



Office of the City Manager

ACTION ITEM  
July 25, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services  
 Subject: Adopting the Affordable Housing Framework for Development at the North Berkeley BART Station Area

RECOMMENDATION

Adopt a Resolution:

1. Adopting the framework for City subsidy of affordable housing at the North Berkeley BART station area.
2. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate this action.

FISCAL IMPACTS OF RECOMMENDATION

City Council reserved \$53M in funding for the BART sites at their April 27, 2021 meeting through Resolution 69,833-N.S.

The actions in the above recommendations under consideration by the City Council do not result in direct fiscal impacts, since future funding commitments will return to Council for action. Staff will provide more detail about these potential fiscal impacts in advance of possible future actions.

CURRENT SITUATION AND ITS EFFECTS

The City has engaged Street Level Advisors, a housing economics firm, to develop the general framework that the City of Berkeley will use to evaluate affordable housing project proposals at the North Berkeley BART station (Attachment 2). The framework outlines expectations regarding the share of affordable units and their income requirements, the phasing of various components of the project, the conditions for award of City subsidy funds, and expectations regarding the contribution to affordable housing from market rate components of the projects.

Spurred by the requirements of Assembly Bill 2923 and the opportunity to achieve mutual objectives of creating housing, including substantial amounts of deed-restricted affordable housing adjacent to transit to help reduce greenhouse gas emissions, the City and BART have embarked on a process to redevelop the Ashby and North Berkeley BART station areas. The City and BART entered into a Memorandum of

Agreement (MOA) in June 2022 to address additional aspects of the collaboration, and both agencies adopted the Joint Vision and Priorities for Transit-Oriented Development for Ashby and North Berkeley Stations (JVP) in June 2022. The JVP articulates the shared goals of the City and BART, including the goal of achieving at least 35% affordability at each site.

On December 1, 2022, the San Francisco Bay Area Rapid Transit District (“BART”) Board approved the selection of a development team to build housing at the North Berkeley BART station site. The team is comprised of lead nonprofit developer BRIDGE, nonprofit development partners East Bay Asian Local Development Corporation (EBALDC) and Insight Housing (formerly Berkeley Food and Housing Project), and market-rate developer Avalon Bay Communities. The BRIDGE team proposes to provide 50% of the units as affordable to households earning up to 60% of Area Median Income (AMI), which exceeds the requirement that at least 35% of new housing be affordable to households earning an average of 60% of AMI. The preliminary design concept includes three affordable housing buildings for low-income families (up to 60% AMI) and one permanent supportive housing project. The BRIDGE team is currently engaged in community outreach and planning activities that will inform the project design.

The proposed framework is not intended to address all potentially relevant questions or provide detailed guidelines. Unless otherwise indicated in the framework or approved by the City Manager, BART projects requesting City funding will be expected to comply with the requirements of the City’s Housing Trust Fund (HTF) Guidelines.

Advancing affordable housing development at the North Berkeley BART station supports the Strategic Plan Priority to create affordable housing and housing support service for our most vulnerable community members.

## BACKGROUND

The Berkeley City Council and BART Board of Directors approved a Memorandum of Understanding (MOU) to plan for TOD at the stations in December 2019 and January 2020, respectively

Since then, the City has been working closely with BART on the development of the North Berkeley and Ashby BART sites. The City created a BART Community Advisory Group (CAG), made up of 15 members of the public to develop a vision for affordable housing, land use, station access, building form, and new public spaces. The CAG met throughout 2020 and 2021 at public meetings and community workshops, and provided feedback on the new zoning regulations impacting the North Berkeley BART site.

The CAG was instrumental in shaping the City - BART Joint Vision and Priorities for Transit-Oriented Development for Ashby and North Berkeley Stations (JVP). The JVP establishes baseline requirements and aspirational goals for housing development, including the total number of housing units, affordability levels, 10-year time horizon to

deliver units, sequencing of affordable housing units, unit-type, and type of developers desired. This section was informed by financial feasibility analyses conducted by Street Level Advisors that estimated the City subsidy required to achieve varying levels of affordable housing.

