



Lori Droste
Vice Mayor, District 8

ACTION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Lori Droste, Councilmember Terry Taplin, Councilmember Ben Bartlett, and Councilmember Rigel Robinson
Subject: Resolution to End Exclusionary Zoning in Berkeley

Recommendation

Adopt a resolution to state Berkeley City Council's intent to end exclusionary zoning in Berkeley [-with a focus on formerly non-redlined districts](#) by December of 2022.

Current Problem and Its Effects

[Single-family residential zoning and Redlining](#) has its roots in racist exclusionary zoning policy and [when combined with more expensive single-family home zoning, has](#) led to racial and economic segregation.

[As a result of historic and ongoing disinvestment, gentrification, market displacement, and inequity in formerly red-lined communities, it is critical that the City's approach to end exclusionary zoning, including potential upzoning, does not disproportionately burden these neighborhoods or needlessly displace tenants. If not done carefully, rezoning can lead to displacement through a demolished housing stock and rising rents. The likely impact on different parts of the City based on land and housing values and consideration of land value recapture, as previously adopted by the Council, must be assessed.](#)

[At the same time, it is the intent of the Council that any new policies aimed at increasing diversity and housing density be focused in former non-redlined districts, which were designated as most desirable and subject to restrictive covenants. Entirely excluding fire zones, which largely track with areas that formerly had exclusive covenants and are often on large lots \(see attachment 1\), would be patently inequitable as it would concentrate new multi-unit housing in less well-off parts of the city and disproportionately impact lower-income and more diverse neighborhoods. This would simply perpetuate historic discriminatory outcomes.](#)

It is also the intent of the Council to ensure that new development resulting from such changes does not require demolition or elimination of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, (i.e., subsidized affordable units, inclusionary housing or units under Section 8 contract) or units subject to Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance. When considering changes to the zoning code, the City must consider the Costa-Hawkins Rental Housing Act's exemption of new units from rent control. Even if current tenants are guaranteed a first right to rent at prior amounts, tenants are unlikely to return and these units will lose affordability over time, with new tenants facing exorbitant market-rate rental prices.

In addition, any change must conform to expanded and permanent tenant protections pursuant to Government Code 663001, including but not limited to increased relocation payments and conferring right-to-return and relocation benefits to tenants not covered by Berkeley's Rent Stabilization Ordinance. The Council also intends to prohibit ministerial approval if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years, and to require notice be provided to tenants of an application for demolition, elimination or consolidation of units (notice is not required if the project is ministerially approved).

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Techniques such as division, contextual addition and adaptive reuse should be preferred over demolition to advance two goals (1) Climate/Environment, by reusing existing materials and reducing embodied energy in new housing production, (2) ensuring that new units added are more likely to be contextual if they start with "what's already there." Daniel Parolek, the original framer of the "missing middle" calls for both zoning reform and consideration of context in developing this type of housing.¹

Further, we are also facing a crisis in homeownership. It is the intent of the Council to preserve naturally occurring affordable housing and rent-controlled or below-market housing consistent with Berkeley's proposed Tenant Opportunity to Purchase Act (TOPA), an anti-displacement housing policy being considered by the Council that would give tenants options to secure housing when the property they rent before it is sold.

Finally, it is in the public interest and the intent of Council that new units built as result of new zoning policies are subject to affordable housing requirements to prevent displacement, reduce housing costs, and diversify communities. Bringing lower income families into more highly resourced neighborhoods allows them to share in the benefits of living in those areas. Such a policy is consistent with the City's affordable housing requirements, which would need to be adapted to deal with smaller projects as current

¹ Daniel G. Parolek, "Missing Middle Housing: Thinking Big and Building Small to Respond to Today's Housing Crisis," Island Press, July 14, 2020, p. 12.

[requirements exclude buildings of four or fewer units, and the land value capture policy adopted by the Council on July 25, 2017.](#)²

Background

History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley's City Attorney Frank V. Cornish wrote "Apartment houses are the bane of the owner of the single family dwelling" while the consultant who penned Berkeley's zoning ordinance stated, "[The] great principle of protecting the home against the intrusion of the less desirable and floating renter class."³ Subsequently, the Mason McDuffie Company's use of Berkeley's zoning laws and racially-restrictive property deeds and covenants prevented Black, Indigenous, and People of Color from purchasing or leasing property in east Berkeley.⁴

Mason-McDuffie race-restrictive covenants stated, "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void..."⁵ In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"⁶ and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.⁷

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called

² ["Land Value Recapture Policy," Berkeley City Council, July 25, 2017.](#)
https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_34_Land_Value_Recapture.aspx.

