


Office of the City Manager

ACTION CALENDAR

May 22, 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 declaring cessation of current Berkeley Housing Authority (BHA) Board of Commissioners as of June 30, 2007 on specified conditions pursuant to Health and Safety Code Section 34293;
- 2) Approve the recommendations in the Mayor's companion report appointing the new BHA Board of Commissioners pursuant to Health and Safety Code Section 34270;
- 3) Adopt a resolution authorizing elimination of all City positions, currently filled by both career and temporary employees, to the Berkeley Housing Authority and, as a result of this action, subject the career employees to the provisions of the layoff procedure set forth in the respective union contracts; and
- 4) Approve in concept the implementation of the transition plan for BHA operations set forth in this report and direct that a more detailed plan be presented to the City Council and the new BHA Board on June 12, 2007.

SUMMARY

BHA operations have been in troubled status since 2002. In 2005, HUD gave the Berkeley Housing Authority (BHA) until July 2006 to achieve a passing score on federal performance indicators. In 2006, HUD confirmed that BHA had again failed to achieve a passing score and required that the BHA, at minimum, change its governance structure and take all other administrative actions to demonstrate that it would be able to get out of troubled status by July 1, 2007. HUD has made it plain 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 defund BHA operations within a period as short as one year and no longer than two years from now.

This report is designed to recommend a process to be followed and sequence of actions to be taken by the Council and the current Housing Authority Board in order to appoint a new Housing Authority Board pursuant to Health and Safety Code Section 34270 and to transition operations of the BHA. In this report I conclude that the current staffing structure, which has resulted in keeping the BHA in troubled status since 2002, is not capable of resolving the huge and pervasive problems with BHA operations which continue to date.

### FISCAL IMPACTS OF RECOMMENDATION

The BHA will utilize up to \$20,000 of General Fund subsidy, which is budgeted in the FY 2007 BHA budget to enable the current BHA Board to authorize a contract with an outside consultant to help manage BHA operations for the month of June. The proposed FY 2008 and FY 2009 budget includes a total General Fund subsidy of \$947,000 to the Housing Authority for a two-year period to be used to bring the Housing Authority to a Standard Performer status with U.S. HUD. These funds are proposed to be used for a combination of contracts and personnel costs.

### CURRENT SITUATION AND ITS EFFECTS

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. Based upon the reports provided by the new BHA Manager and the assessment of the City Attorney in her attached memorandum, I have concluded that the City simply cannot competently staff BHA operations and that the new Board must be able to create its own staffing structure in order to attempt to address the deficiencies of the current operation within the one- to two-year HUD window.

### 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. These recommendations and implementing actions are described next.

**Cessation of Current Housing Authority Board**

As it currently exists, the BHA is a state agency that operates within the geographical jurisdiction of the City of Berkeley, California. It is legally distinct from the City of Berkeley, although the City Council plus two tenant members sit as its governing board pursuant to Health and Safety Code Section 34290.

As noted above, both the current BHA Board and the City Council have approved an alternate form of governance of the BHA. The current BHA Board would cease and be succeeded by a Board created pursuant to Health and Safety Code Section 34270 whereby the Mayor appoints a seven-member board (including two BHA tenants) that is confirmed by the City Council.

The City Council must first adopt a resolution determining that it shall no longer function as the BHA Board. (Health and Safety Code § 34293.) This report recommends that the Council adopt a resolution which declares that it shall cease functioning as the BHA Board upon June 30, 2007 if the new Board accepts Council's recommendation of a transition plan to take over operations of the BHA on June 12, 2007. (See Attachment 1.)

**Appointment of New Board**

A companion Council report has been submitted by the Mayor that recommends appointment and confirmation of the new Board. The Council should adopt the resolution recommended in the Mayor's companion report in order to create the new BHA Board. That Board will make decisions in the month of June and will take over operations on July 1, 2007 as described further below in sections e and f.

**Current Administrative Support for BHA**

The BHA currently delegates its staff responsibilities to the City Manager and City staff. The California Attorney General has opined that such delegations are authorized by state law. (See attached City Attorney memo, Attachment 2.)

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 issues regarding the continuity of program administration.

