
NEBA News

NORTH EAST BERKELEY ASSOCIATION

Fall 2009

★★★★★ **DOWNTOWN BERKELEY PLAN EDITION** ★★★★★
GENERAL MEMBERSHIP MEETING IN NOVEMBER

BERKELEY'S DOWNTOWN AREA PLAN, REFERENDUM and ALTERNATIVES

Thursday, November 12, 2009, 7:00 p.m. (Mingle with your neighbors 6:00-7:00 p.m.)

AT NORTHBRAE COMMUNITY CHURCH, HAVER HALL
941 The Alameda (at Los Angeles)

President's Message

DOWNTOWN BERKELEY MAY CHANGE RADICALLY IN THE NEXT FEW YEARS! Will the changes make Berkeley a better place? Berkeley deserves a vibrant downtown area that we can all enjoy, where we can comfortably shop locally and share our unique community. We do not have that now. I think we all want to improve our town without sacrificing those aspects of Berkeley that we value.

The city council has adopted the Downtown Area Plan that encourages increased density in the downtown area by increasing allowable building heights for new buildings to as much as **180 feet** (see the Allowable Building Heights map, Figure LU-1, in this newsletter). Will this plan provide the downtown that we want?

The supporters of the Referendum on the plan have proposed modifications to the City's plan to, among other things, encourage more affordable housing and strong environmental standards. The city's plan cannot move forward until we all vote on the Referendum at the next regularly scheduled election.

And, there are other voices in Berkeley in support of other ways to improve our downtown, who would like for this pause in the process to allow us to consider other options.

This is a pivotal time for our Berkeley. Decisions that we make now will have enormous repercussions on the lives of all of the people of Berkeley. Let's look carefully at our choices.

Read the article that follows on the next page for

an overview of the downtown plan and visit www.northeastberkeleyassociation.org for a selection of links to other articles about the plan.

Then, come to the **NEBA fall meeting, November 12th**, to hear supporters of the Plan, the Referendum and other proposals and **ask your own questions!**

And read the fascinating article by Pat Mapps in this newsletter on the recent 20% increase in city refuse fees in a controversial and unusual Prop 218 Protest process that equated the failure to protest as the act of approving the refuse fee increase! Because the City got "only" about 5,000 protests (they expected at most 800), not the necessary 50% plus one of 31,000 Berkeley property owners, it passed!

Whatever your opinion, you and your neighbors will have your opportunity to join the discussion about our downtown, Thursday, November 12.

Please join NEBA. Your membership dues support the newsletter mailings and public meetings where our voices can be heard! We need your support. If you have not yet renewed or joined, **NOW IS THE TIME!** Visit: www.northeastberkeleyassociation.org.

Sharon Eige

<p>QUESTIONNAIRE – NEBA members, please tell us what you think! Please use the questionnaire that you see on the flap of the envelope included with the newsletter to tell us what you would like to see in future newsletters and meetings. If you would like to contribute an article to the newsletter, let us know.</p>
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DOWNTOWN V. DOWNTOWN (The Berkeley Downtown Area Plan)

Mid 20th century Downtown Berkeley is now viewed as the idyllic golden age when Downtown was a safe, presentable, vibrant, family-friendly and revenue-generating destination for the entire Berkeley community. Since then, in good economic times and bad, there has been a steady decline in Downtown's diversity and fortunes. Many attribute the causes and symptoms of this decline to dysfunctional politics, increases in the antisocial and service-dependent populations, expansion of UC buildings and students westward, unacceptable levels of crime and scuzziness, and zoning tools inappropriate to successful revitalization.

