

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, October 12, 2021
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87357139470>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **873 5713 9470**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Recess Items

1. **Contract: Murray Building, Inc. for Cazadero Camp Jensen Dormitory Construction Project**

From: City Manager

Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess: 1. Approving the plans and specifications for the Cazadero Camp Jensen Dormitory Project, Specification No. 21-11443-C; 2. Accepting the bid of Murray Building, Inc. as the lowest responsive and responsible bidder for the amount of \$1,329,000; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the Project in accordance with the approved plans and specifications with Murray Building, Inc. in an amount not to exceed \$1,461,900 which includes a 10% contingency.

Financial Implications: Camps Fund - \$1,461,900

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

2. **Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets**

From: Councilmember Taplin (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Recommendation: Adopt second reading of Ordinance No. 7,784 amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on:

1. Ninth Street between Dwight Way and Heinz Avenue
2. Addison Street between San Pablo Avenue and Sixth Street;
3. Allston Way between San Pablo Avenue and Sixth Street;
4. Bancroft Way between San Pablo Avenue and Sixth Street;
5. Channing Way between San Pablo Avenue and Fourth Street;
6. Dwight Way between San Pablo Avenue and Sixth Street;
7. Camelia Street between Eighth Street and Ninth Street;
8. Eighth Street between Jackson Street and Camelia Street;
9. Ninth Street between Camelia Street and Cedar Street;
10. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
11. Virginia Street between Shattuck Avenue and Euclid Avenue;
12. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
13. Heinz Avenue between Ninth Street and San Pablo Avenue;
14. Russell Street between San Pablo Avenue and Shattuck Avenue;
15. Russell Street between Telegraph Avenue and Claremont Avenue;
16. California Street between Hopkins Street and University Avenue;
17. California Street between Dwight Way and Russell Street;
18. King Street between Russell Street and Stanford Avenue;
19. Milvia Street from Dwight Way to Russell Street;
20. Bowditch Street from Bancroft Way to Dwight Way;

Consent Calendar

21. Hillegass Avenue from Dwight Way to Woolsey Street
22. Addison from San Pablo to Sacramento
23. Allston San Pablo to Sacramento
24. Bancroft from San Pablo to Sacramento
25. Addison San Pablo to Curtis
26. Cowper from San Pablo to Curtis
27. Byron from Addison to Bancroft
28. Curtis from University to Dwight
29. Browning from Addison to Dwight
30. West from Addison to Allston
31. Valley from Bancroft to Dwight
32. Acton from Addison to 66th.
33. Bonar from University to Dwight
34. Edwards from Bancroft to Dwight
35. Matthews from Dwight to Russell
36. Mabel from Dwight to 66th.
37. Derby from San Pablo to Sacramento
38. Ward from San Pablo to Sacramento
39. Oregon from San Pablo Park to Sacramento
40. Burnett from San Pablo to Acton
41. Dohr from Ward to Prince
42. Haskell from San Pablo to Acton
43. Harmon from Idaho to California
44. Prince from Acton to California
45. 66th from Mabel to California

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

3. **Amending BMC Section 14.56.040 to Reduce the Commercial Weight Limit on Marin Ave**

From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Droste (Co-Sponsor)

Recommendation: Adopt second reading of Ordinance No. 7,785–N.S. amending Berkeley Municipal Code (BMC) Section 14.56.040 to reduce the commercial vehicle weight limit from four tons gross weight to three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Consent Calendar

4. **Ordinance for a Shared Electric Micromobility Permit Program**

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,786–N.S. adding Berkeley Municipal Code Chapter 14.63 and amending Chapter 14.68 to establish the Shared Electric Micromobility Permit Program and related parking regulations.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

5. **Adoption of the Baseline Zoning Ordinance (BZO)**

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,787–N.S. rescinding the current Berkeley Municipal Code (BMC) Title 23 and adopting the new Baseline Zoning Ordinance (BZO) as BMC Title 23 with an effective date of December 1, 2021.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

6. **Update Guidelines and Procedures for City Council Office Budget Expenditure Accounts**

From: City Manager

Recommendation: Adopt a Resolution: 1. Rescinding Resolution No. 65,540-N.S.; and 2. Updating the guidelines and procedures for City Council Office Budget Expenditure Accounts to allocate for Mayor and Councilmember Office staff salaries and fringe benefits for Legislative Assistant position to be adjusted annually consistent with any increase provided to the SEIU Local 1021 Community Services Unit and Part-Time Recreation Leaders Association (CSUPTRLA) Unit.

Financial Implications: See report

Contact: Rama Murty, Budget Office, (510) 981-7000

7. **City Council Rules of Procedure and Order Revisions**

From: City Manager

Recommendation: Adopt a Resolution revising Appendix C of the City Council Rules of Procedure and Order to refine practices for holding public meetings via video conference technologies; clarifying the Council procedures for moving an item from the Action to Consent Calendar; removing Appendix D; and rescinding any preceding amendatory resolutions.

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 8. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 12, 2021**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Zero Waste Fund - \$750,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 9. Proposed Ordinance Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020**
From: City Manager
Recommendation: 1. Adopt the first reading of an Ordinance (Attachment 1) which modifies the language of Paragraph 'NN.' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and which will expand the existing local code amendment that requires the installation of fire sprinklers in new structures and the retrofit fire sprinklers into existing structures that currently exists in Fire Zone 3 to include structures located in Berkeley Fire Zone 2;
2. Adopt a Resolution (Attachment 2) setting forth findings of local conditions that require more stringent building standards than those provided by the 2019 California Fire Code and that amends Resolution number 69,178–N.S.; and
3. In compliance with state law on adopting such more restrictive building standards, hold a public hearing following the first reading and before the second reading, and schedule the public hearing for October 26, 2021.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473
- 10. Purchase Order: Braun Northwest for Two 2022 North Star 155-1 Type 1 Ambulances**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in HGACBuy contract bid procedures, and authorizing the City Manager to execute a purchase order for two (2) 2022 North Star 155-1 Type 1 Ambulances with Braun Northwest, Inc. in an amount not to exceed \$650,000.
Financial Implications: Measure FF - \$650,000
Contact: Abe Roman, Fire, (510) 981-3473, Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 11. Purchase Order: Nicholas K Corp DBA “The Ford Store” San Leandro for Five Ford F-250 4X4 Pickup Trucks**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Alameda County bid procedures and authorizing the City Manager to execute a purchase order for five (5) Ford F-250 4X4 Pickup Trucks with Nicholas K Corp DBA “The Ford Store” San Leandro in an amount not to exceed \$322,000.
Financial Implications: Measure FF - \$322,000
Contact: Abe Roman, Fire, (510) 981-3473, Liam Garland, Public Works, (510) 981-6300
- 12. Contract No. 32100181 Amendment: Alameda County Healthcare Services Agency**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100181 with Alameda County Healthcare Services to increase the total contract amount by \$62,000 for a total contract amount not to exceed \$100,000 for the period of May 1, 2021 to July 31, 2024 for epidemiology and program evaluation services. The contract will serve the needs of the Public Health Division in providing the program evaluation required under the 3-year Prop 64 Cohort 2 grant funding that was awarded to the City of Berkeley in May 2021.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 13. Appointment of Fire Chief**
From: City Manager
Recommendation: Adopt a Resolution confirming the appointment of Abraham Roman as the Fire Chief to be effective October 17, 2021 at an annual salary of \$268,990.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 14. Classification and Salary: Establish Program Manager I and II Classifications**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 68,709-N.S., Classification and Salary Resolution for Public Employees Union, Local One to include the classification of Program Manager I and II Classifications with an hourly salary range of \$51.7326 - \$62.4561 effective October 12, 2021.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Consent Calendar

- 15. Transfer Tax Refund for 1685 Solano Avenue**
From: City Manager
Recommendation: Adopt a resolution authorizing the City Manager to grant a transfer tax refund of an estimated \$121,250 to the Bay Area Community Land Trust (BACLT) to support the acquisition and renovation of 1685 Solano Avenue and BACLT's operation of the property as affordable housing.
Financial Implications: General Fund - \$121,250
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 16. Contract No. 112798-2 Amendment: Geographic Technologies Group for Additional Geographic Information System (GIS) Projects**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 112798-2 with Geographic Technologies Group (GTG) for Geographic Information System (GIS) professional services, for a total not to exceed \$100,000 and for a total contract value of \$499,411 from September 14, 2016 to June 30, 2023.
Financial Implications: FY22 IT Cost Allocation - \$100,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 17. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$492,000 through September 30, 2022.
Financial Implications: See report
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 18. Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in the amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Council Consent Items

