



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

**Monday, November 25, 2019  
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Cheryl Davila, and Sophie Hahn

**AGENDA**

**Roll Call**

**Public Comment on Non-Agenda Matters**

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - October 28, 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

### 2a. 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 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.

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

## Committee Action Items

**2b. 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 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.

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 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

## Committee Action Items

- 2c. Draft Plan for Public Meeting on Receivership**  
**From: Councilmember Bartlett**  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 3. Healthy Checkout Ordinance**  
**From: Councilmembers Harrison and Hahn**  
**Referred: October 28, 2019**  
**Due: April 6, 2019**  
**Recommendation:** 1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.  
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 4. Listening Session on general conditions at encampments and from the homeless population at large (30 minutes)**
- 5. Establishing an Outdoor Emergency Shelter** *(Item contains revised materials)*  
**From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson**  
**Referred: October 1, 2019**  
**Due: March 10, 2020**  
**Recommendation:** Adopt five referrals to the City Manager to begin the process of establishing a sanctioned homeless encampment in Berkeley:  
1. Enter into a contract to purchase climate-controlled, wind-resistant durable tents.  
2. Issue a Request for Proposals for an agency to manage and oversee the encampment.  
3. Install a portable toilet and handwashing station at the encampment parcel.  
4. Request that Lava Mae to service the encampment parcel once a week, thereby reinstating the City's twice weekly service standard.  
5. Add the emergency shelter parcel to an existing garbage pickup route and provide safe needle disposal as part of trash services.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## 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.*

- 6a. Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**  
**From: Housing Advisory Commission**  
**Referred: October 29, 2019**  
**Due: April 7, 2020**  
**Recommendation:** Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:
1. Increase staffing to implement enforcement of the ordinance as part of the next budget;
  2. Improve signage related to the ordinance in residential buildings;
  3. Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge;
  4. Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
  5. Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.
- Financial Implications:** See report  
Contact: Mike Uberti, Commission Secretary, (510) 981-7400
- 6b. Companion Report: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**  
**From: City Manager**  
**Referred: October 29, 2019**  
**Due: April 7, 2020**  
**Recommendation:** The City Manager appreciates the Housing Advisory Commission’s efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 7. Presentation on Vector Control**  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

## 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. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

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 (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 21, 2019.

A handwritten signature in black ink that reads "Mark Numainville".

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**

**Monday, October 28, 2019  
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, and Sophie Hahn

**Roll Call:** 10:07 a.m. Councilmember Kesarwani absent.

**Public Comment on Non-Agenda Matters** – 6 speakers.

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - September 23, 2019**

**Action:** M/S/C (Bartlett/Hahn) to approve the minutes of September 23, 2019.

**Vote:** Ayes – Bartlett, Hahn; Noes – None; Abstain – None; Absent – Kesarwani.

**Committee Action Items**

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*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

### 2a. 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 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.

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

### 2b. 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 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.

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 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:



## Committee Action Items

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

### 2c. **Draft Plan for Public Meeting on Receivership**

**From: Councilmember Bartlett**

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

**Action:** 4 speakers. Discussion held.

Item continued to next meeting on November 25, 2019.

Recess 11:29 a.m. – 11:34 a.m.

## Committee Action Items

**3. Establishing the Outdoor Emergency Shelter**  
**From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson**

**Referred: October 1, 2019**

**Due: March 10, 2020**

**Recommendation:** Adopt five referrals to the City Manager to begin the process of establishing a sanctioned homeless encampment in Berkeley:

1. Enter into a contract to purchase climate-controlled, wind-resistant durable tents.
2. Issue a Request for Proposals for an agency to manage and oversee the encampment.
3. Install a portable toilet and handwashing station at the encampment parcel.
4. Request that Lava Mae to service the encampment parcel once a week, thereby reinstating the City's twice weekly service standard.
5. Add the encampment parcel to an existing garbage pickup route.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

**Action:** 10 speakers. Discussion held.

Item continued to next meeting on November 25, 2019.

## 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

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

The committee requested a presentation on vector control from HHCS staff.

- **Discussion of future hearings and open forums**

The committee requested a 30 minute listening session on the general conditions in encampments and from the homeless population at large.

## Adjournment

Adjourned at 12:13 p.m.

I hereby certify that this is a true and correct record of the Health, Life Enrichment, Equity & Community Committee meeting held on October 28, 2019.

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April Richardson, Assistant 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.*





Housing Advisory Commission

2a

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: Abdesahian, 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

2b

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

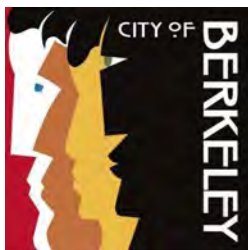
; and

**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.



### Councilmember Ben Bartlett

City of Berkeley, District  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE: 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

2c

September 23rd, 2019

#### Draft Plan for Public Meeting on Receivership

##### Format of the Public Meeting:

1. Community Panel discussing their experience
2. Take Public Comments
3. Presentation from City Staff/ Departments
4. Councilmembers make comments
5. Take questions from Public
  - a. 5-10 questions at a time
6. City/Panel answers questions
7. Councilmembers make comments
8. A second round of questions if time permits

##### Goals for the meeting and what's to be presented:

- Understand how receivership works
- City of Berkeley's role in receivership
- Who ends up under receivership
  - Circumstances leading to receivership
- Opportunities/Challenges
  - Listening session: Hear from the community

#### Potential invites

##### Departments:

Planning/ Code-Enforcement Department  
City Manager/ City Attorney Office  
City Finance Department

##### City Staff (from Community Input):

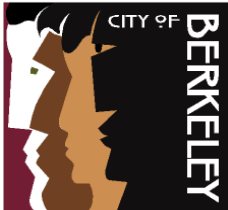
Greg Daniel – Director of Code Enforcement  
Mark Adams – Berkeley City Inspector  
Alex Roshal – Official in Berkeley Housing Dept.  
Raquel Molina – Official in Berkeley Housing Dept.  
Shallon Allen – Official in Berkeley Finance Dept.  
Brent Nelson – Housing Dept. Inspector  
Zach Cowan – Berkeley City Attorney  
Savith Iyengar – Deputy City Attorney  
Laura McKinney – Deputy City Attorney  
Dee Williams-Ridley – Berkeley City Manager  
Farimah Brown – City Attorney

##### Community members (from Community Input):

Leonard Powell – Owner of the house  
Roland Powell – Mr. Powell's son  
Audrey Shields – Current Attorney for Mr. Powell  
Gerard Keena – Court-appointed receiver  
Nathaniel Marston – Attorney for Mr. Keena  
Steve Martinot – Writer, reporter on the affair, member of Friends of Adeline  
Willie Phillips – Community Organizer, Member of Friends of Adeline  
Eugene Turitz – Writer on the affair, Member of Friends of Adeline  
Mr. Willis and members of the Probate Court protest group  
Manuel Juarez – Attorney for Mr. Powell







Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
November 12, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison and Sophie Hahn  
Subject: Healthy Checkout Ordinance

RECOMMENDATION

1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.

POLICY COMMITTEE TRACK

Health, Life Enrichment, Equity and Community

FINANCIAL IMPLICATIONS

1. Implementation of the ordinance would require staff time to educate the approximately 25 stores about what is required of them to comply with the ordinance. The Center for Science in the Public Interest could provide technical assistance including a suggested list of products that meet the criteria of the ordinance. Healthy Berkeley funded programs could also assist with store education and monitoring. Community partners could assist with implementation.
2. Enforcement of the ordinance may be incorporated into the regular inspections of food retailers conducted by the City. Spot checks of items sold in each aisle could monitor compliance.
3. The City-held public meetings for retailers and community residents to share their input will require time from the Commission secretaries.

BACKGROUND

Today's food landscape plays a large role in determining what people purchase and consume. Unhealthy food and beverages are promoted and placed repeatedly throughout retail stores. Cheap, ready-to-eat foods high in salt, saturated fat, and added sugars dominate checkout aisles, where shoppers are more likely to make impulse purchases and where parents struggle with their children over demands to buy treats at the end of a shopping trip.

This ordinance would require all stores over 2,500 square feet in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the

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ordinance, the specifics of which are to be determined in the policy committee process. This would impact approximately 25 stores in Berkeley, including Safeway, Whole Foods, CVS, Walgreens, Berkeley Bowl, and Monterey Market.

### ***Health Impacts of Sugar and Sodium Consumption and Related Disease Disparities***

Impulse buying at checkout contributes to the high levels of sugar consumption in American diets. There has been much research and media attention<sup>1</sup> about the health impacts of excessive added sugar intake, including elevated risk of tooth decay, heart disease, and Type 2 diabetes.<sup>2</sup> The adverse health effects of added sugar consumption further entrench health disparities, burdening people of color more than white populations. Currently, Type 2 diabetes is on the rise across the country; one in three children and one of two children of color will be diagnosed in their lifetime.<sup>3</sup>

Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,<sup>4</sup> all of which disproportionately affect African Americans and communities of color.<sup>5</sup>

Berkeley also has health disparities in diet-related disease. In 2014, African American residents were four times more likely than White residents to be diagnosed with diabetes and 14 times more likely to be hospitalized due to its effects.<sup>6</sup> This gap has decreased since 2014, but the disparity continues to exist.<sup>7</sup> Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African-American residents than White and Latino residents.<sup>5</sup>

### ***Checkout Areas of Grocery Stores Contribute to the Problem***

Consumers are trying to make healthier purchases. A 2019 report found that 73 percent of shoppers are concerned about the nutritional content of their food.<sup>89</sup>

Despite consumer desire to select healthier foods, unhealthy foods are prevalent in checkout areas in a wide variety of retail stores. A national study of 8,600 stores – including supermarkets, convenience stores, drug stores, and dollar stores – found that 88 percent display candy at checkout and one-third (34 percent) sell sugar-sweetened beverages.<sup>10</sup> Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.<sup>8</sup> Almost all supermarkets (91 percent) display candy and 85 percent sell soda and other sugary drinks at checkout.<sup>8</sup>

In 2018, a Berkeley-based youth group assessed a sample of 35 Berkeley stores including Walgreens, Safeway, Trader Joes, Target, Berkeley Bowl, Dollar Tree and others. Data was collected from 16,404 facings, which are the display of a single product on the shelf (not including the items stacked behind it). They found that 69 percent of beverages and 81 percent of foods sold in the checkout area of surveyed stores were considered unhealthy using the [National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout](#).<sup>11</sup>

Research shows that food choices are strongly affected by the environments in which they are made. The aim of placing food and beverages at checkout is to induce

unplanned purchases; thus, unhealthy checkout options undermine consumers' efforts to purchase healthier foods.<sup>12</sup> The placement of snacks near the register increases the likelihood that people purchase those foods.<sup>13</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children, undermining parents' efforts to feed their children well.<sup>14</sup>

Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.<sup>15</sup> Healthy checkout aisles provide all families more opportunities to say yes to their kids.

### ***Grocery Stores are a Prime Place for Policy Change***

Grocery stores are Americans' top source for food and beverages, providing more than 60 percent of calories.<sup>16</sup> Ninety percent of Supplemental Nutritional Assistance Program (SNAP) dollars are redeemed at supermarkets and grocery stores.<sup>17</sup> Though grocery stores sell a wide range of healthy products, they are also the largest contributor of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.<sup>18</sup>

Sugary drinks are promoted repeatedly throughout stores; appearing in as many as 25 different places in a single grocery store.<sup>19</sup> At checkout, these drinks make up 60% of beverage offerings.<sup>20</sup>

For all these reasons, grocery store checkout lanes are an ideal place to begin changing norms around healthy snacks and drinks.

### ***Strategies to Reduce Sugar Consumption in Berkeley***

In 2014, Berkeley became the first city in the country to tax the distribution of sugar sweetened beverages. In the last five years, the City created the Healthy Berkeley program which supports the Berkeley Unified School District garden education program as well as community programs that educate residents about nutrition and are changing norms around beverage choice.

This ordinance is another effort to create a healthy food environment that would support families by providing them the ability to avoid high-calorie, low-nutrient food and beverages when they do their grocery and other shopping. Individuals and families who want to purchase sugary drinks, candy, chips, and other sweet and salty snacks will be able to find them in their respective aisles in the center of stores. By changing checkout norms, shoppers and their children face less temptation to consume sugary foods and there is less reinforcement of these unhealthy choices.