**Current Operational Problems and City's Incapability to Contract For Staffing Services**

The current BHA Manager, Tia Ingram, has continued to uncover numerous, widespread and egregious violations of federal regulations and the most basic standards for operating a housing authority. Ms. Ingram has referred these problems on an ongoing basis to the City Attorney for advice and resolution. They are described in the attached City Attorney's memo. (Attachment 2). The problems are so serious, that I have also reported them to the HUD Inspector General based on the recommendations of the City Attorney and outside counsel.

The City Attorney has the Charter responsibility under Section 65 to supervise contracts. In this capacity, she has been advising me that the City does not have the capability to competently

perform a contract to staff BHA day-to-day operations. The City Attorney and her staff, outside counsel and Ms. Ingram have kept me regularly apprised of severe and pervasive problems with the BHA staff's adherence to applicable and routine federal protocols. Based on these reports and the City Attorney's advice about the City's contracting responsibilities, capabilities and liability for breach, and my own assessment, I believe that the City cannot competently perform these services and that a major administrative restructuring is necessary if BHA is to bring its operations into conformity with applicable standards.

I, therefore, recommend that the Council adopt a resolution eliminating all City employee positions that provide day-to-day operational staffing services to the BHA (Attachment 3), since the City will no longer be providing these services to the BHA. The elimination of the City positions currently filled with career employees is subject to the terms and conditions of the layoff procedure of the City's union contracts. Included in these terms and conditions is the right to retreat to certain other vacant City positions, bump employees with lesser Citywide seniority or to be flexibly placed in appropriate positions.

The Human Resources Department has analyzed the affected employee classifications and has advised me that all of the career employees in positions that will be eliminated will have a right to 30 days notice of the layoff and will be offered other existing vacant positions with the City. Upon the City Council's adoption of the resolution eliminating these positions, I will implement the contracted layoff procedure including giving the career employees 30 days notice of the layoff and offering them other vacant positions for which they are eligible. I also recommend that the City Council authorize a one-year Save Pay component for affected career employees being placed in lower paid positions as a result of employee layoffs and the exercise of retreat rights and management's discretionary flexible placement.

This action will also result in the termination of eight temporary employees at the BHA. Temporary employees are hired for a limited term, generally not to exceed six months, and have no right to continued employment. Also, temporary employees are not covered by the layoff procedures and they will cease to be employed by the City on June 30, 2007. However, six of these temporary employees are employees of the Alameda County Housing Authority who were hired on a temporary basis to work no more than nineteen hours a week who have been working at BHA on their day off. The other two temporary employees were hired for six month limited terms. One employee's term will expire on June 18, 2006 and the other's term will expire on June 30, 2007.

#### **Contract for CGI, Inc. Services for June**

I am recommending the current BHA Board's approval tonight of a contract with CGI, Inc. to retain one full-time Senior Consultant to assist the current Housing Authority Manager for the month of June. Funding is available in the FY 2007 BHA budget. The newly appointed BHA Board and City Council will thereafter take actions during the month of June to develop a viable operational plan and budget and take related actions. A companion report before the current BHA Board on tonight's agenda recommends that the Board authorize the Executive Officer to enter into a contract with CGI, Inc. for the month of June.

**Further Implementing Actions Will Be Before the City Council and New BHA Board on June 12, 2007**

I recommend that a meeting of the new BHA Board and City Council be scheduled on June 12, 2007. At that meeting, I will recommend that the City Council propose to the new Board that the City subsidize its services through the provision of certain financial assistance and in kind services, and that these subsidies be conditioned on certain oversight requirements including the new Boards' adoption of a proposed interim staffing and transition plan, with appropriate positions covered by union contracts, to enable it to take over full operation of the BHA on July 1, 2007.

I envision that the proposed plan will include position descriptions for the Executive Director, a limited number of BHA staff positions and authorization of a contract with CGI, Inc. for up to an additional five contract persons for a three-month period. This interim staffing plan would be in place from July through September, 2007. During this period, the Executive Director and CGI, Inc. staff would develop a permanent staffing plan with advice and in consultation with me. My recommendations will include suggestions to the unions about placing appropriate BHA positions in represented bargaining units and how these positions will fit into the City's overall system. I have already commenced discussion with the unions about my proposed recommendations in this report and on those I will make on June 12th.