19. **City Policy Regarding Scheduling City Meetings on Significant Religious Holidays**
From: Mayor Arreguin (Author), Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution establishing an official City of Berkeley policy to avoid scheduling of meetings of the City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on any religious holiday that incorporates significant work restrictions and direct the City Manager to identify those holidays in consultation with community religious leaders.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, (510) 981-7100
20. **Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas**
From: Councilmember Taplin (Author), Councilmember Kesarwani (Author)
Recommendation: In order to deter gun violence and obtain evidence to solve criminal investigations, adopt the following recommendations: 1. Authorize the City Manager to install security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime, including appropriate arterial streets serving as entry into and exit out of the City of Berkeley; 2. Refer to the City Manager an environmental safety assessment of the high crime areas specifically in South and West Berkeley; 3. Refer costs for security cameras and lighting to the Annual Appropriations Ordinance (AAO) #1 budget process. We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever. Key intersections entering and leaving Berkeley for security camera installation could include those listed below. Arterial intersections along University, Ashby and Alcatraz in close proximity to gun violence in South and West Berkeley should be prioritized: 6th/University, 7th/Ashby, San Pablo Ave./Ashby, Sacramento/Alcatraz, Alcatraz/Adeline, Ashby/Telegraph, Gilman/6th, College/Alcatraz, Ashby/Domingo, Ashby/Claremont. Other locations within Berkeley may include the following: University/San Pablo, University/Sacramento, Sacramento/Ashby, George Florence Park, 10th/Bancroft, 8th/Channing, 8th/Addison.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Council Consent Items

21. Ghost Gun Ordinance

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Droste (Co-Sponsor)
(Reviewed by the Public Safety Committee)

Recommendation: Adopt first reading of an Ordinance amending the Berkeley Municipal Code to prohibit any person other than a licensed manufacturer or importer from possessing, selling, offering for sale, transferring, purchasing, transporting, receiving, or manufacturing an unfinished firearm frame or receiver that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law; and prohibiting any person from possessing, manufacturing or assembling a firearm that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law.

Policy Committee Recommendation: Send the item, with a positive recommendation, to Council and directed the author to work with the City Attorney's office to finalize a draft Ordinance and to submit the item as a time critical item for inclusion in the October 12, 2021 Council agenda.

Financial Implications: Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

22. Letter to Senate Budget Committee Chair Sen. Skinner Regarding Berkeley Pier

From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)

Recommendation: Send a letter to State Senator Nancy Skinner (D-Berkeley), Chair of the Senate Budget Committee, requesting state budget allocations for urgent infrastructure needs at the Berkeley Municipal Pier.

Financial Implications: None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Council Consent Items

- 23. Infrastructure and Affordable Housing Finance Plan for Adeline Corridor**
From: Councilmember Bartlett (Author)
Recommendation: Refer to the November Annual Appropriation Ordinance an allocation of \$200,000 to fund a Consultant to design and implement an infrastructure and affordable housing finance strategy for the Adeline Corridor Plan that was adopted by the City Council on December 8, 2020. The proposed analysis should examine the feasibility of various infrastructure financing tools, such as an Enhanced Infrastructure Finance District (EIFD), Community Facilities District, Affordable Housing Authority, Community Revitalization and Investment Authority, pursuit of state and Federal grants, and other public and private financing tools. The project team should determine which financing mechanism(s) would be most appropriate to fund elements of the Adeline Corridor Plan, and future community-oriented projects. Upon identifying the appropriate funding tools, the consultant would then proceed with implementation based on further feedback from City Council and the community.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 24. Adopt a Resolution in Support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**
From: Councilmember Harrison (Author)
Recommendation: Adopt a resolution in support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit. end copies of the resolution to Senators Feinstein and Padilla, Congresswoman Lee, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 25. Adopt a Resolution Denouncing Texas Anti-Abortion Law (SB 8) and Reaffirming Reproductive Freedom in Berkeley**
From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution to denounce the Texas abortion law, Senate Bill (SB) 8, banning most abortions after six weeks of pregnancy. The resolution will also reaffirm the City of Berkeley's commitment to reproductive freedom.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Council Consent Items

26. **Support for H.R. 3755 and S.1975 – Women’s Health Protection Act of 2021**
From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution in support of H.R. 3755 and S.1975 – Women’s Health Protection Action of 2021 (Rep. Chu) (Sen. Blumenthal) and send copies to House Representatives Judy Chu and Barbara Lee; Senators Richard Blumenthal, Dianne Feinstein and Alex Padilla; Vice President Kamala Harris and President Joe Biden.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

Action Calendar – Public Hearings

27. **ZAB Appeal: 1205 Peralta Avenue, Variance/Use Permit #ZP2020-0060**
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to deny Zoning Permit #ZP2020-0060 for a Variance to legalize the elimination of two off-street parking spaces by conversion of an existing 18 foot x 20 foot garage to habitable space, and a Use Permit to legalize the addition of three bedrooms on a lot that is non-conforming for density, lot coverage, setbacks, usable open space and parking.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400
28. **Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04** *(Continued from September 28, 2021) (Item contains revised material)*
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – Old Business

29. **Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee) (Continued from September 14, 2021)*
From: Agenda & Rules Committee: Mayor Arreguin, Councilmember Hahn, Councilmember Wengraf
Recommendation:
Take one of the following actions: 1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or 2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.
Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Action Calendar – Old Business

- 30. Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) (Continued from September 14, 2021)*
From: Councilmember Harrison (Author)
Recommendation:
Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags by December 31, 2021.
As part of the series of meetings, the Commissions should: 1. strive to conduct community/business outreach and education events to include, but not limited to the following entities: a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors); b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and 2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.
Policy Committee Recommendation: Make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the FITES Committee.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 31. Objective Standards Recommendations for Density, Design and Shadows**
From: Joint Subcommittee for the Implementation of State Housing Laws *(Continued from September 28, 2021) (Item contains supplemental material)*
Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.
Financial Implications: See report
Contact: Alene Pearson, Commission Secretary, (510) 981-7400

Action Calendar – New Business

32. Identifying City Council Referrals for Removal

From: City Manager

Recommendation: 1. Review the referrals marked as rescinded by the sponsoring Councilmember or District; 2. Consider the referrals identified by Councilmembers for further discussion; and 3. Approve the removal of referrals that have been marked as rescinded by the sponsoring Councilmember or District.

Financial Implications: None

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

Council Action Items

33. Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

From: Councilmember Harrison (Author)

Recommendation: Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year.

Financial Implications: General Fund - \$500,000

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>. Agendas and agenda reports may