After a series of unsuccessful Downtown Plans aimed at providing a framework and stimulus for revitalization, a new Downtown planning process was set in motion in 2005 when the City and UC entered into a controversial joint planning process for the Downtown. The official City rationale for this agreement, which ceded exclusive City planning and zoning power to a joint process with the University, was that it was the only way to manage and receive partial compensation for the inexorable westward expansion of UC. A Downtown Area Plan Advisory Committee (DAPAC) was established and met incessantly over the last few years to hammer out a new Downtown vision and plan. The product of this lengthy and contentious process, approved by a bare majority of DAPAC, was finally presented to the City Council and Planning Commission in early 2009 as a hard won compromise plan among the various interests represented on the DAPAC (see Figure LU-2). The Planning Commission and City Council proceeded to make and adopt certain changes pleasing to the DAPAC minority but unacceptable to the DAPAC majority. The DAPAC plan defenders initiated a successful petition drive to place the official City Downtown Plan before Berkeley voters in 2010. Until that time, the official plan cannot be implemented. There are now three options for the City: accept the DAPAC plan, modify the City plan in a manner to cause the withdrawal of the referendum, or await the outcome of the 2010 vote.

Berkeley residents need to think about the larger issues which are inherent in this dispute and central to any final plan and the future shape of Downtown. We now have a pause in the planning

process that provides an opportunity for public education and new input with potential for substantive changes to both plans.

Population Demographics

Should Berkeley be enabling increased resident population? If so, who should these new residents be and where should they be housed? Should we be providing more housing for students? For low-income persons? For higher-income persons? If we desire substantially more housing should it be located in the Downtown? Will this really revitalize Downtown? Note that even without a new plan, at least 1800 new housing units are projected for Downtown and this could rise to 2900 with either the DAPAC or official plan.

Density, Building Height

If we accept the prevailing notion of increasing population growth and locating it Downtown, what level of increased population density and concomitant increase in building numbers, height and bulk is acceptable? To make housing development work, do housing developers really need special public accommodation such as increased height (180 feet in the City's Plan – see Figure LU-1) and bulk limits, subsidies, zoning waivers, and reduced public mitigation requirements? Note that approximately ten new Downtown highrises are under consideration, including a few UC properties.

Mitigations and Public Benefits

What public benefits do we really want in exchange for any increase in height and density? More and more-required low-income housing? More park and open space? More family-friendly commercial uses? Required cultural and nonprofit uses? Child care? Contribution to enhanced public parking? Contribution to enhanced non-auto transportation? Guaranteed prevailing wage jobs?

Parking and Transportation

Should auto use and parking be severely curtailed and more transit-friendly measures be adopted?

What Kind of Downtown You Do Want?

NEBA members and guests will have the opportunity to raise and discuss the issues at the

November 12, 2009 NEBA General Meeting with an expert panel of elected officials and community leaders. We need to let our elected officials know what we really want for Downtown and what features will lure us back.

You will see links to other articles on the Downtown Area Plan and Referendum on www.northeastberkeleyassociation.org

