Office of the City Manager

ACTION CALENDAR
June 12, 2007

To: Honorable Mayor and
Members of the City Council

From: Phil Kamlarz, City Manager

Subject: Transition Of Housing Authority Functions To New Board

RECOMMENDATION

1) Adopt a resolution recommending that the new Berkeley Housing Authority Commission ("Commission") formed pursuant to Health and Safety Code Section 34270 adopt the transition plan for BHA operations set forth in this report

2) Adopt a resolution authorizing the City Manager to enter into a contract with the Commission for subsidy of $947,143 for Fiscal Years 2008 and 2009 on specified terms.

SUMMARY

This report recommends a process and sequence of actions to be taken by the City Council in order to transition operations of the BHA to the new BHA Board.

FISCAL IMPACTS OF RECOMMENDATION

The Proposed FY 2008 budget for the BHA is $23,947,920:

- $20,697,055 for the cost of the Section 8 Housing Assistance Payments.
- $2,531,000 for Authority operations that includes a proposed General Fund subsidy of $507,365.

The transition plan, which would be in effect for up to 120 days, adds new temporary staff classifications and contracts with consultants and services in order to continue the operations of the Authority. The cost for the temporary positions during the first phase of the 120-day transition period is projected to be $255,800 and is within the proposed budget amount of $537,382 for this same time period. Sufficient funds are budgeted to support up to $450,000 in contract expenditures for data system support and staffing, housing inspection services, building maintenance, and legal services during the 120 days of the Fiscal Year.

The proposed FY 2008 and FY 2009 budget includes a total General Fund operating subsidy of $947,143 to the BHA for a two-year period. The first year of the contract is budgeted at $507,365. This is an increase over the $150,000 operating subsidy appropriated in FY 2007. The subsidy is for personnel and contract costs, including new contracts for legal representation and other contracts to assist the BHA in meeting Standard Performer status for Section 8 and Low Income Public Housing programs. The second year funding amount is budgeted at $439,778, which will allow BHA to continue its improvement efforts, while at the same time reducing its operating costs in order eliminate the need for City General Fund support in FY 2010.

CURRENT SITUATION AND ITS EFFECTS

Current BHA Troubled Designation and HUD Remedy

The United States Department of Housing and Urban Development (HUD) deemed BHA's Section 8 Program to be in "troubled" status in the fall 2002 based upon BHA's Section Eight Management Assessment Program (SEMAP) scores. HUD gave BHA until June 30, 2006 to achieve a passing score on a range of performance indicators. HUD advised the BHA in the fall of 2006 that it had not achieved a passing score. In addition, in April 2007, HUD notified BHA that its public housing program was also designated as "troubled" based upon its Public Housing Assessment System (PHAS) score for fiscal year end June 30, 2006.

As a result of BHA's failure to achieve a passing score, HUD has required that the BHA Board be reconstituted as a Board independent of the City Council, in order to allow such a board to focus exclusively on oversight of BHA's operations and has required that its operations be restructured to ensure it operates within federal constraints. HUD has required that the new governance and administrative structure it required be in place by July 1, 2007 and result in BHA operations being in immediate compliance with federal regulations. HUD has reserved its right to remove all federal funding of BHA operations within a period as short as one year and no longer than two years from now.

During this past year, the BHA has made significant progress increasing the PIC 50058 scores from, 72 % to 90% (passing is 95%) and HUD has lifted sanctions of $12,000 per month until September 30, 2007.

BACKGROUND

Prior Council Actions

On June 27, 2006, the BHA Board authorized the Executive Officer to enter into negotiations with HUD regarding alternative management structures. On September 19, 2006, the BHA Board reaffirmed its support of staff efforts to explore an alternative governance structure for the BHA. These actions were initiated primarily in response to HUD's determination that the BHA governance structure requires restructuring to adequately monitor the BHA agency and provide the necessary oversight to ensure its programs are operated in accordance with HUD regulations and guidelines.

