager's report, presented to Council in April 2022, echoes the Taskforce and recommends that the City "review Berkeley Municipal Code for proposed changes to increase equity and racial justice in the City's existing transportation fines and fees, especially related to parking. Involve the Transportation Commission in the recommendation of such changes to Council."[2] Through the subsequent FY 2023-2024 budget process, Council allocated $150,000 to conduct a fines and fees analysis.

This item should align with and complement the upcoming assessment of fines and fees. Both will build off Council's past referrals related to fines and fees reform, including amendments to the indigent payment plan,[3] a referral to the Disability Commission to examine the impacts that the parking citation system may have on people with low income and disabilities,[4] and a referral expanding the community service in lieu of parking penalties program to non-residents.[5]

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[1] https://berkeley-rps.org/wp-content/uploads/2022/03/BerkeleyReport_032422FNL.pdf
[2] https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-04-21%20Agenda%20Packet%20-%20Council.pdf
[3] https://records.cityofberkeley.info/PublicAccess/api/Document/AQOQRceMCzTaULeVOAA2odBEtJ8DÁwcGNV911ÁdF8ZjqW2lEoRntIzlwfDSYlPb5u3gX4RBHOuzWVWoWBiaUcEc%3D/
[4] https://records.cityofberkeley.info/PublicAccess/api/Document/AanANYizYnm9EVOkiYEpn1CRI60Sdf9vU3UY3hzKBDUqnqFpplÉsjT5za7N5EjkH69KlLlhA5ÉucrfpQPIqWAWc%3D/
[5] https://records.cityofberkeley.info/PublicAccess/api/Document/ASÁplwGjfLaUÁsb382hHTJR7BdOvBCibrp2fGaLyCIJTwp7PklTMCtUFrLbZvMGjfPTj4Mccz5wXn4500yCd7U4%3D/

RPP for Vehicles with Outstanding Parking Tickets
The City's Residential Parking Permits (RPP) program allows Berkeley residents living in designated zones to purchase an annual parking permit for $66. Under current policy, if a resident has any outstanding parking violations older than 21 days, they are ineligible to purchase an RPP permit.[6]

This policy can create a cycle of debt for residents who do not have the funds to pay off tickets, yet have no choice but to continue to park their car on City streets, either for work or because their apartment unit does not come with a parking space. For an individual experiencing financial hardship, a $66 permit may be within financial reach even if paying off several hundreds of dollars in tickets all at once is not. If they are not allowed to obtain a permit, they may continue getting more and more citations for unpermitted parking with no way out of the situation. Combined with late fees, this racks up fines and fees and punishes people who are trying to come into compliance by purchasing a permit.

The City should be encouraging compliance, not prohibiting it. Amending the BMC to allow these residents to purchase Residential Parking Permits even if they have outstanding parking tickets would enable them to stop the ongoing citations and focus on paying off their existing tickets.

Eligibility for Indigent Payment Plan
AB 503 (2017) established that low-income individuals are eligible for a payment plan for unpaid parking citations.[7] The City's program allows individuals to pay off their balance monthly over the course of 24 months or less, up to a limit of $500.[8] Candidates may qualify based on income or proof of public benefits, as follows:

- Supplemental Security Income (SSI) or State Supplementary Payment (SSP)
- California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program
- Supplemental Nutrition Assistance Program (SNAP) or the California Food Assistance Program (CFAP)
- County Relief, General Relief (GR) or General Assistance (GA)
- Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI)
- In-Home Support Services (IHSS)
- Medi-Cal

[6] https://berkeley.municipal.codes/BMC/14.72.080
[7] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40220.&lawCode=VEH
[8] https://berkeleyca.gov/city-services/parking/parking-tickets

Current vs. Suggested Income Caps to be Eligible for the Indigent Payment Plan

Household Size	Current Annual Income Cap (Federal Poverty Guidelines)	Suggested Annual Income Cap (Alameda County 50% AMI)
1	$13,590	$47,950
2	$18,310	$54,800
3	$23,030	$61,650
4	$27,750	$68,500
5	$32,470	$74,000
6	$37,190	$79,500
7	$41,190	$84,950
8	$46,630	$90,450

AB 503 establishes minimum requirements for indigent payment plan programs but does not prohibit municipalities from expanding eligibility. Federal poverty guidelines do not reflect the high cost of living in the City of Berkeley and the larger Bay Area. The federal caps fall well below 30% AMI, which is classified as extremely low income.[9] Acknowledging this reality, the City recently expanded eligibility for low-income commissioner stipends using 50% AMI for a household size of 3.[10]

While an individual does not have to meet the income guidelines if they are receiving any of the public benefits listed above, our current restrictions may not adequately serve undocumented immigrants, who are ineligible for many government programs.