Street Level Advisors' analysis also estimated the amounts of City subsidy that would be required to achieve higher levels of affordability at each site. As the share of affordable housing increases and the number of market rate units decreases, the amount of developer contribution from market rate buildings will decline. This means that the required level of City subsidy per unit will increase at the same time that the number of funded units rises, resulting in increases in the amount of funding needed from the City.

To support the shared affordable housing goal at the BART sites, City Council set aside \$53M through Resolution 69,833-N.S. on April 27, 2021. At their respective March 2021 meetings, the Measure O Bond Oversight Committee (MOBOC) and the Housing Advisory Commission (HAC) unanimously recommended the funding reservation for affordable housing at the Ashby and North Berkeley BART stations.

BART issued a Request for Qualifications (RFQ) in July 2022 to select a team to develop housing at the North Berkeley BART station site. Through the RFQ, the City offered up to \$2M in predevelopment funding authorized by Resolution 69,833-N.S. A selection panel with equal representation of City and BART staff reviewed the qualifications of all teams, interviewed the team leads, and attended the public presentations on November 10, 2022. Based on their cumulative score, the panel recommended the selection of the BRIDGE team to the BART Board of Supervisors.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Creating new affordable housing in Berkeley that allows lower-income individuals and families to live closer to transit will advance the goal of making the City more economically and racially equitable, and reduces greenhouse gas emissions by reducing vehicle-miles-traveled and decreasing reliance on personal vehicles. New affordable housing developments are typically built to third-party green building standards (either GreenPoint or LEED Gold).

#### RATIONALE FOR RECOMMENDATION

Development at the North Berkeley BART station will consist of multiple phases and projects, which requires a defined framework beyond our standard Inclusionary and Housing Trust Fund regulations and guidelines. The proposed framework will ensure that the City and community goals for affordable housing at the North Berkeley BART site are met. The framework also ensures effective leveraging of the City's resources to achieve the maximum number of affordable units.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify alternative actions that are consistent with City priorities and past actions.

CONTACT PERSON

Margot Ernst, Housing and Community Services Manager, HHCS, 510-981-5427

Attachments:

1: Resolution

Exhibit A: North Berkeley BART Affordable Housing Framework

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

ADOPTING THE AFFORDABLE HOUSING FRAMEWORK FOR DEVELOPMENT AT  
THE NORTH BERKELEY BART STATION AREA

WHEREAS, City Council established a Housing Trust Fund Program (HTF) to assist in the development and expansion of housing affordable to low- and moderate-income persons and authorized the City Manager to implement the Program; and

WHEREAS, there is a great need for affordable and special needs housing in the City of Berkeley as stated in the General Plan Housing Element and the City of Berkeley's Consolidated plan; and

WHEREAS, the City and BART are collaborating on the development of the North Berkeley BART site, and articulated shared goals in a Memorandum of Understanding, Memorandum of Agreement, and Joint Vision and Priorities for Transit-Oriented Development for Ashby and North Berkeley Stations; and

WHEREAS, the City and BART are committed to achieving a minimum of 35% affordable housing at each BART site; and

WHEREAS, on April 27, 2021, with Resolution 69,883-N.S., the City Council reserved \$53 million, to be divided between the two BART sites, as the subsidy needed to achieve 35% affordability, and allowed for a portion of that funding to be considered for predevelopment costs associated with affordable housing; and

WHEREAS, in July 2022, BART issued a Request for Qualifications (RFQ) to select a team to develop new housing at the North Berkeley BART site and created an RFQ selection panel with equal representation from the City and BART; and

WHEREAS, on December 1, 2022, the BART Board of Supervisors approved the RFQ panel's recommendation to select a development team made up of BRIDGE Housing Corporation (BRIDGE), East Bay Asian Local Development Corporation, Berkeley Food and Housing Project, and Avalon Bay Communities; and

WHEREAS, the BRIDGE lead development team proposed to develop 50% of the residential units at the North Berkeley BART as affordable to lower-income persons.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it adopts the North Berkeley BART Affordable Housing Framework document (Exhibit A).