### ***Berkeley Residents are Demanding Checkout Changes***

In 2018, Berkeley-based youth advocates conducted four focus groups where adults and adolescents unanimously supported removing unhealthy food and beverages from grocery store checkout lanes and requiring stores to have healthy checkout aisles. Participants suggested retailers stock checkout with water, fruit juice, coffee, and tea. They also requested that gum, mints and healthy snacks be available. Using the National Alliance for Nutrition and Activity standards as a guide, this ordinance aims to

create checkout aisles where beverages with no added sugars or artificial sweeteners, such as 100% juice and water are considered healthy beverages, and where healthy snacks are predominantly fruits, nuts, and vegetables.

In order to streamline implementation and enforcement, the proposed Healthy Checkout Ordinance restricts added sugars and sodium for food products sold at checkout.

### ***Healthy Checkout Reduces Impulse Buying of Sugary Snacks and Drinks***

A recent study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains. They found that consumers purchased 17 percent fewer sweets, chocolate and potato chips. One year later the decline in unhealthy purchases remained steady at 16 percent.<sup>1</sup>

The Healthy Checkout Ordinance will create a level playing field for customers and retailers and support consistent, healthy snacking norms for shoppers and families.

### ***Reducing Unhealthy Food and Beverages Sold at Checkout in Berkeley: Ordinance Elements***

The attached ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 25 stores in Berkeley that are over 2,500 square feet (see attached) and have more than 25 linear feet of food for sale; and
- allows only beverages with no added sugars and no artificial sweeteners and food items with limited calories, added sugars, and sodium to be sold in the checkout area.

The attached ordinance still has some unanswered questions that will require input from public health advocates, City staff, food retailers, and the policy committee. Those questions are:

- how to define healthy food, and what parameters are most appropriate;
- date of implementation;
- appropriate definition of “checkout area”. The attached draft ordinance includes the definition of “checkout area” as defined in AB 765, but that definition may not appropriately reflect the needs of all large retail stores in Berkeley.

### **RATIONALE FOR RECOMMENDATION**

Requiring the approximately 25 stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages. Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

### **ALTERNATIVES CONSIDERED**

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In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, as the bill has not advanced from committee since April, progress at the state level is not guaranteed.

CONTACT PERSON

Kate Harrison, District 4

ATTACHMENTS:

1: Draft Ordinance

- <sup>1</sup> Brody, JE. The Downside of Having a Sweet Tooth. *The New York Times*. July 22, 2019. <https://www.nytimes.com/2019/07/22/well/eat/the-downside-of-having-a-sweet-tooth.html>.
- <sup>2</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015–2020 Dietary Guidelines for Americans 8th Edition*. Washington, DC; HHS and USDA, 2015.
- <sup>3</sup> *Lancet Diabetes Endocrinol*. 2014 Nov;2(11):867-74. doi: 10.1016/S2213-8587(14)70161-5. Epub 2014 Aug 12.
- <sup>4</sup> <https://www.hsph.harvard.edu/nutritionsource/salt-and-sodium/>
- <sup>5</sup> <https://www.cdc.gov/mmwr/volumes/67/ss/ss6705a1.htm>
- <sup>6</sup> City of Berkeley. *Health Status Report 2014*. Berkeley, CA; 2014.
- <sup>7</sup> City of Berkeley. *Health Status Report 2018*. Berkeley, CA; 2018.
- <sup>8</sup> Food Marketing Institute. *The Power of Health and Well-Being in Food Retail*. Arlington, VA: FMI; 2019.
- <sup>9</sup> International Food Information Council Foundation. *2019 Food & Health Survey*. Washington, D.C.: IFIC; 2019.
- <sup>10</sup> Barker D, Quinn C, Rimkus L, Zenk S, Chaloupka F. *Availability of Healthy Food Products at Check-out Nationwide, 2010-2012*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago; 2015.
- <sup>11</sup> The Center for Science in the Public Interest. *Model Nutrition Standards for Checkout*. <https://cspinet.org/protecting-our-health/nutrition/model-nutrition-standards-checkout>.
- <sup>12</sup> Center for Science in the Public Interest. *Temptation at Checkout: The Power of Point-of-Sale Retail Food Marketing*. Washington, D.C.: CSPI; 2015.
- <sup>13</sup> Kerr J, Sallis JF, Bromby E, Glanz K. Assessing Reliability and Validity of the GroPromo Audit Tool for Evaluation of Grocery Store Marketing and Promotional Environments. *J Nutr Educ Behav*. 2012;44(6):597-603. doi:10.1016/j.jneb.2012.04.017.
- <sup>14</sup> Horsley JA, Absalom KA, Akiens EM, Dunk RJ, Ferguson AM. The Proportion of Unhealthy Foodstuffs Children Are Exposed to at the Checkout of Convenience Supermarkets. *Public Health Nutr*. 2014;17(11):2453-2458.
- <sup>15</sup> Caravan ORC International. *Checkout Polling: Online Survey of 1,024 adults*. Princeton, NJ; 2016.
- <sup>16</sup> Mancino L, Guthrie J. *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire their Foods Correlates with Nutritional Quality*. Washington, DC: U.S. Department of Agriculture Economic Research Center; 2018.
- <sup>17</sup> U.S. Department of Agriculture Food and Nutrition Service. *2015 SNAP Retailer Management Year-End Summary*. Washington, D.C.: USDA; 2015.
- <sup>18</sup> Poti JM, Slining MM, Popkin BM, Kenan WR. Where are kids getting their empty calories? Stores, schools, and fast food restaurants each play an important role in empty calorie intake among US children in 2009-2010. *J Acad Nutr Diet*. 2014;114(6):908-917. doi: 10.1016/j.jand.2013.08.012.
- <sup>19</sup> Cohen DA, Bogart L, Castro G, Rossi AD, Williamson S, Han B. Beverage marketing in retail outlets and The Balance Calories Initiative. *Prev Med*. 2018;115:1-7.
- <sup>20</sup> Fielding-Singh P, Almy J, Wootan MG. *Sugar Overload: Retail Checkout Promotes Obesity*. Washington, DC: Center for Science in the Public Interest, 2014.

ORDINANCE NO. -N.S.

ADDING CHAPTER 9.82 TO THE BERKELEY MUNICIPAL CODE "HEALTHY CHECKOUT"

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

Section 1. That the Berkeley Municipal Code is amended to read as follows:

**9.82.010. Findings and Purpose.**

The City of Berkeley hereby finds and declares as follows:

- A. Diets with an excess of added sugars and sodium are correlated to chronic health issues including diabetes, high blood pressure, and stroke.
- B. Grocery stores are Americans' top source for food and beverages, contributing an average of 60% of caloric intake.
- C. Food choices are strongly affected by the environments in which they are made. The placement of unhealthy snacks near a register increases the likelihood that consumers will purchase those foods and drinks, thus undermining consumer health choices and public health initiatives.
- D. It is in the interest of the health, safety, and welfare of all who live, work, and do business in the City that large stores offer healthy options and do not actively encourage the purchase of unhealthy foods.
- E. This Chapter is consistent with the General Provisions of Environmental Health of the City (Berkeley Municipal Code 11.04).

**9.82.020. Definitions.**

- A. Added Sugars shall mean sugars added during the processing of food and beverages, or are packaged as such, and include sugars (free, mono and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type, as defined in Section [101.9](#) of Title 21 of the Code of Federal Regulations.
- B. Artificial Sweetener shall mean sweeteners with few to no calories that have a higher intensity of sweetness per gram than sucrose.
- C. Category List shall mean the list of foods and beverages which meet the standards of BMC 9.82.030.
- D. Checkout Area shall mean any area that is accessible to a customer of the Large Retail Store that is
  - i. within **XX** feet of any Register; or
  - ii. in an area in the Large Retail Store which is designated only for

customers to wait in line to make a purchase.

- E. "Register" shall mean a device used for monetary transactions that calculates the sales of goods and displays the amount of sales for the customer.
- F. "Large Retail Store" shall mean a commercial establishment selling goods to the public with a total floor area of 2,500 square feet or more and selling 25 linear feet or more of food.

**9.82.030. Healthy Checkout Areas.**

Each Large Retail Store shall, at all hours during which the Large Retail Store is open to the public, ensure that the only foods and beverages available in all checkout areas meet the standards in Sec 9.82.030 A-B:

- A. Beverages with no added sugars and no artificial sweeteners.
- B. Food items with no more than XX calories, XX grams of added sugars, and XX grams of sodium.

**9.82.040. Enforcement.**

- A. The City is hereby authorized to issue all rules and regulations consistent with this ordinance, including, but not limited to, fees for re-inspection.
- B. Compliance with this Chapter shall be administered by the City during regular inspections of qualifying Large Retail Stores. The City may require a Large Retail Store to provide such information as may be necessary to determine the Large Retail Store's compliance with this Chapter.

**9.82.050. Violation--Penalty.**

- A. A Large Retail Store that violates any provision of this chapter may be subject to an administrative citations pursuant to Chapter 1.28 of this Code.
- B. This section shall not limit the City from recovering all costs associated with implementing this chapter or investigating complaints pursuant to fee resolution.
- C. Remedies and penalties under this chapter are cumulative and not exclusive.


**Commented [JCD1]:** I'm not sure what the intent is here. We would need to evaluate whether there is a mechanism to recover administrative enforcement costs.

**9.82.060. Effective Date.**

This ordinance and the legal requirements set forth herein shall take effect and be in force XX.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





No Material  
Available for  
this Item

There is no material for this item.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, Health, Life Enrichment, Equity & Community Policy Committee**  
**Webpage:**

[https://www.cityofberkeley.info/Clerk/Home/Policy\\_Committee\\_\\_Health,\\_Life\\_Enrichment,\\_Equity\\_\\_Community.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee__Health,_Life_Enrichment,_Equity__Community.aspx)





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
October 15, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson  
Subject: Establishing ~~the~~an Outdoor Emergency Shelter

RECOMMENDATION

Adopt five referrals to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley:

1. Enter into a contract to purchase climate-controlled, wind-resistant durable tents.
2. Issue a Request for Proposals for an agency to manage and oversee the emergency shelter.
3. Install a portable toilet and handwashing station at the emergency shelter parcel.
4. Request that Lava Mae to service the emergency shelter parcel once a week, thereby reinstating the City's twice weekly service standard.
5. Add the emergency shelter parcel to an existing garbage pickup route and provide safe needle disposal as part of trash services.

Refer the costs associated with establishing the outdoor emergency shelter, about \$500,000, to the November budget process.

[Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.](#)<sup>1</sup>

BACKGROUND

According to the Alameda County Point In Time count (see Attachment 1), there are 1108 homeless people living in Berkeley, 813 of whom are unsheltered. Of the unsheltered

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<sup>1</sup> [For example, tents and membrane structures are required to sit at least four inches off the ground, have wooden or concrete floors, and be equipped with smoke alarms. Though all of these requirements are important to the health and safety of Berkeley residents, they are arduous requirements to meet. The purpose is to provide temporary accommodations.](#)

people, 251 individuals are sleeping in a tent and 231 are sleeping on a street, sidewalk, or in a park. Roughly 500 pPeople in Berkeley are sleeping in tents or without shelter altogether, whether officially sanctioned or not. Under current policy, many of these encampments do not have any trash, sanitary services, good neighbor policy, or engagement with services, creating unsanitary and unsafe circumstances for both the residents of the encampments and surrounding neighbors.

Over the past several years, Berkeley has made significant investments in affordable housing and supportive services, such as approving the Berkeley Way<sup>2</sup> project that will permanently house 59 people, and the Pathways STAIR Center which has already housed over 100<sup>3</sup> in a year of existence. In total, we are able to shelter about 295 people (not including the 40 emergency shelter beds at Old City Hall), and about 100 of those shelter beds have been added since 2016. We have also expanded mental health and crisis services, are working to find a location for a safe RV parking site, and have provided other homeless services. Our long-term investments are working, but in the short term, people are sleeping in tents and outdoors without durable shelter, a potentially dangerous situation with autumn smoke and winter rains approaching. In addition to the elements, transportation-related deaths were the third leading cause of death among the homeless in Los Angeles County in 2018.<sup>4</sup> Living by highway onramps increases the likelihood of a deadly collision by many factors. Within the next year, we want to provide people with permanent housing. In the next month, we want to prevent anyone from dying of exposure.