Giving more people the option to enroll in an indigent payment plan will also shield low-income residents from the broader consequences of delinquent parking tickets. For example, the California Department of Motor Vehicles is required to refuse renewal of vehicle registration until all outstanding parking tickets have been paid, unless the individual is enrolled in a payment plan. Expired vehicle registration puts the vehicle at risk of being towed, which results in additional financial hardship and potential loss of wages for the vehicle's owner if they are not able to get to work without their car. Furthermore, barring vehicle owners from registering their vehicles is antithetical to public safety, since it serves the general public to ensure that drivers are insured and vehicles are regularly smog checked.

[9] https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf
[10] https://berkeleyca.gov/sites/default/files/city-council-meetings/03-09-Annotated-Agenda.pdf

Scofflaw Vehicle Enforcement/I-Tows

California Vehicle Code Section 22651 grants local governments the authority to remove and impound scofflaw vehicles, or vehicles with five or more notices of parking violations where payment is delinquent.[11] This practice is also known as an I-Tow. AB 2876 (2018) placed certain limits on this authority, revising the CVC to read:

> *"Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism."*[12]

In San Francisco, vehicles towed for unpaid parking tickets made up only 9% of all vehicles towed but 55% of lien sales. Half of all the vehicles towed for parking ticket debt were sold, suggesting that this practice targets people who are simply unable to pay and is not a particularly effective strategy for collecting debt.[13] The staff and transportation costs associated with towing and lien sales often do not justify the small amounts of debt that are able to be collected in the end.

In 2019, Assemblymember David Chiu introduced AB 516, which would have ended the practice commonly referred to as a "poverty tow" but died in Senate Appropriations.[14] In February 2022, the City of Los Angeles temporarily suspended the towing of scofflaw vehicles in response to a federal court ruling against the City.[15]

The Berkeley Police Department does not currently conduct scofflaw enforcement due to both the "community caretaking" clause of AB 2876 and the impacts of the COVID-19 pandemic. Parking enforcement performs a critical public safety function by enforcing against cars that are unsafely parked or otherwise pose a risk to the general public. However, scofflaw vehicles that are legally parked are towed solely for the crime of poverty, which does not fall under "community caretaking." In the interest of transparency and clarity, the City should formalize the current practice of not booting or towing scofflaw vehicles by updating relevant public-facing policy documents and internal employee manuals.

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[11] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22651&lawCode=VEH
[12] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2876
[13] https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf
[14] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB516
[15] https://www.latimes.com/california/story/2022-02-08/los-angeles-stops-impounding-cars-for-unpaid-tickets

Vehicle Release Fee Waivers

When a vehicle is towed in the City of Berkeley, the vehicle's owner must pay a release fee of $75 to the City for certain infractions, in addition to towing fees and daily storage fees. If the vehicle was towed for unpaid parking citations, the owner must also pay off all outstanding parking fines and fees before they can obtain a vehicle release.

In the State of California, vehicle owners owe an average of $499 in tow, storage, and administrative fees just three days after a tow.[16] This is in addition to the parking or registration fees that must be paid off. If they do not have the money to retrieve the vehicle, it can be sold at a lien sale after 30 days, resulting in a permanent loss of mobility and potentially jeopardizing their employment and access to other essential services such as school and health care.

These towing practices disproportionately burden low-income people due to the exorbitant fees and the time required to resolve a tow. An individual must first go to the City's Customer Service Center or the DMV to pay outstanding parking and registration fines and fees, then to the Police Department to obtain a vehicle release, and finally to the tow yard to retrieve their car. If someone is not able to take time off work or school to do so on short notice, the daily storage fees accumulate quickly.

