



Association of Bay Area Governments



Technical Assistance  
for Local Planning

**HOUSING**

**DISCLAIMER:** This document offers a case study on the Berkeley Housing Preference Policy for informational purposes and should not be considered legal advice. Local staff should consult with their city attorney or county counsel for policy implementation.

## Case Study: Berkeley Housing Preference Policy

May 2024

### Policy Background and Overview

The City of Berkeley collaborated with community leaders and organizations to create a list of housing preferences that considers the histories and needs of past, present and future residents of Berkeley. This Housing Preference Policy will result in a process to prioritize affordable housing applicants who meet the adopted standards for priority access to the city's below market rate (inclusionary) units and nonprofit affordable units supported by the city's Housing Trust Fund.

The Housing Preference Policy Goals and Outcomes are:

- To support individuals who were displaced from Berkeley and desire to return.
- To provide support for individuals who are currently experiencing housing insecurity in Berkeley.
- To acknowledge and address historical injustices, such as redlining and eminent domain to build BART stations.

The City of Berkeley's Housing Preference Policy needs to comply with the Department of Housing and Urban Development (HUD) regulations, the Fair Housing Act and other state and federal laws. The Housing Preference Policy supports residents who:

- Were displaced or are descendants of someone who was displaced due to construction of BART in Berkeley in the 1960s and 1970s
- Were displaced due to foreclosure in Berkeley since 2005
- Were displaced due to no-fault or non-payment eviction in Berkeley within the past seven years



- Have households with children
- Live or formerly lived in Berkeley's redlined neighborhoods
- Are children or grandchildren of someone who lived in Berkeley's redlined neighborhoods
- Are homeless and not prioritized for local permanent Supportive housing or are at-risk of homelessness with current/former address in Berkeley

The Preference Policy was unanimously adopted by the Berkeley City Council on July 11, 2023. Prior to that, draft housing preferences were presented to the City Council in a council work session in February 2023. The City Council's comments included the importance of ensuring families originally displaced by construction of Berkeley BART stations can return to the city; the impact of the foreclosure crisis and redlining on Black families; the loss of generational wealth for Black families due to displacement; and the potential of limiting the number of overall preferences to have more impact from priority preferences (such as displacement). The Department of Health, Housing, and Community Services was authorized to execute a contract for a disparate impact analysis (DIA) of the policy in accordance with fair housing law.

## Equitable Stakeholder Engagement

In 2020, the City of Berkeley began a community-driven process to develop a Housing Preference Policy with funds from a two-year Partnership for the Bay's Future (PBF) Challenge Grant from the San Francisco Foundation. The Challenge Grant community partners who have led this effort are Healthy Black Families (HBF) and East Bay Community Law Center (EBCLC). Healthy Black Families works on advancing racial equity and changing social systems by implementing programs and advocating for policies that support Black people who currently live in or have lived in Berkeley. EBCLC provides legal services, policy advocacy and education programs for primarily low-income Black and Latino/a/x/e individuals.

The city also worked with a Community Leaders Group (CLG), which included representatives from local community-based organizations (CBOs). In addition to HBF and EBCLC, who co-facilitated the group, represented community-based organizations included the African American Holistic Resource Center, the Berkeley Black Ecumenical Ministerial Alliance, Friends of Adeline, the Berkeley High Black Student Union and the NAACP. These groups were essential to informing a policy grounded in community knowledge and experience.

The primary methods used to engage current and former Berkeley residents were surveys, town halls/forums and CLG meetings. The CLG met six times to design an outreach plan and survey, interpret survey results and compile the Housing Preference Policy recommendations for consideration by the City’s Housing Advisory Commission (HAC) and City Council. With the support of EBCLC and the PBF Fellow, HBF conducted a right to stay, right to return survey. The city also conducted a housing preference policy survey. The survey analysis was used to develop a policy proposal and recommendations, presented to the HAC in February of 2022. HBF also held two focus groups to gather further input on the survey. HBF worked with the Community Leaders Group and Berkeley Black Ecumenical Ministers Association to hold an equity-focused town hall entitled Housing Is a Human Right. EBCLC and the PBF Fellow conducted historical and legal research on racial discrimination in the City of Berkeley’s housing policies and potential pathways for a race-specific housing preference.

The success of Berkeley’s community-driven process in developing a Housing Preference Policy underscores the significance of genuine community engagement for equitable policymaking. Community engagement led by impacted communities helps to ensure policies that reflect the community’s values and priorities, fosters trust and facilitates community buy-in. Berkeley’s innovative techniques for engagement, which were co-developed with PBF Challenge Grant partners, included creating structures that empowered the community to lead the conversation, from outreach design to policy recommendations. Berkeley’s example powerfully demonstrates the potential for policy to be shaped by community engagement.

## Timeframe and Key Milestones

**2010s** Community members and organizations, especially in South Berkeley, begin advocacy to establish local preferences for Berkeley’s affordable housing, including a right to return, right to stay.