be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

~~~~~  
***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, September 30, 2021.***

A handwritten signature in blue ink that reads "Mark Numainville".

Mark Numainville, City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing through [Records Online](#).*

### **Homelessness Issues**

1. Eric Friedman
2. Paul Buddenhagen, Deputy City Manager
3. Yasuo Tanaka
4. Steve Kromer
5. Ben Buettner
6. Fran Haselsteiner
7. Alex Merenkov
8. Parisa Jorjani (2)
9. Jae Wheeler

### **Sustainable Housing at the North Berkeley BART**

- 10.11 similarly-worded form letters
11. Andrew Livsey
12. Deborah Gouailhardou
13. Laura Wise
14. Josh Gutwill
15. Lorna Brand
16. Barbara Fisher

### **Purchase Parcel of the Ashby Community Garden**

17. Carrie Jahde
18. Anna Henry
19. Veronica Graham

- 20. Mariam Queen and Alison Paskal
- 21. Carolyn Goldwasser
- 22. Jennifer Sowerwine
- 23. Nell Wollner
- 24. Larisa Cummings
- 25. Ingrid Good
- 26. Linda Currie
- 27. Elizabeth Barry

**New Construction Funding at 1740 San Pablo Avenue**

- 28. Kate Traynor, on behalf of BRIDGE Housing Corporation

**Zero Waste Commission Support**

- 29. Danielle Epifani
- 30. Chrise

**Fair Work Week Ordinance**

- 31. John Paluska, Owner of Comal

**Fire Hazard at 1040 University Avenue**

- 32. Ben Hubbell

**Vaccine + Masks**

- 33. City of Berkeley Youth Commission
- 34. Susan Imperial

**Oppose SB9**

- 35. Evan Meyer

**Investing in West Berkeley**

- 36. Becca Schonberg

**Cragmont Park Rental**

- 37. Denise

**Parking Ordinance Suggestion**

- 38. Tina Goldsmith

**Secondhand Marijuana and Tobacco Use**

- 39. Carol Denney

**Resolution to Support Redistribution of City Resources**

- 40. Anna Minsky

**RV Parking**

- 41. Charlene Washington

42. Maryann O'Sullivan

**Berkeley Shooting/Crime**

43. Michael O'Heaney

44. Jeff Vincent

45. Naomi Marks

46. Laralynn Rapoza

47. Imad Din

**Street Paving Equity**

48. Zach Franklin

49. Minda Berbeco

50. Kris Wiley

51. Maryann O'Sullivan

**Menstrual Problems After COVID Shots**

52. Vivian Warkentin

**Leonard Powell Saga**

53. Steve Martinot

**Save People's Park**

54. Diana Bohn

**Parking Permits**

55. Parisa Jorjani

**URL's Only**

56. Russbumper (3)

57. Vivian Warkentin

58. Barbara Gilbert

**Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.





Office of the City Manager

**RECESS ITEM**  
**CONSENT CALENDAR**  
 October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Contract: Murray Building, Inc. for Cazadero Camp Jensen Dormitory Construction Project

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess:

1. Approving the plans and specifications for the Cazadero Camp Jensen Dormitory Project, Specification No. 21-11443-C; and
2. Accepting the bid of Murray Building, Inc. as the lowest responsive and responsible bidder for the amount of \$1,329,000; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the Project in accordance with the approved plans and specifications with Murray Building, Inc. in an amount not to exceed \$1,461,900 which includes a 10% contingency.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

The Cazadero Camp Jensen Dorm Project is located in Sonoma County, in the Austin Creek canyon. The Project location is subject to heavy rains, and a short and challenging construction window. Bids were opened on July 8, 2021, which did not allow enough time to complete the bid review process prior to Council summer recess. Construction should start as soon as possible in order to complete the exterior of the new building prior to the winter storm season, which will allow for the interior work to proceed throughout the winter. This will allow the City to complete the project and not impact Camp programming in the spring of 2022. This Project is funded by insurance, and insurance has explicitly accepted the low bid that this resolution awards.

**FISCAL IMPACTS OF RECOMMENDATION**

Funding for the contract is available in the Camps Fund 125 (budget code 125-52-543-581-0000-000-461-662110- PRWEM16004). The cost of this this contract is anticipated to be entirely covered by insurance payments (partially received).

**CURRENT SITUATION AND ITS EFFECTS**

The City of Berkeley has owned Cazadero Camp in Sonoma County since 1927. In April of 2016, a landslide occurred at Cazadero Camp causing irreparable damage to the existing Jensen Dorm structure, Austin Creek Road and multiple trees. The hazardous trees were

Contract: Murray Building, Inc. for Cazadero Camp  
Jensen Dormitory Construction Project

removed, Jensen Dormitory demolished and the debris removed, and the permanent landslide repair work (including repair of Austin Creek Road) completed. Reconstruction of the Jensen Dormitory is the final step to completing the repairs associated with the landslide. Construction is anticipated to take approximately 10-months to complete.

**BACKGROUND**

The 33-acres Cazadero Camp has been leased by the City to Cazadero Performing Arts Camps for over 60 years. The Camp provides a dynamic music education program for young musicians ages 10-18 including both summer camp music programs and JumpStart in Music, a low-cost weekend Camp for school district music programs. The reconstruction of the Jensen Dormitory will restore the full capacity of the Camp. The total cost estimate for the Cazadero Landslide Repair Project is \$3.3M. Project costs are anticipated to be covered by insurance.

On June 17, 2021, the City issued a request for bids for the reconstruction of the Cazadero Camp Jensen Dormitory (Spec No. 21-11443-C). On July 8, 2021 the City received three bids. Murray Building, Inc. submitted a bid of \$1,329,000 and is the lowest responsive and responsible bidder.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE**

This Project replaces a destroyed building. The replacement building has been designed to meet current building code, representing a significant improvement in energy and water efficiency compared to the prior structure. The new Jensen Dormitory includes all-electric equipment, systems and appliances. Solar is not feasible in this heavily forested location; however, the design incorporates passive heating and cooling techniques and requires the use of low-carbon concrete. The Project does not include any irrigation, and ultra-low-flow water fixtures are used throughout the building.

**RATIONALE FOR RECOMMENDATION**

Three bids were submitted for the Project and Murray Building Inc. is the lowest responsive and responsible bidder for the Project.

**ALTERNATIVE ACTIONS CONSIDERED**

None

**CONTACT PERSON**

Scott Ferris, Director, PRW, 981-6700  
Liza McNulty, Project Manager, PRW, 981-6437

Attachments:

- 1: Resolution  
Exhibit A: Bid Abstract

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

CONTRACT: MURRAY BUILDING, INC. FOR THE CAZADERO CAMP JENSEN  
DORMITORY PROJECT

WHEREAS, the City has owned the Cazadero Camp since 1927; and

WHEREAS, in April, 2016 a landslide destroyed the Jensen Dormitory; and

WHEREAS, an invitation for bids was duly advertised and three bids were opened on July 8, 2021 and Murray Building, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, funding for the contract is available in the Camps Fund 125 (budget code 125-52-543-581-0000-000-461-662110- PRWEM16004).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to approve the plans and specification No. 21-11443-C for the Cazadero Camp Jensen Dorm Project.

BE IT FUTHER RESOLVED that the Council of the City of Berkeley accepts the bid of the lowest responsive and responsible bidder, Murray Building, Inc.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extension, and/or change orders until completion of the Project in accordance with the approved plans and specifications with Murray Building, Inc. for the Cazadero Camp Jensen Dormitory Project in an amount not to exceed \$1,461,900 which includes a 10% contingency for unforeseen circumstances. A record signature of said agreements and any amendments to be on file in the Office of the City Clerk.

Exhibit A: Bid Abstract

Exhibit A: Bid Abstract



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

Spec #  
21-11443-C

Bid Date: 7/8/2021

FOR: Cazadero Camp Jensen Dormitory

|    | Bidders                       | Base Bid     | Bid Bond | Addenda (2) | required w/ bid |      |           |       |
|----|-------------------------------|--------------|----------|-------------|-----------------|------|-----------|-------|
|    |                               |              |          |             | Reg./Exp.       | Subs | Non-Coll. | Certs |
| 1  | Murray Building, Inc.         | \$1,329,000  | X        | X           | X               | X    | X         | X     |
| 2  | FRC, Inc                      | \$1,560,000  | X        | X           | X               | X    | X         | X     |
| 3  | M3 Intergrated Services, Inc. | \$ 1,448,000 | X        | X           | X               | X    | X         | X     |
| 4  |                               |              |          |             |                 |      |           |       |