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements, and any amendments will be kept on file in the Office of the City Clerk.

# North Berkeley BART Project

## Affordable Housing Framework

June 2023

This document is intended to outline the general framework that the City of Berkeley will use to evaluate affordable housing project proposals at the North Berkeley BART station. The framework outlines expectations regarding the share of affordable units and their income requirements, the phasing of various components of the project, the conditions for award of City subsidy funds and expectations regarding the contribution to affordable housing from market rate components of the projects.

The framework is not intended to address all potentially relevant questions or provide detailed guidelines. Unless otherwise indicated below or approved by the City Manager, BART projects requesting City Subsidy must comply with the requirements of the City's Housing Trust Fund ("HTF") Guidelines. The City Manager is authorized to provide additional requirements which expand on and modify the general principles outlined here in order to ensure a project that meets the City's ambitious goals of this critical site.

### I. Project Affordable Housing Requirements

#### A. Affordable Unit Mix

The City, BART and the project Master Developer will strive to maximize the number of permanently affordable, rent-restricted housing units on-site, within the funding that can be identified in a timely manner. Based on the selected project proposal for North Berkeley BART, the City expects the Master Developer to pursue a development concept that exceeds minimum affordability requirements and includes a goal of 50% restricted affordable housing units. This total will include units built to satisfy the City's Affordable Housing Requirements Ordinance as well as any units that may be added as a result of a density bonus. Affordable units will be rent-restricted as affordable for the duration of the ground lease(s) with BART (at least 60 years), and any extensions thereon, in accordance with the income targets identified in the adopted Joint Vision and Priorities ("JVP") as follows:

1. At least 35% of new on-site housing must be affordable to households earning an average of up to 60% of Area Median Income ("AMI").
2. At least 20% of the required 35% on-site affordable units must be affordable to Extremely Low-Income ("ELI") households, those earning up to 30% of AMI.
3. Additional affordable units aside from the ELI units should prioritize Very Low Income (up to 50% of AMI) households and Low Income (up to 80%) households but may include some housing rent-restricted to households with moderate incomes (up to 120% of AMI).

## B. Phasing

Affordable units should be built prior to, or along with, any market rate housing. No market rate housing will receive its notice to proceed until an affordable housing project receives its notice to proceed. In the event there are multiple phases of market rate or affordable housing, the City must approve a phasing plan to ensure consistency with the JVP goal of affordable housing being built on pace with market rate housing. The City must approve any changes to the phasing plan, including those caused by changing market conditions or availability of state and federal affordable housing funds.

As described below, under certain market conditions, it may make sense for the affordable components of the project to be constructed in advance of the market rate elements. If necessary, the City will make every effort to support this approach. The City expects the market rate projects to contribute proportionally to the shared costs (net of any sitewide infrastructure funding) related to master planning, site preparation and certain infrastructure. As a multi-phased development with multiple projects and partners, the City expects that each project will contribute its share of sitewide costs prior to receiving its notice to proceed, according to the schedule outlined in the Affordable Housing Compliance Plan. In addition, the City expects market rate projects to make significant financial contributions to support the development of affordable housing on the site. As a condition for any funding committed to an affordable project that proceeds in advance of the market rate development, the City will require a commitment that the future market rate developments contribute their share of sitewide costs prior to issuance of the market rate notice to proceed.

## C. Clustering

Affordable units at the site may be integrated into mixed-income buildings or may be clustered into one or more 100% affordable housing buildings or any combination of the two. Stand-alone affordable buildings must be designed in a way that integrates with the larger project and shares the comparable design standards and quality.

