



Office of the Executive Officer

ACTION CALENDAR

November 14, 2006

To: Honorable Chairperson and
Members of the Housing Authority

From: *PK* Phil Kamlarz, Executive Officer

Submitted by: Stephen Barton, Director, Housing Department

Subject: Alternative Governance Structure

RECOMMENDATION

Approve the concept of establishing an independent Housing Authority Board of Commissioners and direct staff to return to the Board with details of the plan to reconstitute the Housing Authority Board, including the contractual arrangement necessary between the City of Berkeley and the Berkeley Housing Authority.

FISCAL IMPACTS OF RECOMMENDATION

Unable to determine or estimate at this time.

CURRENT SITUATION AND ITS EFFECTS

On October 20, 2006 HUD sent a letter to the BHA informing it that it remains in troubled status. This letter is attached to the accompanying Information report on this evening's agenda. In light of this result, it is essential that the BHA carry through on its previously stated intention to create a separate Board, as requested by the San Francisco Regional Office.

As it currently exists, the Berkeley Housing Authority (BHA) is a non-profit corporate entity that operates within the geographical jurisdiction of the city of Berkeley, California. It is a state agency that is legally distinct from the City of Berkeley, although the City Council plus two tenant members sit as its governing board.

The governing options that a local governing body may consider in establishing or restructuring a housing authority are specified in the California Health and Safety Code Sections 34270-34286 (see Attachment 1). The only option available for maintaining a governing structure that does not establish the City Council itself along with two tenant commissioners as the governing body or join with other cities to create an area housing authority, such as the Alameda County Housing Authority, is for the Council to replace the current governing body with one which is entirely independent of the Council. Under this option, the Council would dissolve the current body and replace it with an independent Housing Authority Board of Commissioners, consisting of five commissioners plus two tenant commissioners. Under the state law, all seven members must be appointed by the Mayor and confirmed by the City Council.

Slate law also mandates the length and staggering of commissioner terms. The two required tenant commissioners serve for two-year terms. Of the remaining five commissioners, three must be appointed for one, two, and three-year terms, and two serve four-year terms. Successors to the non-tenant commissioners serve for four-year terms.

Under this option, which the staff recommends, all BHA powers and duties are exercised by this independent board of commissioners. This governance structure is found in the Santa Barbara, Oakland and San Francisco Housing Authorities and is the most prevalent for Housing Authorities nationwide. It has the advantage of ensuring that the body with an exclusive focus on the Housing Authority oversees its operations. On the other hand, that body is not elected but appointed.

The powers and duties of a board of commissioners are the same as the powers exercised by the current Housing Authority Board. However, the new board may contract with the City, for example for the furnishing of staff and legal services. Since the Housing Authority currently receives a significant subsidy from the City in terms of administrative support, such a new structure would likely require the City to continue to provide such services by contract. The City's continuing oversight of housing authority operations would have to be imposed by contract in light of the City's subsidy, however, the control would be far more indirect than it is currently, depending upon how exactly the staffing and contracting provisions are structured. These issues should be explored in the next phase of this project.

Among the powers and duties of the independent board of commissioners are control and management of the BHA budget, determining staffing and resource allocations, and development of internal agency policies and protocols. The transference of these powers and duties raise concerns regarding the continuity of program administration and the need to avoid conflicts with City personnel, budgetary, and other processes. Consequently, staff recommends that the initial step of creating a separate board should be accompanied by efforts to minimize potential disruption by entering into a contractual arrangement between the City and BHA. The intent of such a contract will be to preserve the existing administrative linkages between the two entities, including maintaining the City Manager as Executive Officer with accountability to the new governing board, continuation of City support services without charge to the BHA from the City Clerk, City Attorney, Human Resources, Information Technology and Finance Departments and continued BHA conformance to the City's personnel, procurement, and other administrative-adopted policies and practices to the extent possible. Once the new Board is in place and functioning, City and BHA staff would begin to examine possible changes in the administrative structure.