~~Sanctioned encampments~~Emergency outdoor shelters should be seen only as a temporary fix. Berkeley must continue to build permanently affordable housing and provide comprehensive services to lift people out of homelessness, prevent displacement and move into homes. However, despite our recent gains, we are still unable to serve all homeless people in Berkeley simultaneously, and there are still gaps in service. An emergency outdoor shelter with durable tents and sanitation services is a short term option that is safer and cleaner than the status quo of unsanctioned camping throughout the City. The intention of this item is to create a limited number of sanctioned encampments operated in an organized fashion. The emergency outdoor shelter has a 180 day suggested length of stay. The goal is that no individual will have to remain for an extended period of time as placement in an indoor navigation center or permanent housing are more appropriate mid- and long-term options.

The state of California has declared a shelter emergency.<sup>5</sup> ~~as has t~~The City of Berkeley ~~has declared a shelter emergency.~~<sup>6</sup> Berkeley's shelter beds are at capacity just about every night. The demand for beds is great – according to the Point in Time count, 98%

<sup>2</sup> <https://bfhp.org/news/berkeley-way/>

<sup>3</sup> "Pathways STAIR Center: First Year Data Evaluation and Results-Based Accountability Dashboard", Item 41, September 24, 2019 Berkeley City Council meeting.

<sup>4</sup> <https://www.theguardian.com/us-news/2019/oct/30/homeless-deaths-los-angeles-county>

<sup>5</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB932](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB932)

<sup>6</sup> "Extension of Housing Crisis Declaration." Item 10, October 31, 2017, Berkeley City Council meeting.

of survey respondents said that they want to find permanent housing. At present, the need far outweighs the available beds, and it is time to look at other, temporary options.

Establishing a limited number of emergency outdoor shelters would represent a positive step for the housed Berkeley community as well. Lack of sanitation services, garbage collection, and potable water can spread infection and disease. Currently, rather than investing in resources to address these important issues, significant resources are being spent on enforcement, simply moving the issues elsewhere in Berkeley. The benefit of an emergency outdoor shelter is the ability to choose the most appropriate location, and provide appropriate services, rather than current disorder.

At the September 10, 2019 City Council meeting, unhoused people and their advocates attended with signs<sup>7</sup> that read “Where Do We Go?” There is currently a community of about 80-100 individuals living in tents or on the street in the area surrounding the I-80 freeway entrance on University Avenue. People live on a combination of City of Berkeley parkland and CalTrans-owned medians, and the incongruent agencies have created an untenable situation for the residents. CalTrans police chase residents onto City land, then City land pushes residents back onto CalTrans property, and there is no are no locations where anyone can in this vicinity where any number of people can sleep safely. Various public agencies regularly threaten the residents of this property with permanent eviction. Sleeping in parks has long been prohibited by BMC 6.32.020.

The Pathways STAIR Center, on the corner of Second and Cedar Streets, acts as a hub for homeless services. The Center is made up of a series of modular buildings on a City-owned lot, with services provided by the Bay Area Community Services (BACS). There is space at the south end of the lot (adjacent to Virginia Street) that is not currently being used (see Attachment 7). Due to its proximity to existing services, including social and housing placement services, showers, and laundry, and the fact that the lot is City-owned, the south end of the STAIR Center lot is a potential location for a City-sanctioned emergency shelter.

Another possibility A possible location is at 611-639 University Ave, beneath the bridge connecting Fourth St and the Waterfront. It is a City-owned<sup>8</sup> lot surrounded by light industry manufacturing to the North, South, and East, and I-80 and Eastshore Highway to the West, so located outside of residential or commercial zones. There are currently about 15 tents set up in an alley between the lot in question and an industrial plant at 1930 Second St. It is currently not possible to set up tents in the The 611-639 University lot because there is a barbed wire fence surrounding it. The lot is mostly empty, with some room used to store old pipes, shipping containers, and other disused pieces of construction equipment.

Regardless of current use, the lot has room for about 15 tents from east to west (judging by the number of tents that are already along the north side of the lot) and, by estimate,

<sup>7</sup> [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=627e4d8c-d4ce-11e9-b703-0050569183fa](http://berkeley.granicus.com/MediaPlayer.php?publish_id=627e4d8c-d4ce-11e9-b703-0050569183fa)

<sup>8</sup> Attachment 4

room for about 5-8 tents from north to south. Arranged into a grid, there is the potential for up to 75-120 tents on this parcel of City-owned but under-utilized property.

Beyond simply being owned by the City of Berkeley, there are other amenities that make it a strong candidate for the location of an emergency outdoor shelter. It is surrounded on all sides by MULI (light industrial manufacturing), so ~~there is no chance of anthe encampment emergency outdoor shelter will not disturb~~ disturbing residential or commercial neighbors.<sup>9</sup> Moreover, is not visible from I-80. The lot is adjacent to areas where unhoused people are currently living, thus transferring to this location would permit this community to stay together. There is a water main about 15 feet from the lot line (see attached pictures). The location is three blocks away from the Pathways STAIR Center, ~~and~~ about a mile away from Berkeley Mental Health, ~~and accessible via University Avenue and San Pablo Avenue bus routes.~~<sup>10</sup> The location fits the needs of our unhoused community, and is currently housing only old pipes. It is a smart location for a City-managed emergency shelter.

Several other cities have already<sup>11</sup> established similar emergency shelters in response to this housing and homelessness crisis. In February, the City of Modesto<sup>12</sup> established several hundred tents under a bridge, where about 300-400 people sleep every night.<sup>13</sup> The project, called the Modesto Outdoor Emergency Shelter (MOES), has proven extremely successful. On September 7, 2019, Gavin Newsom's Homeless and Supportive Housing Advisory Task Force met in Modesto to "observe best practices firsthand."<sup>14</sup> MOES provides portable bathrooms, showers, and handwashing stations, nonprofits and agencies bring food, medical, mental health, and rehousing services, and the encampment is fenced and monitored by a security guard. An editorial in the Modesto Bee applauded MOES for "easing some suffering, however temporary."<sup>15</sup> The Sacramento Mayor and City Council are also looking at using Modesto's model.<sup>16</sup> Sacramento, like Berkeley, is in the process of building new shelters and affordable housing developments, but "as the city enters another month in crisis, other alternatives are coming to the fore."<sup>17</sup> Berkeley ~~looked~~ previously considered ~~sanctioned encampments outdoor emergency shelters~~. At the February 13, 2018 Council meeting, the Council referred to the Homeless Commission a series of questions about what an

<sup>9</sup> [The Homeless Shelter Crisis Resolution specifies that no planning, zoning, building, or other permit requirements shall be required to the extent that compliance would prevent, hinder, or delay the effects of the shelter crisis. Nonetheless, the site's classification as mixed use light industrial is an advantage.](#)

<sup>10</sup> [The proximity to public transportation is a strength of the location though it, like other homeless service providers, would be stronger with dedicated transportation as is called for in Item 33, "Budget Referral: Transportation to Support Mobility-Impaired Individuals Experiencing Homelessness" from the 11/12/19 Berkeley City Council Meeting.](#)

<sup>11</sup> [https://www.vice.com/en\\_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps](https://www.vice.com/en_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps)

<sup>12</sup> <https://www.modbee.com/news/local/article226465300.html>

<sup>13</sup> [https://www.youtube.com/watch?v=J\\_gQ54kZXmA&t=65s](https://www.youtube.com/watch?v=J_gQ54kZXmA&t=65s)

<sup>14</sup> <https://www.modbee.com/news/local/article234754707.html>

<sup>15</sup> <https://www.modbee.com/opinion/editorials/article234558672.html>

<sup>16</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>17</sup> *Ibid.*

[outdoor emergency shelter-sanctioned encampment](#) may look like, including how many residents, who provides facilities, how rules are enforced, etc. (see Attachment 6). In the 18 months since this referral, homelessness has [gone up/increased](#), as has the need for City-designated encampments.

Modesto, Sacramento, and Governor Newsom have all recently concluded that [sanctioned encampments/outdoor emergency shelters](#) are an appropriate temporary addendum, and that MOES models best practices for [sanctioned encampments/outdoor emergency shelters](#). Berkeley has the opportunity to learn from Modesto and MOES, and establish a similar outdoor emergency shelter.

### **Durable Tents**

Working with suppliers to provide durable, waterproof tents [for those unhoused people who require shelter](#) would be a major step toward improving the health, safety and quality of life of Berkeley's homeless population. Nearly one third of Berkeley's homeless population currently lives in tents or makeshift shelters, a number that has doubled in the past two years.<sup>18</sup> Creating a space with durable tents would allow this sizeable part of the homeless community to shift away from temporary and potentially unsafe, unsanitary and weather-prone tents.

[Health and safety standards call for wood or concrete floors to raise tents off the ground. Providing wooden pallets underneath tents fulfills this requirement at a low price. If feasible, collecting pallets should be a part of establishing the emergency shelter.](#)

[In addition, a portable solar powered system for charging phones, wheelchairs, or other electronics should be provided. Generators are also a possibility, but can be dangerous around so many people. High-quality solar generators are a one-time expense of about \\$500-800 but will last for years and can provide power to many people.](#)

Modesto established an encampment that now houses approximately 400 people in 290 10x10ft waterproof tents,<sup>19</sup> donated by the Reno-based company Qamp.<sup>20</sup> These tents include a heavy-duty steal frame, screen door, and an insulating heat-reflective roof.<sup>21</sup> [These tents are 150D polyester, which has a 200% lifespan compared with average camping tents.](#)<sup>22</sup> Partnering with a local company to acquire similarly-sized tents would increase security, community wellbeing and order at the new encampment. Additionally, a 10x10ft space grants homeless individuals a larger, constant and secure location to fit their belongings, exceeding the 9 square feet allocation permitted by the Sidewalk Ordinance.

<sup>18</sup> 2019 HIRD Report

<sup>19</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>20</sup> <https://qamp.com/products/qamp-tent?variant=35987893763>

<sup>21</sup> *Ibid.*

<sup>22</sup> <https://www.goodcampingtents.com/tent-fabrics/>

Other durable tents include those made by ShiftPod<sup>23</sup> and Sweetwater Bungalows<sup>24</sup> produces larger tents intended for entire families. The purpose of this item is not to specify a vendor, but to lay out basic criteria for safe tents, including but not limited to:

- Insulation
- Wind resistance
- Solid (easy to set up and take down, but with a durable frame)

### **Security and Services**

A successful emergency shelter will require the City or a qualified non-profit providing services its residents or providing referrals to other qualified agencies. Such services include but are not limited to:

- Coordination of safety and security 24 hours a day
- Governance of the community, including arrangement of the tents
- Coordination of volunteerism and donations
- Supportive services (such as case management and integration with existing homeless services)
- Rehabilitative opportunities to support the transition out homelessness

Modesto partnered with Turning Point Community Programs to manage all of these services.<sup>25</sup><sup>26</sup> The city also invited other charitable organizations like the Salvation Army<sup>27</sup> to assist with shelter management and food services. Berkeley could similarly work with local organizations specialized in such projects or expand existing city government services to the new shelter.

Having a team to supervise the camp and provide case management, psychological services, and job search support for those who choose to utilize them would ensure that the homeless residents have a shot at keeping their stay in the emergency shelter to a minimum. This could be handled similarly to the Pathways project, or through a mechanism similar to that of Modesto's outsourcing of most service responsibilities to non-profit organizations. The Pathways Center is a "low barrier" shelter with two key rules: no onsite drug or alcohol consumption, and a zero tolerance policy for abuse and harassment. These same rules would be applicable, and even more important given the close proximity of residents. Engagement with services is encouraged but is not a requirement for staying in the emergency outdoor shelter, as a low-barrier emergency shelter.

