



Office of the City Manager

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ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Paul Buddenhagen, Deputy City Manager & Kelly Wallace, Interim Director, Health, Housing and Community Services
Subject: Companion Report: Commission Recommendations Regarding Code Enforcement and Mr. Leonard Powell

RECOMMENDATION

The City Manager appreciates the concerns identified by the Peace & Justice Commission and Housing Advisory Commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City Manager believes that current City policies, practices and records demonstrate the proper mechanisms are in place to ensure the outcomes each commission wishes and that additional recommendations are not needed. City staff have worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property.

FISCAL IMPACTS OF RECOMMENDATION

No additional staff time or expense would be required should Council adopt the City Manager recommendation.

CURRENT SITUATION AND ITS EFFECTS

At its regularly scheduled March 4, 2019 meeting, the Peace & Justice Commission (PJC) took the following action: M/S/C: (Lippman/Bohn) to authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to Council as amended.

Vote: Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub. Noes: None. Abstain: None. Absent: Han, Pancoast

The recommendations adopted by the PJC are in summary: 1) receivership should only be conducted in response to severe code enforcement violations or with input from the Zoning Adjustments Board and Council; 2) the Mayor and representative Councilmember and the Housing Advisory Commission should be notified in cases of receivership; 3) the City should assist affected low-income homeowners and tenants financially; 4) the City should establish a policy that code enforcement should aim to improve the safety and security of the affected property for residents and their

neighbors; and 5) Mr. Leonard Powell, Friends of Adeline and the NAACP should be reimbursed for legal and administrative fees paid to the receiver.

At its regularly scheduled March 7, 2019 meeting, the Housing Advisory Commission adopted a similar action related to the City's code enforcement procedures and Mr. Leonard Powell: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

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

The City appreciates the concerns of each commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City made repeated efforts to assist Mr. Powell in addressing serious health and safety issues at his property, including an interest free Senior & Disabled Home Rehabilitation loan, without the need for a receivership. Unexpected costs during receivership created a challenging situation for all parties involved, and the City made good faith efforts to assist Mr. Powell with staying in his home.

The goal of the City's code enforcement unit is to provide a clean and safe environment for all Berkeley residents, workers and visitors. The Berkeley Municipal Code details the procedures for issuing citations, the penalties for violations, and the provisions for abating code violations when property owners are unresponsive. If a good faith effort was made to correct the violation, the officer may grant an extension so long as there is no risk to life and safety. If the offender remains noncompliant, the officer will force remediation through civil action and abatement.

The City's efforts in Mr. Powell's case demonstrate the City's commitment to operating with clear, objective, and equitable standards for conducting code enforcement actions and due process rights. To assist with renovations, City resources of \$100,000 were allocated to Mr. Powell via the Senior and Disabled Home Rehabilitation Loan program ("Rehabilitation Loan"). This is a zero-interest loan, payable only when the property changes hands. After several years of notices and meetings with Mr. Powell, his property remained unsafe, in violation of state and local codes, and created a nuisance

which endangered the health and safety of the public and residents of the property. The Alameda County Court ultimately decided to place the property in receivership.

The City took all steps possible to obtain voluntary compliance with state and local laws and only referred Mr. Powell's case to the Court as a last resort. The City actively tried to assist Mr. Powell to complete the renovations prior to receivership with standards that are beneficial to the borrower via the Rehabilitation Loan. More generally, receivership is already viewed by City code enforcement staff as a last resort, to be used when other measures to obtain voluntary compliance fail, and it presently the policy of the City Attorney to seek the approval of the City Council before seeking a receivership. However, receivership remains an important tool to protect public health and safety when property owners are unwilling or unable to correct serious code violations on their property. The Housing Advisory Commission is currently designated as the City's appeals board for all matters respecting the abatement of substandard or deficient buildings.

A formal fact finding case should not be necessary for Mr. Powell's case as the City Attorney's Office clearly documented the City's actions throughout the process (more detailed information is available in the Background section of this report), and worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property. This is part of the City's ongoing work, with the direction and support of the City Council and community, to implement multiple policies and programs across departments to protect our community members from displacement. The City's policies, practices and records demonstrate the City has the proper mechanisms in place to ensure the outcomes each commission wished to achieve with these recommendations.