The quality of exterior design and overall quality of construction of the Clustered Units must be consistent with the exterior design of the Market Rate Units. Clustered Units may have different interior finishes and features than the Market Rate Units in the Residential Development, provided the finishes and features are functionally equivalent to the Market Rate Units and are durable and of good quality.

## D. Monitoring

The City will monitor all restricted affordable units at the site. Units that are included within mixed income buildings without City subsidy will be subject to a regulatory agreement which requires compliance with the City's BMR Rental Program Guidelines even if the total number exceeds the number that would be required under the Inclusionary Housing Ordinance. The City will collect an annual monitoring fee for these units as it does for other BMR units.

All affordable units in 100% affordable buildings will be subject to City loan and regulatory agreements and will be monitored according to the City's Housing Trust Fund guidelines.

#### E. Occupancy Preferences

The Joint Vision and Priorities (JVP) adopted by the City and BART after extensive public engagement calls for affordable housing units at the Ashby and North Berkeley BART sites to provide a preference for residents who have been displaced or are at risk of displacement. The Berkeley City Council is currently considering a city-wide preference policy which would address this need for all projects, and the City has commenced a Fair Housing Analysis to determine how each preference can be applied to the maximum percentage of units permitted. The preference policy will apply to the maximum number of units at the site that the City finds consistent with fair housing goals.

#### F. Inclusionary Housing Requirements

Berkeley currently has local Inclusionary Housing Ordinance for housing development projects (Berkeley Municipal Code [BMC] Chapter 23.328) which require new residential projects to either dedicate 20% of the onsite units as Below Market Rate (BMR) affordable units, with half affordable to households earning 50% or less of Area Median Income and half to households earning 80% or less, or to pay a fee in lieu of some or all of the unit provision. The City expects the North Berkeley BART project to exceed these citywide requirements and provide a total of 35-50% affordable housing units inclusive of units which would satisfy the Affordable Housing Requirements Ordinance requirements. It is the City's expectation that the North Berkeley BART project will request Council approval of an alternative means of compliance under the Inclusionary Housing Ordinance in order to cluster some or all of the required affordable units into 100% affordable housing projects. This clustering would not normally be allowed under the Inclusionary Housing Ordinance.

#### G. Outside Financing Sources

The Master Developer is expected to utilize all standard sources of debt and equity commonly available for similar projects including the potential use of Low-Income Housing Tax credits for eligible affordable units as well as other funding sources offered by the State of California. The City will work with the selected developers to seek public financing resources not obtainable without City support.

#### H. City Subsidy Funds

The City has provisionally reserved \$53 million of City-controlled funds to facilitate a higher share of affordable housing units at the North Berkeley Project and the Ashby Project than would be financially feasible without local public support. The funds will be used to support the development of on-site affordable units in excess of the current



requirement under the City's Affordable Housing Requirements of 20%. Up to \$26.5 million of this total is available to be invested in the North Berkeley Project. These City Subsidy Funds may be used for funding affordable housing units that exceed the City's inclusionary requirements. Any commitment of City funds to the project shall comply with the City's Housing Trust Fund Guidelines and the maximum per unit subsidy included below.

The City subsidy will be available to buildings which are 100% affordable housing and to affordable units dispersed amongst mixed-income housing buildings which meet the Housing Trust Fund Guidelines. The Developers may include additional moderate-income units in their overall affordable housing mix but may not request City subsidy for those units.

#### 1. Development Funding

Developers meeting the threshold requirements in the HTF Guidelines for experience may apply for development funding for HTF affordable units following the predevelopment period. Staff anticipates Measure O funds will be available after the third and fourth bond issuances, currently projected for 2025 and 2027.

In addition to the HTF guidelines, the operation of the HTF program must comply with City procurement and contracting requirements as well as state or federal requirements when state or federal funds are used. In case of a conflict, City, State, and Federal requirements will prevail over the HTF Guidelines and the Project Guidelines.