As part of San Francisco's Financial Justice Project, the City and County of San Francisco implemented a tow waiver program for people experiencing homelessness or low income, as well as a fee reduction for first-time tows.[17] For low-income people, the $325 administrative fee is waived and the tow fee is reduced from $268 to $100. For unhoused people, both the administrative and tow fees are waived. For first-time tows, the administrative fee is reduced to $275.

San Francisco is a larger and more well-resourced jurisdiction that handles their own towing, as opposed to contracting it out to tow companies like the City of Berkeley does. While the case study of San Francisco cannot be directly applied to Berkeley, we should look to San Francisco's program as a model and offer waivers for fees that fall under the City's control.

<u>ALTERNATIVES CONSIDERED</u>

The City could reduce the tow and storage fees imposed on vehicle owners by amending our tow contracts at the next available opportunity. However, this would make it infeasible for any tow companies to operate in Berkeley without significant subsidies. The City could also consider municipalization of towing operations.

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[16] https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf

[17] https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals

FINANCIAL IMPLICATIONS

Staff time and $383,512 in ongoing annual funding for 2 Associate Management Analyst FTEs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant

Attachments:
1: Ordinance

ORDINANCE NO. -N.S.

ORDINANCE AMENDING THE MUNICIPAL CODE TO ALLOW ISSUANCE OF RESIDENTIAL PARKING PERMITS FOR VEHICLES WITH OUTSTANDING PARKING TICKETS

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

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

14.72.080 Issuance of permits.

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

C.

1. No permits shall be issued to residents in newly constructed residential units. The Current Planning division shall provide a listing of newly-constructed housing units to the Department of Finance.
2. No permits shall be issued to residents of Group Living Accommodations as defined in Chapter 23F.04 that are approved after January 1, 2012, unless the Zoning Adjustments Board specified otherwise when it approved the GLA. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.
3. In the R-2 and R-2A zoning districts, no permits shall be issued to residents of dwelling units with more than 5 bedrooms to which new bedrooms have been added subsequent to January 1, 2012. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.
4. This subdivision shall not prevent issuance of permits to residents of permitted and legal nonconforming sororities, fraternities and student cooperatives who are not otherwise prohibited from obtaining them.

D. The Department of Finance and the traffic engineering division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

~~E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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 Worksessions and Special Meetings *start time is 6:00 p.m. unless otherwise noted*	
Scheduled Dates	
Nov. 15	African American Holistic Resource Center (4:00 p.m.)

Unscheduled Workshops
None

Unscheduled Presentations (City Manager)
1. Civic Arts Grantmaking Process & Capital Grant Program 2. Fire Facilities Study Report 3. Civic Center Vision Project (March 2023)

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
	None

CITY CLERK DEPARTMENT WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	**Board/ Commission**	**Appeal Period Ends**	**Public Hearing**
NOD – Notices of Decision			
Public Hearings Scheduled			
2018 Blake Street (construct multi-family residential building)	**ZAB**		**11/3/2022**
1643-47 California St (new basement level and second story)	**ZAB**		**11/3/2022**
Remanded to ZAB or LPC			
1205 Peralta Avenue (conversion of an existing garage)			
Notes			

10/13/2022

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Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

for Supplemental Packet 2

Meeting Date: November 10, 2020

Item Number: 20

Item Description: Annual Commission Attendance and Meeting Frequency Report

Submitted by: Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.

Office of the City Manager

November 9, 2020

To: Mayor and Council

From: Dee Williams-Ridley, City Manager

Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

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complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