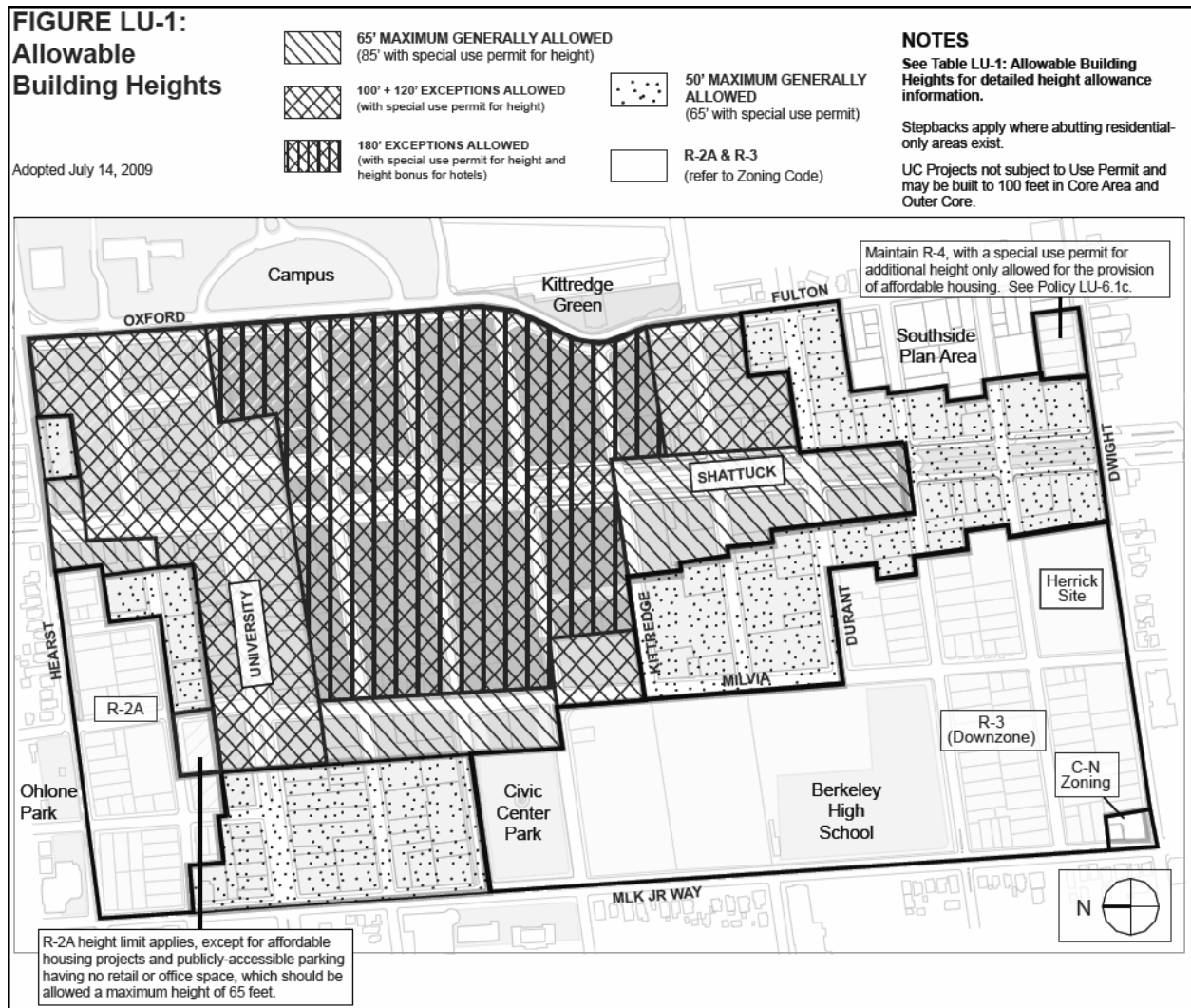


Figure LU-1 Allowable Building Heights map from the Downtown Area Plan as adopted by the city council July 14, 2009, Resolution Number 64,581-N.S <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=832> (where Table LU-1 and Policy LU-6.1c can be seen)

You can find the full text of the City’s Plan on the Berkeley Planning & Development Department website <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=832>.

Here is the Downtown Area Plan Referendum petition heading language, which appears on <http://greendowntownberkeley.org/?cat=6>:

We the undersigned voters of the City of Berkeley protest the passage of Resolution No. 64,581-N.S. adopting a new plan for our Downtown. The plan gives developers the right to build massive skyscrapers (up to 22 stories) without the environmental protections and improvements essential for a vibrant Downtown. The Council’s plan lacks good transit options, protections for all workers, mitigations for greenhouse gas emissions, and does nothing to preserve the quality of life for neighbors in and around the Downtown. This plan promotes tiny apartments and condos for millionaires, but fails to provide the affordable housing that ordinary people need to live in our community. Instead of reflecting our values, our future is placed in the hands of corporate developers and UC. The plan should be put before the voters.

**FIGURE LU-2:
Land Use Map**



NOTE

For detailed information on use, see Figure LU-1: Allowable Building Heights and Table LU-1: Allowable Building Heights.