**April 2016** The City Council’s first discussion of a Housing Preference policy to reduce displacement.

**April 2019** The City Council made a referral to create policies to develop a right to return for displaced residents, with a priority to support displaced Black residents.

**Feb 2020** The city began work associated with the Partnership for the Bay’s Future Challenge Grant to develop a Housing Preference Policy, with deep and meaningful community engagement.

**Dec 2020** The city adopted the Adeline Corridor Specific Plan, which recommended developing a local Housing Preference Policy for future affordable units at Ashby BART.

**2020-2022** HBF, EBCLC, and other community partners engaged with the broader community through a community leaders’ group, focus groups, surveys and town halls.

**Feb 2022** The Housing Advisory Commission held a meeting to present and discuss the community’s Housing Preference Policy recommendations.

**April 2022** The Housing Advisory Commission held a meeting to make recommendations to the City Council for the Housing Preference Policy.

**Sept 2022** The city issued a request for proposals to conduct a fair housing analysis.

**February 2023** Draft housing preferences were presented to the City Council. The Department of Health, Housing, and Community Services was authorized to execute a contract for a disparate impact analysis of the policy in accordance with fair housing law.

**July 2023** City Council unanimously adopted the Affordable Housing Preference Policy.

**January 2024** Resources for Community Development (RCD) began the lease-up process for Maudelle Miller Shirek Community, the first affordable housing development to implement the recently adopted housing preferences - almost 10,000 applications were submitted for 75 units.

## Funding and Implementation Strategy

### Funding for Policy Development

The San Francisco Foundation's Partnership for the Bay's Future awarded the city a challenge grant in January 2020. PBF aims to give Bay Area families of all races and economic backgrounds access to quality, affordable homes, as housing is "crucial to creating and maintaining healthy, resilient communities" (baysfuture.org). The challenge grant provided a full-time PBF Fellow to work at the city to facilitate the process, as well as technical assistance funding and access to additional funding opportunities, including funding for partner organizations. The fellowship was so successful that the fellow was hired by the City of Berkeley to continue this effort as full-time staff.

In June 2022, PBF launched a new two-year cohort of fellows, including a new fellow at the City of Berkeley and grants to local Berkeley partners.

### Funding for Implementation

County, state, and federal funding agencies must approve the use of housing preferences in developments they are funding. Housing Trust Fund (HTF) projects typically include funding from the State of California's Department of Housing and Community Development and the federal Department of Housing and Urban Development.

Implementation of Berkeley's final adopted Housing Preference Policy included embedding housing preferences into Alameda County's recently launched online Housing Portal, <https://housing.acgov.org/>, where residents can apply for new affordable housing. The Portal will also assist property managers to rank applicants based on their housing preference eligibility. The Alameda County Housing Portal is in conversation with the Bay Area Housing Finance Authority (BAHFA) to partner as part of a regional housing portal known as Doorway. The city will work with Alameda County and eventually BAHFA to operationalize the Housing Preference Policy. Costs will have to be assessed over time for the new staff and technology required.



## Accountability and Success Metrics

Federal fair housing laws such as the Fair Housing Act (FHA) prohibit policies that have a disparate impact on protected classes, even if they do not explicitly discriminate, to make sure new policies such as this Housing Preference Policy do not result in unintentional discriminatory practices. The city released an RFP in August of 2022 to conduct a disparate impact analysis. This analysis assesses how racial groups and other protected classes will be impacted by a preference policy and determines what percentage of units can receive preferences without creating disparate impacts on protected classes under state or federal law. In fall 2023, this analysis was shared with California Department of Housing and Community Development (HCD). The city received HCD approval to apply the preferences to Maudelle Miller Shirek Community in December 2023.

The city is currently developing a monitoring plan to ensure the policy is meeting its anti-displacement goals, while abiding by HUD and Fair Housing Act regulations.

## Key Takeaways

- Anti-displacement initiatives are broadly defined as a critical priority for the City of Berkeley. The city's primary challenge to date is balancing the goal of fighting displacement and addressing historic race-based injustices with federal and state regulations that intend to prevent racial discrimination.
- In partnership with Healthy Black Families, city staff presented a report to the City Council on their efforts on the Housing Preference Policy in February 2023. The City Council unanimously adopted the Affordable Housing Preference Policy in July 2023. Staff then worked on implementation planning, and the policy became effective on January 1, 2024. Staff plan to report out on impacts after the first year of implementation, considering policy adjustments as needed to help the policy best meet its goals.
- The San Francisco Foundation, which awarded the City of Berkeley with a PBF Fellow through a grant from the Partnership for the Bay's Future, is an example of a community foundation being a strategic partner in developing equity-minded affordable housing policies. The fellow was ultimately hired by the City of Berkeley to continue the preference program development as full-time staff.



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## Contributions

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