I will be recommending that the new Board hire Tia Ingram as its Executive Director in light of her extraordinary efforts, successes to date, competence, diligence, leadership and guidance that she has displayed in identifying and solving problems under very trying circumstances. I will also be recommending that the Board delegate to Ms. Ingram the responsibility of hiring staff to fill positions in the interim and final staffing plans.

I will be formulating recommendations concerning the circumstances under which existing employees in eliminated positions may apply for newly-developed positions including being subject to a probationary period, but with retention of certain existing seniority and other rights within the City's merit system.

I will also recommend that the budget for the new Board contain funds for independent legal counsel since the City and the BHA are contracting parties and the Board should not, therefore, be represented by the City Attorney's Office which is already counsel for one of the contracting parties, the City of Berkeley.

**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 current Board to terminate on June 30, 2007 and a new Board to be constituted pursuant to the procedures required under state law. 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
David W. Hodgkins, Director of Human Resources	981-6805
Manuela Albuquerque, City Attorney	981-6950

Attachments:

1. Resolution Declaring Cessation of Current BHA Board
2. City Attorney Memo to City Council and City Manager
3. Resolution Authorizing Elimination of all City Employee Classifications at the BHA

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

DETERMINATION THAT BERKELEY HOUSING AUTHORITY BOARD OF COMMISSIONERS FORMED PURSUANT TO HEALTH AND SAFETY CODE SECTION 34290 SHALL NO LONGER FUNCTION AS BOARD OF COMMISSIONERS AS OF JUNE 30, 2007 ON SPECIFIED CONDITIONS PURSUANT TO HEALTH AND SAFETY CODE SECTION 34293

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

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

WHEREAS, in October, 2005, 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, 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; and

WHEREAS, a complete restructuring of BHA's administrative structure is also necessary in order to bring the operations into conformance with federal standards; and

WHEREAS, HUD has made it clear that, if BHA cannot perform by a deadline which may be as soon as one year and no longer than two years from now, BHA will lose its federal subsidies to operate its housing programs in Berkeley; and

WHEREAS, based upon BHA's performance, HUD determined that the BHA governance required restructuring to adequately monitor the agency and provide the necessary oversight to ensure its programs were operated in accordance with HUD regulations and guidelines; and

WHEREAS, on June 27, 2006 and September 19, 2006, the BHA Board of Commissioners authorized the Executive Officer to enter into negotiations with HUD regarding alternative management structures; and

WHEREAS, on November 14, 2006 the BHA Board approved the concept of the establishing an independent Housing Authority Board of Commissioners appointed by

the Mayor and confirmed by the City Council pursuant to Health and Safety Code 34270; and

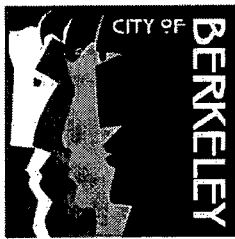
WHEREAS, on February 27, 2007, the Council of the City of Berkeley also approved the concept of establishing an independent Housing Authority Board of Commissioners and directed staff to return to the Council and BHA Board with implementing actions and recommendations after conferring with HUD; and

WHEREAS, the Mayor of the City of Berkeley has solicited applications for appointment to the Board of Commissioners and has chosen 5 individuals to appoint as Commissioners and 2 individuals to appoint as Tenant Commissioners pursuant to Health and Safety Code Section 34270; and

WHEREAS, the City Council shall be presented with a detailed plan for transition of BHA's management and operation to the new governance structure on June 12, 2007; and

WHEREAS, the transition plan shall include the offer by the City to continue to subsidize BHA's operations through the provision of financial assistance and in-kind services and these subsidies shall be conditioned on oversight requirements including a requirement that the newly-appointed BHA Board adopt a recommended interim staffing and transition plan to enable it to take over full operation of the BHA on July 1, 2007.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it determines that it shall no longer function as the Berkeley Housing Authority Board of Commissioners as of June 30, 2007 pursuant to Health and Safety Code Section 34293 on the condition that the Berkeley Housing Authority Board of Commissioners formed pursuant to Health and Safety Code Section 34270 accepts the City Council's recommendations made on June 12, 2007 regarding a transition plan to enable it take control over Berkeley Housing Authority operations by July 1, 2007.



