



**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &
COMMUNITY COMMITTEE
SPECIAL MEETING**

**Monday, September 9, 2019
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, and Sophie Hahn

AGENDA

Roll Call

Announcement: Brown Act Participation Rules

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - July 8, 2019

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.

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

Committee Action Items

2. **Air Quality Monitoring Program**

From: Councilmembers Bartlett, Harrison, and Davila

Referred: April 8, 2019

Due: October 28, 2019

Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

3. **Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear** *(Item contains revised material)*

From: Councilmembers Robinson, Davila, Bartlett, and Hahn

Referred: March 11, 2019

Due: September 15, 2019

Recommendation: Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear, and refer to the City Manager to consider the operational requirements of enforcement of the ordinance, including what effective and appropriate enforcement would entail or what amendments to the Chapter would be necessary to perform such enforcement.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

From: Housing Advisory Commission

Referred: June 11, 2019

Due: November 26, 2019

Recommendation: On June 11, 2019, the City Council referred the two Commission items to the Health, Life Enrichment, Equity & Community Committee to:

1. Create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.
2. Request an analysis of receivers and conservators by the City.
3. Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

The original recommendation from the Housing Advisory Commission is as follows: Establish policies that will 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. Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard 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.

Financial Implications: Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

4b. Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

From: Peace and Justice Commission

Referred: June 11, 2019

Due: November 26, 2019

Recommendation: On June 11, 2019, the City Council referred the two Commission items to the Health, Life Enrichment, Equity & Community Committee to:

1. Create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council
2. Request an analysis of receivers and conservators by the City
3. Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

The original recommendation from the Peace and Justice Commission is as follows: The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

Send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the

Unscheduled Items

Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

Financial Implications: See report

Contact: Bre Slimick, Commission Secretary, (510) 981-7000

Items for Future Agendas

- **Discussion of items to be added to future agendas**
- **Discussion of future hearings and open forums**

Adjournment

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*Written communications addressed to the Health, Life Enrichment, Equity & Community Committee and submitted to the City Clerk Department 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. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