<sup>23</sup> <https://shiftpod.com/shiftpod/shelter>

<sup>24</sup> <https://www.sweetwaterbungalows.com/>

<sup>25</sup> <https://www.tpcp.org/programs/moes/>

<sup>26</sup> <https://www.abc10.com/article/news/local/modesto/modesto-homeless-community-to-leave-beard-brook-for-new-location/103-622123290>

<sup>27</sup> <http://www.stancounty.com/bos/agenda/2019/20190226/DIS01.pdf>



The emergency shelter should be open 24 hours a day. Unhoused people want to know where they can go, and if they are removed every morning, that question remains unanswered. Many unhoused people do not utilize traditional shelters because they work nights and need to sleep when the shelter is closed. However, most shelters have limited hours because they provide extensive services, meals, and other amenities, and do not have the resources to maintain this level of service all day. If there is a direct tradeoff between hours of operation and the depth of service, this referral prioritizes hours of operation.

A safe and secure environment is vital to the success of the project. A designated, limited space that would not allow extending tents on to surrounding streets is preferred. Setting up a fence and hiring a security team, as was done in Modesto,<sup>28</sup> would be one way to achieve this goal, though the lot at 611 University already has a fence surrounding it. Just as in Modesto, the need for security would have to be balanced with limited restrictions on entry and exit. Regulating permitted activities and items brought into the camp would also help ensure improved safety for its residents. Mobility around the camp can be ensured by capping the amount or size of possessions at what residents can fit in their own tents. A ban on bonfires would drastically reduce the risk to health and life of residents.

### **Toilets and Handwashing Stations**

The potential for disease in compact outdoor emergency shelters is significant, and decreases dramatically with adequate access to handwashing.<sup>29</sup> In 2017, three counties in California experienced an unprecedented hepatitis A outbreak that was primarily carried by the homeless population.<sup>30</sup> As part of the response, San Diego County implemented 160 new handwashing stations, which was highly influential in curbing the spread of the disease.<sup>31</sup> The Here/There encampment on Ashby and Adeline has a portable toilet and handwashing station that was donated by Friends of Adeline,<sup>32</sup> because proper sanitation for the homeless is beneficial to entire communities.

The City is making progress setting up public restrooms across the City, which is a positive development. However, restrooms spread throughout the City do not meet the needs of a single community. A highly concentrated group of people (as currently exists on CalTrans land) will have more intense restroom needs, and the City should establish restrooms to account for those needs.

There is a water pipe just northwest of the lot at 611-639 University (see Attachment 5) and while the toilet may be portable, there is the possibility to install a real handwashing

<sup>28</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>29</sup> <https://www.cdc.gov/handwashing/why-handwashing.html>

<sup>30</sup> <https://www.mercurynews.com/2017/10/02/california-scrambles-to-contain-deadly-hepatitis-a-outbreaks/>

<sup>31</sup> <https://www.sandiegocounty.gov/content/dam/sdc/cosd/SanDiegoHepatitisAOutbreak-2017-18-AfterActionReport.pdf>

<sup>32</sup> <https://www.berkeleyside.com/2017/07/18/homeless-camp-city-berkeley-want-bathroom>

station with running water, which would reduce the costs to refill a reservoir. Even if the City decides that both the toilet and handwashing station are to be portable, the proximity to potable water provides options.

### **Mobile Shower Services**

Berkeley has an ongoing partnership with Lava Mae, a mobile shower charity. Access to showers prevents disease and allows unhoused people to live in dignity. In addition to showers, Lava Mae and other organizations such as Dignity On Wheels also organize day-long “care villages” that provide dental care, haircuts, clothing, vaccinations, and other services. For several months Lava Mae has been operating at two pilot locations in near the STAIR Center and at the Progressive Baptist Church.<sup>33</sup> However, according to City staff, Lava Mae is relocating their South Berkeley location to West Oakland. The mobile shower program has been extremely successful and has improved quality of life for unhoused people in Berkeley. Rather than sending those services to Oakland, we should expand them. Any sanctioned encampment will need some shower services for simple sanitary purposes, and by bringing them to Second and University, Berkeley can reinstate the previous practice of having mobile showers twice weekly, at two separate locations. Reinstating services at this location should not preclude finding other strategic locations for mobile shower services in Berkeley.

[The City of Berkeley previously partnered with the Alameda County Mobile Healthcare for the Homeless<sup>34</sup> program which is on hiatus due to staffing shortages. The program brings primary care to homeless individuals free of charge. If the program resumes service in Berkeley, a partnership with them will help keep residents sanitary and healthy.](#)

### **Trash Pickup**

On June 4, 2019 the Modesto City Council voted unanimously to perform garbage removal and disposable services for the Outdoor Emergency Shelter (see Attachment 2). Reliable garbage pickup is crucial to the success of any homeless services. Excessive garbage is highly detrimental to all City residents, as it is unsightly and can attract rodents and disease. [Currently there is a rodent infestation at the encampments on University and Frontage Road negatively affecting quality of life for the residents and visitors to the Marina. To prevent this in the future, we need reliable garbage pickup.](#) Housed Berkeleyans have their garbage removed and disposed of once a week. Unhoused people oscillate between having nothing, and having all of their belongings removed that do not fit in nine square feet, whether it is garbage or not.

[As a part of regular refuse pickup, the City or coordinating agency should provide sharps containers or other forms of safe needle disposal. Approximately 8% of homeless adults](#)

<sup>33</sup> [file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20\(1\).pdf](file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20(1).pdf)

<sup>34</sup> <https://www.achch.org/mobile-health.html>

in the United States have diabetes,<sup>35</sup> and there are many other diseases that require sharps to mediate, including arthritis, hepatitis, HIV/AIDS, blood clotting disorders, and others.<sup>36</sup> Regardless of why an individual may need a sharp, safe disposal is critical to prevent the spread of infection. Putting sharps in the garbage is insufficient and can harm zero waste employees.<sup>37</sup> Sharps boxes can be purchased at drugstores and are inexpensive, but are crucial to the health and safety of all involved.

There is enormous need for refuse services for the homeless population. Early reports on enforcement of the Sidewalk Ordinance indicate that thousands of pounds of refuse have already been removed, since implementation began six months ago. Many complaints regarding homelessness to Council offices and 311 are concerning garbage and illegal dumping. All residents of Berkeley deserve clean streets, and refuse removal will provide not only cleanliness and safety to homeless residents, but more harmony among the community at large as well.

Initiating refuse service is a process typically initiated by the property owner<sup>38</sup> and performed by the Customer Service Division. Because 611-639 University is owned by the City of Berkeley, this item refers the initiation of refuse services to the City Manager.

#### REVIEW OF EXISTING PLANS AND POLICIES

The Strategic Plan includes several goals and priorities that are in line with an emergency outdoor shelter, including creating housing support services for our most vulnerable community members and fostering a resilient and connected City. The purpose of an emergency outdoor shelter is to provide basic shelter needs to the most vulnerable as a City, not relying on private development to do so.

The 1000 Person Plan is a comprehensive plan to permanently end homelessness. It costs between \$16 million and \$20 million, depending on the depth of housing subsidies. The emergency outdoor shelter is not intended to supersede the 1000 Person Plan, but complement its goals and efforts. Finding 2 in the 1000 Person Plan says that our system is serving a progressively smaller percentage of the literally homeless population every year, and the emergency outdoor shelter is a low-barrier way to serve more literally homeless people.

#### ALTERNATIVES CONSIDERED

At roughly \$750,000 yearly, this proposal costs less than any aspect of the 1000 Person Plan except for outreach, and so this money could be spent on outreach for an otherwise developing 1000 Person Plan. Concentrating where people living on the streets makes outreach simpler and more cost effective.

<sup>35</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318300/>

<sup>36</sup> <https://www.fda.gov/medical-devices/consumer-products/safely-using-sharps-needles-and-syringes-home-work-and-travel>

<sup>37</sup> *Ibid.*

<sup>38</sup>

[https://www.cityofberkeley.info/Customer\\_Service/Home/Refuse\\_Start\\_Stop\\_or\\_Change\\_Service.aspx](https://www.cityofberkeley.info/Customer_Service/Home/Refuse_Start_Stop_or_Change_Service.aspx)

With a goal of a 180 day stay, this shelter should serve about 150 people annually. This is equivalent to about \$5,000 per person or about 2-3two months' rent at the market rate. Direct subsidies are possible alternative, but direct subsidies cannot serve as many people for as long as an emergency outdoor shelter. In addition, there is currently limited market rate housing to be had.

### FINANCIAL IMPLICATIONS

The costs below could be considered most appropriate coming from Measure P funds allocated for Shelter and Temporary Accommodations, ~~CDBG funds, Homeless Emergency Aid Program (HEAP) funds,~~ or the General Fund, with the possibility of future funding from Homeless Housing, Assistance, and Prevention (HHAP) funds or other funds.

1. High quality tents can be expensive, with potential discounts for purchasing in bulk. However, Modesto had all tents donated by a local company. Maximum of \$10,000 to be spent on purchasing tents, and preference for donations, if possible.
- 1-2. A good solar battery costs about \$200<sup>39</sup>. Cheaper solar batteries are available but can provide power for fewer people at a time, or have the power to charge fewer items.
- 2-3. The City of Berkeley allocates about \$~~170~~450,000 annually for the ~~Veteran's Building~~Dwight Way shelter which provides a comparable level of services as what would be needed for this encampment. This funding comes from CDBG funding as an emergency shelter service. While this represents only a portion of the costs of running that shelter, the outdoor emergency shelter envisioned here will be less service intensive than that at Dwight Way and without a physical building to maintain. Keeping a shelter open at all times requires 4.2 FTEspeople per FTE, and a shelter of this size needs two people at a time, or 8.4 FTEs and approximately \$420,000, plus some overhead.
- 3-4. A portable toilet can be rented for \$78/month,<sup>40</sup> which includes weekly cleanings, and handwashing stations for \$93/month.<sup>41</sup> Alternatively they can be purchased outright for between \$500 and \$1000 each, but staff time would be required to clean them regularly. For a large shelter of 100-150 people, 63 portable toilets would be required if cleaned once a week, or nine if cleaned every day. Approximately \$255,000 per year for the toilet services of an outdoor shelter of this kind.
- 4-5. 20 yard dumpsters are approximately \$500 per week to rent, and 96-gallon trash receptacles are about \$100 each. A large dumpster may be necessary

<sup>39</sup> [https://www.rei.com/product/862517/goal-zero-yeti-150-portable-power-generator?sku=8625170001&store=12&cm\\_mmc=PLA\\_Google\\_LIA%7C404\\_1050574532%7C862517001%7Cnone%7C91269da0-c490-42f0-9dd7-2b8e5742415d%7Cpla-293946777986&lsft=cm\\_mmc:PLA\\_Google\\_LIA%7C404\\_1050574532%7C8625170001%7Cnone%7C91269da0-c490-42f0-9dd7-2b8e5742415d&qclid=CjwKCAiAzanuBRAZEiwA5yf4uqC5zxPI6mfDJV103rSVfAQX\\_I3v74MWOce-QduDTIdGCMHpCEndbBoCTFYQAvD\\_BwE](https://www.rei.com/product/862517/goal-zero-yeti-150-portable-power-generator?sku=8625170001&store=12&cm_mmc=PLA_Google_LIA%7C404_1050574532%7C862517001%7Cnone%7C91269da0-c490-42f0-9dd7-2b8e5742415d%7Cpla-293946777986&lsft=cm_mmc:PLA_Google_LIA%7C404_1050574532%7C8625170001%7Cnone%7C91269da0-c490-42f0-9dd7-2b8e5742415d&qclid=CjwKCAiAzanuBRAZEiwA5yf4uqC5zxPI6mfDJV103rSVfAQX_I3v74MWOce-QduDTIdGCMHpCEndbBoCTFYQAvD_BwE)

<sup>40</sup> <https://www.portapottyrentalguide.com/advice/prices/>

<sup>41</sup> *Ibid.*

immediately upon set-up of the emergency shelter, and several receptacles for ongoing use. Staff time to accrete the lot into a regular refuse pickup route.

All told, the expected amount needed is about \$~~500~~750,000 per year.

In addition, this measure would reduce enforcement costs. The City expends significant resources in both the City Manager's office and the police force by moving unhoused individuals from place to place. By providing a place where people can go, this staff time can be directed back towards neighborhood services and curbing criminal behavior.