On November 14, 2006, the BHA Board approved the concept of establishing an independent Housing Authority Board of Commissioners appointed by the Mayor and confirmed by the City Council. Also, on February 27, 2007, the Council approved the concept as well and directed staff to return to the Council and BHA Board with implementing actions and recommendations after conferring with HUD.

On May 22, 2007, the Council adopted a resolution determining that it should no longer function as the current BHA Board and confirmed the Mayor's appointments for the new BHA Board. The Council designated Carole Norris to be the first Chairperson of the BHA Commission d. In addition, it approved a transition plan for BHA operations in concept and directed that a detailed plan be presented to it at this meeting for its consideration.

TRANSITION PLAN JULY 2007-OCTOBER 2007

I recommend that the City Council recommend the following transition plan to the new Commission for adoption and implementation. The transition plan, which would be in effect for 120 days (July 1-October 31, 2007), adds new temporary staff classifications and consultants in order to provide temporary coverage and maintain day-to-day operations of the BHA on an interim basis. The plan also requires implementation of a permanent organizational structure, and classification and compensation plan effective following the end of the transition period. I have been in close touch with the HUD Area office. HUD officials and a expert Housing Authority resource recommend that the interim period should span 120 days because of the large number of items that need to be addressed to establish a new Authority, such as this one.

June 2007

On May 22, 2007, Council approved a plan that eliminated all City line BHA staff by June 30, 2007. In addition, the former BHA Board authorized, a contract with consultants with expertise in HUD Housing Authority regulations for $20,000 to provide additional staffing for the month of June to help the Housing Authority Manager. This contract was delayed however due to new HUD procurement restrictions. However, since that time the City Attorney has advised that the former BHA Board's resolution complies with HUD procurement standards and a contract will be executed this week. Initially only one individual was contemplated but because of the large amount of outstanding work, additional contractor staff will be working on BHA data at their office in Cleveland, Ohio. No additional expenditure authority will be required for the contract for the month of June. Further, all other City administrative support would continue to be provided to the BHA during this time period. However, the new Board will appoint Ms Ingram Executive Director and the Board will retain its own attorney to help advise it on matters concerning the City including the terms of financial assistance that the City provides.

Staffing Plan

The BHA Board will approve the creation of the classifications proposed in the companion report and appoint Tia Ingram its Executive Director. The classification and compensation plan is separate from that of the City of Berkeley and the Board will adopt this classification and compensation plan under its own authority as an independent entity.

During the first phase from July through October 2007, the BHA Executive Director, a Deputy Director, the s consultants and temporary BHA staff appointed by the Executive Director will conduct the day-to-day operations of the BHA. The staffing plan creates five temporary unrepresented classifications. The five temporary classifications are intended to augment interim consulting staff, and will be in place only for the interim period until such time as a permanent organizational structure, classification and compensation is developed. Summaries of these classifications are provided in Exhibit A. In addition, specifications for the two permanent at-will classifications of Executive Director and Deputy Director are also attachments to Exhibit A.

The proposed Executive Director position is a regular at-will position appointed by and serving at the pleasure of the BHA Board. It is recommended that the BHA Board delegate the authority to appoint staff to the Executive Director. Based upon her depth of knowledge of Housing Authority operations and excellent performance as the current BHA Manager, I am proposing that the Council recommend to the new Board that it should hire Ms. Ingram as its Executive Director.

The interim-staffing plan has been developed which utilizes both permanent and temporary BHA positions as well as outside consultants for a four-month period. Specifically, the following staffing plan is proposed for July 1, 2007 through October 31, 2007:

- Two (2) permanent BHA positions with the following classifications:
    - BHA Executive Director
    - BHA Deputy Director
- Seven (7) temporary BHA positions with the following classifications:
    - BHA Accountant 1 FTE
    - BHA Housing Specialist 2 FTE
    - BHA Management Analyst 1 FTE
    - BHA Administrative Assistant 1 FTE
    - BHA Office Assistant 2 FTE

Additional consultant positions as needed to staff BHA operations in during the 210 day transition period.