Boards and Commissions	Meetings Held Under COVID March - Oct	Regular Mtg. Date	Secretary	Dept.	Resume Regular Schedule in January 2021?	Note
Fair Campaign Practices Commission	9	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Open Government Commission	6	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Animal Care Commission	0	3rd Wed.	Amelia Funghi	CM	YES	
Police Review Commission	10	2nd & 4th Wed.	Katherine Lee	CM	YES	Have been meeting regularly under COVID Emergency
Disaster and Fire Safety Commission	4	4th Wed.	Keith May	FES	YES	
Community Health Commission	0	4th Thur.	Roberto Terrones	HHCS	YES	
Homeless Commission	0	2nd Wed.	Josh Jacobs	HHCS	YES	
Homeless Services Panel of Experts	5	1st Wed	Josh Jacobs	HHCS	YES	
Human Welfare & Community Action Commission	0	3rd Wed.	Mary-Claire Katz	HHCS	YES	
Mental Health Commission	1	4th Thur.	Jamie Works-Wright	HHCS	YES	
Sugar-Sweetened Beverage Product Panel of Experts	0	3rd Thur.	Dechen Tsering	HHCS	YES	
Civic Arts Commission	2	4th Wed.	Jennifer Lovvorn	OED	YES	
Elmwood BID Advisory Board	1	Contact Secretary	Kieron Slaughter	OED	YES	
Loan Administration Board	0	Contact Secretary	Kieron Slaughter	OED	YES	
Solano Avenue BID Advisory Board	2	Contact Secretary	Eleanor Hollander	OED	YES	
Design Review Committee	6	3rd Thur.	Anne Burns	PLD	YES	Have been meeting regularly under COVID Emergency
Energy Commission	0	4th Wed.	Billi Romain	PLD	YES	
Landmarks Preservation Commission	6	1st Thur.	Fatema Crane	PLD	YES	Have been meeting regularly under COVID Emergency
Planning Commission	3	1st Wed.	Alene Pearson	PLD	YES	Have been meeting regularly under COVID Emergency
Zoning Adjustments Board	11	2nd & 4th Thur.	Shannon Allen	PLD	YES	Have been meeting regularly under COVID Emergency
Parks and Waterfront Commission	4	2nd Wed.	Roger Miller	PRW	YES	
Commission on Disability	0	1st Wed.	Dominika Bednarska	PW	YES	
Public Works Commission	4	1st Thur.	Joe Enke	PW	YES	
Zero Waste Commission	0	4th Mon.	Heidi Obermeit	PW	YES	
Commission on the Status of Women	0	4th Wed.	Shallon Allen	CM	YES - LIMITED	Secretary has intermittent COVID assignments

Boards and Commissions	Meetings Held Under COVID March - Oct	Regular Mtg. Date	Secretary	Dept.	Resume Regular Schedule in January 2021?	Note
Commission on Aging	0	3rd Wed.	Richard Castrillon	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Housing Advisory Commission	0	1st Thur.	Mike Uberti	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Measure O Bond Oversight Committee	0	3rd Monday	Amy Davidson	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Transportation Commission	2	3rd Thur.	Farid Javandel	PW	REDUCED FREQUENCY	Staff assigned to COVID response
Children, Youth, and Recreation Commission	0	4th Monday	Stephanie Chu	PRW	NO - SEPT 2021	Staff assigned to COVID response
Youth Commission	0	2nd Mon.	Ginsi Bryant	PRW	NO - SEPT 2021	Staff assigned to COVID response
Community Environmental Advisory Commission	0	2nd Thur.	Viviana Garcia	PLD	NO - JUNE 2021	Staff assigned to COVID response
Cannabis Commission	0	1st Thur.	VACANT	PLD	NO - JAN. 2022	Staff vacancy
Peace and Justice Commission	0	1st Mon.	VACANT	CM	NO	Staff vacancy
Commission on Labor	0	3rd Wed., alternate mor	Kristen Lee	HHCS	NO	Staff assigned to COVID response
Personnel Board	1	1st Mon.	La Tanya Bellow	HR	NO	Staff assigned to COVID response

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

Section 1. Boards and Commissions
Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee
Fair Campaign Practices Commission
Housing Advisory Commission (limited to quasi-judicial activities)
Joint Subcommittee on the Implementation of State Housing Laws
Landmarks Preservation Commission
Open Government Commission
Personnel Board
Planning Commission
Police Review Commission
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

Category B
Animal Care Commission
Cannabis Commission
Civic Arts Commission
Children, Youth, and Recreation Commission
Commission on Aging
Commission on Disability
Commission on Labor
Commission on the Status of Women
Community Environmental Advisory Commission
Community Health Commission
Disaster and Fire Safety Commission
Elmwood Business Improvement District Advisory Board
Energy Commission
Homeless Commission
Homeless Services Panel of Experts
Housing Advisory Commission
Human Welfare and Community Action Commission
Measure O Bond Oversight Committee
Mental Health Commission
Parks and Waterfront Commission
Peace and Justice Commission
Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees
The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council
For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