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

~~~~~  
I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 5, 2019.

Mark Numainville, City Clerk

Communications

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

**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY & COMMUNITY COMMITTEE
REGULAR MEETING MINUTES**

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

**Monday, July 8, 2019
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, and Sophie Hahn

MINUTES

Roll Call: 10:04 a.m.

Present: Bartlett, Hahn

Absent: Kesarwani

Councilmember Kesarwani present at 10:06 a.m.

Public Comment on Non-Agenda Matters: 2 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 24, 2019

Action: M/S/C (Bartlett/Kesarwani) to approve the minutes as presented.

Vote: All Ayes

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.

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

Committee Action Items

2. Air Quality Monitoring Program

From: Councilmembers Bartlett, Harrison, and Davila

Referred: April 8, 2019

Due: October 28, 2019

Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

Financial Implications: See report

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

Action: 3 speakers. Discussion held. The item was continued to the next meeting. The committee requested that the author return with more information to provide for a complete picture, such as the fiscal implications, staffing needs, and the benefit of collecting new data. Additionally, the committee requested that the author follow-up with staff to determine what infrastructure already exists and what would be needed to implement.

3. Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear *(Item contains revised materials)*

From: Councilmembers Robinson, Davila, Bartlett, and Hahn

Referred: March 11, 2019

Due: September 15, 2019

Recommendation: Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear.

Financial Implications: See report

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

Action: The item was continued to the next meeting.

Committee Action Items

4a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

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Financial Implications: Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

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The original recommendation from the Peace and Justice Commission is as follows: The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

Send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and

Committee Action Items

allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

Financial Implications: See report

Contact: Bre Slimick, Commission Secretary, 981-7000

Action: 5 speakers. Discussion held. The item was continued to the next meeting. The committee continued the item to come back with a two-part proposal that will have more detail and address the overall process.

1. A report and presentation to the full Council. The report should include Code Enforcement procedures and identify how they prioritize to provide a full picture of the Code Enforcement process. Councilmember Kesarwani to work with staff to explore what should be included in the report, including details regarding this particular case.
2. A community forum to provide for general information on receiverships and conservatorships. The community forum should include court staff and public testimony. Councilmember Bartlett to draft proposal on what to include in the community forum, such as the City's responsibility.

Committee Action Items

5. **Pilot Cannabis Event at Cesar Chavez Park**

From: Councilmembers Bartlett and Davila

Referred: June 24, 2019

Due: December 9, 2019

Recommendation: That the City Council permit a pilot cannabis event at Cesar Chavez Park. Adopt an ordinance amending BMC Chapter 12.22 to permit temporary cannabis events for a period of one-year after the effective date of the ordinance.

Financial Implications: Staff time

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

Action: 8 speakers. Discussion held. The item was withdrawn by the author, Councilmember Ben Bartlett.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- **None**

Items for Future Agendas

- **None**

Adjournment

Action: M/S/C (Bartlett/Kesarwani) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 12:28 p.m.

I hereby certify that this is a true and correct record of the Health, Life Enrichment, Equity & Community Committee meeting held on July 8, 2019.

Michael MacDonald, Assistant City Clerk



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

CONSENT CALENDAR
April 23, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Ben Bartlett, Kate Harrison & Cheryl Davila
Subject: Air Quality Monitoring Program

RECOMMENDATION:

Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

CURRENT SITUATION

Berkeley has had a history of poor air quality, with causes ranging from smoke caused by regional wildfires to air pollution emitted by high amounts of vehicular traffic throughout the Bay Area. While this is harmful to all Berkeley residents in general, it is particularly harmful to those with respiratory issues and without adequate healthcare. By upgrading air quality monitoring in Berkeley, the City can provide more accurate reports to its residents and identify which areas of Berkeley contain the highest levels of air pollutants and address these issues accordingly. The program will also have the benefit of identifying poor air quality areas that coincide with low-income neighborhoods. Since these particular neighborhoods are less likely to have access to affordable and necessary medical services, they will be at much higher risk of health issues caused by air pollutants. Therefore, this program, in conjunction with the Health Innovation Zone, will not only benefit the general population but also serve to provide better, more equitable healthcare to underserved and low-income neighborhoods in Berkeley.

BACKGROUND:

Currently, Berkeley's primary air monitoring station is located in the Berkeley Aquatic Park area. This single station provides daily Air Quality Index (AQI) measurements as well as ozone and fine particulate matter (PM_{2.5}) levels¹. The station can provide only a single aggregate estimate for the entire city of Berkeley once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the

¹ <http://www.baaqmd.gov/about-air-quality/current-air-quality/air-monitoring-data?DataViewFormat=daily&DataView=aqi&ParameterId=316>

natural formation of inversion layers in the Bay Area.² These factors, along with the layout of the city, tend to place wealthier neighborhoods at higher elevations (such as on tops of hills) and low-income neighborhoods at lower elevations, with air pollutants possibly accumulating at ground level.³ Neighborhoods near high-traffic roadways are also believed to have higher levels of air pollution due to vehicle emissions.⁴ While all people are harmed by the effects of air pollution, those who consistently live in areas with poorer air quality are at a higher risk of developing long-term respiratory and other health-related issues. If these areas also happen to be low-income neighborhoods, then residents here may have more difficulty affording access to the healthcare necessary to treat or prevent the adverse health effects of air pollution.