| 5  |                               |              |          |             |                 |      |           |       |
| 6  |                               |              |          |             |                 |      |           |       |
| 7  |                               |              |          |             |                 |      |           |       |
| 8  |                               |              |          |             |                 |      |           |       |
| 9  |                               |              |          |             |                 |      |           |       |
| 10 |                               |              |          |             |                 |      |           |       |

Bid Recorder: Josh Roben *JR* 7/8/2021

Bid Opener: Darryl Sweet *DS*

Project Manager: Liza McNulty *McNulty* 7-8-2021

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390 Email: finance@ci.berkeley.ca.us

## ORDINANCE NO. 7,784-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 14.56.070 TO ADD NEW SECTIONS OF ROAD IN THE LIST OF LOCATIONS PROHIBITING THE USE OF CERTAIN STREETS BY COMMERCIAL VEHICLES EXCEEDING 3 TONS GROSS VEHICLE WEIGHT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 14.56.070 of the Berkeley Municipal Code is amended to read as follows:

**14.56.070 Prohibiting the use of certain streets by commercial trucks exceeding three tons gross vehicle weight.**

A. It is unlawful for any person to operate any commercial vehicle exceeding three tons gross vehicle weight on the following portions of streets, hereafter referred to as "restricted streets":

1. Hearst Avenue between 6th Street and San Pablo Avenue;
2. Hearst Avenue between San Pablo Avenue and Sacramento Street;
3. 7th Street between University Avenue and Cedar Street;
4. 8th Street between University Avenue and Cedar Street;
5. 9th Street between University Avenue and Cedar Street;
6. 10th Street between University Avenue and Cedar Street;
7. Delaware Street between San Pablo Avenue and 6th Street;
8. Delaware Street between San Pablo Avenue and Sacramento Street;
9. Virginia Street between San Pablo Avenue and 6th Street;
10. Virginia Street between San Pablo Avenue and Sacramento Street;
11. Francisco Street between San Pablo Avenue and Sacramento Street;
12. Hopkins Street west of Gilman Street;
13. Blake Street between Shattuck Avenue and Telegraph Avenue;
14. Blake Street between San Pablo Avenue and Sacramento Street;
15. Parker Street between Shattuck Avenue and Telegraph Avenue;
16. Carleton Street between Shattuck Avenue and Telegraph Avenue;
17. Carleton Street between San Pablo Avenue and Sacramento Street;
18. Channing Way between San Pablo Avenue and Sacramento Street;
19. Derby Street between Shattuck Avenue and Telegraph Avenue;
20. Ward Street between Shattuck Avenue and Telegraph Avenue;
21. Stuart Street between Shattuck Avenue and Telegraph Avenue;
22. Oregon Street between Shattuck Avenue and Telegraph Avenue;
23. Parker Street between San Pablo Avenue and Sacramento Street;
24. Russell Street between Shattuck Avenue and Telegraph Avenue;
25. Howe Street between Ellsworth Street and Telegraph Avenue;

26. Fulton Street between Ashby Avenue and Dwight Way;
27. Ellsworth Street between Ashby Avenue and Dwight Way;
28. Dana Street between Ward Street and Dwight Way;
29. Spaulding Avenue between Dwight Way and Addison Street;
30. California Street between Dwight Way and University Avenue;
31. Jefferson Avenue between Dwight Way and University Avenue;
32. McGee Avenue between Dwight Way and University Avenue;
33. Roosevelt Avenue between Dwight Way and Addison Street;
34. McKinley Avenue between Dwight Way and Addison Street;
35. Addison Street between Sacramento Street and Martin Luther King Jr. Way;
36. Allston Way between Sacramento Street and Martin Luther King Jr. Way;
37. Bancroft Way between Sacramento Street and Martin Luther King Jr. Way;
38. Channing Way between Sacramento Street and Martin Luther King Jr. Way;
39. Grant Street between Dwight Way and University Avenue;
40. Cedar Street east of 6th Street;
41. Dwight Way between San Pablo Avenue and Martin Luther King Jr. Way;
42. Claremont Avenue between Ashby Avenue and Belrose Avenue;
43. Belrose Avenue between Claremont Avenue and Derby Street;
44. Derby Street between Belrose Avenue and Warring Street;
45. Warring Street between Derby Street and Dwight Way;
46. Piedmont Avenue between Dwight Way and Bancroft Way;
47. Milvia Street between Dwight Way and Hopkins Street;
48. The Uplands between Claremont Avenue and Tunnel Road;
49. Panoramic Way between Canyon Road and Berkeley/Oakland city limits.;
50. Kains Avenue between Virginia Street and Harrison Street;
51. Virginia Street between Shattuck Avenue and Martin Luther King Jr. Way,
52. Francisco Street between Shattuck Avenue and Martin Luther King Jr. Way,
53. Delaware Street between Shattuck Avenue and Martin Luther King Jr. Way,
54. Hearst Avenue between Shattuck Avenue and Martin Luther King Jr. Way,
55. Berkeley Way between Shattuck Avenue and Martin Luther King Jr. Way.
56. Tenth Street between University Avenue and Dwight Way;
57. Ninth Street between University Avenue and Dwight Way;
58. Eighth Street between University Avenue and Dwight Way;
59. Seventh Street between University Avenue and Dwight Way
60. Addison from San Pablo to Sacramento
61. Allston San Pablo to Sacramento
62. Bancroft from San Pablo to Sacramento
63. Addison San Pablo to Curtis
64. Cowper from San Pablo to Curtis
65. Byron from Addison to Bancroft

66. Curtis from University to Dwight
67. Browning from Addison to Dwight
68. West from Addison to Allston
69. Valley from Bancroft to Dwight
70. Acton from Addison to 66th.
71. Bonar from University to Dwight
72. Edwards from Bancroft to Dwight
73. Matthews from Dwight to Russell
74. Mabel from Dwight to 66th.
75. Derby from San Pablo to Sacramento
76. Ward from San pablo to Sacramento
77. Oregon from San Pablo Park to Sacramento
78. Burnett from San Pablo to Acton
79. Dohr from Ward to Prince
80. Haskell from San Pablo to Acton
81. Harmon from Idaho to California
82. Prince from Acton to California
83. 66th from Mabel to California

B. All inter-city buses and tourist buses will be prohibited on these streets. School buses, emergency vehicles, and buses converted for use by disabled people will be allowed to use three-ton commercial truck weight limit routes.

C. The provisions of this section shall not apply to:

1. Any vehicle subject to Sections 1031 through 1036 of the California Public Utilities Code (governing certain common carriers engaged in the transportation of passengers for compensation);
2. Any vehicle owned by a public utility company or a licensed contractor while necessarily in use in the construction, installation or repair of any public utility;
3. Any commercial vehicle using any restricted street for the purpose of (a) making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on such restricted street; or (b) delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon any restricted street for which a building permit has previously been obtained;
4. Any vehicle owned, leased, operated or controlled by any licensed contractor while necessarily in use in the construction, maintenance, or repair of a public works project, or by any highway carrier regulated by the Public Utilities Commission while transporting any materials to or from a public works project, when the bids for such project were opened prior to the adoption of the ordinance establishing this section, unless an alternate direct route is provided substantially within and by the City.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

The foregoing Resolution was adopted by the Berkeley City Council on September 28, 2021 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



## ORDINANCE NO. 7,785-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 14.56.040, PROHIBITING THE OPERATION OF COMMERCIAL VEHICLES ON MARIN AVENUE BETWEEN GRIZZLY PEAK BOULEVARD AND THE CIRCLE EXCEEDING FOUR TONS GROSS VEHICLE WEIGHT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That subsection A of Section 14.56.040 of the Berkeley Municipal Code is amended to read as follows:

A. It is unlawful for any person to operate any commercial vehicle over three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle. Provided, however, that this section shall not apply to any commercial vehicle using said street when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on said portion of Marin Avenue or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such portion of Marin Avenue for which a building permit has previously been obtained therefore, providing the operator of said commercial vehicle enters and leaves said portion of Marin Avenue by the cross street either above or below the point of pickup or delivery. Provided, further, that this section shall not apply to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility. (Ord. 6799-NS § 1 (part), 2004: Ord. 3600-NS § 1, 1957)

B. The prohibitions established herein shall not be effective until appropriate signs are erected indicating the streets affected by this section. (Ord. 6526-NS § 1, 2000: Ord. 6508-NS § 1, 1999: Ord. 6426-NS § 1, 1998: Ord. 6351-NS § 1, 1996: Ord. 6265-NS § 1, 1994: Ord. 6102-NS § 1, 1992)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