In accordance with Health and Safety Code Section 34293, the existing governing body of a city which has declared itself to be the housing authority commission can be determined by resolution that it shall no longer be the governing body. In so doing, in accordance with the option of creating the independent board of commissioners, the Mayor and Council may commence to appoint the seven members to the independent board of commissioners.

Upon Board approval of staff's proposal to move forward with this alternate governance structure for the BHA, staff will provide further details of the applications and implications of such a transference, including a resolution establishing a separate Board and details of the contractual provisions that will be necessary to maintain an accountable relationship between the BHA and City. Staff intends to return to the Board with this information by no later than the BHA Board meeting in January 2007.

BACKGROUND

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 guidelines.

RATIONALE FOR RECOMMENDATION

The proposal contained in this report conforms to HUD expectations that the City move expeditiously with changing the governing structure of the BHA to provide more effective oversight of agency functions. Moreover, this option provides the best opportunity to preserve the local objectives for providing subsidized housing for the city's residents.

ALTERNATIVE ACTIONS CONSIDERED

The other options that were considered include forming a joint powers agreement with other entities, thereby forming a regional housing authority, and relinquishing agency functions altogether by allowing the County of Alameda to take over agency functions. Both of these options relinquish more control over the administration and application of agency programs, budget, and operations and could result in a diminution in services in Berkeley. State law does not permit the creation of a nine-member Board, appointed in conformance with the City's Fair Representation Ordinance.

CONTACT PERSON

Stephen Barton, Director, Housing Department, (510) 981-5400

Attachments:

- 1: California Health and Safety Code, Sections 34270-3428
- 2 : Congresswoman Barbara Lee's Letter to HUD

HEALTH AND SAFETY CODE

SECTION 34270-34286

Attachment 1

34270. When the governing body of a city adopts a resolution declaring the need for an authority, it shall promptly notify the mayor of the adoption. Upon receiving the notice and if his office is one filled by election by the people, the mayor, subject to the confirmation of a majority of the members of the governing body, shall appoint five persons as commissioners of the authority. The mayor shall appoint two additional commissioners who are tenants of the authority if the authority has tenants, or within one year after the authority first does have tenants. One such tenant commissioner shall be over 62 years of age if the authority has tenants of such age.

If the office of the mayor is not elective, the city governing body shall make the appointments.

The amendments to this section enacted by the Legislature at the 1975-76 Regular Session shall not affect the office of any commissioner of a housing authority, which on January 1, 1976, has seven commissioners, but the successors to the two additional commissioners appointed pursuant to the changes in this section which were made by Chapter 120 of the Statutes of 1972 or Chapter 545 of the Statutes of 1974 shall be tenants of the authority and one shall be over 62 years of age if the authority has tenants of such age.

34270.1. The provisions of this section apply to an authority in a city and county.

Notwithstanding any other provision of law to the contrary, including Section 34272, the mayor shall appoint five persons as commissioners of the authority in a city and county. The mayor shall appoint two additional commissioners who are tenants of the authority. One such tenant commissioner shall be over 62 years of age if the authority has tenants of such age. Appointments shall not be subject to confirmation by the governing body of the city and county. All commissioners appointed on and after January 1, 1977, shall be residents of the city and county, at the time of their appointment and during their term of office. A failure to maintain residence in the city and county shall cause the office to be vacant.

Vacancies in office for whatever reason, including but not limited to, the expiration of a term, shall be filled by the mayor as provided for in this section.

34271. When the governing body of a county adopts such a resolution it shall appoint five persons as commissioners of the authority. The governing body shall appoint two additional commissioners who are tenants of the authority if the authority has tenants, or within one year after the authority first does have tenants. One such tenant commissioner shall be over 62 years of age if the authority has tenants of such age.

The amendments to this section enacted by the Legislature at the 1975-76 Regular Session shall not affect the office of any commissioner of a housing authority, which on January 1, 1976, has seven commissioners, but the successors to the two additional commissioners appointed pursuant to the changes in this section which

were made by Chapter 120 of the Statutes of 1972 or Chapter 545 of the Statutes of 1974 shall be tenants of the authority and one shall be over 62 years of age if the authority has tenants of such age.