In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. These smaller, less expensive sensors will complement the Berkeley Aquatic Park station by enhancing it with highly localized data that may reveal the differences in air quality in separate parts of Berkeley. Should these disparities exist, the City of Berkeley will be better equipped and informed to address these and other health-related issues.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, The Bay Area Air Quality Management District maintains an air quality monitoring network consisting of over 30 stations distributed among the nine Bay Area counties. This network measures concentrations of pollutants for which health-based ambient air quality standards have been set by the U.S. Environmental Protection Agency and the California Air Resources Board. The network also measures concentrations of various pollutants designated as Toxic Air Contaminants by the state of California.⁵ However, only one of these stations is located within Berkeley. Thus, to upgrade the quality of air monitoring within the city, a network of sensors should be installed throughout the city.

ACTIONS/ALTERNATIVES CONSIDERED

This program is modeled after the Breathe London project.

OUTREACH OVERVIEW AND RESULTS

² <http://static.lawrencehallofscience.org/scienceview/scienceview.berkeley.edu/html/view/plume.php>

³ <https://www.berkeleyside.com/2013/01/04/a-map-details-berkeley-gulf-between-rich-and-poor>

⁴ <https://cen.acs.org/environment/pollution/London-starts-worlds-largest-air/97/web/2019/02>

⁵ <http://www.baaqmd.gov/about-air-quality/air-quality-measurement/ambient-air-monitoring-network>

This legislation is designed to make it possible for the City of Berkeley to form partnerships with organizations such as technology companies, environmental groups, and healthcare groups to better implement this program. Recommendations were also received from former Councilmember Gordon Wozniak.

RATIONALE FOR RECOMMENDATION

Currently, Berkeley’s single air monitoring station is located in the Berkeley Aquatic Park area, which provides daily measurements of air pollutant levels for the entire city once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley’s varied geography and the natural formation of inversion layers in the Bay Area. In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. By identifying poor air quality areas that coincide with low-income neighborhoods, the City can address health-related issues caused by air pollution more easily.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The program will be financed by the City of Berkeley with support from possible partnerships with interested organizations.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and costs associated with purchasing, installing, and maintaining equipment.

ENVIRONMENTAL SUSTAINABILITY

This program will provide better measurements of air quality and help identify and address environmental issues related to air pollution.

OUTCOMES AND EVALUATION

It is expected that the City of Berkeley and Public Health Department will partner with other organizations to create an effective and cost-efficient program to upgrade Berkeley’s air quality monitoring system.

CONTACT PERSON

Councilmember Ben Bartlett
Brian Gan

510-981-7130
brianjgan@gmail.com



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

03

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, Ben Bartlett, and Sophie Hahn
Subject: Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear

RECOMMENDATION

Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear, and refer to the City Manager to consider the operational requirements of enforcement of the ordinance, including what effective and appropriate enforcement would entail or what amendments to the Chapter would be necessary to perform such enforcement.

BACKGROUND

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

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

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

To achieve these goals, the Council should adopt a new ordinance, BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial, ethnic, cultural, or religious discrimination on the basis of hair, hair styling, or headwear, and enumerate the rights of all persons to maintain natural, untreated, and traditional hairstyles and headwear in all sectors of employment, housing, and public accommodations. Chapter 13.23 is modeled after other sections of the code under Title 13 (PUBLIC PEACE, MORALS AND WELFARE), including Chapters 13.20, 13.27, 13.28, 13.30, and 13.101.

This item also refers consideration of appropriate enforcement measures to the City Manager. The ordinance as written will establish the prohibition on discriminatory practices and grant private right of action to remedy violations, but does not set up a system for the City to receive complaints and administratively address violations. Such an enforcement system is important to ensure that all Berkeley residents are able to access justice, as private legal action is outside of financial feasibility for many. Staff should consider what form and scope of enforcement is appropriate for the ordinance, the resources necessary to conduct such enforcement, and what, if any, changes need to be made to the ordinance to facilitate such enforcement. One specific form of enforcement that should be considered is the mandatory posting of a notification of rights in workplaces.

ALTERNATIVE ACTIONS CONSIDERED

An alternative considered was to issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51. It was found that adopting new code language to codify these findings would be more enforceable and legally defensible, as City staff have greater leeway in interpreting local statute than state or federal law.

FINANCIAL IMPLICATIONS

Variable. Staff time to implement the program, including crafting exemptions. Enforcement costs would be dependent on the volume of complaints received by the City, and the level and type of enforcement that the City Manager finds is feasible and necessary.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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

Attachments:

1: Ordinance

2: NYC Commission on Human Rights Legal Enforcement Guidance on Race
Discrimination on the Basis of Hair

<https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>

3: Unruh Civil Rights Act, California Civil Code Section 51

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51

4: Fair Employment and Housing Act

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

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

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

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

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

13.23.010 Purpose

It is the policy of the City to eliminate all forms of racial, ethnic, cultural, and religious discrimination within the City. It is the intent of the City Council to ban grooming and appearance policies which have the effective result of discrimination on the basis of racial, ethnic, cultural, or religious identity, both for policies impacting City employees and for private employers.

13.23.020 Findings

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

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

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