Jesse Arreguin, Mayor

Attest:

Mark Numainville, City Clerk

Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

From: DWR Dee Williams-Ridley, City Manager

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7000 ● TDD: (510) 981-6903 ● Fax: (510) 981-7099
E-Mail: manager@cityofberkeley.info Website: http://www.cityofberkeley.info/manager

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

The limitations on commission meetings are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Many of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new specific duties related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:
1. Resolution 69,331-N.S.
2. List of Commissions with Meeting Data

cc: Mayor and City Councilmembers
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

Section 1. Boards and Commissions
Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee
Fair Campaign Practices Commission
Housing Advisory Commission (limited to quasi-judicial activities)
Joint Subcommittee on the Implementation of State Housing Laws
Landmarks Preservation Commission
Open Government Commission
Personnel Board
Planning Commission
Police Review Commission
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

Category B
Animal Care Commission
Cannabis Commission
Civic Arts Commission
Children, Youth, and Recreation Commission
Commission on Aging
Commission on Disability
Commission on Labor
Commission on the Status of Women
Community Environmental Advisory Commission
Community Health Commission
Disaster and Fire Safety Commission
Elmwood Business Improvement District Advisory Board
Energy Commission
Homeless Commission
Homeless Services Panel of Experts
Housing Advisory Commission
Human Welfare and Community Action Commission
Measure O Bond Oversight Committee
Mental Health Commission
Parks and Waterfront Commission
Peace and Justice Commission
Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees
The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council
For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

Jesse Arreguin, Mayor

Attest:

Mark Numainville, City Clerk

Boards and Commissions	Meetings Held Under COVID Emergency (through 10/11)	Scheduled Meetings in October	Regular Mtg. Date	Secretary	Department
Zoning Adjustments Board	10	1	2nd & 4th Thur.	Shannon Allen	PLD
Police Review Commission	9	1	2nd & 4th Wed.	Katherine Lee	CM
Fair Campaign Practices Commission	8	1	3rd Thur.	Sam Harvey	CA
Design Review Committee	5	1	3rd Thur.	Anne Burns	PLD
Landmarks Preservation Commission	5	1	1st Thur.	Fatema Crane	PLD
Open Government Commission	5	1	3rd Thur.	Sam Harvey	CA
Homeless Services Panel of Experts	4	1	1st Wed	Brittany Carnegie	HHCS
Disaster and Fire Safety Commission	3	1	4th Wed.	Keith May	FES
Parks and Waterfront Commission	3	1	2nd Wed.	Roger Miller	PRW
Planning Commission	3		1st Wed.	Alene Pearson	PLD
Public Works Commission	3	1	1st Thur.	Joe Enke	PW
Civic Arts Commission	2		4th Wed.	Jennifer Lovvorn	OED
Solano Avenue BID Advisory Board	2		Contact Secretary	Eleanor Hollander	OED
Elmwood BID Advisory Board	1		Contact Secretary	Kieron Slaughter	OED
Joint Subcom. on Implementation of State Housing Laws	1		4th Wed.	Alene Pearson	PLD
Mental Health Commission	1		4th Thur.	Jamie Works-Wright	HHCS
Personnel Board	1		1st Mon.	La Tanya Bellow	HR
Transportation Commission	1	1	3rd Thur.	Farid Javandel	PW
Animal Care Commission	0		3rd Wed.	Amelia Funghi	CM
Cannabis Commission	0		1st Thur.		PLD
Children, Youth, and Recreation Commission	0		4th Monday	Stephanie Chu	PRW
Commission on Aging	0		3rd Wed.	Richard Castrillon	HHCS
Commission on Disability	0		1st Wed.	Dominika Bednarska	PW
Commission on Labor	0		3rd Wed., alternate mor	Nathan Dahl	HHCS
Commission on the Status of Women	0		4th Wed.	Shallon Allen	CM
Community Environmental Advisory Commission	0		2nd Thur.	Viviana Garcia	PLD
Community Health Commission	0		4th Thur.	Roberto Terrones	HHCS
Energy Commission	0		4th Wed.	Billi Romain	PLD
Homeless Commission	0		2nd Wed.	Brittany Carnegie	HHCS
Housing Advisory Commission	0		1st Thur.	Mike Uberti	HHCS
Human Welfare & Community Action Commission	0		3rd Wed.	Mary-Claire Katz	HHCS
Loan Administration Board	0		Contact Secretary	Kieron Slaughter	OED
Measure O Bond Oversight Committee	0		3rd Monday	Amy Davidson	HHCS
Peace and Justice Commission	0		1st Mon.	Nina Goldman	CM
Sugar-Sweetened Beverage Product Panel of Experts	0		3rd Thur.	Dechen Tsering	HHCS
Youth Commission	0		2nd Mon.	Ginsi Bryant	PRW
Zero Waste Commission	0		4th Mon.	Heidi Obermeit	PW