³ Frank V. Cornish. "The Legal Status of Zone Ordinances" and Charles Cheney. "The Necessity for a Zone Ordinance in Berkeley." Berkeley Civic Bulletin, May 18, 1915.

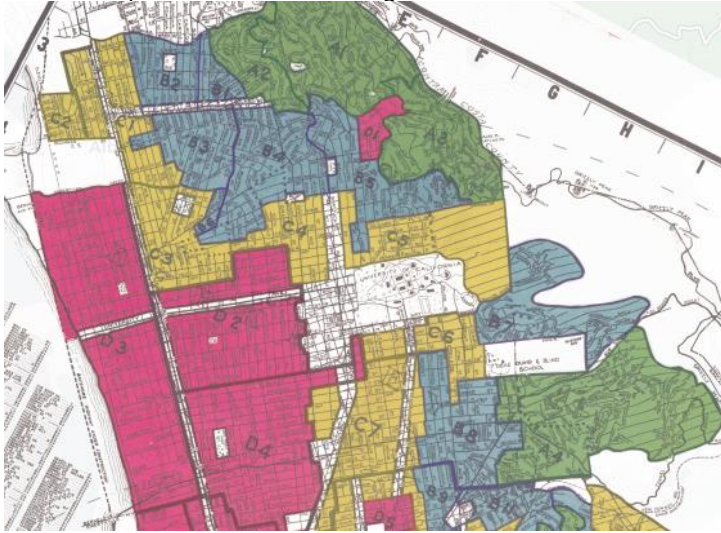
⁴ Wollenberg, *Berkeley, A City in History*, 2008.

⁵ Claremont Park Company Indenture, 1910

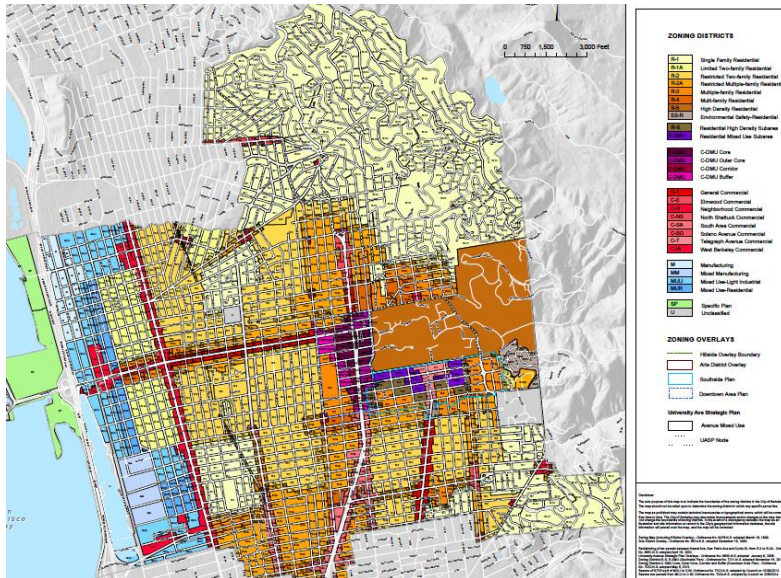
⁶ Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013.
<http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

⁷ Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. Berkeley Planning Journal, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

'redlining') and allowed lenders to enforce local segregation standards.⁸ These maps extensively referenced single-family zoning as on par with racial covenants in appreciating property values, unaffordability and excluding people of color. For example, when describing the Berkeley Hills: "Zoned first residential, single family, deed restrictions prohibit Asiatics and Negroes."