C) The overall effect of grooming or appearance policies which target the natural or traditional hair styles and headwear of racial, ethnic, cultural, and religious minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living, and to restrict these groups from fully and freely participating in public life.

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

13.23.030 Definitions

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

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

B) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including but not limited to treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state. This shall include all hair grown on the head and face.

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

D) "Traditional hair" means styles of maintaining hair of cultural or religious significance to any racial, ethnic, cultural, or religious group, including keeping hair uncut or completely shaven. This shall include all hair grown on the head and face.

E) "Traditional headwear" means clothing that is worn on the head that is culturally or religiously significant to any racial, ethnic, cultural, or religious group.

13.23.040 Unlawful activities

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

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

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

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

D) Represent to any person because of their natural or traditional hair style or headwear that employment opportunities, housing accommodations, or public

accommodations are not available when such opportunities or accommodations are in fact available;

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

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

G) Enforce grooming or appearance policies inconsistently between similarly situated employees, tenants, or recipients of public accommodations or groups of employees, tenants, or recipients of public accommodations, to the effect of enacting unequal and discriminatory grooming standards.

13.23.050 Exemptions – Health and Safety

A. The City Manager shall draft and maintain a list of exemptions from the requirements of this ordinance based upon operational requirements related to health and safety. The exemptions shall be of job categories and work environments, not for organizations as a whole.

B. Exemptions shall only be made with respect to section 13.23.040 A, B, C, and E.

C. No exemption shall be made with respect to the provision of housing, including short term housing.

D. The criteria for exemption shall be limited to only the advancement of health and safety, and exemptions shall be eliminated when the health and safety basis for the exemption no longer exists.

13.23.060 Enforcement

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

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

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

~~D) Any person who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure to~~

~~receive and investigate such complaints and take appropriate enforcement action, or may select another department or agency.~~

~~E) Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.~~

13.23.070 Liability for costs and damages

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

13.23.080 Criminal penalties

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

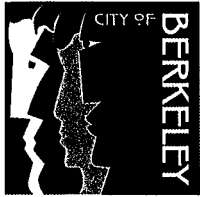
13.23.090 Limitation on action

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

13.23.100 Effective date

The effective date of this ordinance shall be **{DATE}** or when the City Manager has released the list of exemptions pursuant to Section 13.23.050, whichever is later.

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



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

**RECEIVED AT
COUNCIL MEETING OF:**

JUN 24 2019

**OFFICE OF THE CITY CLERK
CITY OF BERKELEY**
March 26, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, Ben Bartlett, and Sophie Hahn
Subject: Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear

RECOMMENDATION

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

BACKGROUND

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

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

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

To achieve these goals, the Council should adopt a new ordinance, BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial, ethnic, cultural, or religious discrimination on the basis of hair, hair styling, or headwear, and enumerate

the rights of all persons to maintain natural, untreated, and traditional hairstyles and headwear in all sectors of employment, housing, and public accommodations. Chapter 13.23 is modeled after other sections of the code dealing with anti-discrimination law under Title 13 (PUBLIC PEACE, MORALS AND WELFARE), including Chapters 13.20, 13.27, 13.28, and 13.30, and as well as Chapter 13.101, the Berkeley Family Friendly and Environment Friendly Workplace Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

An alternative considered was to issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51. It was found that adopting new code language to codify these findings would be more enforceable and legally defensible, as City staff have greater leeway in interpreting local statute than state or federal law.

FINANCIAL IMPLICATIONS

Limited Variable. Staff time to implement the program, including crafting exemptions. Enforcement would mostly be done on a complaint basis and by private right of action, limiting staff time required after adoption costs would be dependent on the volume of complaints received by the City, and the level and type of enforcement that the City Manager finds is feasible and necessary.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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

Attachments:

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

ORDINANCE NO. -N.S.

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

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

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

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

13.23.010 Purpose

~~The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking~~ It is the policy of the City to eliminate all forms of racial, ethnic, cultural, and religious discrimination within the City. It is the intent of the City Council to make unlawful grooming and appearance policies which have the effective result of discrimination on the basis of racial, ethnic, cultural, or religious identity.

13.23.020 Findings

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

- A) Discrimination against racial, ethnic, cultural, and religious minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.
- B) Racial, ethnic, cultural, and religion based discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.
- C) The overall effect of grooming or appearance policies which target the natural or traditional hair styles and headwear of racial, ethnic, cultural, and religious minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living, and to restrict these groups from fully and freely participating in public life.
- D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic, cultural, religious, and economic groups.

13.23.030 Definitions

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