34271.5. (a) The governing body of a county of the 10th class may appoint two additional commissioners to increase the number of commissioners of an authority which is in existence and transacting business and exercising its powers on March 7, 1973.

(b) One of the two additional commissioners shall be a project tenant and the other shall be a senior citizen over 62 years of age who may be a tenant. The two additional commissioners first appointed shall not be or have been commissioners of such authority.

(c) The two additional commissioners shall serve for terms of four years from the date of their appointments. Their successors shall be appointed for a term of four years except that all vacancies shall be filled for the unexpired term.

(d) Under this section, four commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes.

(e) All of the provisions of this part shall apply to an authority of a county of the 10th class, except those provisions which conflict with the provisions of this section.

34272. (a) In the case of a commission of five persons, three of the commissioners first appointed shall be designated by the appointing authority to serve for terms of one, two, and three years, respectively, from the date of their appointment, and two shall be designated to serve for terms of four years from the date of their appointments. If two tenant commissioners are added to increase the number of commissioners of an authority, such commissioners shall serve for terms of two years from the date of their appointments, and their successors shall be tenants. Successors of commissioners shall be appointed for a term of four years, except that successors of tenant commissioners shall be appointed for a term of two years and all vacancies shall be filled for the unexpired term. A tenant commissioner shall have all the powers, duties, privileges, and immunities of any other commissioner. If a tenant commissioner ceases to be a tenant of the authority, he shall be disqualified as commissioner and another tenant shall be appointed to fill the unexpired term.

(b) Notwithstanding any other law, and subject to the conditions in this section, a commissioner may be an officer or employee of the county or city for which the authority is created, or he may be a member, commissioner, or employee of any other agency or authority of, or created for, the community.

(c) An officer or employee of a city or county in which an authority is established may serve as a commissioner only if such officer or employee does not exercise powers or duties in his office or employment that may conflict with the exercise of the independent judgment required to carry out the purposes of an authority.

(d) Any appointment of a successor to a commissioner of a city housing authority shall be made by the mayor if his office is one filled by election by the people, subject to the confirmation of a majority of the members of the governing body. If the office of mayor is not elective the governing body of the city shall make the appointment. All appointments of commissioners of a county housing authority shall be made by the governing body of the county.

The amendments to this section enacted by the Legislature at the

1975-76 Regular Session shall not affect the office of any commissioner of a housing authority, which on January 1, 1976, has seven commissioners, but the successors to the two additional commissioners appointed pursuant to the changes in this section which were made by Section 2 of Chapter 367 of the Statutes of 1972 or Chapter 1112 of the Statutes of 1974 shall be tenants of the authority and one shall be over 62 years of age if the authority has tenants of such age.

34273. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and the certificate is conclusive evidence of the due and proper appointment of the commissioner.

34274. A commissioner shall not be regularly employed by the authority to which he is appointed during his tenure of office, but may receive per diem payment for attendance at not more than four meetings per month of the authority, which shall not exceed fifty dollars (\$50) per day, and shall receive necessary traveling and subsistence expenses incurred in the discharge of his duties.

34275. The power of each authority is vested in the commissioners in office from time to time.

34276. In the case of a commission of five persons, three commissioners constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes while in the case of a commission of seven persons, four commissioners constitute a quorum for such purposes. Action may be taken by the authority upon a vote of a majority of the commissioners empowered to vote, unless in any case the bylaws of the authority require a larger number.

34277. The mayor of the city or the governing body of the county shall designate the first chairman from among the commissioners. The authority shall select his successor from among its commissioners.

34278. (a) An authority shall select from among its commissioners a vice chairman. It also may employ a secretary, who shall be executive director, technical experts, and such other officers, agents, and employees as it requires, and shall determine their qualifications, duties, terms of employment and compensation. The authority shall adopt personnel rules and regulations applying to all employees. Such rules shall contain procedures affecting conflicts of interest, use of funds, personnel procedures on hiring and firing including removal of personnel for inefficiency, neglect of duties, or misconduct in office. Such rules and regulations shall be of public record.