08b

Hybrid Meeting Policies for City Council Meetings
Revised May 2022

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies. These administrative policies supplement the City Council Rules of Procedure and Order.

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of "up-to-date" COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is "up-to-date" with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

Pre-entry negative testing

Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with CDC guidance.

Verification: See current CDPH Updated Testing Guidance and CDPH Over-the-Counter Testing Guidance for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.

https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx

II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

If an attendee at a Council meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. The relevant capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, CO_2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium if staff determines that attendance is likely to exceed the capacity of the Boardroom. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

X. In-Meeting Procedures

Revised and Supplemental Materials
All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

Communications from the Public
The public may submit communications in hard copy at the Boardroom or electronically to clerk@cityofberkeley.info. To ensure that both in-person and remote Councilmembers receive the communication, the public should submit 10 copies at the Boardroom and send the electronic version to the e-mail listed above.

Hybrid Meeting Policies for City Council Meetings
Revised May 2022

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of "up-to-date" COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is "up-to-date" with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

Pre-entry negative testing

Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with CDC guidance.

Verification: See current CDPH Updated Testing Guidance and CDPH Over-the-Counter Testing Guidance for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.

https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx

II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

If an attendee at a Council meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons. The relevant capacity limits will be posted at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, CO_2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

X. In-Meeting Procedures

Revised and Supplemental Materials from Staff and Council

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

Communications from the Public

A communication submitted by the public during the City Council meeting may be shared as follows.

- Paper: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.
- Electronic: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.

Office of the City Attorney

Date: March 3, 2021

To: Agenda and Rules Committee

From: Office of the City Attorney

Re: Continuing Use of Teleconferencing for Public Meetings

Assembly Bill 361 amended the Ralph M. Brown act to authorize the City to continue to hold teleconferenced meetings during a Governor-declared state of emergency without complying with a number of requirements ordinarily applicable to teleconferencing. For example, under AB 361, the City may hold teleconferenced meetings without:

1. Posting agendas at all teleconference locations
2. Listing each teleconference location in the notice and agenda for the meeting
3. Allowing the public to access and provide public comment from each teleconference location
4. Requiring a quorum of the body to teleconference from locations within City boundaries

(Cal. Gov. Code § 549539(b)(3) & (e)(1).)

Under AB 361, the City can continue to hold teleconferenced meetings without adhering to the above practices as long as the state of emergency continues and either (1) "state or local officials have imposed or recommended measures to promote social distancing," or (2) the City determines that "meeting in person would present imminent risks to the health or safety of attendees." (Cal. Gov. Code § 54953(e)(1).)

Every thirty days, the City must review and determine that either of the above conditions continues to exist. (Cal. Gov. Code § 54953(e)(3).) Since September 28, 2021, the City Council has passed a recurring resolution every thirty days determining that both of the above conditions continue to exist and therefore teleconferencing under AB 361 is warranted. The Council may continue to renew the teleconferencing resolution every thirty days, and thereby continue to hold teleconferenced meetings under the procedures it has used throughout the pandemic, until the state of emergency ends. (*See* Cal. Gov. Code § 54953(e)(3)(A).)