#### ENVIRONMENTAL SUSTAINABILITY

Regular refuse removal will decrease littering and illegal dumping, in line with the City's Zero Waste goals.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

#### ATTACHMENTS

- 1: Summary of Point in Time Count, 2019.
- 2: Modesto City Ordinance 2019-254.
- 3: *City Officials Suddenly Support Homeless Tent Cities, Car Camps in Sacramento Neighborhoods*, Sacramento Bee, August 29, 2019.
- 4: Map of 2<sup>nd</sup> and University and surrounding areas.
- 5: Pictures of 2<sup>nd</sup> and University and surrounding areas.
- 6: Supplemental 3 to Item 38a, "First They Came For The Homeless Encampment" at February 13, 2018 Berkeley City Council Meeting.
- ~~7: Map of 2<sup>nd</sup> and Virginia and surrounding areas.~~



Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
October 15, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson  
Subject: Establishing the Outdoor Emergency Shelter

RECOMMENDATION

Adopt five referrals to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley:

1. Enter into a contract to purchase climate-controlled, wind-resistant durable tents.
2. Issue a Request for Proposals for an agency to manage and oversee the emergency shelter.
3. Install a portable toilet and handwashing station at the emergency shelter parcel.
4. Request that Lava Mae to service the emergency shelter parcel once a week, thereby reinstating the City's twice weekly service standard.
5. Add the emergency shelter parcel to an existing garbage pickup route.

Refer the costs associated with establishing the outdoor emergency shelter, about \$500,000, to the November budget process.

BACKGROUND

According to the Alameda County Point In Time count (see Attachment 1), there are 1108 homeless people living in Berkeley, 813 of whom are unsheltered. Of those people, 251 individuals are sleeping in a tent and 231 are sleeping on a street, sidewalk, or in a park. People in Berkeley are sleeping in tents, whether officially sanctioned or not. Under current policy, many of these encampments do not have any trash, sanitary services, good neighbor policy, or engagement with services, creating unsanitary and unsafe circumstances for both the residents of the encampments and surrounding neighbors.

Over the past several years, Berkeley has made significant investments in affordable housing and supportive services, such as approving the Berkeley Way<sup>1</sup> project that will

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<sup>1</sup> <https://bfhp.org/news/berkeley-way/>



permanently house 59, and the Pathways STAIR Center which has already housed over 100<sup>2</sup> in a year of existence. Our long-term investments are working, but in the short term, people are sleeping in tents and outdoors without durable shelter, a potentially dangerous situation with autumn smoke and winter rains approaching.

Sanctioned encampments should be seen only as a temporary fix. Berkeley must continue to build permanently affordable housing and provide comprehensive services to lift people out of homelessness and into homes. However, despite our recent gains, we are still unable to serve all homeless people in Berkeley simultaneously, and there are still gaps in service. An emergency outdoor shelter with durable tents and sanitation services is a short term option that is safer and cleaner than the status quo of unsanctioned camping throughout the City. The intention of this item is to create a limited number of sanctioned encampments operated in an organized fashion.

The state of California has declared a shelter emergency.<sup>3</sup> The City of Berkeley has declared a shelter emergency.<sup>4</sup> Berkeley's shelter beds are at capacity just about every night. At present, the need far outweighs the available beds, and it is time to look at other, temporary options.

Establishing a limited number of emergency outdoor shelters would represent a positive step for the housed Berkeley community as well. Lack of sanitation services, garbage collection, and potable water can spread infection and disease. Currently, rather than investing in resources to address these important issues, significant resources are being spent on enforcement, simply moving the issues elsewhere in Berkeley. The benefit of an emergency outdoor shelter is the ability to choose the most appropriate location, and provide appropriate services, rather than current disorder.

At the September 10, 2019 City Council meeting, unhoused people and their advocates attended with signs<sup>5</sup> that read "Where Do We Go?" There is currently a community of about 80 living in tents or on the street in the area surrounding the I-80 freeway entrance on University Avenue. People live on a combination of City of Berkeley parkland and CalTrans-owned medians, and the incongruent agencies have created an untenable situation for the residents. CalTrans police chase residents onto City land, then City land pushes residents back onto CalTrans property, and there is no location where anyone can sleep safely. Sleeping in parks has long been prohibited by BMC 6.32.020.

The Pathways STAIR Center, on the corner of Second and Cedar Streets, acts as a hub for homeless services. The Center is made up of a series of modular buildings on a City-owned lot, with services provided by the Bay Area Community Services (BACS). There is space at the south end of the lot (adjacent to Virginia Street) that is not currently being

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<sup>2</sup> "Pathways STAIR Center: First Year Data Evaluation and Results-Based Accountability Dashboard", Item 41, September 24, 2019 Berkeley City Council meeting.

<sup>3</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB932](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB932)

<sup>4</sup> "Extension of Housing Crisis Declaration." Item 10, October 31, 2017, Berkeley City Council meeting.

<sup>5</sup> [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=627e4d8c-d4ce-11e9-b703-0050569183fa](http://berkeley.granicus.com/MediaPlayer.php?publish_id=627e4d8c-d4ce-11e9-b703-0050569183fa)

used (see Attachment 7). Due to its proximity to existing services, including social and housing placement services, showers, and laundry, and the fact that the lot is City-owned, the south end of the STAIR Center lot is a potential location for a City-sanctioned emergency shelter.

Another possibility is at 611-639 University Ave, beneath the bridge connecting Fourth St and the Waterfront. It is a City-owned<sup>6</sup> lot surrounded by light industry manufacturing to the North, South, and East, and I-80 and Eastshore Highway to the West. There are currently about 15 tents set up in an alley between the lot in question and an industrial plant at 1930 Second St. It is currently not possible to set up tents in the 611-639 University lot because there is a barbed wire fence surrounding it. The lot is mostly empty, with some room used to store old pipes, shipping containers, and other disused pieces of construction equipment.

Regardless of current use, the lot has room for about 15 tents from east to west (judging by the number of tents that are already along the north side of the lot) and, by estimate, room for about 5-8 tents from north to south. Arranged into a grid, there is the potential for up to 75-120 tents on this parcel of City-owned but under-utilized property.

Beyond simply being owned by the City of Berkeley, there are other amenities that make it a strong candidate for the location of an emergency outdoor shelter. It is surrounded on all sides by MULI (light industrial manufacturing), so there is no chance of an encampment disturbing residential or commercial neighbors. Moreover, is not visible from I-80. The lot is adjacent to areas where unhoused people are currently living, thus transferring to this location would permit this community to stay together. There is a water main about 15 feet from the lot line (see attached pictures). The location is three blocks away from the Pathways STAIR Center and about a mile away from Berkeley Mental Health. The location fits the needs of our unhoused community, and is currently housing only old pipes. It is a smart location for a City-managed emergency shelter.

Several other cities have already<sup>7</sup> established similar emergency shelters in response to this housing and homelessness crisis. In February, the City of Modesto<sup>8</sup> established several hundred tents under a bridge, where about 300-400 people sleep every night.<sup>9</sup> The project, called the Modesto Outdoor Emergency Shelter (MOES), has proven extremely successful. On September 7, 2019, Gavin Newsom's Homeless and Supportive Housing Advisory Task Force met in Modesto to "observe best practices firsthand."<sup>10</sup> MOES provides portable bathrooms, showers, and handwashing stations, nonprofits and agencies bring food, medical, mental health, and rehousing services, and the encampment is fenced and monitored by a security guard. An editorial in the Modesto

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<sup>6</sup> Attachment 4

<sup>7</sup> [https://www.vice.com/en\\_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps](https://www.vice.com/en_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps)

<sup>8</sup> <https://www.modbee.com/news/local/article226465300.html>

<sup>9</sup> [https://www.youtube.com/watch?v=J\\_gQ54kZXmA&t=65s](https://www.youtube.com/watch?v=J_gQ54kZXmA&t=65s)

<sup>10</sup> <https://www.modbee.com/news/local/article234754707.html>



Bee applauded MOES for “easing some suffering, however temporary.”<sup>11</sup> The Sacramento Mayor and City Council are also looking at using Modesto’s model.<sup>12</sup> Sacramento, like Berkeley, is in the process of building new shelters and affordable housing developments, but “as the city enters another month in crisis, other alternatives are coming to the fore.”<sup>13</sup>

Berkeley looked previously considered sanctioned encampments. At the February 13, 2018 Council meeting, the Council referred to the Homeless Commission a series of questions about what a sanctioned encampment may look like, including how many residents, who provides facilities, how rules are enforced, etc (see Attachment 6). In the 18 months since this referral, homelessness has gone up, as has the need for City-designated encampments.

Modesto, Sacramento, and Governor Newsom have all recently concluded that sanctioned encampments are an appropriate temporary addendum, and that MOES models best practices for sanctioned encampments. Berkeley has the opportunity to learn from Modesto and MOES, and establish a similar outdoor emergency shelter.

### **Durable Tents**

Working with suppliers to provide durable, waterproof tents would be a major step toward improving the health, safety and quality of life of Berkeley’s homeless population. Nearly one third of Berkeley’s homeless population currently lives in tents or makeshift shelters, a number that has doubled in the past two years.<sup>14</sup> Creating a space with durable tents would allow this sizeable part of the homeless community to shift away from temporary and potentially unsafe, unsanitary and weather-prone tents.

Modesto established an encampment that now houses approximately 400 people in 290 10x10ft waterproof tents,<sup>15</sup> donated by the Reno-based company Qamp.<sup>16</sup> These tents include a heavy-duty steel frame, screen door, and an insulating heat-reflective roof.<sup>17</sup> Partnering with a local company to acquire similarly-sized tents would increase security, community wellbeing and order at the new encampment. Additionally, a 10x10ft space grants homeless individuals a larger, constant and secure location to fit their belongings, exceeding the 9 square feet allocation permitted by the Sidewalk Ordinance.

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<sup>11</sup> <https://www.modbee.com/opinion/editorials/article234558672.html>

<sup>12</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>13</sup> *Ibid.*

<sup>14</sup> 2019 HIRD Report

<sup>15</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>16</sup> <https://qamp.com/products/qamp-tent?variant=35987893763>

<sup>17</sup> *Ibid.*

Other durable tents include those made by ShiftPod<sup>18</sup>, and Sweetwater Bungalows<sup>19</sup> produces larger tents intended for entire families. The purpose of this item is not to specify a vendor, but to lay out basic criteria for safe tents, including but not limited to:

- Insulation
- Wind resistance
- Solid (easy to set up and take down, but with a durable frame)

### **Security and Services**

A successful emergency shelter will require the City providing services its residents. Such services include but are not limited to:

- Coordination of safety and security
- Coordination of volunteerism and donations
- Supportive services (such as case management)
- Rehabilitative opportunities to support the transition out homelessness

Modesto partnered with Turning Point Community Programs to manage all of these services.<sup>20</sup><sup>21</sup> The city also invited other charitable organizations like the Salvation Army<sup>22</sup> to assist with shelter management and food services. Berkeley could similarly work with local organizations specialized in such projects or expand existing city government services to the new shelter.

Having a team to supervise the camp and provide case management, psychological services, and job search support would ensure that the homeless residents have a shot at keeping their stay in the emergency shelter to a minimum. This could be handled similarly to the Pathways project, or through a mechanism similar to that of Modesto's outsourcing of most service responsibilities to non-profit organizations.

A safe and secure environment is vital to the success of the project. Setting up a fence and hiring a security team, as was done in Modesto,<sup>23</sup> would be one way to achieve this goal, though the lot at 611 University already has a fence surrounding it. Just as in Modesto, the need for security would have to be balanced with limited restrictions on entry and exit. Regulating permitted activities and items brought into the camp would also help ensure improved safety for its residents. Mobility around the camp can be ensured by capping the amount or size of possessions at what residents can fit in their own tents. A ban on bonfires would drastically reduce the risk to health and life of residents.

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<sup>18</sup> <https://shiftpod.com/shiftpod/shelter>

<sup>19</sup> <https://www.sweetwaterbungalows.com/>

<sup>20</sup> <https://www.tpcp.org/programs/moes/>

<sup>21</sup> <https://www.abc10.com/article/news/local/modesto/modesto-homeless-community-to-leave-beard-brook-for-new-location/103-622123290>

<sup>22</sup> <http://www.stancounty.com/bos/agenda/2019/20190226/DIS01.pdf>

<sup>23</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

## **Toilets and Handwashing Stations**

The potential for disease in compact outdoor emergency shelters is significant, and decreases dramatically with adequate access to handwashing.<sup>24</sup> In 2017, three counties in California experienced an unprecedented hepatitis A outbreak that was primarily carried by the homeless population.<sup>25</sup> As part of the response, San Diego County implemented 160 new handwashing stations, which was highly influential in curbing the spread of the disease.<sup>26</sup> The Here/There encampment on Ashby and Adeline has a portable toilet and handwashing station that was donated by Friends of Adeline,<sup>27</sup> because proper sanitation for the homeless is beneficial to entire communities.