A) "Department" means the City of Berkeley's Health, Housing, and Community Services Department, or any successor department, or any other Department as designated by the City Manager.

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

C) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including but not limited to treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state. This shall include all hair grown on the head and face.

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

E) "Traditional hair" means styles of maintaining hair of cultural or religious significance to any racial, ethnic, cultural, or religious group, including keeping hair uncut or completely shaven. This shall include all hair grown on the head and face.

F) "Traditional headwear" means clothing that is worn on the head that is culturally or religiously significant to any racial, ethnic, cultural, or religious group.

13.23.040 Unlawful activities

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

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

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

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

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

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

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

G) Enforce grooming or appearance policies inconsistently between different employees, tenants, or recipients of public accommodations or groups of employees, tenants, or recipients of public accommodations ~~members of different groups,~~ to the effect of enacting unequal and discriminatory grooming standards.

13.23.050 Exemptions – Health and Safety

~~The Department, in consultation with the Director of Human Resources, may exempt non-City Employees upon request of their non-City Employers, shall draft and maintain a list of exemptions from this ordinance based upon operational requirements related to health and safety according to criteria developed by the Agency and the Director of Human Resources. Such The criteria for exemption shall be limited to only the advancement of public safety or public health, and exemptions shall be eliminated when the public health or public safety basis for the exemption no longer exists.~~

~~A) Department Directors may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees based upon operational requirements related to health and safety according to criteria developed by the Director of Human Resources. Such criteria shall advance public safety or public health.~~

13.23.060 Enforcement

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

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

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

D) Any person who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for the Department to receive and investigate such complaints and take appropriate enforcement action, or may select another department or agency.

E) Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

13.23.070 Liability for costs and damages

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

13.23.080 Criminal penalties

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

13.23.090 Limitation on action.

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

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



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

RECEIVED AT
COUNCIL MEETING OF:
MAY 13 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY
March 26, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, ~~and~~ Ben Bartlett, and Sophie Hahn
Subject: Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear

RECOMMENDATION

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

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

Or

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

BACKGROUND

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

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

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

~~In To achieving achieve~~ these goals, the Council ~~has multiple potential legislative routes to consider. Firstly, Berkeley could should~~ adopt a new ordinance, BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial, ethnic, cultural, or religious discrimination on the basis of hair, ~~or~~ hair styling, or headwear, and enumerate the rights of all persons to maintain natural, untreated, and traditional hairstyles and headwear in all sectors of employment, housing, and public accommodations. Chapter 13.23 is modeled after other sections of the code dealing with anti-discrimination law, including Chapters 13.20, 13.28, and 13.30, as well as Chapter 13.101, the Berkeley Family Friendly and Environment Friendly Workplace Ordinance.

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

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

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

An alternative considered was to issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51. It was found

that adopting new code language to codify these findings would be more enforceable and legally defensible, as City staff have greater leeway in interpreting local statute than state or federal law.

FINANCIAL IMPLICATIONS

Limited. Enforcement would mostly be done on a complaint basis and by private right of action, limiting staff time required after adoption. None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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

Attachments:

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

ORDINANCE NO. -N.S.

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

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

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

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

~~Chapter~~ 13.23.010 Purpose

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

~~Chapter~~ 13.23.020 Findings

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

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

B) Racial, ethnic, cultural, and religion based ~~ly~~ discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.

C) The overall effect of grooming or appearance policies which target the natural or traditional hair styles and headwear of racial, ethnic, cultural, and religious minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living, and to restrict these groups from fully and freely participating in public life.

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

~~Chapter~~ 13.23.030 Definitions

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

A) "Department" means the City of Berkeley's Health, Housing, and Community Services Department, or any successor department, or any other Department as designated by the City Manager.

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

B)C) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including but not limited to treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.

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

E) "Traditional hair" means styles of maintaining hair of cultural or religious significance to any racial, ethnic, cultural, or religious group, including keeping hair uncut or completely shaven.

F) "Traditional headwear" means clothing that is worn on the head that is culturally or religiously significant to any racial, ethnic, cultural, or religious group.

Chapter 13.23.040 Unlawful activities