The state of emergency for COVID-19 has been in effect since it was issued by the Governor on March 4, 2020. There is no clear end date for the state of emergency at this time. As recently as February 17, 2022, the Governor stated that, for now, the state will continue to operate under the state of emergency, but that his goal is "to unwind the state of emergency as soon as possible."[1] Additionally, per a February 25, 2022 *Los Angeles Times* article, Newsom administration officials have indicated that the state of emergency is necessary for the State's continued response to the pandemic, including measures such as waiving licensing requirements for healthcare workers and clinics involved in vaccination and testing.[2]

On March 15, 2022, the California State Senate Governmental Organization Committee will consider a resolution (SCR 5) ending the state of emergency.[3] Some reporting suggests that the Republican-sponsored resolution is unlikely to pass. Notably, Senate Leader Toni Atkins' statement on the Senate's consideration of SCR 5 articulates strong support for the state of emergency.[4]

The Governor has issued an executive order (N-1-22) which extends to March 31, 2022 sunset dates for teleconferencing for state legislative bodies (under the Bagley-Keene Open Meeting Act) and student body organizations (under the Gloria Romero Open Meetings Act).[5] Executive Order N-1-22 does not affect the Brown Act teleconferencing provisions of AB 361, which have a sunset date of January 1, 2024. Therefore, until January 1, 2024, the City may utilize the teleconferencing provisions under AB 361 as long as the state of emergency remains in effect.

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[1] *New York Times*, California Lays Out a Plan to Treat the Coronavirus as a Manageable Risk Not an Emergency (Feb. 17, 2022), https://www.nytimes.com/2022/02/18/us/california-lays-out-a-plan-to-treat-the-coronavirus-as-a-manageable-risk-not-an-emergency.html.

[2] *Los Angeles Times*, Newsom scales back some special pandemic rules, but not California's state of emergency (Feb. 25, 2022), https://www.latimes.com/california/story/2022-02-25/newsom-scales-back-special-pandemic-rules-but-not-california-state-of-emergency.

[3] Text of SCR 5 available at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCR5.

[4] Press release: Senator Toni G. Atkins, Senate Leader Atkins Issues Statement on SCR 5 and the State of Emergency (Feb. 17, 2022), https://sd39.senate.ca.gov/news/20220217-senate-leader-atkins-issues-statement-scr-5-and-state-emergency.

[5] Text of Executive Order N-1-22available at: https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf.

Hybrid Meeting Policies for City Council Meetings
Revised April 2022

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of "up-to-date" COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is "up-to-date" with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

Pre-entry negative testing

Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with CDC guidance.

Verification: See current CDPH Updated Testing Guidance and CDPH Over-the-Counter Testing Guidance for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.

https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx

II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees' duties and responsibilities).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID contact resulting from the meeting.

III. Face Coverings/Mask

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons. The relevant capacity limits will be posted at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of "up-to-date" COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is "up-to-date" with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

~~No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.~~

II. Health ~~Check~~Status Precautions

If an in-person attendee is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees' duties and responsibilities).

~~A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.~~

~~Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature~~

Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.~~

~~Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.~~

III. Face Coverings/Mask

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

~~Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to~~

Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees.~~ Conference room capacity is limited to ~~12~~ 15 persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions,~~temperature checks,~~ and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is ~~100~~ 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided.
- Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

I. Vaccination Status

No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.

II. Health Check

A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.

Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

III. Face Coverings/Mask

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting. Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees. Conference room capacity is limited to 12 persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status, temperature checks, and mask requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

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VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 100 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided.
- Box lunches only. Total of 18 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff, Extras [2])
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

URGENT ITEM
AGENDA MATERIAL

Government Code Section 54954.2(b)
Rules of Procedure Chapter III.C.5

THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES

Meeting Date: **September 28, 2021**

Item Description: **Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**

This item is submitted pursuant to the provision checked below:

☐ Emergency Situation (54954.2(b)(1) - majority vote required)
Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

X Immediate Action Required (54954.2(b)(2) - two-thirds vote required)
There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:

Assembly Bill 361 (Rivas) was signed by the Governor on September 16, 2021. This bill allows local legislative bodies to meet using videoconference technology while maintaining the Brown Act exemptions in Executive Order N-29-20 for noticing and access to the locations from which local officials participate in the meeting. Local agencies may only meet with the exemption if there is a state declared emergency.

The bill also requires that local legislative bodies meeting only via videoconference under a state declared emergency to make certain findings every 30-days regarding the need to meet in a virtual-only setting.