There is a water pipe just northwest of the lot at 611-639 University (see Attachment 5) and while the toilet may be portable, there is the possibility to install a real handwashing station with running water, which would reduce the costs to refill a reservoir. Even if the City decides that both the toilet and handwashing station are to be portable, the proximity to potable water provides options.

## **Mobile Shower Services**

Berkeley has an ongoing partnership with Lava Mae, a mobile shower charity. Access to showers prevents disease and allows unhoused people to live in dignity. In addition to showers, Lava Mae and other organizations such as Dignity On Wheels also organize day-long “care villages” that provide dental care, haircuts, clothing, vaccinations, and other services. For several months Lava Mae has been operating at two pilot locations in near the STAIR Center and at the Progressive Baptist Church.<sup>28</sup> However, according to City staff, Lava Mae is relocating their South Berkeley location to West Oakland. The mobile shower program has been extremely successful and has improved quality of life for unhoused people in Berkeley. Rather than sending those services to Oakland, we should expand them. Any sanctioned encampment will need some shower services for simple sanitary purposes, and by bringing them to Second and University, Berkeley can reinstate the previous practice of having mobile showers twice weekly, at two separate locations. Reinstating services at this location should not preclude finding other strategic locations for mobile shower services in Berkeley.

## **Trash Pickup**

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<sup>24</sup> <https://www.cdc.gov/handwashing/why-handwashing.html>

<sup>25</sup> <https://www.mercurynews.com/2017/10/02/california-scrambles-to-contain-deadly-hepatitis-a-outbreaks/>

<sup>26</sup> <https://www.sandiegocounty.gov/content/dam/sdc/cosd/SanDiegoHepatitisAOutbreak-2017-18-AfterActionReport.pdf>

<sup>27</sup> <https://www.berkeleyside.com/2017/07/18/homeless-camp-city-berkeley-want-bathroom>

<sup>28</sup> [file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20\(1\).pdf](file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20(1).pdf)

On June 4, 2019 the Modesto City Council voted unanimously to perform garbage removal and disposable services for the Outdoor Emergency Shelter (see Attachment 2). Reliable garbage pickup is crucial to the success of any homeless services. Excessive garbage is highly detrimental to all City residents, as it is unsightly and can attract rodents and disease. Housed Berkeleyans have their garbage removed and disposed of once a week. Unhoused people oscillate between having nothing, and having all of their belongings removed that do not fit in nine square feet, whether it is garbage or not.

There is enormous need for refuse services for the homeless population. Early reports on enforcement of the Sidewalk Ordinance indicate that thousands of pounds of refuse have already been removed, since implementation began six months ago. Many complaints regarding homelessness to Council offices and 311 are concerning garbage and illegal dumping. All residents of Berkeley deserve clean streets, and refuse removal will provide not only cleanliness and safety to homeless residents, but more harmony among the community at large as well.

Initiating refuse service is a process typically initiated by the property owner<sup>29</sup> and performed by the Customer Service Division. Because 611-639 University is owned by the City of Berkeley, this item refers the initiation of refuse services to the City Manager.

#### FINANCIAL IMPLICATIONS

The costs below could be considered most appropriate coming from Measure P funds allocated for Shelter and Temporary Accommodations, CDBG funds, Homeless Emergency Aid Program (HEAP) funds, or the General Fund.

1. High quality tents can be expensive, with potential discounts for purchasing in bulk. However, Modesto had all tents donated by a local company. Maximum of \$10,000 to be spent on purchasing tents, and preference for donations, if possible.
2. The City of Berkeley allocates about \$170,000 annually for the Veteran's Building shelter which provides a comparable level of services as what would be needed for this encampment. This funding comes from CDBG funding as an emergency shelter service.
3. A portable toilet can be rented for \$78/month,<sup>30</sup> which includes weekly cleanings, and handwashing stations for \$93/month.<sup>31</sup> Alternatively they can be purchased outright for between \$500 and \$1000 each, but staff time would be required to clean them regularly. For a large shelter of 100-150 people, 63 portable toilets would be required if cleaned once a week, or nine if cleaned every day. Approximately \$255,000 per year for the toilet services of an outdoor shelter of this kind.
4. 20 yard dumpsters are approximately \$500 per week to rent, and 96-gallon trash receptacles are about \$100 each. A large dumpster may be necessary immediately

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<sup>29</sup>

[https://www.cityofberkeley.info/Custom\\_Service/Home/Refuse\\_Start\\_Stop\\_or\\_Change\\_Service.aspx](https://www.cityofberkeley.info/Custom_Service/Home/Refuse_Start_Stop_or_Change_Service.aspx)

<sup>30</sup> <https://www.portapottyrentalguide.com/advice/prices/>

<sup>31</sup> *Ibid.*

upon set-up of the emergency shelter, and several receptacles for ongoing use. Staff time to accrete the lot into a regular refuse pickup route.

All told, the expected amount needed is about \$500,000 per year.

ENVIRONMENTAL SUSTAINABILITY

Regular refuse removal will decrease littering and illegal dumping, in line with the City's Zero Waste goals.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

- 1: Summary of Point in Time Count, 2019.
- 2: Modesto City Ordinance 2019-254.
- 3: *City Officials Suddenly Support Homeless Tent Cities, Car Camps in Sacramento Neighborhoods*, Sacramento Bee, August 29, 2019.
- 4: Map of 2<sup>nd</sup> and University and surrounding areas.
- 5: Pictures of 2<sup>nd</sup> and University and surrounding areas.
- 6: Supplemental 3 to Item 38a, "First They Came For The Homeless Encampment" at February 13, 2018 Berkeley City Council Meeting.
- 7: Map of 2<sup>nd</sup> and Virginia and surrounding areas.

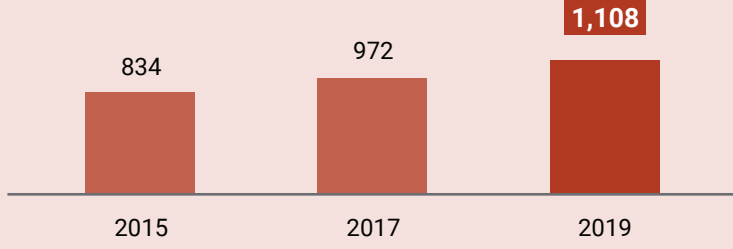
# City of Berkeley

## 2019 EveryOne Counts Homeless Point-in-Time Count & Survey

Every two years, during the last 10 days of January, communities across the country conduct comprehensive counts of people experiencing homelessness in order to measure the prevalence of homelessness in each local community.

The 2019 Alameda County EveryOne Home Point-in-Time Count was a community-wide effort conducted on January 30th, 2019. In the weeks following the street count, a survey was administered across Alameda County. In the city of Berkeley, 257 unsheltered and sheltered homeless individuals were surveyed in order to profile their experience and characteristics.

### Homeless Census Population



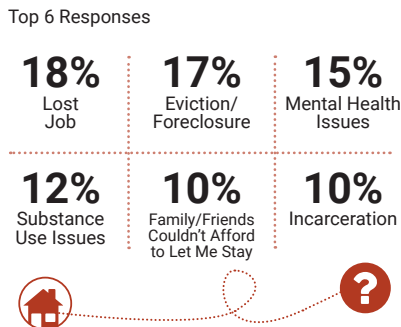
### Sheltered/ Unsheltered Population



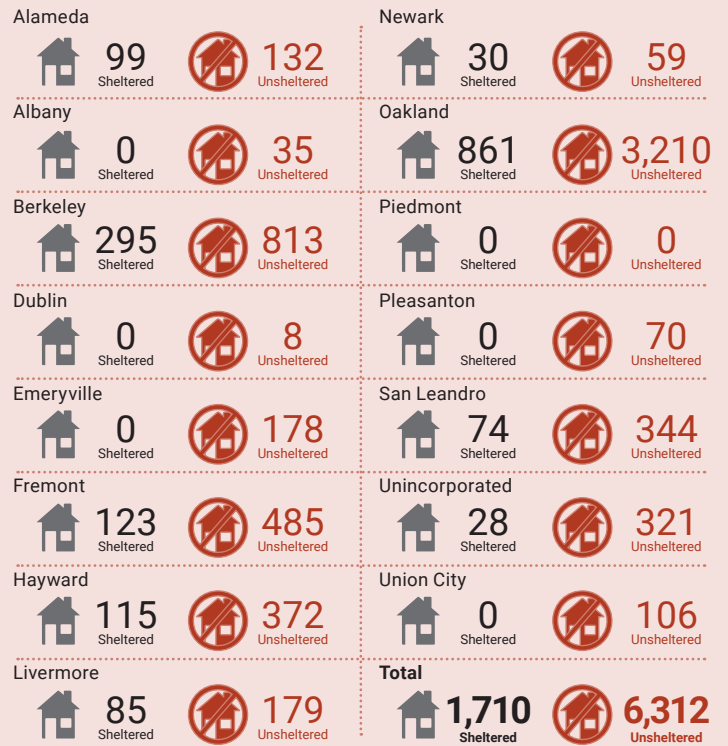
### What Might Have Prevented Homelessness



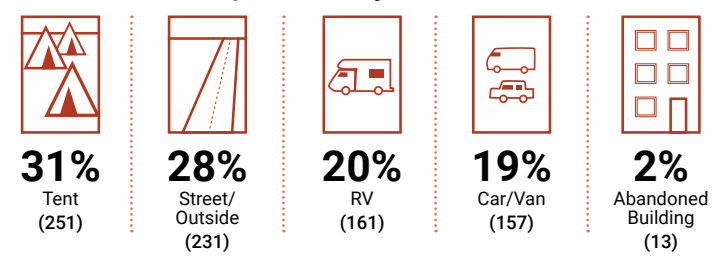
### Primary Causes of Homelessness



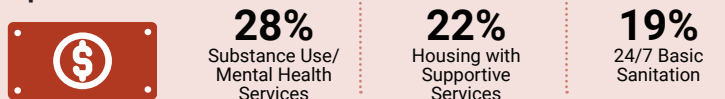
### Sheltered/Unsheltered Population by City



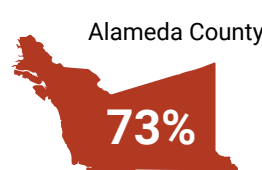
### Unsheltered Population by Location



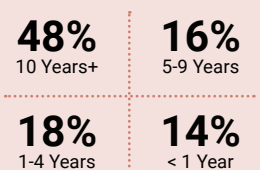
### How New Money Should Be Spent



### Residence Prior to Homelessness



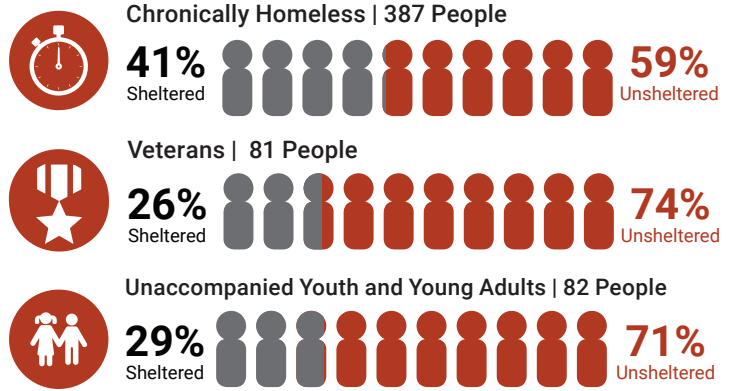
### Length of Time in Alameda County



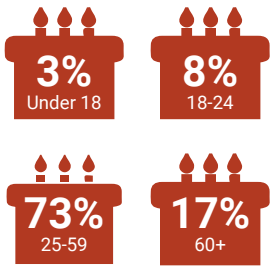
### Household Breakdown



### Subpopulations



### Age

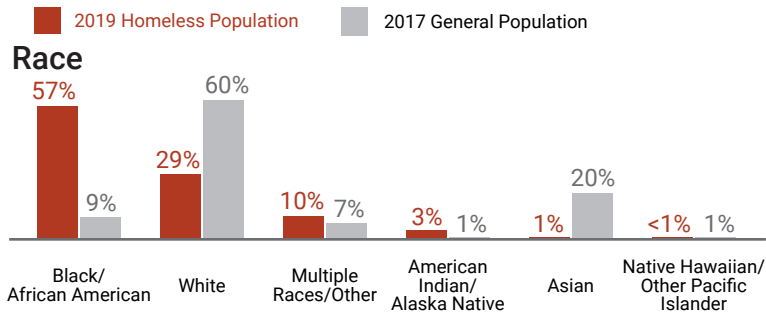


### LGBTQ+ Status

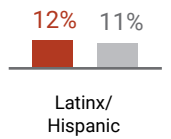
14% of survey respondents identified as LGBTQ+.