The foregoing Resolution was adopted by the Berkeley City Council on September 28, 2021 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

## ORDINANCE NO. –N.S

AMENDING BERKELEY MUNICIPAL CODE TO ESTABLISH CHAPTER 14.63, AMENDING SECTION 14.68.010 DEFINING “MOTORIZED SCOOTER” AND AMENDING SECTIONS 14.68.120 AND 14.68.180 TO INCLUDE LANGUAGE FOR MOTORIZED SCOOTERS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

**Chapter 14.63**  
**Shared Electric Micromobility**

**Sections:**

- 14.63.010 Findings and purpose.**
- 14.63.020 Definitions.**
- 14.63.030 Term.**
- 14.63.040 Shared electric micromobility parking zone.**
- 14.63.050 Issuance of permits.**
- 14.63.060 Permit fees.**
- 14.63.070 Suspension or revocation.**
- 14.63.080 Penalties, liability and enforcement.**

**14.63.010 Findings and purpose**

The Council finds that the use of shared electric micromobility device sharing within Berkeley has numerous benefits, including improved mobility for residents, reduced personal vehicle ownership and vehicle miles traveled, and overall reduction in greenhouse gas emissions. The purpose of this Chapter is to facilitate shared micromobility within Berkeley by establishing a program under which permitted devices may operate within the City of Berkeley’s right-of-way, establish device parking requirements, and associated fees.

**14.63.020 Definitions**

A. “Shared electric micromobility device” or “device” means an electrically-powered device for short-term rental for point-to-point trips where, by design of the shared electric micromobility operator, the device is intended to remain in the public-right-of-way, even when not being rented, and is not required to be docked in a designated docking station for rental. “Devices” include electric scooters and electric-assisted bicycles.

a. “Device(s)” may include:

- i. “Electric Scooter” – any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is

powered by an electric motor, as defined in Section 407.5 of the California Vehicle Code.

- ii. “Electric Bicycle” – A Class 1 Electric Bicycle or Class 2 Electric Bicycle as defined in Section 312.5 of the California Vehicle Code.
- iii. “Electric Motorized Bicycle” – A fully motorized two-wheeled device with a seat and footrest and an electric motor of no more than 750 watts.
- iv. “Electric Tricycle” – a three-wheeled device with a seat and an electric motor of no more than 750 watts.
- v. “Adaptive Shared Electric Micromobility Device” or “Adaptive Device” – an electric scooter, tricycle, or bicycle that is accessible to people with various physical disabilities. Adaptive Devices must include three wheels (or be self-balancing), a seat, and a basket or storage area large enough to hold a cane.

- B. “Shared electric micromobility system operator” or “operator” is an entity that owns and/or operates a Shared Electric Micromobility System in the public-right-of-way. The term includes any employee, agent, or independent contractor hired or retained by the operator.
- C. “Shared electric micromobility permittee” or “permittee” is an entity that is issued a Permit by the City to operate a Shared Electric Micromobility System in the public-right-of-way.
- D. “Shared electric micromobility permit program” or “program” means the program under which the permit system is regulated.
- E. “Shared electric micromobility system” or “system” means a system providing Devices as defined above.
- F. “Shared electric micromobility user”, “user” or “customer” is any person that uses, rents, or rides a shared electric micromobility device or is a customer of the operator.

#### **14.63.030 Term**

Reserved

#### **14.63.040 Shared electric micromobility parking zone**

The shared micromobility parking zone boundaries will be established by a shared electric micromobility operator in consultation with the Public Works Department. Current and updated maps of the operator’s parking zones will be made available

through the operator's website and cell phone application. Individual devices must be parked at locations as permissible and described in BMC 14.68.180.

**14.63.050 Issuance of permits**

A. Permits to operate a shared electric micromobility system within the City of Berkeley shall be issued by the Public Works Department in accordance with requirements set forth in this chapter.

B. The Public Works Department shall issue rules and regulations consistent with this Chapter governing the issuance of permits, as well as the terms and conditions that define and regulate the program.

C. A shared electric micromobility operator may apply for any amount of devices they wish to deploy; however the City retains the right to cap or reduce that number at any time. The Public Works Department will make fleet size cap and reduction decisions based on device usage data and responsiveness of the operator in maintaining the organization and clear use of the public right-of-way.

D. The Public Works Department shall issue the permits with a maximum term of one year. Permits may be granted annually through the end of the City's fiscal year.

**14.63.060 Permit fees.**

Fees for Permits for the implementation and administration of this Chapter may be adopted by resolution of the City Council.

**14.63.070 Suspension or revocation.**

A. The City may suspend or revoke the status of any qualified operator for any violation of the provisions of this Chapter or regulations promulgated to implement this Chapter. During the time that the permit is suspended or revoked, it shall be unlawful for the Operator to exercise any of the rights granted under this Chapter.

B. The permittee shall be entitled to appeal the City's decision to suspend or revoke its Permit by filing a written notice of appeal with the City Manager within ten days from the date the notice of suspension or revocation is mailed.

C. The appeal shall clearly and concisely set forth the grounds upon which it is based.

D. If the permittee files a timely request for appeal, a hearing shall be held before the City Manager or their designee. The decision of the City Manager or their designee shall be final.

E. Pending the appeal hearing it shall be unlawful for the permittee to exercise its rights under this chapter.

**14.63.080 Penalties, liability, and enforcement.**

A. Every person who violates any provision of this chapter may be subject to administrative citations pursuant to Chapter 1.28.

B. Each violation of this chapter and each day of violation of this chapter shall be considered a separate and distinct violation thereof and the imposition of a penalty shall be as set forth in subsection A of this section for each and every separate violation and each and every day of violation.

Section 2. That Berkeley Municipal Code Title 14 "Division II. Bicycles" be amended to read as follows:

**Div. II Bicycles and Motorized Scooters**

Section 3. That Berkeley Municipal Code Section 14.68.010 is amended to read as follows:

**14.68.010 Definitions.**

A. "Bicycle" means a device upon which any person may ride, propelled exclusively by human power through a belt, chain or gears, and having either two or three wheels in a tandem or tricycle arrangement.

B. "Bicycle establishment" means and includes a business operated by any person, partnership, association or corporation, wherein new or used bicycles or bicycle parts are purchased, sold, dismantled or junked

C. "Motorized bicycle" means any two-wheeled or three-wheeled device having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor which produces less than two gross brake horsepower and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground. (Ord. 4957-NS §§ 1-3, 1976)

D. "Motorized scooter" means any two--wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding and is powered by a motor.

Section 4. That Berkeley Municipal Code Section 14.68.120 is amended to read as follows:

**14.68.120 Riding motorized bicycles and motorized scooters on sidewalk prohibited.**

No person shall ride or operate a motorized bicycle or motorized scooter on any sidewalk in the City. (Ord. 4957-NS § 14, 1976)

Section 5. That Berkeley Municipal Code Section 14.68.180 is amended to read as follows:

**14.68.180 Parking Restrictions**

No person shall park any bicycle, motorized bicycle, or motorized scooter against windows or parking meters or on the main-traveled portion of the sidewalk, nor in such manner as to constitute a hazard to pedestrians, traffic or property. (Ord. 4957-NS § 20, 1976)

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation





ORDINANCE NO. 7,787-N.S.

REPEALING ZONING ORDINANCE AND OFFICIAL ZONING MAP (BERKELEY MUNICIPAL CODE TITLE 23) AND ADOPTING NEW ZONING ORDINANCE AND OFFICIAL ZONING MAP

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the existing Berkeley Municipal Code Title 23, including the Official Zoning Map adopted by Berkeley Municipal Code Section 23A.16.010, is repealed.

Section 2. That a new Berkeley Municipal Code Title 23 is adopted as set forth in Exhibit A.