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

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

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

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

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

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

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

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

13.23.050 Exemptions – Health and Safety

A) The Department, in consultation with the Director of Human Resources, may exempt non-City Employees upon request of their non-City Employers, based upon operational requirements related to health and safety according to criteria developed by the Agency and the Director of Human Resources. Such criteria shall advance public safety or public health.

B) Department Directors may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees based upon operational requirements related to health and safety according to criteria developed by the Director of Human Resources. Such criteria shall advance public safety or public health.

Chapter 13.23.0650 Enforcement

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

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

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

Chapter 13.23.0760 Liability for costs and damages

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

Chapter 13.23.0870 Criminal penalties

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

Chapter 13.23.0980 Limitation on action.

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

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



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, and Ben Bartlett
Subject: Ban Racial Discrimination on the Basis of Hairstyle

RECOMMENDATION

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

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

Or

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

BACKGROUND

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

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

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

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

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

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

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

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

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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

Attachments: [Delete if there are NO Attachments]

1: Ordinance

2: NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair

<https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>

3: Unruh Civil Rights Act, California Civil Code Section 51

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51

4: Fair Employment and Housing Act

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

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

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

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

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

Chapter 13.23.010 Purpose

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

Chapter 13.23.020 Findings

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

- A) Discrimination against racial minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.
- B) Racially discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.
- C) The overall effect of grooming or appearance policies which target the natural hair styles of racial minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living.
- D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic and economic levels.

Chapter 13.23.030 Definitions

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

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

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

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

Chapter 13.23.040 Unlawful activities

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

- A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural hair, either textually or in practice;
- B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or implicitly bans any natural hair style.
- C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural hair style;
- D) Represent to any person because of their natural hair style that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;
- E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural hair style;
- F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural hair, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.

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

Chapter 13.23.050 Enforcement

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

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

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

Chapter 13.23.060 Liability for costs and damages

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

Chapter 13.23.070 Criminal penalties

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

Chapter 13.23.080 Limitation on action.

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

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



Housing Advisory Commission

4a

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission
Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

Establish policies that will 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.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard 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.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: 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).

ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114



Peace and Justice Commission

4b

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission
Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. “Reimburse” Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley’s code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City’s Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

CITY MANAGER

See companion report.

CONTACT PERSON

Breanne Slimick, Associate Management Analyst, 981-7018

Attachments:

1. Letter to Judge Brand

**RESOLUTION
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR
HOMEOWNERS AND TENANTS**

Whereas Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

Whereas since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

Whereas the conversion from a duplex to a single family home was done without permits and inspections; and

Whereas several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

Whereas although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

Whereas since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

Whereas many more repairs were made than were requested, bringing the total costs to over \$600,000; and

Whereas the house is now certified by the City for occupancy; and

Whereas Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

Whereas Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

Whereas at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast; and

; and

Whereas the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

Whereas PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

Now, Therefore, Be it Resolved that the Berkeley City Council adopt the actions recommended by the PJC.