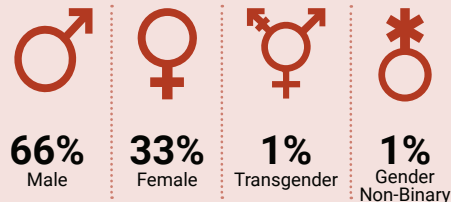
### Race and Ethnicity Compared to General Population



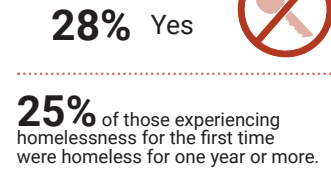
### Ethnicity



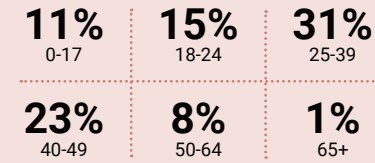
### Gender



### First Episode of Homelessness



### Age at First Episode of Homelessness



### Not Interested in Housing

2% of survey respondents said they were not interested in Independent, Affordable Rental Housing or Housing with Supportive Services.

### Health Conditions

Current health conditions reported by survey respondents.



### Disabling Conditions

41% of survey respondents reported having at least one disabling condition.



A disabling condition is defined by HUD as a developmental disability, HIV/AIDS, or a long-term physical or mental impairment that impacts a person's ability to live independently, but could be improved with stable housing.



**MODESTO CITY COUNCIL  
RESOLUTION NO. 2019-254**

**RESOLUTION APPROVING THE AGREEMENT WITH BERTOLOTTI  
MODESTO DISPOSAL INC., CERES, CA, TO PERFORM GARBAGE  
REMOVAL AND DISPOSAL SERVICES AT THE MODESTO OUTDOOR  
EMERGENCY SHELTER AND FOR HOMELESS ENCAMPMENT BLIGHT  
REMOVAL BY THE MODESTO POLICE DEPARTMENT BEAT HEALTH  
UNIT THROUGH MAY 31, 2021 FOR A TOTAL AMOUNT NOT TO EXCEED  
\$150,000; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,  
TO EXECUTE THE AGREEMENT**

WHEREAS, in response to an emerging and concentrated homeless population precipitated by recent legal developments and case law the City permitted a temporary homeless encampment at Beard Brook Park, and

WHEREAS, the Modesto Police Department (MPD) established a blight abatement team to assist with on-going City efforts in city-wide cleanup and the temporary encampment at Beard Brook Park, and

WHEREAS, the City established a temporary outdoor shelter underneath the 9<sup>th</sup> Street Bridge known as the Modesto Outdoor Emergency Shelter (MOES) to accommodate the growing number of homeless individuals which Beard Brook Park could no longer sustain, and

WHEREAS, the maintenance and cleanup of both encampments required extensive use of garbage and disposal services which nearly depleted the city-wide blanket purchase order, and

WHEREAS, the Finance Purchasing Division issued an emergency purchase agreement, not to exceed \$50,000, with Bertolotti Disposal designated to cover MOES expenses through December 31, 2019, and



WHEREAS, funding for the emergency purchase agreement has been exhausted,  
and

WHEREAS, the City and Bertolotti desire to enter into a new purchase agreement to include garbage and disposal services for MOES and for MPD's Beat Health expenses for illegal homeless camps and dumping to capture all costs related to encampment cleanup, and

WHEREAS, the total amount for MOES garbage and disposal services through December 31, 2019 is \$105,000, and

WHEREAS, the total amount for MPD's Beat Health homeless encampment blight removal through May 31, 2021 is \$45,000, and

WHEREAS, the total amount of the agreement with Bertolotti for both MOES and homeless encampment blight removal by MPD's Beat Health Unit is \$150,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Bertolotti Modesto Disposal Inc., Ceres, CA, to perform garbage removal and disposal services at the Modesto Outdoor Emergency Shelter and for MPD Beat Health homeless encampment blight removal by the Modesto Police Department Beat Health Unit through May 31, 2021 for a total amount not to exceed \$150,000.

BE IT FURTHER RESOLVED, that the City Manager or his designee is authorized to execute the Agreement, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of June, 2019, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
ADAM U. LINDGREN, City Attorney



As homeless men, women and children in Sacramento wait for three new large shelters to open, another model that local officials have repeatedly rejected over the years is now quickly gaining traction.

The “safe ground” model – essentially creating an area where homeless people can live safely in tent cities or in cars – has not been a part of Mayor Darrell Steinberg’s homeless plan. Steinberg has instead been pushing hard for large shelters with rehousing services. But as the city enters its fifth month without a city-run shelter, other alternatives are now coming to the fore.

Councilman Jeff Harris was previously opposed to the “safe ground” model, along with most of the council aside from Councilman Allen Warren. Now, Harris is proposing the city open a temporary homeless camp similar to one Modesto and Stanislaus County opened earlier this year.

### TOP ARTICLES



“To get from today until we stand up more shelter beds, which we desperately need, I suggest we take a look at the safe ground model,” Harris said.

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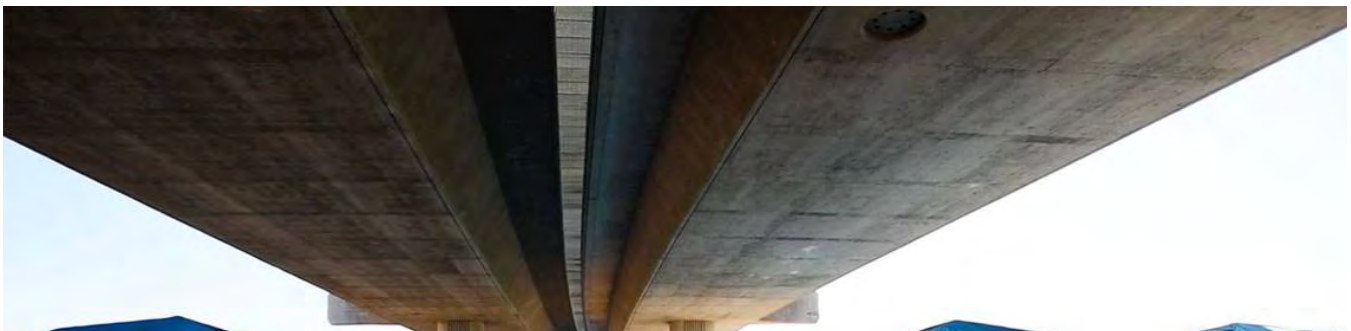
[SAVE NOW](#)

Harris and city staff earlier this month traveled to Modesto to check out that model. He liked what he saw.

The camp, officially called [the Modesto Outdoor Emergency Shelter](#), opened underneath a bridge in a regional park in February. It holds roughly 400 campers who sleep in about 290 white and blue 10-foot-by-10-foot tents donated by a Reno company called Qamp, said Doug Halcomb, the camp’s operations manager.

Local officials provide portable bathrooms and wash stations, and nonprofits provide at least one meal a day, Halcomb said. The camp is fenced in and has two full-time security guards to ensure safety. Providers come to offer medical, mental health and rehousing services to campers. Sacramento-based organization Turning Point handles the day-to-day operations, Halcomb said.

“When I came back from Modesto, I went to the River District and there were more than 150 camps on one city block,” Harris said during a meeting earlier this month. “People were sleeping on the street, defecating in the open. I mean, it’s a mess. This is our city. And this is my district. And that’s what I saw when I came home and I thought, why don’t we do it? Why don’t we try a safe ground model and try to control some of these issues?”





Tents have been assembled in preparation for the new homeless camp under the Ninth Street Bridge at Gateway Park in Modesto, Calif., Tuesday, Feb. 19, 2019. Andy Alfaro  
AALFARO@MODBEE.COM

Opening a “safe ground” for campers could also be cost effective; Harris estimates well under \$1 million. By comparison, the two 100-bed shelters the council approved Tuesday will cost [more than \\$20 million to open and operate for two years](#).

Harris suggested the tent city open next month and close in the spring, after a shelter under the W/X freeway opens. He has a few location ideas in his district – which includes the American River, East Sacramento, South Natomas and part of north Sacramento – but is not sure if they will work.

“It’s not a solution. It’s a way to get from here to there and mitigate the deep impacts on the street in the short term and create safety and hygiene,” Harris said.

Harris previously proposed a [shelter site on Cal Expo property](#), but Cal Expo has not yet approved it.

City Hall has long debated the tent city model. In 2016, a delegation of 20 Sacramento officials [toured tent facilities in Seattle](#), where a network of camps has existed for years. Some officials expressed support for the Seattle model, but the issue was soon dropped.

Councilman Rick Jennings, also struggling to find a site for a large shelter in his south Sacramento district, is pushing for the city to open “safe parking zones,” essentially a safe ground model for car camping.

Volunteers canvassing the county in January found [four times the number of vehicles](#) where people were living than they counted in 2015. Researchers estimate people were sleeping in at least 340 vehicles in the county. This included approximately 100 children. Most of the vehicles were in the city of Sacramento.

The City Council on Tuesday asked staff to come back with a plan for both models. Jennings said he hopes staff can come back with a plan, including costs and potential sites for safe parking zones, within 30 days. He wants to start with a pilot program for about six months. If it goes well, he wants to open more.

“We’re going to look at every possibility within our district, from businesses to nonprofit partners to community centers to parks,” Jennings said Wednesday. “We’re going to look and see if there’s an opportunity at every single one to put a pilot in place so we can get some results.”

Steinberg is supportive of both ideas, he told The Sacramento Bee Wednesday.

“I applaud my colleagues who are working to find creative solutions to our community’s greatest challenge,” Steinberg said in a statement. “Our goal is to get people under a roof with the help they need as quickly as possible. I support any efforts to make their plight even a little better as we aggressively help people get inside.”



Crystal Sanchez, a homeless activist who visited the Modesto site earlier this year, has been urging local officials to replicate the model here. She and other activists, including civil rights attorney Mark Merin, urged Sacramento County Board of Supervisors members to create a safe ground at the former San Juan Motel lot on Stockton Boulevard, where Sacramento Sheriff's deputies [cleared out dozens of campers earlier this year](#). They didn't go for it.

"Modesto is utilizing what is already in place to help their homeless population," Sanchez said. "It is a full-scaled organized community ... It is cost effective and involves every aspect of the community. The local government and the community grassroots have been doing what they do to help."

The Sacramento Regional Coalition to End Homelessness also supports the model as a temporary response until there is enough affordable housing.

"Safe ground means that people experiencing homelessness can camp without fear of harassment from law enforcement and can come and go without the fear that all their possessions have been taken or destroyed," Bob Erlenbusch of SRCEH said. "Equally important is that they can get a good night's sleep without fear of violence from predators who prey on vulnerable people."

James "Faygo" Clark, a local well-known homeless activist, said he is in favor of a safe ground model that rotates locations periodically.

"It would allow people a place to begin to stabilize and move forward," Clark said. "They would need private security, access to trauma-informed services, access to water, sanitation, and trash pickup to succeed. We should also work to ensure that such encampments give the unhoused a voice in their operation."

Warren, [who proposed safe ground sites](#) on his property years ago, said he still supports the model.

"I started on this three years ago and the council wasn't prepared at that time," Warren said. "They seem more willing now."

Merin and other activists [in January 2017 proposed a "safe ground" site](#) near Sacramento Army Depot off Florin Perkins Road.

Councilman Eric Guerra, who represents that area, opposed it, and so did his colleagues.