BACKGROUND

On August 13, 2014, the City's Code Enforcement Unit inspected Mr. Powell's property pursuant to a referral from the Berkeley Police Department ("BPD"). BPD had observed potentially substandard conditions at the property during a July 24, 2014 execution of a search warrant and arrest of a guest staying at Powell's home. Code Enforcement inspectors observed the following code violations:

1. General dilapidation or improper maintenance in violation of Health & Safety Code § 7920.3(a)(13).
2. Inadequate sanitation in violation of Health & Safety Code § 17920.3(a)(5).
3. A lack of adequate heating in violation of Health & Safety Code § 17920.3(a)(6).
4. Improper venting, which presents a fire hazard and is a violation of Health & Safety Code § 17920.3(a)(7).
5. Faulty weather protection in the form of deteriorated plaster, a violation of Health & Safety Code § 17920.3(g)(l).

6. Deteriorated or ineffective waterproofing due to broken windows, a violation of Health & Safety Code § 17920.3(g)(2).
7. Inadequate egress, in violation of Health & Safety Code § 17920.3(1).
8. A lack of operational smoke detectors, in violation of Health & Safety Code § 17920.3(m).
9. A lack of carbon monoxide devices, in violation of Health & Safety Code § 17926(a)(3).
10. Unsafe electrical conditions in violation of the California Building Code § 116.1 and BMC § 19.28.020.

On October 2, 2014, the Building and Safety Division issued a Notice of Substandard and Unsafe Building and Public Nuisance ordering Mr. Powell to correct the code violations. The Order instructed Mr. Powell to submit complete Building, Plumbing and Electrical Permit applications to the Planning Department within 45 days, or by Monday, November 17, 2014.

Following the issuance of the Notice, the City met with Mr. Powell on more than 20 occasions by Mr. Powell's own admission. The City also provided \$100,000 to Mr. Powell through a Rehabilitation Loan issued on September 18, 2015. The terms of the loan provide that Mr. Powell has no obligation to make payments on the loan so long as he resides at the property and the loan does not accrue any interest.

Despite the City's efforts to actively assist Mr. Powell, the unsafe conditions persisted at the property through April 2017. On April 17, 2017, the Court entered an order placing the property in receivership on the ground that the property was "maintained in such a condition as to violate the Health & Safety Code and Berkeley Municipal Code, thus creating a nuisance which substantially endangers the health and safety of the public." The Court appointed George Keena as receiver.

The receiver initially planned to borrow \$175,000 to correct the known code violations. However, inspection of the property identified serious foundation issues. (The house was leaning to one side and had floors that slope more than six inches from one side to the other.) The receiver was also required to perform lead and asbestos abatement work, and was required to perform additional work to meet FHA guidelines for habitability. Mr. Powell applied for a Veteran's Administration (VA) loan to assist with costs that require the more strict standards of FHA guidelines for rehabilitation work.

The receiver ultimately incurred borrowing costs (including interest) of \$498,217 (estimated as of March 1, 2019). The receiver also advanced additional fees, so that amount of debt is estimated to be approximately \$680,000. The receiver has waived his personal fees totaling more than \$133,000, but has charged fees for staff time and has also incurred legal fees. The receiver's scope of work and expenses were approved by the court, and not by the City; the receiver does not report to the City, and the City exercises no control over his work.

On February 7, 2019, the City executed an agreement to subordinate its Rehabilitation Loan to Mr. Powell's VA loan, allowing Mr. Powell to obtain financing from the VA. Mr. Powell has qualified for a VA loan in the amount of \$571,000.

On March 21, 2019, the parties received confirmation that the necessary documentation for underwriting Mr. Powell's loan was in place. In addition, Mr. Powell has obtained funds to pay off the balance of the debt on the property through contributions from his family, generous donations from members of the community, and a refund of certain building permit fees paid to the City. With these contributions, there will be sufficient funds available to pay off Mr. Powell's debts and dissolve the receivership when the VA loan is finalized. At the time of this report's writing in March 2019, the parties anticipate completing this process in late April. After dissolution of the receivership, Mr. Powell will be able to return to his home, and he will have significant equity in the property and the ability to earn income from renting the legal second unit (which was restored to its legal status under the receivership).

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City's Code Enforcement already operates with clear and equitable standards to support and protect the Berkeley community. The City's efforts to support Mr. Powell prior to and during receivership (when the case is legally out of the City's control) demonstrate the City's commitment to assisting our community members with staying in their homes, and improving their health and safety. Receivership that may result in the permanent displacement is the very last resort that the City takes related to code enforcement activity. The Housing Advisory Commission is also currently designated as the City's appeals board for all matters respecting the abatement of substandard or deficient buildings.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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