Office of the City Attorney

Date: May 22, 2007

To: Honorable Mayor and Members of the  
City Council and City Manager

From: Manuela Albuquerque, City Attorney

Re: City Contract with New Berkeley Housing Authority (BHA) Board for Staff  
Services

#### INTRODUCTION AND SUMMARY OF RECOMMENDATION

In response to the United States Department of Housing and Urban Development's concerns about the BHA's failure to meet federal standards in its operations over the last few years, the governance of the BHA is to be changed from a governing board consisting of the City Council and two tenant commissioners to a governing board consisting of seven members (including two tenant commissioners) appointed by the Mayor and confirmed by the City Council. The new Board is to take over complete control over BHA operations by July 1, 2007, the beginning of the new fiscal year. By law, the new BHA Board must either create its own administrative structure and 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 will provide and General Fund subsidies.

Under City of Berkeley Charter Section 65, all contracts "shall be drawn under the supervision of the City Attorney...." In this role, I am writing to advise you of my evaluation that the City is not qualified to competently meet the day-to-day staffing needs of the BHA and would be in immediate breach should it contract with the new Board to provide these services. The City Manager's report before you tonight incorporates my recommendations.

#### BACKGROUND

The BHA is currently governed by an eleven-member board composed of the nine members of the City Council and two tenant members appointed pursuant to Health and Safety Code Section 34290<sup>1</sup>. For many decades, the staff support to BHA has been provided by the City Manager who is the Executive Director of the Authority and by line staff appointed by him. The BHA Manager is a Division Head within the Housing Department. The staff in this Division performs work related exclusively to BHA operations under the direction of the Housing Authority Manager, Housing Director and City Manager. Various individuals in the Housing Department also perform functions relating to the BHA including selecting and monitoring vendors and managing Project Based Section 8 program issues. The organizational structure below the City

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<sup>1</sup> Unless otherwise noted, all references herein are to the Health and Safety Code.

Manager has changed from time to time and may do so again. The Attorney General has previously opined that housing authorities have inherent authority to enter into such arrangements with cities, in light of authorities' broad powers to contract. (57 Ops.Atty.Gen. 492 (1974).)

**A. The Legal Authority of New Board to Contract with City Staff for Staff Services**

Section 34280 states "[a]n authority may delegate to one or more of its agents or employees the powers or duties it deems proper", Section 34310 states "[a]n authority constitutes a corporate and politic public body, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out the purposes and provisions of this chapter." Finally, Section 34314 states "[a]n authority may arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection which, a housing project or its occupants".

In examining whether a Housing Authority could contract with city staff for all or any staff services, the Attorney General's Office observed: "there is express statutory authority for interchange of personnel between a city or county... and a housing authority."(57 Ops.Atty.Gen. 492, 496 (1974).)

While the opinion concerns a Housing Authority Board in which the City Council had constituted the governing board with two tenant commissioners pursuant to Section 34290, and not a board appointed by the Mayor and confirmed by the Council as provided by Section 34270, the Attorney's General's conclusion does not turn on this fact. The reasoning of the opinion also makes no distinction between the manner in which a Housing Authority Board may be constituted and, indeed, includes Boards appointed either way. For example, the opinion states:

The governing body of the community may ... appoint ... commissioners of the authority, section 34270. Or, on the other hand, as was done in the instant situation, the governing body may itself become ... the commissioners of the authority, section 34290. Each act gives the governing body of the city or county at the time the particular entity is activated the right to contract with either type of entity anywhere for the furnishing by ... a housing authority of any necessary staff services associated with or required by ... housing and which could be performed by the staff of ... an authority. In such a case the legislative body is vested with all of the rights, powers, duties, and privileges and immunities vested by the act in an authority.

(57 Ops.Cal.Atty.Gen., *supra*, at 495.)

In light of the broad language of the Attorney General's opinion and the Sections that he relies on, it would appear that a newly-constituted BHA Board composed of members nominated by the Mayor and appointed by the City Council pursuant to Section 34270 could continue to contract for administrative support from the City on the terms it specifies.