Adopted July 14, 2009

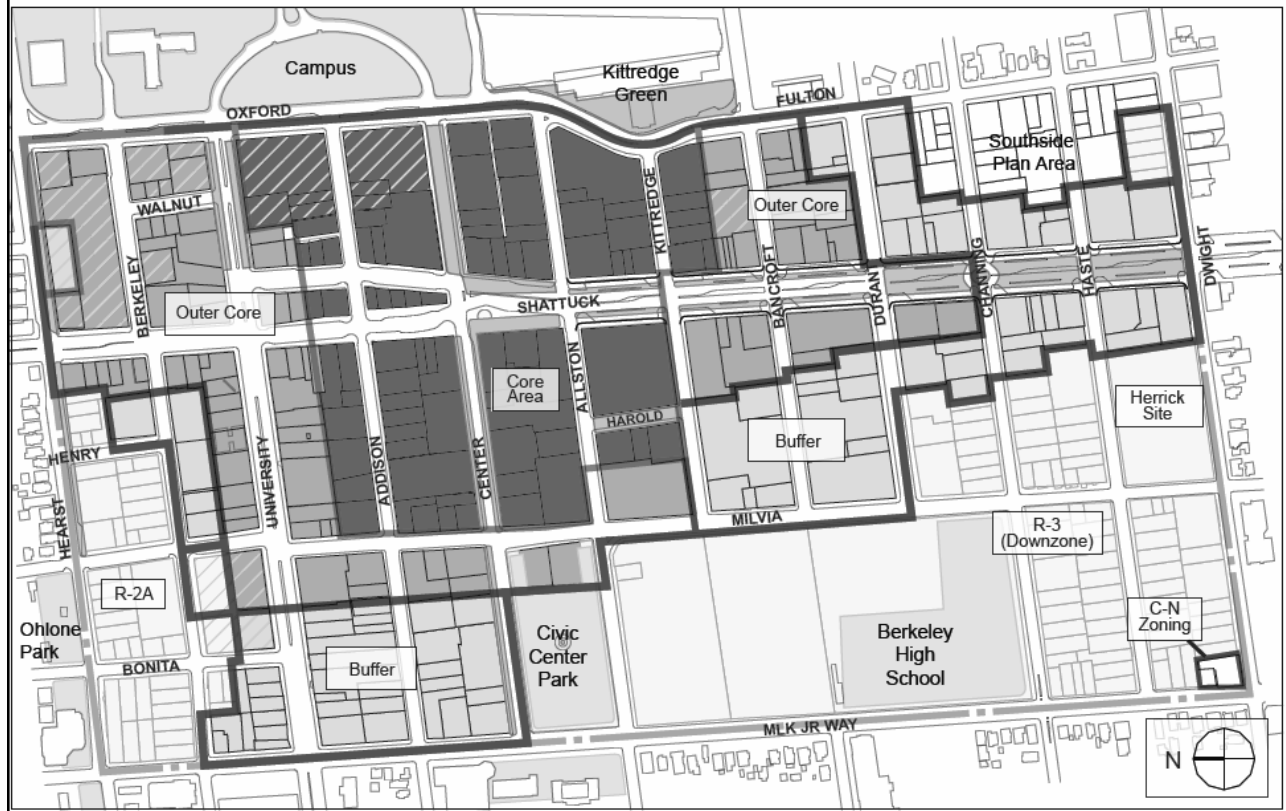


Figure LU-2 Land use map from the Downtown Area Plan as adopted July 14, 2009, Resolution Number 64,581-N.S
<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=832> (where Table LU-1 can be seen)

**COME TO THE NEBA GENERAL MEMBERSHIP MEETING NOVEMBER 12, 2009
BERKELEY'S DOWN AREA PLAN AND REFERENDUM AND ALTERNATIVES**

Thursday, November 12, 2009, 7:00 p.m.
(Come early, mingle with your neighbors 6:00-7:00 p.m.)
AT NORTHBRAE COMMUNITY CHURCH, HAVER HALL
941 The Alameda (at Los Angeles), Berkeley

- **SPEAKING FOR THE PLAN:**
Councilmembers Laurie Capitelli and Susan Wengraf
- **SPEAKING FOR THE REFERENDUM:**
Councilmember Jesse Arreguin, DAPAC member Patti Dacey
- **PRESENTING OTHER VIEWS:**
Fred Dodsworth, Marie Bowman, Austene Hall
- **YOUR QUESTIONS**

QUESTIONNAIRE – Don't forget the questionnaire on the envelope!