⁸ NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf



The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as "best" in green on the HOLC-era map typically remain zoned as single family residential areas today. Red 'hazardous' neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.⁹

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing --duplexes, triplexes, and other smaller multi-unit building typologies-- was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which outlawed multi-unit housing in certain parts of Berkeley. As Councilmember Ben Bartlett and Yelda Bartlett wrote in their 2017 *Berkeleyside* op-ed, the neighborhood preservation ordinance "[the Neighborhood Preservation Ordinance] did not mention race, but instead tried to preserve 'neighborhood character.' As a result, from 1970 to 2000, fewer than 600 dwelling units were built in Berkeley. Areas zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2) are now some of the most expensive parts of our city—especially on a per-unit basis."¹⁰

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and

⁹ Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," *American Panorama*, ed. Robert K. Nelson and Edward L. Ayers, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&advview=full>

¹⁰ Ben Bartlett, Yelda Bartlett. "Berkeley's zoning laws wall off communities of color, seniors, low-income people and others." *Berkeleyside*, 13 June 2017. Op-ed. <https://www.berkeleyside.com/2017/06/13/opinion-berkeleys-zoning-laws-wall-off-communities-color-seniors-low-income-people-others>

African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

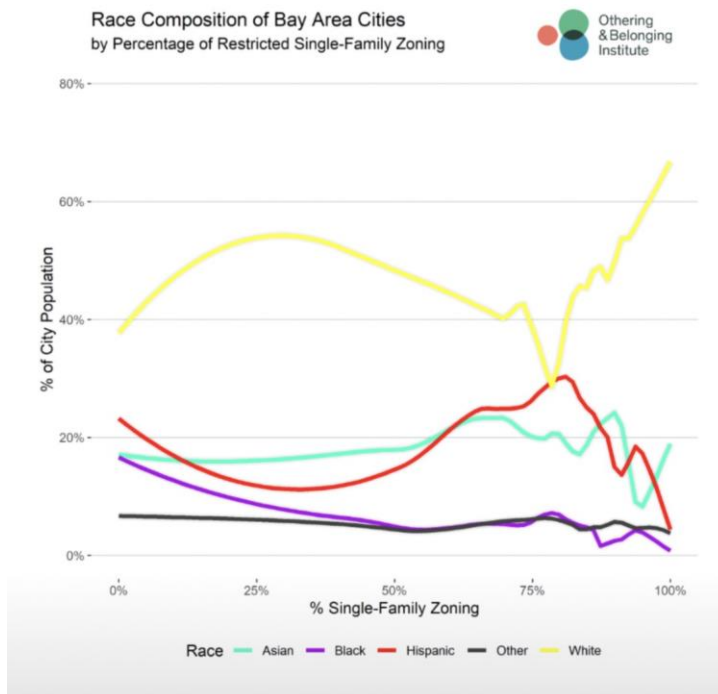
The UC Othring and Belonging Institute recently released a study on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes.¹¹ The authors found that the ramifications of such zoning practices leads to a greater percentage of white residents, as recounted in KQED's "The Racist History of Single Family Zoning."¹² By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density, "desirable" places in Berkeley, the current zoning map dictates that only wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley. Today, with the median home sale price at \$1.3 million¹³ and the typical White family having eight times the wealth of the typical Black family,¹⁴ this de-facto form of segregation is even more pronounced.

¹¹Racial Segregation in the San Francisco Bay Area (2020) UC Othring and Belonging Institute. <https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5>

¹² Baldassari, Erin and Molly Solomon (2020). "The Racist History of Single Family Zoning." <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

¹³ Berkeley, CA Real Estate Market (2021). https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview

¹⁴ Survey of Consumer Finances (2020). Federal Reserve. <https://www.federalreserve.gov/econres/scfindex.htm>



According to the data mapped by UC Berkeley's Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as 'at-risk of exclusion', currently feature 'ongoing exclusion', or are at stages of 'advanced exclusion'. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a 'hot housing market,' and migration patterns. The Urban Displacement Project's findings indicate that exclusion is more prevalent than gentrification in the Bay Area.¹⁵ While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities

¹⁵ Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

today.”¹⁶ Not surprisingly, Chapple has indicated that zoning reform “has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.”¹⁷

Historic Redlining

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence “redlining.” The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important

¹⁶ Karen Chapple’s February 25, 2019 letter to Berkeley City Council in support of this proposal. <https://www.berkeleyside.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf>

¹⁷Ibid.

to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units.