Nonetheless, I requested that Assemblymember Loni Hancock introduce a bill amending Section 34278 in order to make it explicit that housing authorities have the authority to contract with city staff for the provision of staff services. At Assemblymember Hancock's request, this language has been included into AB 382, the Omnibus Local Government bill, at page 23, line 28.

**B. Inability of City Staff to Perform Basic Functions-Daily Uncovering of New and Serious Errors**

Even though I believe that the new Board would have the legal authority to contract with the City for staff services, I have concluded that the City would not be able to competently perform such a contract. I have, thus, prepared this memorandum in light of my role under Charter Section 65 to supervise contracts.

My assessment is based on the problems that the new Housing Authority Manager, Tia Ingram, has uncovered over the last nine months and referred to our office for advice and resolution. The problems are so numerous and pervasive that they reveal BHA's inability to perform routine functions in conformance with federal regulations. Despite the allocation of one lawyer in my office, outside counsel and a considerable amount of Ms. Ingram's own time, the backlog and complexity of problems that have surfaced is large and growing because of the pace at which new problems are discovered.

**C. Section 8 Housing Choice Voucher Program Problems**

In reviewing the matters referred to us by Ms. Ingram, we have discovered a pattern of omissions and commissions in routine and unremarkable functions of the Housing Authority. These include:

- Inaccurately determining eligibility, often in the face of documents plainly visible in the file which are at odds with the determination made.
- Granting multiple-bedroom vouchers to single-person households with no supporting documentation in the file.
- Failing to obtain verifications for live-in aides and, in one case, granting additional bedrooms on the voucher to allow an aide's children to reside in the subsidized unit and thereby subsidizing a multiple-bedroom unit for a single eligible person.
- Allowing ineligible family members to "inherit" assistance ahead of persons on the waiting list, even though they have no voucher and are not part of the eligible household.
- Failing to conduct or complete income certifications.
- Failing to obtain any verification of reported income.
- Ignoring income that is reported and setting rent too low.
- Failing to conduct or complete unit inspections or require clearance of substandard conditions.
- Failing to verify whether a subsidized unit is even occupied by the assisted tenant.
- Continuing to pay rent on units where the file makes it clear that the tenant no longer lives in the unit.
- Continuing to pay rent on at least 15 units in which the tenants are deceased and, in some cases, for up to 2 years after the tenant has died.
- Executing Housing Assistance Payment contracts retroactive to dates many months before the execution of the contract, in violation of clear federal regulations.

- Paying rent for the same tenant on two separate units where the tenant appeared to be ineligible in the first place.
- Failing to conduct federally-mandated criminal background checks to exclude registered sex offenders, a problem discovered only when a registered sex offender receiving assistance ported to another jurisdiction and the new Housing Authority's screening procedure discovered the error. Ms. Ingram has since reinstated the proper screening procedure.

Ms. Ingram's efforts to train and guide staff or to contract for additional staff support to fix errors or complete tasks have been actively thwarted or resisted by some of the staff. Some examples are described below.

- **Disappearance of files or key papers.** After Ms. Ingram has discovered the types of omissions and errors mentioned above, sections of the files, or the entire file itself, have disappeared and then reappeared. This frequent occurrence has required Ms. Ingram to secure the files in her office once a problem has been discovered. In addition, she has also been required to change the lock on her office door.
- **Obstruction of work.** Many staff have actively obstructed Ms. Ingram's attempt to piece together missing information and to establish new best practices. For example, Ms. Ingram retained the services of other housing authority staff on a temporary basis to assist in reviewing files. When the temporary staff reported for work while the Ms. Ingram was attending a family member's funeral, the BHA staff claimed that no work was outstanding or necessary and there was no backlog.
- **Failure to voluntarily provide problematic files.** Although Ms. Ingram has requested that staff notify her of files containing issues that need attention and resolution, they have not done so on a consistent basis. Instead, nearly every file Ms. Ingram reviews leads to the discovery of errors, omissions and missing critical documentation.
- **Obstruction of oversight by HUD.** HUD staff visited the BHA in order to conduct oversight activities and, despite numerous pleas by Ms. Ingram for cooperation, some BHA staff has refused to provide the documentation necessary for HUD staff to perform their task.
- **Extremely poor service to clients.** Many staff are also rude and, at times, outright hostile to BHA's clients. Ms. Ingram has forwarded to us many voice mail messages from distressed clients reporting that their housing and/or health is in jeopardy due to the staff's failure to respond to their repeated and longstanding requests for assistance. Because of the disappearance of files, or portions of files, many clients have been required to completely recreate their file with the BHA or reapply for some action, which results in a substantial hardship, especially if the client is physically disabled. Clients have reported coming into the BHA office and being subjected to extremely rude and hostile behavior from some BHA staff.