Section 3. That the new Official Zoning Map is adopted as set forth in Exhibit B.

Section 4. That the new Official Zoning Map maintains existing boundaries, but creates two new zoning districts (University Avenue Commercial [C-U] and Corridor Commercial [C-C]) from the General Commercial (C-1) zoning district.

Section 5. That the effective date of this Ordinance is December 1, 2021 and that the City Clerk is directed to codify an online version of the Zoning Ordinance that includes necessary technical edits, graphics, hyperlinks, and grammatical corrections.

Section 6. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 28, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

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- 23.108.010– Chapter Purpose
- 23.108.020– Zoning Districts
- 23.108.030– Zoning Map

## **23.102 INTRODUCTORY PROVISIONS**

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- 23.102.010 – Title
- 23.102.020 – Effective Date
- 23.102.030 – Authority
- 23.102.040 – Purpose of the Zoning Ordinance
- 23.102.050 – Applicability and Jurisdiction
- 23.102.060 – Emergencies
- 23.102.070 – Conflicting Provisions
- 23.102.080 – Transitional Provisions
- 23.102.090 – Severability
- 23.102.100 – Rules of Evidence and Procedure

### **23.102.010 – Title**

Municipal Code Title 23 is known and cited as the “City of Berkeley Zoning Ordinance” and referred to in this title as “the Zoning Ordinance.”

### **23.102.020 – Effective Date**

The Zoning Ordinance takes effect and is in force from and after [date of adoption].

### **23.102.030 – Authority**

The Zoning Ordinance is adopted under the authority in California Government Code Section 65850 and all other relevant laws of the State of California. If the Zoning Ordinance refers to a section of state law that is later amended or superseded, the Zoning Ordinance is deemed amended to refer to the amended section or the section that most closely corresponds to the superseded section.

### **23.102.040 – Purpose of the Zoning Ordinance**

- A. **General.** The purpose of the Zoning Ordinance is to implement the General Plan and adopted area plans and to protect the public health, safety, and welfare.
- B. **Specific.** The Zoning Ordinance is intended to:
  - 1. Encourage appropriate land uses and a harmonious relationship among land uses by regulating the location and type of allowed land uses and development.
  - 2. Provide for the appropriate intensity of development by regulating:
    - a. The establishment, density and change of uses;
    - b. The construction of buildings and additions; and
    - c. The size and coverage of lots.

3. Provide for adequate light and air by:
  - a. Limiting building height, bulk, and size; and
  - b. Requiring building setbacks from lot lines and separations between buildings.
4. Provide for adequate usable open space, off-street parking, and off-street loading spaces for specified land uses by:
  - a. Requiring reservations of land and structures for such purposes; and
  - b. Regulating the number, placement, and location of such spaces and areas.
5. Prevent adverse effects of commercial and manufacturing activities by:
  - a. Limiting the hours, intensity, presence of outdoor activities, and other aspects of commercial and manufacturing land uses; and
  - b. Limiting the number and size of commercial and manufacturing land uses in specified districts.
6. Provide review of major changes in buildings by regulating proposals for their demolition, conversion, or relocation.
7. Ensure that the construction and alteration of buildings in Non-Residential Districts is compatible with the existing neighborhoods by requiring Design Review to provide for a pleasing Berkeley environment and encourage excellence in design.
8. Protect Berkeley's existing housing stock by regulating the reduction in size, removal, demolition, or conversion of dwelling units, group living accommodations, and residential hotel rooms.
9. Promote the development of affordable housing for all persons and in particular for persons with low and moderate incomes.
10. Incorporate the substantive provisions of the Neighborhood Preservation Ordinance (Ordinance 4641-NS, not codified), a citizen initiative, to the extent permitted by law.

### **23.102.050 – Applicability and Jurisdiction**

#### **A. Applicability.**

1. **General.** The Zoning Ordinance applies to all property in Berkeley, including property owned by the City and other governmental entities, to the full extent permitted by law.
2. **Public Right-of-Way.** The Zoning Ordinance does not apply to uses and structures wholly in the public right-of-way, unless otherwise specified. Such uses and structures must comply with Encroachment Permit regulations in

Municipal Code Chapter 16.18 (Right-of-Way Encroachments and Encroachment Permits).

- B. **Compliance Required.** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations.
- C. **City Actions.** No City department, employee, or official may issue a permits or license for a use or structures that conflicts with the Zoning Ordinance. Any permit or license issued in conflict with the Zoning Ordinance is null and void. Nothing in this subsection is intended to create a mandatory duty under Government Code Section 815.6.
- D. **Approvals Required.** A land use may be established and a structure may be constructed, altered, or moved only after:
  - 1. All applicable project review and approval processes have been followed;
  - 2. All required permits and approvals have been obtained; and
  - 3. All required authorizations to proceed have been issued.
- E. **Other Regulations.** Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

### 23.102.060 – Emergencies

- A. **Deviations Allowed.** During a local emergency, the City Council may allow a land use or structure to be established without a Use Permit or other approval ordinarily required by the Zoning Ordinance.
- B. **Approval Procedures.**
  - 1. The City Council may approve such a land use or structure by the same vote required for the adoption of an urgency ordinance upon finding that:
    - a. An emergency exists as defined in Municipal Code Section 2.88.020—  
Emergency Defined; and
    - b. The use or structure is required to ameliorate the effects of the emergency.
- C. **Effective Date of Action.** Action by the City Council under this section is effective immediately.
- D. **Post-Emergency Requirements.**
  - 1. Uses and structures permitted under this section are no longer authorized after the City Council declares the emergency has ended.
  - 2. After the emergency has ended, uses and structures shall either:

- a. Be removed or discontinued; or
- b. Apply for all permits and approvals required by the Zoning Ordinance.

**23.102.070 – Conflict with Private Agreements**

- A. It is not the intent of the Zoning Ordinance to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties. If the Zoning Ordinance imposes a greater restriction than imposed by a private agreement, the Zoning Ordinance controls. Private agreements may impose greater restrictions than the Zoning Ordinance, and at its sole discretion, the City monitor or enforce private agreements.

**23.102.080 – Transitional Provisions**

- A. **Relation to Prior Zoning Ordinance.** The Zoning Ordinance supersedes the prior Zoning Ordinance codified in Municipal Code Title 23, including all Title 23 sub-titles and appendices.
- B. **Violations Continue.** A violation of the prior Zoning Ordinance continues to be a violation under this Zoning Ordinance unless the violation is brought into compliance with this Zoning Ordinance.
- C. **Pending Applications.**
  - 1. If the City deems an application complete but does not take final action on the application before the effective date of this Zoning Ordinance, the application remains subject to prior Zoning Ordinance in effect when the application was deemed complete.
  - 2. If an application is withdrawn before a decision, any re-application is subject to the requirements of this Zoning Ordinance.
- D. **Approved Projects.**
  - 1. Permits and other approvals valid on the effective date of this Zoning Ordinance remain valid until their expiration date.
  - 2. Projects with valid permits or approvals shall be completed in compliance with the standards in effect at the time of approval. If the permit or approval expires, future development shall comply with the requirements of this Zoning Ordinance.
- E. **Nonconformities.** A parcel, land use, or structure lawfully established before [effective date of Zoning Ordinance] that does not comply with this Zoning Ordinance is considered nonconforming and subject to the requirements in Chapter 23.324 (Nonconforming Uses, Structures, and Buildings).



**23.102.090 – Severability**

If any portion of the Zoning Ordinance is found invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the remaining portions of the Zoning Ordinance, which shall remain in full force and effect. The City Council declares that it would have passed the Zoning Ordinance and each of its portions, regardless of whether any portion is declared invalid or unconstitutional.