The agenda for the September 28, 2021 was finalized and published prior to the Governor signing AB 361 in to law. Thus, the need to take action came to the attention of the local agency after the agenda was distributed. This item qualifies for addition to the agenda with a two-thirds vote of the Council under Government Code Section 54954.2(b)(2).

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7000 ● TDD: (510) 981-6903 ● Fax: (510) 981-7099
E-Mail: manager@CityofBerkeley.info Website: http://www.CityofBerkeley.info/Manager

Office of the City Attorney

CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public.

These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on September 28, 2021, the Council will need to review and ratify the resolution by October 28, 2021.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
Not applicable.

RATIONALE FOR RECOMMENDATION
The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

ALTERNATIVE ACTIONS CONSIDERED
None.

CONTACT PERSON
Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998
Mark Numainville, City Clerk, (510) 981-6908

Attachments:
1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNEMNT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 ("Delta") variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by October 28, 2021.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination; and

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference; and

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.

OFFICE OF THE GOVERNOR

June 2, 2021

VIA EMAIL

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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

Thank you for your correspondence of May 18, 2021, inquiring what impact the anticipated June 15 termination of the Blueprint for a Safer Economy will have on Executive Order N-29-20, which provided flexibility to state and local agencies and boards to conduct their business through virtual public meetings during the COVID-19 pandemic.

Please be assured that this Executive Order Provision will not terminate on June 15 when the Blueprint is scheduled to terminate. While the Governor intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, consistent with the Emergency Services Act, the Governor recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision to provide state and local agencies and boards time necessary to meet statutory and logistical requirements. Until a further order issues, all entities may continue to rely on N-29-20.

We appreciate your partnership throughout the pandemic.

Regards,

Ana Matosantos
Cabinet Secretary

Department of Industrial Relations
STATE OF CALIFORNIA

NEWS RELEASE

Release Number: 2021-58 June 4, 2021

Standards Board Readopts Revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards

The revised Cal/OSHA standards are expected to go into effect no later than June 15

Sacramento — The Occupational Safety and Health Standards Board on June 3 readopted Cal/OSHA's revised COVID-19 prevention emergency temporary standards.

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The revised standards are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

The Board may further refine the regulations in the coming weeks to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases standard. Notable revisions include:

- **Face Coverings**:
  - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
  - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program**: Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
  - Employers must review the California Department of Public Health's Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments.
  - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections 3205 (COVID-19 Prevention), 3205.1 (Multiple COVID-19 Infections and COVID-19 Outbreaks), 3205.2 (Major COVID-19 Outbreaks) 3205.3 (COVID-19 Prevention in Employer-Provided Housing) and 3205.4 (COVID-19 Prevention in Employer-Provided Transportation) of the California Code of Regulations. Pursuant to the state's emergency rulemaking process, this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The Occupational Safety and Health Standards Board, a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or Cal/OSHA, is the division within the Department of Industrial Relations that helps protect California's workers from health and safety hazards on the job in almost every workplace. Cal/OSHA's Consultation Services Branch provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

Contact: Erika Monterroza / Frank Polizzi, Communications@dir.ca.gov, (510) 286-1161.

The California Department of Industrial Relations, established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the Labor & Workforce Development Agency

CITY OF BERKELEY

Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

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Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 ("Executive Order") in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.

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Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

Summary Recommendations of Meeting Options						
	Physical Distancing			**No Physical Distancing**		
	In-Person	**Hybrid**	**Virtual***	**In-Person**	**Hybrid**	**Virtual***
City Council	**X**	**X**	**X**	**X**	**X**	**X**
Policy Committees			**X**	**X**		**X**
Board and Commissions			**X**	**X**		**X**

** The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20*

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

> *Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?*

Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-29-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

WHEREAS time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

WHEREAS social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare an Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.

3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

   Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

   In particular, any otherwise-applicable requirements that

   (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;

   (ii) each teleconference location be accessible to the public;

   (iii) members of the public may address the body at each teleconference conference location;

   (iv) state and local bodies post agendas at all teleconference locations;

   (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and

   (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

   are hereby suspended.

   A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

(i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and

(ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

(i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and

(ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State