Current Discourse on Exclusionary Zoning Regulations

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and address exclusionary practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902, which allowed for missing middle housing in transit-oriented or jobs-rich areas.¹⁸

Exclusionary zoning laws also became a prevalent national topic during the 2020 Presidential campaign under the guise of “protect[ing] America’s suburbs.”¹⁹ Celebrity Apprentice host and former President Donald Trump and his Housing and Urban Development Secretary Ben Carson expressed a concern that removing exclusionary zoning laws would prevent single family home ownership and “destroy suburbs” despite the fact that these reforms don’t bar single family home construction but allow the creation of duplexes, triplexes, and other multi-unit properties. Furthermore, exclusionary zoning practices were amplified with the termination of the 2015 Obama-era Fair Housing rule which outlawed discrimination in housing. In doing so, Trump stated that Democrats wanted to “eliminate single-family zoning, bringing who knows into your suburbs, so your communities will be unsafe and your housing values will go down.”²⁰ On the other hand, Democratic Presidential candidates embraced zoning reform, most notably Elizabeth Warren and Cory Booker. President Biden has also indicated that he plans to invest \$300 million in local housing policy grants to give communities the planning support they need to eliminate exclusionary zoning.²¹

In January 2021, the Association of Bay Area Governments voted to approve the implementation of Senate Bill 828 which was designed to address the extreme housing shortage across California. As a result, Bay Area cities will have to zone for 441,000 new homes. Berkeley will see a 19% increase — approximately 8,900 — in the number of homes for which it must zone.

¹⁸ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-28_Annotated_Agenda_pdf.aspx

¹⁹ Trump, Donald J and Ben Carson. “We’ll Protect America’s Suburbs.” Wall Street Journal. <https://www.wsj.com/articles/well-protect-americas-suburbs-11597608133>

²⁰ “Seeking Suburban Votes, Trump to Repeal Rule Combating Racial Bias in Housing.” (2020). NPR <https://www.npr.org/2020/07/21/893471887/seeking-suburban-votes-trump-targets-rule-to-combat-racial-bias-in-housing>

²¹ “The Biden Plan for Investing in Our Communities Through Housing.” (2020) <https://joebiden.com/housing/>

According to the U.S. Census American Community Survey, newly built missing middle housing like duplexes and quadplexes more often houses middle and lower income families in Berkeley, while single-family homes, no matter what year built, are exclusively higher income.

Median household income, Berkeley & Albany, by building age & type					
	Pre-1950	1950-1969	1970-1989	1990-2004	2005-
Single-family detached	148,590	139,295	107,081	131,004	148,835
Single-family attached	84,903	126,930	96,233	167,025	134,460
2-4 units	79,012	63,973	53,335	45,403	48,691
5-19 units	46,037	41,104	39,811	42,243	27,950
20+ units	25,628	42,319	41,387	23,585	40,518

Source: American Community Survey, 2014-18, Public Use Microdata Set, US Census.

ALTERNATIVE ACTIONS CONSIDERED

Berkeley City Council previously authorized a study on missing middle housing. Due to the impending rezoning mandated by new Regional Housing Needs Allocations, Council wanted to ensure that there was a willingness on Council to address and acknowledge the implications of single family zoning on affordability and racial and economic segregation.

FINANCIAL IMPLICATIONS

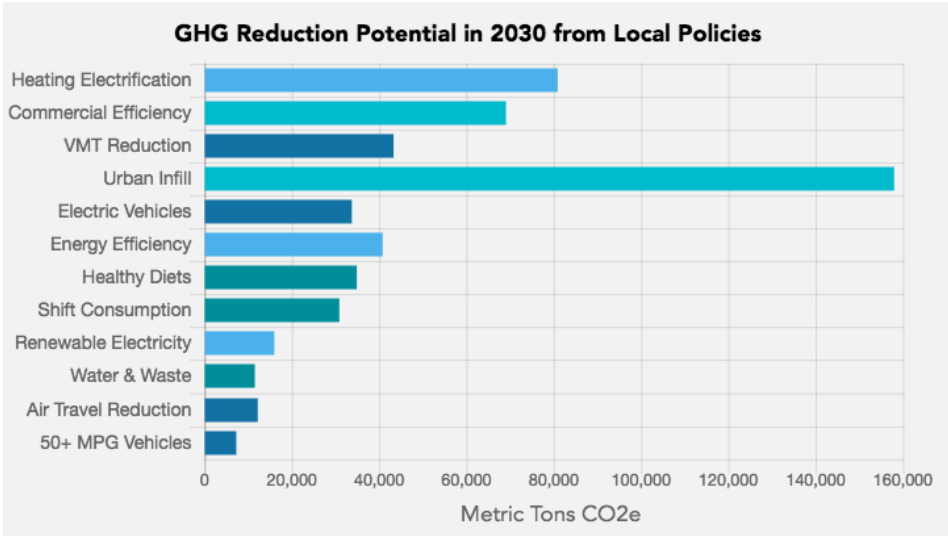
There are no financial implications in approving a resolution of intent.

ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”²² The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.²³

²² “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183-7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

²³ “Why Housing Policy Is Climate Policy.” Scott Wiener and Daniel Kammen. New York Times. March 25, 2019. <https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html>



CONTACT PERSON(S):
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RESOLUTION NO. XX

WHEREAS the City of Berkeley was the first city in the country to implement single-family zoning in 1916; and

WHEREAS the City of Berkeley's current zoning is still greatly influenced by maps developed by the federal government's Home Owners Loan Corporation which sought to maintain racial segregation through discriminatory lending practices; and

WHEREAS with the passage of the Neighborhood Preservation Ordinance in 1973, the City of Berkeley restricted the creation of multifamily units in residential zones; and

WHEREAS escalating income inequality and the prohibition of apartments and multi-family homes in the City of Berkeley coincide with the most unaffordable neighborhoods and the origins of the City's affordability crisis starting in the late 1970s;²⁴ and

WHEREAS there is deeply racist history to zoning practices all over the country, particularly as a proxy for overt racial restrictions, and inequities still exist today as a result of redlining; and

WHEREAS exclusionary zoning creates a system of de facto rather than de jure racial and economic segregation, which creates strong adverse effects in life outcomes for residents; and

WHEREAS zoning reform does not ban single family homes but allows for a greater mix of home types and home affordability levels in more Berkeley neighborhoods; and

WHEREAS zoning reform can reduce real housing cost-burdens for low- and middle-income households; and

WHEREAS the League of California Cities called for cities to allow up to fourplexes in single family zones in their *Blueprint for More Housing 2020*;²⁴

~~NOW, THEREFORE BE IT BE IT FURTHER~~ RESOLVED that the City of Berkeley registers its intent to allow for more multifamily housing throughout Berkeley with a focus on formerly non-redlined neighborhoods; and

BE IT FURTHER RESOLVED that City Council will pursue zoning reform that takes into account the public safety in all parts of Berkeley, including areas within CalFire's Very High Hazard Severity Zones; and

²⁴https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Berkeley_Rent_Control_1978-1994_1998_Planning_Dept_report.pdf

BE IT FURTHER RESOLVED that in neighborhood interiors that already contain a mix of housing types from single family homes to apartments, allow new housing within that existing range; and

BE IT FURTHER RESOLVED that the City of Berkeley encourage inclusion of homes that can accommodate families in new and rehabilitated multifamily housing developments with a focus in formerly exclusionary areas; and

BE IT FURTHER RESOLVED that the City of Berkeley will no longer ban multi-family housing ~~with a focus on formerly exclusionary areas of the City, and by extension, affordable housing in certain parts of Berkeley;~~ and

BE IT FURTHER RESOLVED that it is the intent of the Council that techniques such as division, contextual addition and adaptive reuse are preferred ahead of demolition and to ensure that, in any case, new development resulting from such changes does not require demolition or elimination of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, (i.e. subsidized affordable units, inclusionary housing or units under Section 8 contract) or units subject to Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance; and

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BE IT FURTHER RESOLVED that it is the intent of the Council that new development resulting from such changes change must also conform to expanded and permanent tenant protections pursuant to Government Code 663001, including but not limited to increased relocation payments and conferring right-to-return and relocation benefits to tenants not covered by Berkeley's Rent Stabilization Ordinance; and

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BE IT FURTHER RESOLVED that the Council also intends to prohibit ministerial approval if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years, and to require notice be provided to tenants of an application for demolition, elimination or consolidation of units; and

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BE IT FURTHER RESOLVED that the Council intends to work with the State to ensure that Berkeley receives full credit for any new units pursuant to the Regional Housing Needs Allocation and Berkeley's Housing Element; and

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BE IT FURTHER AND FINALLY RESOLVED that the City of Berkeley registers its intent that affordable housing requirements apply to all housing built as result of new zoning policies to prevent displacement, reduce housing costs, and diversify communities.