**23.102.100 – Rules of Evidence and Procedure**

Except as otherwise expressly provided in this Ordinance, formal rules of evidence or procedure which must be followed in a court of record in this state shall not apply. No action, inaction or recommendation made by any City official, employee, commission, board or other entity under this Ordinance shall be void or invalid or be set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission (hereinafter called error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

## 23.104 INTERPRETING THE ZONING ORDINANCE

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### Sections:

- 23.104.010 – Chapter Purpose
- 23.104.020 – Authority
- 23.104.030 – Rules of Interpretation
- 23.104.040 – Threshold Regulations
- 23.104.050 – Zoning Map

### 23.104.010 – Chapter Purpose

This chapter establishes rules and procedures for interpreting the Zoning Ordinance to ensure that it is applied and enforced in a consistent manner.

### 23.104.020 – Authority

The Zoning Officer has the authority to interpret the meaning and applicability of the Zoning Ordinance. Zoning Officer interpretations are subject to review and modification by the Zoning Adjustments Board (ZAB) and the City Council, with the ultimate decision-making power resting with the City Council.

### 23.104.030 – Rules of Interpretation

- A. **Meaning and Intent.** All language shall be construed according to the purpose and intent set out in Section 23.102.040 (Purpose of the Zoning Ordinance).
- B. **Minimum Requirements.** The Zoning Ordinance establishes minimum requirements to promote the public health, safety, and general welfare. When the Zoning Ordinance provides for discretion on the part of a City official or body, that discretion may be exercised to impose more stringent requirements as necessary to achieve the purpose and intent of the Zoning Ordinance set out Section 23.102.040 (Purpose of the Zoning Ordinance).
- C. **Harmonious Construction.** The City intends that all provisions of the Zoning Ordinance be construed harmoniously. When two or more provisions of the Zoning Ordinance appear to conflict, the City shall construe such provisions to give effect to both, if possible, by harmonizing them with each other. In cases of conflict, the more restrictive shall govern.
- D. **Headings, Illustrations, and Text.** In cases where text conflicts with any heading, table, or figure, the text controls.
- E. **Lists and Examples.** Unless otherwise specifically indicated, lists of items or examples that use terms such as “including,” “such as,” or similar language are intended to provide examples, not to be exhaustive lists of all possibilities.

- F. **Computation of Time.** References to days are consecutive calendar days unless otherwise stated. When business days are referenced, they include only days when City Hall is open. The end of a time period is computed by excluding the first day and including the last day. If the last day is a holiday observed by the City or a City Hall non-business day, that day is excluded.
- G. **Rounding of Fractional Numbers.** Unless otherwise stated, a fraction of one-half or more is rounded to the nearest highest whole number and a fraction of less than one-half is rounded to the next lowest whole number.
- H. **References to Other Regulations, Publications, and Documents.** Whenever reference is made to a resolution, ordinance, regulation, or document, it is construed as a reference to the most recent edition of such resolution, ordinance, regulation, or document, unless specifically stated.
- I. **Technical and Non-Technical Terms.** Words and phrases are construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law are construed and understood according to such meaning.
- J. **Terms Not Defined.** If there is a term used in the Zoning Ordinance that is not defined in this title, the Zoning Officer has the authority to provide a definition based upon intended meaning of the undefined term.
- K. **Public Officials and Agencies.** All public officials, bodies, and agencies to which references are made are those of the City of Berkeley, unless otherwise indicated.
- L. **Mandatory and Discretionary Terms.** The words “shall,” “will,” “must,” and “is” are always mandatory. The words “may” and “should” are advisory and discretionary terms.
- M. **Conjunctions.** Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
  - 1. “And” means that all connected items apply.
  - 2. “And/or” means that the connected words or provisions may apply singularly or in any combination.
  - 3. “Or” means that any one of the connected items may apply singularly but not in combination.
  - 4. “Either...or” means that the connected words or provisions shall apply singularly but not in combination.
- N. **Tenses and Plurals.** Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

**23.104.040 – Threshold Regulations**

To determine if a non-residential project application is subject to a requirement which applies only if certain development or use thresholds are reached, any construction or change of use which is subject to the same regulation and was completed within one year before the application is considered part of the same application.

**23.104.050 – Zoning Map**

**A. Zoning Map Boundaries.** Where uncertainty exists as to the boundaries of districts shown on the Zoning Map, the following rules apply:

1. Boundaries shown as approximately following lot lines are construed to follow the lot lines.
2. Boundaries shown as approximately following the centerlines of streets, highways, and alleys are construed to follow the centerlines.
3. Boundaries shown as approximately following city limits are construed to follow city limits.
4. Where a district boundary divides a lot, the location of the boundary is determined by the use of the scale appearing on the Zoning Map unless otherwise indicated by a legal description of the property.

**B. Lots Containing Two or More Districts.**

1. For lots containing two or more districts, each part of the lot is subject to the regulations of district in which it is located, except as allowed by Paragraph (2) below.
2. The City may apply the setback requirements in one part of a lot to a part of the lot located in another district with a Use Permit, subject to the following:
  - a. The development intensity (residential density and/or floor area ratio) of the project may not exceed the development intensity that would be allowed if the setbacks requirements are not adjusted; and
  - b. Allowed land uses in each part of the lot are only as permitted in the district in which it is located.

## 23.106 RULES OF MEASUREMENT

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### Sections:

- 23.106.010– Chapter Purpose
- 23.106.020– Lot Coverage
- 23.106.030– Floor Area, Gross
- 23.106.040– Floor Area, Leasable
- 23.106.050– Floor Area Ratio
- 23.106.060– Story
- 23.106.070– Setbacks
- 23.106.080– Building Separation
- 23.106.090– Height

### 23.106.010 – Chapter Purpose

This chapter establishes rules for the measurement of standards contained in the Zoning Ordinance.

### 23.106.020 – Lot Coverage

- A. **Lot Coverage Defined.** Lot coverage means all the area of a lot, as projected on a horizontal plane, which is:
  1. Enclosed by the exterior walls of buildings or enclosed accessory structures; or
  2. Covered by decks, porches, stairs and/or landings which cover an enclosed space or paved ground area.
- B. **Exclusions.** The lot coverage calculation excludes:
  1. Uncovered porches, landings and stairs;
  2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
  3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.

### 23.106.030 – Floor Area, Gross

- A. **Gross Floor Area Defined.** Gross floor area means the total gross horizontal areas of all floors of a building or enclosed structure.
- B. **Basements and Cellars.** Gross floor area includes usable basements and cellars that are either:

1. Below the roof and within the outer surface of the main walls of a main or accessory building (or the centerlines of party walls separating such buildings or portions of buildings); or
  2. Within lines drawn parallel to and 2 feet within the roof line of any building or portion of a building without walls.
- C. **Access Features in Multi-Story Buildings.** For a multi-story building with a covered or enclosed stairways, stairwells, or elevator shafts, the horizontal area of these features is counted only once at the floor level of their greatest area of horizontal extent.
- D. **Excluded Areas.** The following areas are excluded from gross floor area calculation:
1. Covered or uncovered areas used for off-street parking or loading spaces.
  2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
  3. Mechanical, electrical, and telephone equipment rooms below finished grade.
  4. Areas which qualify as usable open space.
  5. Arcades, porticoes, and similar open areas for non-residential uses which are:
    - a. Located at or near street level;
    - b. Accessible to the general public; and
    - c. Are not designed or used as sales, display, storage, service, or production areas.