**D. Public Housing Program-Vendor Oversight and Inadequate Performance**

Affordable Housing Associates (AHA) has been managing the BHA's public housing units for approximately four years. During this period, there have been continued and substantial complaints from the public housing tenants, as well as neighbors in the surrounding communities, which have been ignored or minimized.

- **The maintenance and management of the units.** BHA received complaints regarding public nuisance and criminal activity occurring at these units, but has failed to take any action in response until Ms. Ingram arrived. She has inspected the units herself and is single-handedly attempting to address these concerns.
- **Vacant units.** *Eight public housing units* have remained vacant under AHA's management. The dates the units initially became vacant range from *May 1, 2004 to September 1, 2006 and they are still currently vacant.* Moreover, it appears that the majority of these units only required regular maintenance to make them ready for occupancy. No attempts to remedy this situation occurred before Ms. Ingram became aware of the situation.
- **Erroneous certifications to HUD.** The City's outside auditor raised a concern that AHA appeared to have submitted certifications to HUD regarding the management of the public housing units that was not supported by the documents in their files but this conclusion was ignored until Ms Ingram began looking into these complaints and found that the certifications to HUD did not appear to be warranted in many instances. She has apprised HUD of these problems and HUD will be reviewing the files itself in its confirmatory review of the apparently erroneous PHAS certification. There is a possibility of disallowed costs in this program as well.
- **Troubled designation from HUD.** In April 2007, HUD notified BHA that it has now designated as "troubled", not only the Section 8 Program, but the public housing program as well, due to its Public Housing Assessment System (PHAS) score for fiscal year end June 30, 2006.

#### **E. Problems with Project based Section 8 Assistance**

HUD notified the Housing Director in early August, 2006 of problems with Project Based Section 8 allocations to the Oxford Plaza and other projects because of the failure of these projects to meet applicable federal regulatory standards. When notified of the violations, the City took an untenable and combative position with HUD that was at odds with the regulations and prior documents that it had submitted to HUD in connection with a grant application on the Oxford Plaza project. The problem was only brought to my attention by chance via the City Clerk just prior to the final approvals for the Oxford Plaza project. I then learned that no City staff have been trained in the requirements of the Project Based Section 8 Program including those cited in HUD's August correspondence to the City. Yet, the BHA Board had been advised to allocate Project Based vouchers to these projects without an adequate prior evaluation of the applicability of federal regulations.

Luckily, with a lawyer in my office and I devoting a substantial portion of our time to preparing reports, resolutions and letters to HUD, the City was able to get approval of the subsidy to the Oxford Plaza project. Had the subsidy been denied, the project would have suffered a huge financial setback that could have spelled its demise or required another very large infusion of

General Fund dollars. One other project did not fare as well and was so far along that the City made up the loss of Project Based Section 8 funds with an additional large subsidy to fill the funding gap.

It is critical that the BHA Board and the City have adequately-trained and sufficient staff to ensure that major federal subsidies counted upon in housing projects comply with federal regulatory standards before they receive Trust Fund subsidies and the like. In addition, as soon as the City has notice that a project is running into legal problems, the staff should consult with the City's Attorney's office and advise the City Manager and, if necessary, the Council and BHA Board so that the City can take early action.

Currently there are not enough staff with sufficient training on the regulatory standards to address this deficiency. Both the BHA Board and the City can face liability unless this issue is addressed. The BHA Board has to decide whether to enter into a contract or "AHAP" with HUD and the project for Project Based Section 8 assistance. The BHA can hold the City liable for incorrectly advising the old BHA Board as to the propriety of the project based assistance. The City may face demands to fill financing gaps in a project with General Fund subsidies as occurred with one other project in the past.