#### 2. Predevelopment Funding

##### *a) Phase I Predevelopment Loan Funding Awarded through the Request for Qualifications (RFQ)*

Up to \$500,000 in City predevelopment loan funds were awarded to the Master Developer at the time of RFQ selection. The selected developer executed an Exclusive Negotiating Agreement (ENA) with BART effective June 23, 2023, meeting the City's requirement that it do so prior to drawing upon predevelopment loan funds. Eligible predevelopment costs include: ENA deposit, fees related to the station access study, and other costs related to the development of the Property, to be approved by the City. City funds may only pay a prorated share of reasonable Property soft costs, in proportion to the percentage of the proposed residential square footage dedicated to stand alone affordable housing.

##### *b) Phase II Predevelopment Loan Funding*

The Master Developer may apply to the City for Phase II predevelopment loan funding of up to \$1.5 million, for a total of \$2 million in predevelopment funding. In addition to the nonprofit development team members' collective share of the early costs to the station access study and other master planning and predevelopment activities, the

funds may be used to pay for architectural and engineering costs related to the design of the affordable buildings.

Predevelopment loans will have a five-year term and will accrue interest at a rate of 3% per year. If development funding is provided through the Housing Trust Fund, the predevelopment loan will be added to the permanent loan, extending the term.

In the event the developer team does not proceed with development of the Project, the City shall have the option to cause borrower to assign, transfer and deliver to the City, all third party written reports which borrower has commissioned with Phase I or Phase II loan proceeds with respect to the development and entitlement, including any architect or consulting agreements with any third parties providing design or development services with respect to the North Berkeley affordable units and all work product produced under any such agreements.

### 3. Maximum Per Unit City Subsidy

The City will limit its subsidy to no more than an average of \$200,000 per rent-restricted lower income unit, counting only units provided beyond the 20% which would be required by the City's Affordable Housing Requirements.

The City subsidy will be available to buildings which are 100% affordable housing or HTF affordable units dispersed amongst mixed income housing buildings, which meet the Housing Trust Fund Guidelines. Projects may include additional moderate-income units in their overall affordable housing mix but may not request City subsidy for those units.

#### I. Minimum Developer Contribution for Affordable Housing

To ensure that City subsidy is increasing the commensurate level of on-site affordability that would otherwise be provided, any developer applying for City Affordable Housing Subsidy shall demonstrate a developer capital contribution equal to the greater of:

- a. The then-current City housing mitigation and/or inclusionary in-lieu housing fee amount per unrestricted market rate unit (or aggregate square footage of the market rate units) to be developed on the Property (including any bonus units available as a result of the density bonus), or
- b. \$200,000 per on-site affordable unit required by the City's affordable housing regulations (inclusionary unit).

The project's Affordable Housing Compliance Plan must include a schedule for the timing of payment of these contributions and an indication of how they will be allocated among multiple affordable housing buildings within the project. The City's expectation is that Developer Contributions will be paid to affordable projects prior to the close of construction financing for each affordable project, but the City may approve alternative timelines provided that there is adequate assurance that the payments will be made

prior to the issuance of a notice to proceed for market rate units. The City will regulate and secure all developer funded units in the same way that it would affordable units funded directly through the City's Housing Trust Fund.

The developer capital contribution may be provided by the market rate developer of record towards the affordable housing units or in the form of one or more cash contributions to nonprofit sponsors developing affordable housing at North Berkeley or through documented in-kind expenditures approved by the City on behalf of the affordable housing projects. The value of any land discount (e.g., ground rent) provided by BART may not be counted toward the developer in-kind contribution.