Now, Guerra, also struggling to find a site for a large shelter, appears to be supportive of a safe parking zone in his south Sacramento district.

Guerra Tuesday suggested staff contact the nonprofit Power Inn Alliance to see if any parking lots could be used in the industrial area for nighttime car camping. A representative for the Power Inn group was unavailable for comment.

#### RELATED STORIES FROM SACRAMENTO BEE

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[Where will Modesto's homeless go when shelter opens and there's not enough room?](#)

MAY 17, 2019 5:39 PM



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UNIVERSITY AVE

Southern Pacific Railroad Station

MULI

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MULI

2ND ST

C-W

63

EAST



C-W















## What would "Sanctioned Encampments" look like? A quick overview of some elements to consider

Chart reads from left to right only, not from top to bottom

<b>LOCATION</b>	100% Resident Discretion	City designated	One/Several locations	Unlimited locations
<b>RESIDENTS</b> <i>Who?</i>	City/Agency Criteria	No Criteria	Resident Criteria	Hybrid
<b>RESIDENTS</b> <i>How Many?</i>	No limit per Encampment	City/Agency determined limit	Resident-determined limit (Who/how decided?)	Variable/Stable
<b>RESIDENTS</b> <i>Criteria?</i>	Resident-Determined	City/Agency determined	Hybrid	Protected Class requirements for criteria?
<b>RESIDENTS</b> <i>Duration</i>	Indefinite/Forever	City/Agency specified – limited time	Resident specified – limited time	
<b>Rules /Code of Conduct</b>	Defined by residents	Defined by City/Agency	Hybrid	
<b>Governance</b>	Resident defined: any system desired, self-governing. What system?	City/Agency Defined	Jointly determined/different areas of governance for each?	
<b>Enforcement of Rules</b>	Residents	City/Agency		
<b>Removal/exclusion of Individuals</b>	Decision and Action by Residents	Decision and Action by City/Agency	No removal or exclusion	
<b>Engagement with Services</b> <i>Housing</i>	Not Necessary	Required	Voluntary	Who decides?
<b>Engagement with Services</b> <i>Other (health, jobs, etc.)</i>	Not necessary	Required	Voluntary	Who decides?
<b>Facilities</b> <i>Provision</i>	Provided by community/Not for profits	Provided by City	Hybrid/Mix	
<b>Facilities</b> <i>maintenance</i>	Residents	City/Agency	Not for Profit Org.	Shared responsibilities
<b>First Amendment issues</b>	"Protest" camp – if City affirmatively sanctions/provides space, does this become sanctioning of one type of speech? Code Pink – type concerns?			
<b>Self-Governance</b>	What system?	Who picks system?	Who ensures fairness?	Recourse?
<b>City/Agency</b>	Which agency?	Scope of Responsibility?	Funding?	

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 COUNCIL MEETING OF:  
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 CITY OF BERKELEY



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Housing Advisory Commission

6a

ACTION CALENDAR  
October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Housing Advisory Commission  
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
Subject: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

RECOMMENDATION

Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;
- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be "sworn," and considering other, less threatening language that still expects a complaint be provided under the best of appellant's knowledge;
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

SUMMARY

At its July 11, 2019 meeting, the HAC took the following actions:

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;

- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).

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

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

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

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

#### FISCAL IMPACTS OF RECOMMENDATION

Unknown direct costs. Staff time would be needed to implement these recommendations and to administer a possibly increased volume of complaints should the process of filing a complaint become less onerous. However, savings in staff time would potentially be realized as a result of implementing the efficiencies being proposed.

#### CURRENT SITUATION AND ITS EFFECTS

The HAC’s recommendation to modify certain policies related to the enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

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



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

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

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

## BACKGROUND

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

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

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

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

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

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

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

The survey results point to similar challenges, primarily associated with:

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

At its March 2019 meeting, the HAC convened a Smoke-Free Housing Ordinance Subcommittee which met in April 2019. Members of the subcommittee reached consensus on several recommendations to the HAC, which were discussed at the April 2019 HAC meeting. Additional feedback was solicited from HAC members as well as members of the public at that meeting. Although the subcommittee did not meet a second time to finalize these recommendations, one of the members of the subcommittee discussed these recommendations with the Eviction Defense Center and the East Bay Community Law Center and modified the draft recommendations so that the idea of empowering inspectors to integrate proactive inspections at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program), exploring the legality of allowing anonymous complaints to be processed, and relaxing the requirement of having to provide two separate complaints within a six-month period in buildings of *all* unit counts were removed from the proposed recommendations that were discussed and approved at the July meeting.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATIONS

The recommendations above address the primary challenges associated with enforcement that have been previously described. A brief rationale for each recommendation is presented below.

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;

- 2) Improve signage related to the ordinance in residential buildings;

The recommendations above were made at the request of several members of the public who credibly claimed that the current staffing level to enforce the ordinance and required signage are inadequate to meet the goals of this ordinance.

- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).

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

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

The current process requires an extremely high bar of evidence and effort for a complainant, and in a situation in which the complainant resides in close quarters with the allegedly offending party, may expose the complainant to possible retaliation (due to the lack of anonymity of the complaint). In addition, while the correctness of a complaint is fundamental to its ability to be processed, using the same language in the complaint form that is seen in a sworn affidavit is likely to intimidate some would-be complainants from undergoing the process of completing and submitting the form.

Furthermore, while the Smoke-Free Multi-Unit Housing Ordinance page on the City of Berkeley website currently includes several forms in Spanish as well as English, the complaint form itself is only available in English. No other languages besides English and Spanish were found anywhere on the site.<sup>7</sup> The requirement that only a hard copy can be submitted and that electronic submission mechanisms are not accepted is overly burdensome, in an age where even police reports can be filed online. The provision that three separate complaints (two of them from separate individuals) must be received within the span of six months shifts the burden of policing onto the complainants rather than City, which is charged with enforcing this ordinance. Each of these recommendations addresses these and related concerns mentioned above.

The final recommendation approved by a separate vote by the HAC is as follows:

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

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

#### ALTERNATIVE ACTIONS CONSIDERED

Members of the HAC Smoke-Free Housing Subcommittee briefly discussed but dismissed the notion of making changes to the underlying Berkeley Smoke-Free Multi-Unit Housing Ordinance itself. Based on discussions with the eviction defense community, several elements were removed from the initial recommendations. These recommendations that are no longer proposed included the following:

- 1) Empowering inspectors to integrate proactive inspections regarding the smoke-free Ordinance enforcement at the same time that the inspectors are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program);
- 2) Exploring the legality of allowing anonymous complaints to be processed;
- 3) Relaxing the requirement of having to demonstrate two separate complaints within a six-month period in buildings of *all unit sizes*.

Therefore, though some of the recommended actions, if approved, may trigger the need to provide subtle adjustments to the enforcement of the Ordinance, none of the actions above alter the fundamental architecture of the Ordinance.

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

CITY MANAGER

See companion report.

CONTACT PERSON

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





Office of the City Manager

6b

ACTION CALENDAR  
October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kelly Wallace, Interim Director, Health, Housing, & Community Services  
Subject: Companion Report: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

RECOMMENDATION

The City Manager appreciates the Housing Advisory Commission's efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.

FISCAL IMPACTS OF RECOMMENDATION

The modifications proposed by the Housing Advisory Commission could require increase in staffing and resources for Public Health's Tobacco Prevention Program and the City Manager's Code Enforcement Division. A feasibility analysis will provide more insight to the costs of revised program administration as proposed.

CURRENT SITUATION AND ITS EFFECTS

On July 11, 2019, the Housing Advisory Commission adopted a multi-pronged recommendation to modify the SFMUH ordinance. The proposed modifications vary in their scope and will require additional analysis prior to adoption, which fits with the Strategic Plan Priority goal to provide an efficient and financially-healthy City government.

The commission's recommendations are outlined below with proposed analysis by staff. The proposed analysis would include:

**Commission Recommendation 1: Increase staffing to implement enforcement of the ordinance as part of the next budget.**

Staff should analyze how the proposed modifications, if adopted, will impact current demands on staff time and determine how many Full Time Equivalent (FTE) employees would be needed. The Public Health Division's Tobacco Prevention Program manages the administration of the ordinance, including processing and monitoring complaints and correspondence with potential violators and landlords. Enforcement of this ordinance is

managed by the City Manager's Code Enforcement Division in coordination with the PH Tobacco Prevention Program.

This request for analysis aligns with a recommendation of the June 2018 City Audit of the Neighborhood Services' Code Enforcement Unit. The audit states any proposed legislation that creates additional workload for the Neighborhood Services Code Enforcement Unit should undergo a resource analysis by City Council to evaluate the proposed fiscal and workload impacts and determine the opportunity cost and implementation approach. The Audit also notes that new code enforcement areas may require significant staff time and resources, which may take away from the unit's ability to meet its other enforcement obligations. Additions to the unit's workload could result in loss of revenue generated from fines and enforcement fees, as well as an increased risk to lawsuits brought on by those who claim the City failed to meet its enforcement obligations.

**Commission Recommendation 2: Improve signage related to the ordinance in residential buildings.**

The City's Tobacco Prevention Program provides property owners/managers with "No Smoking" signage for common areas consistent with the signposting requirements of Berkeley Municipal Code Section 12.70.060. Staff could consult with the Community Health Commission to seek information and determine any potential improvements.

**Commission Recommendation 3: Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be "sworn," and considering other, less threatening language that still expects a complaint be provided under the best of appellant's knowledge.**

Staff appreciates the Commission's efforts to make the complaint process more user-friendly. An electronic complaint submission system would considerably ease the complaint process (which requires signature authentication) as well as administrative tasks. At the same time, some of the Commission's suggestions could raise potential unintended consequences that would need to be considered and thought through. For instance, several departments—including the City Attorney's office—would need to provide an opinion on the City's ability to accept signatures electronically and the implications of removing requirements for sworn statements. Additionally, electronic forms and signatures should be considered as a part of the City's ongoing website redesign.

Staff currently has a limited capacity for language translation. A feasibility analysis would have to determine criteria for what languages should be included and funding needed to provide these services, as well as changes to the language in the ordinance to simply the process.



**Commission Recommendation 4: Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).**

Again, we support efforts to ease the process for complainants, and would work with the City Attorney on any liabilities or legal implications associated with the proposed modifications.

**Commission Recommendation 5: Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.**

Staff are currently working on amendments to the current SFMUH ordinance (and other parts of the Berkeley Municipal Code) to clarify that it includes cannabis. Proposition 64 legalized adult-use of cannabis in California by creating limited exceptions to the state Uniform Controlled Substances Act. But Proposition 64 specifically provided that it did not permit smoking of “cannabis or cannabis products in a location where smoking tobacco is prohibited.” (Health & Safety Code, § 11362.3.) Thus, cannabis smoking is still unlawful in places where tobacco smoking is prohibited, including under local laws like the SFMUH ordinance.

#### BACKGROUND

The Berkeley City Council adopted Ordinance No. 7,321-N.S. regulating second hand smoke in all multi-unit residences common areas. As of May 1, 2014, smoking tobacco products is prohibited in 100% of multi-unit housing with two or more units (i.e. apartments, co-ops, condominiums, common interest developments, etc.). This also includes common areas such as private decks, balconies, and porches of units.

#### ENVIRONMENTAL SUSTAINABILITY

Providing smoke-free housing improves the local air quality of Berkeley’s housing stock.

#### RATIONALE FOR RECOMMENDATION


Staff appreciate the commission’s efforts to respond to community concerns and ensure the City has the most effective and accessible ordinance possible to serve our residents. Due to the varied, multi-pronged nature of their recommendations, staff are recommending a feasibility analysis is first considered to better understand the potential impacts and needs associated with the proposed ordinance modifications.

#### ALTERNATIVE ACTIONS CONSIDERED

The City Council may consider to maintain the current enforcement mechanisms that fall within the City’s established legal and administrative protocol.

CONTACT PERSON

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



No Material  
Available for  
this Item

There is no material for this item.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, Health, Life Enrichment, Equity & Community Policy Committee**  
**Webpage:**

[https://www.cityofberkeley.info/Clerk/Home/Policy\\_Committee\\_\\_Health,\\_Life\\_Enrichment,\\_Equity\\_\\_Community.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee__Health,_Life_Enrichment,_Equity__Community.aspx)