#### **Conclusion.**

In conclusion, serious problems are manifest in all aspects of BHA operations. Many of these deficiencies may result in significant disallowed costs and City financial liability and/or sanctions. Prior warnings by outside auditors, regulatory bodies or internal reviewers have been dismissed as overblown or the result of budgetary cutbacks, reflecting a defensive and combative attitude by Housing Department management to early warnings about the severity and widespread scope of these problems. Ms. Ingram has now confirmed that the early warnings presaged very severe problems and has underlined how very serious the problems are. Despite her Herculean efforts, Ms. Ingram is unable to resolve the problems because they are uncovered at the pace of 2 to 4 problematic files per day on average. It is, thus, essential that the City not contract with the new Board to administer BHA operations, since the City is incapable of competently providing full staffing services and will be entering into a contract it cannot perform. The City Manager's recommended plan in this regard incorporates of my legal advice.

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

AUTHORIZING ELIMINATION OF ALL CITY POSITIONS ALLOCATED TO THE  
BERKELEY HOUSING AUTHORITY

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

WHEREAS, in October, 2005, 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, 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; and

WHEREAS, based upon BHA's performance, HUD determined that the BHA governance required restructuring to adequately monitor the agency and provide the necessary oversight to ensure its programs were operated in accordance with HUD regulations and guidelines; and

WHEREAS, a complete restructuring of BHA's administrative structure is also necessary in order to bring the operations into conformance with federal standards; and

WHEREAS, HUD has made it clear that, if BHA cannot perform by a deadline which may be as soon as one year and no longer than two years from now, BHA will lose its federal subsidies to operate its housing programs in Berkeley; and

WHEREAS, the \$947,000 City General Fund subsidy to the BHA for the next two years also requires that BHA become self-supporting within the next two years; and

WHEREAS, both the current BHA Board of Commissioners and the City Council have approved an alternate form of governance for the BHA. The current BHA Board will cease to function and be succeeded by an independent Board created pursuant to Health and Safety Code Section 34270 whereby the Mayor appoints a seven-member board (including two BHA tenants) that is confirmed by the City Council; and

WHEREAS, among the powers and duties of the independent Board 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 raised issues regarding the continuity of program administration; and

WHEREAS, the BHA is currently staffed by City employees, including thirteen (13) City career employees and eight (8) temporary employees hired for a limited term; and

WHEREAS, the new BHA Board must either create its own administrative structure and 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 will provide and General Fund subsidies; and

WHEREAS, the City Attorney has the Charter responsibility under Section 65 to supervise contracts. In this capacity, she has advised that the City does not have the capability to competently perform a contract to staff BHA day-to-day operations and would be in immediate breach should it contract with the new Board to provide these services; and

WHEREAS, the City Manager has determined that it is impossible to meet federal requirements and operate a local federally subsidized housing program in Berkeley and continue under the current administrative structure.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the elimination of the following City positions at the Berkeley Housing Authority:

1. One (1) Community Services Specialist I position;
2. One (1) Customer Services Specialist III position;
3. Four (4) Housing Authority Representative positions;
4. One (1) Senior Housing Assistance Supervisor position;
5. One (1) Office Specialist III position;
6. One (1) Senior Accountant position;
7. One (1) Accountant I position;
8. Three (3) Office Specialist II positions; and
9. One (1) Housing Authority Manager position.

BE IT FURTHER RESOLVED, that, with regard to the above eliminated positions, the Council of the City of Berkeley authorizes implementation of the layoff procedure and the administration of retreat of staff into the City workforce as set forth in the respective union contracts and authorizes one year of Save Pay for those employees who retreat to a lower paying classification.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley authorizes the elimination of the following eight temporary appointments at the Berkeley Housing Authority:

1. Five (5) Temporary Customer Services Specialist III appointments, not to exceed 19 hours per week; and
2. One (1) Temporary Housing Assistance Supervisor appointment, which is not to exceed 19 hours per week; and
3. One (1) Temporary Community Services Specialist appointment, which is due to expire on June 18, 2007; and
4. One (1) Temporary Office Specialist II appointment.