(b) An authority may contract with the Department of Housing and Community Development, or any other authority, for the furnishing by the department or authority of any necessary staff services associated with or required by an authority and which could be

performed by the staff of an authority.

34279. For the legal services it requires, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff.

34280. An authority may delegate to one or more of its agents or employees the powers or duties it deems proper.

34281. A commissioner or employee of an authority shall not acquire any direct or indirect interest in any housing project or in any property included or planned to be included in any project, nor shall he have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If he owns or controls a direct or indirect interest in any such property, he shall immediately make a written disclosure of it to the authority and the disclosure shall be entered upon its minutes. Failure so to disclose his interest constitutes misconduct in office.

Nothing contained in this section or in any other provision of law shall be construed as precluding a tenant of an authority from serving as a commissioner of that authority, provided that the fact of such tenancy is disclosed to the authority in writing and entered upon its minutes immediately upon his assuming office; nor shall any provision in this code or elsewhere be construed as in any manner inhibiting the right of such tenant commissioner to exercise the full powers vested in his office.

34282. For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed by the governing body of the county in the case of a county authority, or by the mayor, if he has the power of appointment of commissioners, otherwise, by the governing body of the city in the case of a city authority. A commissioner shall be removed only after he has been given a copy of the charges at least 10 days prior to the hearing on them and has had an opportunity to be heard in person or by counsel. If a commissioner is removed, a record of the proceedings and the charges and findings on them shall be filed in the office of the clerk.

34283. The commissioners shall provide by resolution for the time and place of holding their regular meetings. Special meetings may be called by the chairman or by two commissioners, and notice thereof shall be mailed to each commissioner at least 48 hours before the meeting. An authority shall supply to the governing body of its respective city or county, on request, such information relating to its activities as are public records. Leases and lists or rosters of tenants of the authority shall be confidential and shall not be open to inspection by the public, but shall be supplied to the respective governing body on request, pursuant to this section.

Leases and lists or rosters of tenants shall be open for inspection by any government agency.

34284. The governing body of any city or county may call upon the residents and existing community organizations within the area of jurisdiction of the governing body to form a community housing advisory committee comprising persons who, for at least six months, have been residents in or owned property in the area of the governing body's jurisdiction, and which is considered representative by the governing body. The members of the community housing advisory committee shall serve without compensation.

34285. (a) The governing body of a city or county may call upon the residents in a housing project to form a project committee comprised of persons who for at least six months have been residents in the project, and which is considered representative by the governing body. The members of the committee shall serve without compensation.

(b) The authority, through its staff, shall upon the direction and approval of the governing body consult with and obtain the advice of the project committee concerning matters which affect the residents of the project. The provisions of this subdivision shall apply for a one-year period after the formation of the project committee, subject to one-year extensions by the governing body.

(c) Minutes of all the meetings of the authority with the project committee, which meetings shall be open and public, together with a record of all the information presented to the project committee by the authority or by the project committee for the authority for the purpose of carrying out the provisions of this section, shall be maintained by the authority. Such minutes and records shall be open to public inspection and a summary of such records shall be included in a report to the governing body submitted by the authority.

34286. Any tenant shall be eligible for appointment as a tenant commissioner of any authority if such person is a tenant in any housing provided by or through such authority pursuant to the provisions of this part, the Temporary Housing Projects Law, Part 4 (commencing with Section 35450) of, or the Farm Labor Center Law, Part 7 (commencing with Section 36050) of, this division. Any tenant shall also be eligible for appointment as one of the commissioners not required to be a tenant commissioner, with all the rights, powers, duties, privileges, and immunities of any other commissioner.

BARBARA LEE
9TH DISTRICT, CALIFORNIA

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Housing and Community Opportunity
Subcommittee on
Domestic and International Monetary
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October 10, 2006

Mr. Stephen Schneller
Director of Public Housing
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Mr. Schneller:

Constituents of California's Ninth U.S. Congressional District, which I represent, have contacted my office regarding their concerns about the Berkeley Housing Authority (BHA). As a Member of the U.S. House of Representatives Subcommittee on Housing and Community Opportunity, this matter is of particular importance to me.