Selection and Appointment Process for Temporary Positions

Job announcements for BHA positions will be posted through the City's Human Resources Department and on the City's employment opportunities website as soon as is administratively feasible after Council and the new Commission take action on these recommendations. Individuals interested in these positions must submit an application with the Human Resources Department. Applications will be accepted from current BHA staff as well as any other individuals wishing to apply for the three-month temporary assignments. All current BHA staff that apply and meet the requirements for the positions will be considered for these temporary appointments. The BHA Executive Director will make selections by July 1, 2007. Individuals appointed to these positions will receive the same health, leave, and retirement benefits that are afforded career City employees. Current City Housing Authority staff appointed to these positions will also continue to accrue City seniority and will be eligible for placement back into City classifications if they are not selected for permanent BHA positions in October 2007.

With regard to the seven temporary BHA positions, if any existing City employees, including those currently assigned to the BHA's day-to-day operations, are selected to fill the temporary classifications, they will retain their right to retreat to the City's competitive service should they not be appointed to or are unwilling to serve in the permanent positions created by the new Board before the interim four month period expires.

Discussions with labor unions are underway to provide a smooth transition for employees into the City and those that will remain in the Housing Authority.

Insurance & Workers Compensation

The Department of Human Resources is working on procuring liability coverage, property insurance for the 75 units and workers' compensation coverage for the new entity. The intent is that the new insurance/coverage will be in effect on July 1, 2007.

Development of Permanent Organizational Structure
During the months of July through October, consultants with expertise in HUD and Housing Authority regulations will assist the Executive Director to develop a permanent staffing plan that shall include classification descriptions and compensation packages. The new organizational structure, classification and compensation plan will be submitted to the Berkeley Housing Authority Board for review and adoption at a meeting date to be determined.

Contracts
The Code of Federal Regulations (24 CFR 85.36) allows non-competitive procurement for outside contractual services under a number of circumstances including the public exigency or emergency and when the agency authorizes noncompetitive bids. Both these conditions are met which will allow BHA during this transition period to contract for necessary services. In Phase II of the Transition Plan, the BHA will continue to comply with all requirements of HUD's procurement policies, as directed in the HUD Handbook and pursuant to the Code of Federal Regulations.

Administrative Services
By law, the new BHA Board must either create its own administrative structure or retain staff or contract for some or all of its administrative needs from other entities. Because BHA operations are not self-supporting, the City Council and new BHA Board will have to agree to contract for the services that the City is not otherwise providing and General Fund subsidies. The City will provide services where feasible.

With regard to ongoing support services, the City will continue to provide most of the current services to the BHA after July 1, 2007. These include Human Resources, Payroll, Information Technology, Finance and Public Works Janitorial Services. However, in the case of the City Clerk, the Clerk has indicated that she does not have the capacity to provide services to the new Board after July 1, 2007. Therefore, the BHA will either have to contract with an outside contractor for these services or take the function on in-house.

Legal Services
For purposes of conflict of interest, the City and the BHA are deemed to have an adverse relationship and cannot be represented by the same legal counsel. Thus the City Attorney's has advised me that her office cannot represent the new Commission. Instead, for purposes of reviewing the terms of the City contract and advising the BHA on it, the Commission in the separate report will be asked to authorize the Executive Director to hire legal counsel for interim legal services. The Commission will also have to retain a permanent general counsel.

Maintenance of Public Housing Units
The contract with Affordable Housing Associates for maintenance and management of the Public Housing units owned by BHA will terminated as of June 30, 2007. In the transition period, BHA will need to contract with a qualified maintenance firm for the maintenance, upkeep and emergency response for the 75 apartment units. The Executive Director will be retain these services.

Other Expert Services
The BHA will need the services of other expert services for staffing, financial and data management needs. During the transition period the BHA may use these experts to the degree that funds are available. .

Permanent Staffing Recruitment
During this second phase, staff will complete meet and confer with appropriate labor organizations over the establishment of these classifications and salaries. It is my recommendation that the existing benefits afforded union represented staff in the City be applied to the proposed permanent classifications in the BHA, and that the existing labor organizations represent the applicable classifications in the BHA.