Fool me twice – shame on me: A practical Guide to surviving parcel ownership in the “Post Prop 13 Era” *By Pat Mapps*

As it pertains to Berkeley’s recent Refuse Collection Fee increase, the fool me once portion of this adage already has happened. Whether you know it or not, you as a Berkeley parcel owner, may be among about 26,000 (of 31,000) parcel owners who agreed to allow the City to increase your refuse rate by about 20% in the first year. The 26,000 parcel owners also agreed to an “annual inflator not-to-exceed 3% per year.”

If you are thinking, “Wait a minute. I don’t remember agreeing to anything like that,” you may find this Guide quite informative - and alarming. Because when it came to approving the proposed refuse rate increase, *the City counted your failure to Protest the proposed rate increase as the act of approving it.* Even if you were part of this painful process and tried to prevent the rate increase, you still may find this information useful. If you are **not** a parcel owner in Berkeley, please read on anyway to find out about how your City really operates.

A practical view of “Prop 13”

We all (think we) know what Prop 13 does. It regulates our property taxes, right? But in reality, most of us don’t really know much about Prop 13 even if we were here and voted for or against it in 1978. One mistake most of us probably make is to think of Prop 13 as something that happened in the past.

It turns out that “Prop 13” is a group of people (the Howard Jarvis Taxpayers Association or HJTA) endlessly opposing efforts by the government of California to raise revenue by increasing taxes and fees. “Prop 13” is an ongoing process which has very real effects on all California parcel owners.

So how’s Prop 13 working for you?

Several months ago, one of my neighbors made a rather astonishing statement to me. “My property taxes are \$800.” Although \$800 is neither the highest nor the lowest amount paid for a Berkeley property tax bill, it is a lot of money for ordinary people.

I repeated this statement to a friend from Ohio who asked if the \$800 was the annual or semi-annual amount. No. That is the monthly amount. Think about that for a moment. The median annual

household income in the US in 2007 was just over \$50,000. If my neighbor’s income is in that range, her property taxes consume almost 20% of it.

I mentioned this property tax amount to someone who lives in Dixon, New Mexico, on a five acre family compound. His reaction? “I’m retired on \$900 a month.” (I played mixed doubles with this man at a tennis resort just outside of Taos, New Mexico, so he is not living in poverty.)

So the fact that the HJTA is busy “herding the cats” in the California Legislature and the Governor’s Office is both good and bad news. The good news is that somebody has the will, organization, and resources to try to keep California taxes from becoming so high that they force regular people to live elsewhere. The bad news is that we as parcel owners have to adapt to the systems that HJTA’s efforts create.

Prop 218 Gives you the “Right to Veto All Local Taxes”

HJTA takes credit on its web site for **two** California Propositions – Prop 13 and Proposition 218. HJTA captions Proposition 218 as “Your right to vote on all local taxes,” and describes Prop 218 this way: “Proposition 218 gives you the right to vote on all local taxes, and requires taxpayer approval of assessments and property-related fees. Now bureaucrats can’t find sneaky ways to raise revenues!”

Maybe this was a good way to “sell” Prop 218 to voters, but our local “bureaucrats” still managed to find “sneaky ways” to raise our refuse rates. Remember that you may have agreed to this rate increase. Oh, that’s right. You are reading this Guide to find out exactly how you agreed to something that you don’t remember doing. Here’s how:

Prop 218 uses a concept called “Majority Protest” as the mechanism that allows you to “Vote on all Local Taxes.” (“Majority Protest” is **not** voting, so this Guide says Prop 18 gives you “The Right to **Veto** all Local Taxes.”) In most circumstances, “Majority Protest” means that if more parcel owners Protest than approve new or increased property related taxes or fees, the new or increased tax or fee is not allowed.