The City's expectation is that market rate developer contribution funds will be allocated between affordable buildings roughly in proportion to the share of low and very low-income units in each building. However, in the event that one or more of the affordable housing projects receive building permits prior to the issuance of building permits for the corresponding market rate projects, the City may approve a plan which allocates a higher share of City Subsidy and a lower share of market rate Developer Contribution to the initial project provided that:

1. The project is able to provide security satisfactory to the City Attorney's Office to ensure that future phases of the market portion of the project will contribute the required amounts to remaining affordable projects, and
2. At least 1/3 of the allocated City Subsidy amount (or another amount approved by the City) is reserved and not committed until 100% of the required Developer Contribution has been paid to either the City or the Affordable Housing Sponsors or approved by the City as in-kind expenditures on behalf of the affordable housing projects.

#### J. Process for Award of Development Subsidy

Each affordable housing project's sponsor may apply for City development subsidy in compliance with the City's maximum per unit subsidy limits included below. The City has reserved \$26.5 million for affordable housing at the North Berkeley BART site, including both development and predevelopment funding.

To access development funding, the developer must submit an application for each affordable housing project through the City's HTF program. The application must include the items listed below if not already provided through a predevelopment application:

- An Affordable Housing Compliance Plan, as described below, covering the entire development site (including all market and affordable buildings), and describing the specific strategy that will be used to meet BART and the City's Affordable Housing Requirements

- Evidence that that the market rate portions of the Project are contributing financially to the provision of Affordable Housing in an amount at least equal to the Developer Minimum Contribution Standard (defined above)
- Evidence that the request for City Affordable Housing Subsidy complies with the City's existing Housing Trust Fund Guidelines which may be found at [Housing-Trust-Fund-Guidelines.pdf \(berkeleyca.gov\)](https://www.berkeleyca.gov/DocumentCenter/View/11111/Housing-Trust-Fund-Guidelines.pdf)
- Evidence that the request for City Affordable Housing Subsidy does not exceed the Maximum Per Unit City Subsidy (defined above)

Development subsidy funds will not be disbursed prior to complete project entitlement and execution of BART ground lease. Staff will fully underwrite each development funding application using HTF Guidelines and any supplemental guidance for affordable housing development at North Berkeley BART as approved by the City Manager.

Any commitment for City funding beyond the predevelopment stage will require an Affordable Housing Compliance Plan ("AHCP") approved by the Berkeley City Council. The developer will be required to submit a revised plan for approval if project plans change after the AHCP is approved.

## II. Appendix: Affordable Housing Compliance Plan

The Affordable Housing Compliance Plan must provide a comprehensive overview of the proposed affordable housing strategy with enough detail to enable the City to evaluate requests for funding for individual components within the context of the whole project. An initial outline of the requirements of the AHCP is included below. HHCS staff may make additions and modifications to this outline before finalizing the list of required elements.

### **Affordable Housing Compliance plan – Required Elements:**

- a. A description of the proposed means of compliance with the City's Inclusionary Housing Ordinance, including any request for alternative means of compliance such as clustering of the inclusionary units
- b. Site Plan identifying the location of the market rate and affordable housing units/developments
- c. Unit and bedroom count for the market rate units and the affordable units, including the specific affordability restrictions (depth of affordability) for each set of units
- d. Phasing Plan covering the entire site and demonstrating that affordable units will be constructed in advance of or concurrent with the market rate units
- e. A description of any site amenities including open space or exterior amenities
- f. A description of the proposed developer contribution to affordable housing. This description will identify specific in-kind and cash contributions as well as their likely timing. The land discount granted by BART cannot be included as an in-kind contribution for the purposes of the developer contribution
- g. A report completed by a third-party economic analysis firm approved by the City of Berkeley which:
  - i. Compares the proposed level of affordability (number of units and depth of AMI affordability) to the level that would be provided by a hypothetical development project on the Property that complied with the City's Inclusionary Housing Requirements through the on-site compliance option;
  - ii. Provides a financial analysis estimating the developer capital contribution that would be required to provide the City's inclusionary units on-site and comparing that to the developer's proposed affordable housing capital contribution as part of their finance plan; and
  - iii. Reviews individual and combined project return metrics, economics, and annual cash flow to validate project feasibility and to ensure a customary market rate return.