Once the classification and compensation plan are established, The Director of Human Resources will work with the BHA Executive Director to conduct the recruitment and selection process necessary to appoint individuals to permanent classifications. Temporary Housing Authority staff, as well as any individuals interested in employment with the Housing Authority may apply for these positions. Temporary Housing Authority staff with retreat rights to City classifications will have the opportunity to exercise their retreat rights in the event they are not selected or choose not to remain with the Housing Authority at such time as the permanent classifications are filled.

It is recommended that the Council require that the City condition its ongoing financial and in kind subsidy for the Authority on its ensuring that the additional permanent new classifications be represented by the City unions. They will also be subject to the City's existing union contracts, with minor modifications to reflect the different governance structure.

Budget Modifications
The Proposed FY 2008 and FY 2009 BHA budget is included in the Proposed City of Berkeley Biennial Budget (Attachment B). This budget is based on the organizational structure that was in place in FY 2007. The total budgeted amount is determined by revenue received from HUD and the City of Berkeley. While significant revenue changes are not anticipated, the allocation of expenditures are expected to change once the new organizational structure for BHA is determined.

The BHA Board will be required to adopt a Budget for FY 2008; it will be recommended that the Board adopt the proposed budget included in the City's Proposed Biennial Budget. During the second phase of the Transition Plan, and upon completion of classification and salary determinations, the BHA Executive Director will coordinate with the City Budget Office to make any necessary changes to the FY 2008 BHA budget for personnel, lease costs, and other service expenditures, in order to reflect the changes in the organizational structure and service costs.

BHA Office Lease
Currently, the BHA Office is located in property that the City leases from a private owner. This lease terminates in October 2007. At that time, the City will not renew the lease and the BHA will be required to negotiate a new lease.

Terms of Contract with BHA for City Subsidy
In order to ensure that BHA is continuing to meet its federal obligations and to ensure that the new Board is functioning properly, I am recommending that the City's General Fund subsidy be conditioned on all of the following requirements:

1. The BHA Board adopts the City Council's recommendation for a transition plan for BHA operations including the conditions concerning the employee protections described above for both the temporary and permanent BHA staff; and

2. The City unions represent the additional permanent new classifications. They will also be subject to the City's existing union contracts, with minor modifications to reflect the different governance structure.

3. The BHA assumes the HUD 108 Consolidated Loan Series 2003-A.

4. The BHA provides annual SEMAP and PHAS scores to the City Manager; and

5. The Commissioners of the new BHA Board participate in a joint 2 x 2 committee with members of the City Council; and

6. The BHA Board conducts a minimum of 10 meeting per year pursuant to open meeting laws; and

7. The BHA Board makes an annual presentation to the City Council; and

8. The BHA provides the City Manager with annual and mid-year budget reports.

RATIONALE FOR RECOMMENDATION
Due to BHA's poor performance, HUD has required that its governance be reconstituted in order to allow more oversight and direction of the agency. The recommended actions in this report allow the BHA to continue to serve its clients while the transition between the current Board and the new Board to takes place. It necessarily makes recommendations on how the administrative functions will be accomplished and the rationale for this portion of the recommendations is set forth in the body of this report.

ALTERNATIVE ACTIONS CONSIDERED
See body of report on each recommendation.

CONTACT PERSONS
Phil Kamlarz, City Manager 981-7000

Attachments:

Resolutions
Exhibit: Proposed FY 2008 and FY 2009 Budget for Berkeley Housing Authority

RESOLUTION NO. ##,###-N.S.