Except...*for increases in water, sewer and refuse rates.* In these three cases, “Majority Protest” means that **50% plus one of all parcel owners must object to the proposed increase in order to prevent its adoption.**

This exception explains how you agreed to something without knowing that you agreed to it. Perhaps you did not receive, or you did not open, or you did not read, or you did not understand, or you forgot or otherwise failed to act on the one letter (in an ordinary envelope) that the City sent “explaining” your “Right to Veto all Local Taxes” and “justifying” the need for the proposed refuse rate increase.

If you did not approve of the rate increase but did not Protest it, your disapproval was not tallied. As a result, instead of the roughly 15,501 Protests (50% + 1 of all parcel owners) that were required to veto the proposed rate increase, the City received “only” about 5,000 written Protests. With the “consent” of those who disapproved but did not Protest the increase, the City imposed the refuse rate increase. That’s right. **“Majority Protest” allowed the City to count 5,000 written Protests and 0 expressed approvals as a 26,000 to 5,000 margin of approval of the proposed rate increase.**

So what’s a parcel owner to do?

Parcel owners who spoke at the Public Hearing on the proposed increase roundly criticized the City’s Majority Protest Process, expressing concern that it was designed to elicit minimal participation and amounted to a “sneaky way to raise revenues.” This concern lent credence to rumor that City personnel expected fewer than 800 Protests. The speakers clearly believed that there were many among the Silent 26,000 whose silence reflected the poor design and implementation of the Majority Protest process rather than their support for the rate increase. Councilmember Max Anderson’s observation that City Council had obtained no information about parcel owners’ attitude toward the refuse rate increase and his abstention from voting for it showed his concern about the real message the Silent 26,000 was sending. Councilmembers Susan Wengraf later expressed her willingness to work to improve the Prop 218-enabling Ordinance with a view to ensuring the City receives written Protests from **every** parcel owner who disapproves of a proposed tax or fee increase.

Here are two things that you can do right now to help ensure that Berkeley parcel owners actually are able to exercise the “Right to Veto all Local Taxes”:

- Become better educated about Prop 218 and how Berkeley implemented it with respect to the refuse rate increase.

- Approach your Council Member with your ideas about how Berkeley’s implementation of “Majority Protest” should be improved.

The larger reality is that we are required to become a new kind of parcel owner/taxpayer in order effectively to exercise Prop 218’s promised “Right to Veto all Local Taxes.” Recognize that the “Majority Protest” mechanism is real and act accordingly. You can:

- Be vigilant; know when the City and other entities propose new or increased taxes or fees that are subject to a “Majority Protest.” ***The opportunity to Protest proposed new or increased fees almost certainly will not coincide any election cycle.***

- Read and evaluate the mandatory engineer’s report that describes and justifies the proposed new or increased fee or tax.

- Decide whether there are alternative strategies that enable the service in question to be delivered equally effectively for the same or lower costs.

- Communicate your thoughts to your Councilmember.

- Timely submit your Protest if you determine that the tax or fee increase should not take place.

- Communicate with your neighbors and friends to ensure that they are aware of the requirement and the methods available to Protest the tax or fee increase so that they are silent only if they intend to support the proposed new or increased tax or fee.

“Majority Protest” means that more than 50% of the parcel owners must object to water, sewer, and refuse fee increases in order to prevent their adoption. It is an important new reality that presents a rather high hill to climb.

“Majority Protest” succeeds in stopping a proposed EBMUD fee increase

Fortunately, there is good news to report. EBMUD pursued its recent water rate increases at almost the same time as Berkeley pursued the refuse rate increase – EBMUD sent its letters in

April and held its Public Hearing in early June. About 200,000 Protests were required to achieve a “Majority Protest” of the general water rate increase. This number of Protests was not submitted.

EBMUD also had proposed to eliminate an existing discount on non-potable water rates. EBMUD’s Board Minutes of the Public Hearing show that several organizations including the City of Oakland, the East Bay Asian Local Development Corporation, and the Sierra Club-San Francisco Bay Chapter spoke or provided written Protests of the elimination of the discount. As a result of these Protests, the EBMUD Board of Directors voted unanimously to retain the discount!