I understand that BHA is in its fourth year of being in "troubled status" and has recently submitted a performance review, Section 8 Management Assessment Program (SEMAP), to the U.S. Department of Housing and Urban Development (HUD) to show that it has made satisfactory advances to overcome some of the agency's management issues. I am optimistic to hear that BHA made a self-assessment, which demonstrated BHA's improvements with a score of 67%, or passing with 90 points out of a total of 135.

Constituents and tenants of BHA have also informed me that if BHA does not receive a passing score based on its SEMAP submission, then BHA may face restructuring that may have significant consequences for my constituents who depend on BHA programs. For instance, BHA serves close to the maximum number of clients (1,900) by consistently operating at approximately 95% lease-up. Through its Section 8 programs, BHA also distributes approximately \$2 million in rental subsidies each month.

I applaud HUD for its efforts to maintain performance standards for its public housing agencies to ensure that our public funds and services are managed properly and benefit the constituents they are intended to serve. As HUD and BHA consider options for BHA management, I urge you to consider maintaining local control of BHA programs. By keeping BHA offices, staff and administration in Berkeley and keeping BHA's current allocation of Section 8 vouchers in Berkeley, BHA would be able to continue addressing the specific needs of Berkeley residents.

My constituents have shared with me their concerns about the potential of BHA vouchers being administered by an entity outside of Berkeley. As you may know, Berkeley rents are, on average, higher than rents in neighboring cities and higher than the county average. These vouchers need to reflect the local housing market of the households that are using them. Otherwise, there would be a gap between the housing assistance and the actual need—a gap that many of my constituents say they would not have the resources to close. Moreover, many Berkeley residents who depend on BHA programs for shelter also use supportive services offered by the City of Berkeley. They are able to maximize the benefit from these programs because they can coordinate the services to complement each other and because of the close proximity of these services and the BHA office to their home, jobs and public transit.

Many of these constituents stress to me the importance of BHA programs. Without Section 8 vouchers, they would be homeless. Many seniors, families with young children and people with mental and physical health challenges will be left with no other option but homelessness, moving from one emergency shelter to another or sleeping on the streets. I share my constituents' concerns and encourage HUD and the BHA to work together to make access to BHA programs a priority for those who live or work in Berkeley.

Moreover, I understand that HUD and BHA have been moving forward with improvements in BHA management, and I hope that maintaining local control of BHA programs will be included in ongoing improvements. HUD and BHA's efforts to address BHA's management issues are important, and I am hopeful that my constituents will be better served by ongoing management improvements via the following changes:

- The BHA Board has directed staff to submit proposals that would create an independent BHA Board, and discontinue having the Berkeley Mayor and City Council serve directly as BHA Board members. This proposal is intended to preserve local control while changing the governance model to a Board that is entirely focused on the work of BHA.
- BHA has a new manager, Ms. Tia Ingram, with over twelve years of experience in housing authority management, including five years with Alameda County, a high performing agency.
- The inspection element has been contracted out, and BHA is now carrying out inspections in a timely manner.
- BHA now participates in HUD's "Enterprise Income Verification" system and in the Alameda County system for TANF and GA income verification, as well as the National Clearinghouse for student status verification. BHA is also scheduled to begin with "Go Section 8," a service to improve BHA's reviews of rent reasonableness.

I want to commend HUD and BHA again for working together to address BHA's management issues, and I hope that this will be an opportunity to increase affordable housing opportunities for Berkeley residents. HUD programs, like Section 8 vouchers, are critical for communities throughout the nation. They provide housing choice for our communities and ensure that those who work in our communities can afford to live in the neighborhoods in which they work.

I hope you will take into consideration my constituents' and my concerns, as you evaluate BHA management options. If you would like to discuss this issue further, please do not hesitate to contact my District Director, Mr. Tim Cromatic, at 510-763-0370, ext. 16. Thank you for your attention to this matter.

Sincerely,



Barbara Lee
Member of Congress

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