RECOMMEND THAT THE NEW BERKELEY HOUSING AUTHORITY BOARD (BHA BOARD) OF COMMISSIONERS FORMED PURSUANT TO HEALTH AND SAFETY CODE SECTION 34272 ADOPT THE TRANSITION PLAN FOR BHA OPERATIONS

WHEREAS, the United States Department of Housing and Urban Development deemed BHA's Section 8 Program to be in "troubled" status in the fall 2002 based upon BHA's Section Eight Management Assessment Program (SEMAP) scores; and

WHEREAS, HUD gave BHA until June 30, 2006 to achieve a passing score on a range of performance indicators; and

WHEREAS, HUD advised the BHA in the fall of 2006 that it had not achieved a passing score; and

WHEREAS, as a result of BHA's failure to achieve a passing score, HUD has required that the BHA Board be reconstituted as a Board independent of the City Council, in order to allow such a board to focus exclusively on oversight of BHA's operations and has required that its operations be restructured to ensure it operates within federal constraints; and

WHEREAS, HUD has required that the new governance and administrative structure it required be in place by July 1, 2007 and result in BHA operations being in immediate compliance with federal regulations; and

WHEREAS, on May 22, 2007, the Council adopted a resolution determining that it should no longer function as the current BHA Board and confirmed the Mayor's appointments for the new BHA Board; and

WHEREAS, the Council approved a transition plan for BHA operations in concept and directed that a detailed plan be presented to it at the June 12, 2007 meeting for its consideration.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley recommends that the new Berkeley Housing Authority Board of Commissioners formed pursuant to Health and Safety Code Section 34270 adopt the transition plan for BHA operations as detailed in the June 12, 2007 City Manager's report.

RESOLUTION NO. ##,###-N.S.

AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE BERKELEY HOUSING AUTHORITY BOARD OF COMMISSIONERS TO PROVIDE IT A FOR SUBSIDY OF $947,143 FOR FISCAL YEARS 2008 AND 2009

WHEREAS, the Proposed FY 2008 and FY 2009 budget includes a total General Fund operating subsidy of $947,143 to the BHA for a two-year period; and

WHEREAS, in order to ensure that BHA is continuing to meet its federal obligations and to ensure that the new Board is functioning properly a contract between the City and BHA for the subsidy is necessary.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that authorize the City Manager to enter into a contract with the BHA Board for subsidy of $947,143 for Fiscal Years 2008 and 2009.

BE IT FURTHER RESOLVED, that the subsidy is conditioned on the following requirements:

1. The BHA Board adopts the City Council's recommendation for a transition plan for BHA operations including the conditions concerning the employee protections described above for both the temporary and permanent BHA staff; and

2. The City unions represent the additional permanent new classifications. They will also be subject to the City's existing union contracts, with minor modifications to reflect the different governance structure.

3. The BHA assumes the HUD 108 Consolidated Loan Series 2003-A.

4. The BHA provides annual SEMAP and PHAS scores to the City Manager; and

5. The Commissioners of the new BHA Board participate in a joint 2 x 2 committee with members of the City Council; and

6. The BHA Board conducts a minimum of 10 meeting per year pursuant to open meeting laws; and

7. The BHA Board makes an annual presentation to the City Council; and

8. The BHA provides the City Manager with annual and mid-year budget reports.

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BERKELEY HOUSING AUTHORITY

Exhibit B

MISSION STATEMENT

The mission of the Berkeley Housing Authority is to provide decent, safe, and affordable housing for Berkeley tenants, especially those who are low-income, homeless, seniors, disabled, or have special needs.

Department Overview

Berkeley Housing Authority (BHA)

The BHA administers approximately 2,100 subsidized rental-housing units through the Section 8 Housing Choice Voucher program and the Moderate Rehabilitation SRO program. The BHA also owns and manages 75 units of public housing through the federal Low Income Public Housing program (61 units) and the state Rental Housing Construction Program (14 units).

The Housing Authority is governed by an independent Board of Directors, which is appointed by the City Council.

Major Accomplishments – Fiscal Year 2007

- Developed a plan for establishing an independent agency with an independent Board of Directors to comply with U.S. Housing and Urban Department directives.
- Developed a strategic work plan to bring the Section 8 Program and Public Housing Programs into compliance with regulatory requirements.
- Transferred programmatic and budgetary components of the Shelter Plus Care Program from the BHA to the Housing Department.
- Purged the Section 8 Voucher Program Wait List to eliminate persons no longer needing housing assistance.
- Achieved substantial progress on Voluntary Compliance Agreement with HUD Office of Fair Housing; the last two items pending, are “future” assignments.