Even though there are clear differences between Berkeley parcel owners and the EBMUD non-potable water users who successfully used Prop 218 to avoid a rate increase by retaining an existing discount, I am confident that by taking the simple steps listed in this Guide, we can achieve successful “Majority Protests” of **unjustified** proposed new or increased taxes and fees. After all, thanks to the efforts of citizens, organizations, and neighborhood groups, the first attempt to achieve a “Majority Protest” yielded almost 5,000 Protests when the “experts” predicted that at most 800 Protests would be received.

You will see links to other articles on the “Majority Protest” on the NEBA website: www.northeastberkeleyassociation.org

Pat Mapps, a wife, Computer Systems Engineer, writer, and tennis enthusiast, has lived in Northeast Berkeley since 1983.

Our Backyard Birds *By Kevin Sutton*

Our friends at the Thousand Oaks Neighborhood Association had a delightful presentation on Berkeley’s local birds at their May General Meeting. Doug Greenberg, an environmental science teacher, gave a talk and slide show about the birds we see in Berkeley at various times of the year. He also suggested ways to attract birds to our own backyards.

His talk was so inspiring that we bought a little bird feeder the next day, along with a large sack of mixed seeds. We put the feeder up right outside our back window, and the birds discovered it within hours. Since then we’ve been entertained by a never-ending parade of birds large and small, along with a squirrel or two. It’s great fun to see the birds feeding and sharing, and sometimes bickering and chasing one another around. Besides the birds at the feeder, the activity has also attracted several ground feeding birds. The birds get plenty to eat, while the squirrels try various strategies to get at the feeder.

And a visit to your local nursery can provide you with a number of plants that will lure many birds throughout the year. There are a number of plants with red berries that attract exotic migratory birds who are passing through Berkeley for a mid-trip feast each year. It is a joy to see them as well as the hummingbirds who regularly service some of our blooming plants.

You can find a detailed summary of Doug’s talk at TONA’s website, www.tona.org. (And after that, take a look at NEBA’s website too, www.northeastberkeleyassociation.org.)

Berkeley Burglaries by Beat, Area 1 *By Officer Casimiro Pierantoni #96, Area Coordinator-Area 1, Community Services Bureau, Berkeley Police Department* cpierantoni@cityofberkeley.info

(See map for exact boundaries of each beat on:

http://www.ci.berkeley.ca.us/uploadedFiles/Police/Level_3_-_General/AreaCoord051708.pdf)

The preliminary data for September shows similar residential burglary numbers for Beats 1, 3, and 18, but does also show a significant increase of burglaries in Beat 2 (12 burglaries - similar to the Beat 2 total for September 2008). Your local patrol officers, along with our Property Crimes Detectives, are aware of the increase and are taking steps to address it. You can do your part by always making certain your home is secure, and immediately reporting suspicious behavior you witness in your neighborhood.

Beats	June	July	Aug
1	6	7	4
2	6	7	3
3	3	4	2
18	4	2	2
Totals	19	20	11*

* (August 2008: 35 burglaries)

Contact your Berkeley city government with your questions and concerns. They want to hear from you!
 City Council Roster Contact Information: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=18496>

North East Berkeley Association
P.O. Box 7477, Landscape Station
Berkeley, CA 94707

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Enclosed is my check for:

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North East Berkeley Association (NEBA) is a nonpartisan community organization whose mission is to inform, educate, and advocate for the interests of Berkeley residents of local electoral Districts 5 and 6 (roughly coincident with the 94707 and 94708 zip codes). Civic issues of particular interest and concern include municipal fiscal responsibility, local taxes and fees, public safety, public education, and basic neighborhood services. NEBA is informed and guided in its mission by the single-family zoning and homeowner status of most of NEBA residents. NEBA does not support or oppose any political candidates or parties. However, NEBA does hold candidate and issue forums, thereby stimulating interest and discussion. On occasion, NEBA will offer analysis, opinion, and a recommended position on important local issues. To accomplish its mission, NEBA publishes a newsletter and holds community meetings, each at least twice annually. Its Board of Directors meets monthly and Board subcommittees more often as needed.