Key Objectives for FY 2008 & FY 2009

FY 2008

- Appointment of an independent Board of Directors to oversee all programs administered by the Berkeley Housing Authority.
- Implement re-organization plans for the agency, appoint staff and adopt new policies and procedures.
- Implement additional procedures to ensure that at least 95% of all required functions for continued assistance are performed in a timely manner.
- Implement monitoring systems to insure program utilization in the Section 8 Program is between 95% and 100% of the units in the Annual Contributions Contract with U.S. HUD.
- Insure occupancy in Authority owned units is between 98% and 100% monthly.

- Insure smooth transition from private contractor to Authority management of Authority owned units.
- Obtain Standard Performer rating for Section 8 Voucher and Low Income Public Housing Programs.

FY 2009

- Refine or establish Board of Director protocols to ensure that the Board operates effectively and efficiently and in accordance with regulatory requirements.
- Implement internal structures and practices that eliminate the need for General Fund subsidies to the agency beginning FY 2010.

Performance Measures

Service Area[1]	Objective (goal)	Measure	2-Year Goal
Housing	Develop viable organization and structure	Number of updates to Administrative Plan and Admissions and Continued Occupancy Policy Reclassification of positions for efficiency and effectiveness.	Compliant Administrative Plan and Continued Occupancy Policy by FY 2008
Housing	HUD "Standard" Performer status for Section 8 and Public Housing	SEMAP Certification PHAS Certification	Maintain standard performance; increase score
Housing	Reduce General Fund funding reliance	Level of General Fund required to balance the Housing Authority Budget.	Eliminate General Fund support in FY 2010

[1] **Service Area Inventory:** Arts, Culture & Recreation; Citizenship & Governance; Community Safety; Economy, Education and Employment; Environment; Health; Housing, Transportation; Urban Design & Planning; Support Services

BERKELEY HOUSING AUTHORITY

Department Work Plan

PROJECT TYPE	LEAD DEPT.	PROJECT ID NO.	PROJECT TITLE
CI	BHA	488	Org. Improvements & Restructuring Efforts – Housing Authority
CI	BHA	1031	Berkeley Housing Authority Governance

Significant Changes from Prior Year's Budget

- FY 2008 and FY 2009 budgets show that the Berkeley Housing Authority has been transferred from the Housing Department to its own independent Department.
- Outside Legal Counsel has been retained to represent the Authority and is budgeted as a new expense.
- FY 2008 and FY 2009 budgets reflect the City's General Fund contribution to the Berkeley Housing Authority increased to $508,000 in FY 2008 and $440,000 in FY 2009.

BERKELEY HOUSING AUTHORITY FINANCIAL SUMMARY

Exhibit B

	FY 2005 Actual	FY 2006 Actual	FY 2007 Adopted	FY 2008 Proposed	FY 2009 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits				1,648,620	1,675,104
Services and Materials				22,155,217	22,060,787
Capital Outlay				92,541	92,428
Internal Services				51,542	52,236
Indirect Cost Transfer					
	-	-	-	23,947,920	23,880,555
By Division:					
Administration				50,000	50,000
Section 8 Program				23,202,185	23,134,746
Low Income Housing Mgmt.				568,079	567,899
Capital Improvements				127,656	127,910
	-	-	-	23,947,920	23,880,555
By Fund:					
General Fund			-	507,365	439,778
CDBG Fund				120,000	120,000
BHA Section 8 Voucher				22,124,816	22,124,816
BHA Section Mod Rehab				615,072	615,072
BHA Public Housing LIPH				485,302	485,524
BHA Public Housing RHCP				95,365	95,365
	-	-	-	23,947,920	23,880,555

General Fund FTE	TBD	TBD
Total FTE	TBD	TBD