- E. **Covered Pedestrian Access Features for Non-Residential Uses.** For non-residential uses, gross floor area includes pedestrian access interior walkways or corridors, or interior courtyards, walkways, paseos or corridors covered by a roof or skylight.
- F. **Mezzanines.** Gross floor area includes the floor area of a mezzanine.

**23.106.040 – Floor Area, Leasable**

- A. **Leasable Floor Area Defined.** Leasable floor area means the total interior floor area of a commercial lease space available for use by a single business.
- B. **Included Areas.** Leasable floor area includes all sales, customer, display, shelving, assembly, seating, counter, kitchen, storage, and office areas.
- C. **Excluded Areas.** Leasable floor area does not include stairs, restrooms, and unenclosed walkways and areas serving more than one lease space such as

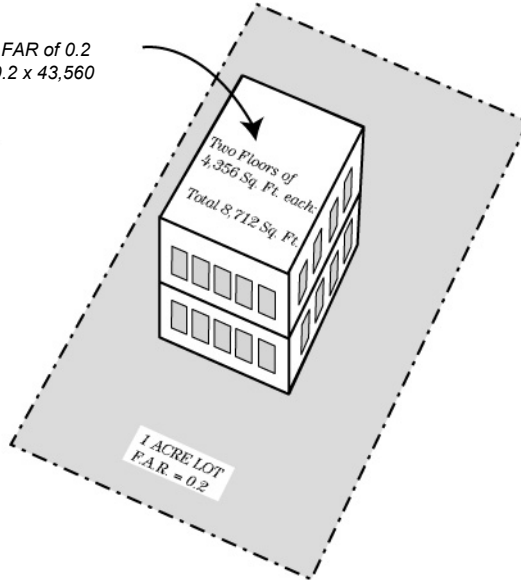
hallways, corridors, lobbies, maintenance areas, vestibules and other common areas.

### 23.106.050 – Floor Area Ratio

- A. **Floor Area Ratio Defined.** Floor area ratio (FAR) means the quotient resulting from division of the gross floor area of all buildings on a lot by the area of the lot. See Figure 23.106-1: Floor Area Ratio.

**FIGURE 23.106-1: FLOOR AREA RATIO**

*Maximum Floor Area for a FAR of 0.2  
on a 43,560 Sq. Ft. Lot = 0.2 x 43,560  
Sq. Ft. = 8,712 Sq. Ft.*

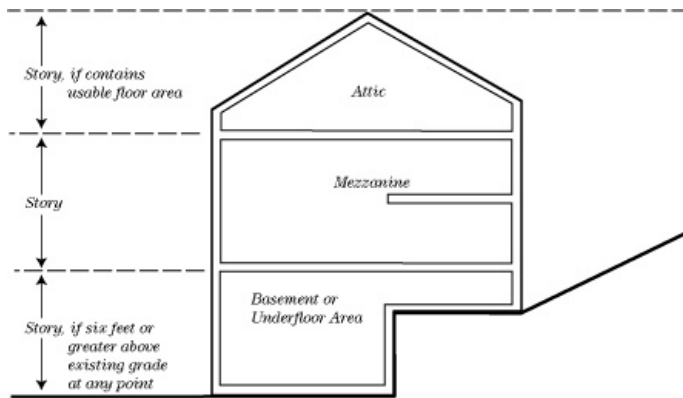


- B. **Development on Contiguous Lots.** In a single integrated development on contiguous lots, the permitted floor area ratio is calculated using the total combined area of all such lots.

### 23.106.060 – Story

- A. **Story Defined.** A story means the portion of a building included between the upper surface of any floor and the upper surface of the floor next above. See Figure 23.106-2: Story.

FIGURE 23.106-2: STORY



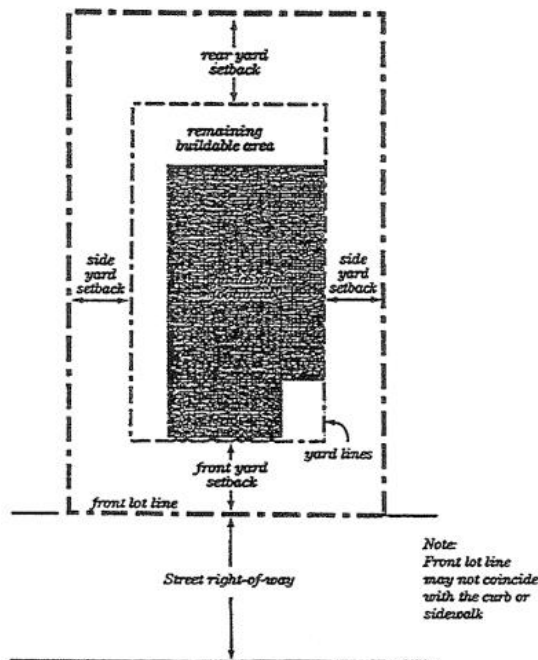
- B. **Topmost Story.** The topmost story of a building is the portion of a building between the floor of the topmost floor and the ceiling or roof above.
- C. **Below Grade Spaces.** If the finished floor level directly above the ceiling of a basement, garage structure, cellar, or unused underfloor space is more than 6 feet above existing grade at any point, such basement, cellar, or unused underfloor space is considered a story.
- D. **Penthouses.** A penthouse used for purposes other than shelter of mechanical equipment or shelter of vertical shaft openings in the roof is considered a story.
- E. **Mezzanines.** When the total floor area of a mezzanine exceeds 33.3 percent of the total floor area in that room, it constitutes an additional story.

### 23.106.070 – Setbacks

- A. **Measurement.** A required setback is measured as the distance between the surface of a building's outer wall and the applicable lot line.
- B. **Setback Areas.** As shown in Figure 23.106-3: Setbacks, a setback area means the required open area on a lot that is between a lot line and a setback line. A setback area must be unoccupied and unobstructed from the ground upward by any portion of a building or structure except as otherwise permitted by the Zoning Ordinance. Required setback areas are defined as follows:
  1. **Front Setback Area:** The area extending across the full width of the front of a lot from the front lot line to the front setback line.
  2. **Rear Setback Area:** The area extending across the full width of the lot between the rear lot line and the rear setback line.
  3. **Interior Side Setback Area:** The area between an interior side lot line and the side setback line, and extending from the front lot line to the rear lot line.
  4. **Street Side Setback Area:** The area between a street side lot line and the side setback line, and extending from the front lot line to the rear lot line.



FIGURE 23.106-3: SETBACKS



### 23.106.080 – Building Separation

- A. **Measurement.** Building separation is measured as the distance between the surface of a main building's outer wall and the outer wall surface of the closest neighboring main building.
- B. **Main Buildings with Different Height.** The required building separation between two or more main buildings which are of different heights is that required for the number of stories in the tallest building.

### 23.106.090 – Height

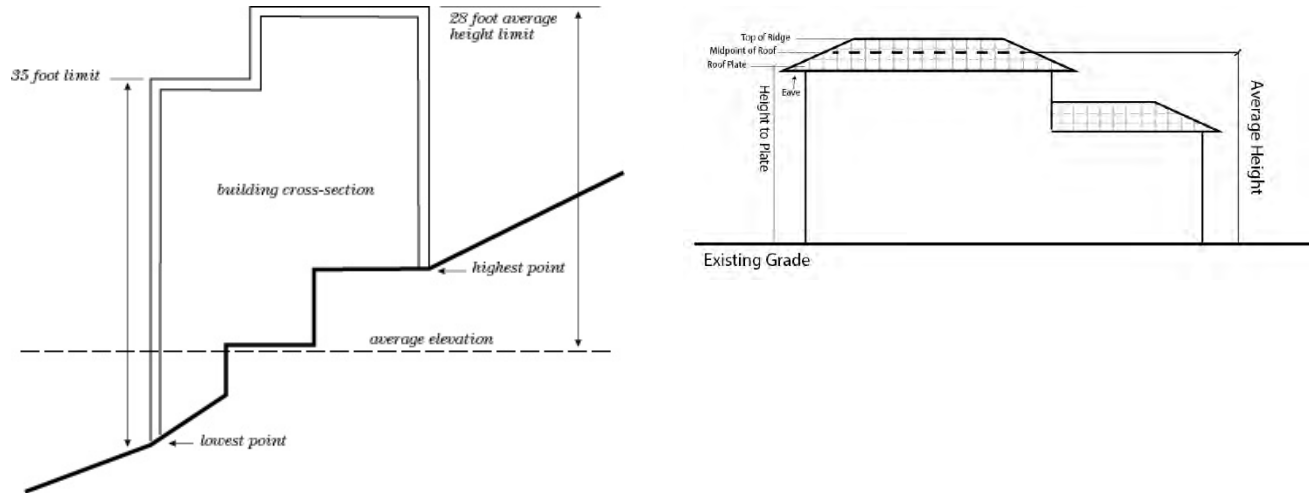
#### A. Average Building Height.

1. **Average Building Height:** The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See
2. Figure 23.106-4: Average Building Height.
3. Dormers are not included in the average building height calculation.

**TABLE 23.106-1: AVERAGE BUILDING HEIGHT MEASUREMENT**

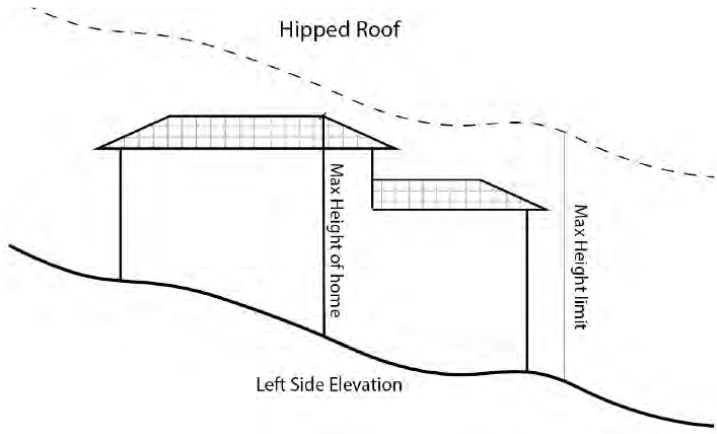
| ROOF TYPE                    | AVERAGE BUILDING HEIGHT MEASURED TO:                                                                                 |
|------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Sloped, hipped, gabled roofs | The average height of the roof between the ridge and where the eave meets the plate                                  |
| Roof with parapet walls      | The top of the parapet wall                                                                                          |
| Gambrel roof                 | The average height of the roof between the ridge and the point where the uppermost change in the roof's slope occurs |
| Mansard roof                 | The height of the deck                                                                                               |
| Shed roof                    | The height of the roof ridge                                                                                         |

**FIGURE 23.106-4: AVERAGE BUILDING HEIGHT**



**B. Maximum Building Height:** The vertical distance of a building at any point, within a given plane, from finished grade to the top of the roof or parapet walls. See Figure 23.106-5: Maximum Building Height

FIGURE 23.106-5: MAXIMUM BUILDING HEIGHT



## 23.108 ZONING DISTRICTS AND MAP

### Sections:

- 23.108.010– Chapter Purpose
- 23.108.020– Zoning Districts
- 23.108.030– Zoning Map

### 23.108.010 – Chapter Purpose

This chapter identifies the districts that apply to land within the Berkeley city limits and establishes the official Berkeley Zoning Map.

### 23.108.020 – Zoning Districts

- A. **Districts.** Berkeley is divided into districts as shown in Table 23.108-1: Zoning Districts. Unique regulations apply within each district as established in Chapters 23.202 – 23.208 (Zoning Districts).

**TABLE 23.108-1: ZONING DISTRICTS**

| DISTRICT SYMBOL              | NAME OF DISTRICT                       |
|------------------------------|----------------------------------------|
| <b>Residential Districts</b> |                                        |
| R-1                          | Single-Family Residential              |
| R-1A                         | Limited Two-family Residential         |
| ES-R                         | Environmental Safety Residential       |
| R-2                          | Restricted Two-family Residential      |
| R-2A                         | Restricted Multiple-family Residential |
| R-3                          | Multiple-family Residential            |
| R-4                          | Multi-family Residential               |
| R-5                          | High Density Residential               |
| R-S                          | Residential Southside                  |
| R-SMU                        | Residential Southside Mixed Use        |
| <b>Commercial Districts</b>  |                                        |
| C-C                          | Corridor Commercial                    |
| C-U                          | University Avenue Commercial           |
| C-N                          | Neighborhood Commercial                |
| C-E                          | Elmwood Commercial                     |

| DISTRICT SYMBOL                | NAME OF DISTRICT            |
|--------------------------------|-----------------------------|
| C-NS                           | North Shattuck Commercial   |
| C-SA                           | South Area Commercial       |
| C-T                            | Telegraph Avenue Commercial |
| C-SO                           | Solano Avenue Commercial    |
| C-DMU                          | Downtown Mixed-Use          |
| C-W                            | West Berkeley Commercial    |
| C-AC                           | Adeline Corridor Commercial |
| <b>Manufacturing Districts</b> |                             |
| M                              | Manufacturing               |
| MM                             | Mixed Manufacturing         |
| MU-LI                          | Mixed Use-Light Industrial  |
| MU-R                           | Mixed Use-Residential       |
| <b>Special Districts</b>       |                             |
| S                              | Specific Plan               |
| U                              | Unclassified                |

B. **Undesignated Areas.** Any area not specifically designated as a district on the Zoning Map is subject to the Unclassified (U) district requirements.

C. **Overlay Zones.**

1. The Zoning Ordinance and Zoning Map include the overlay zones shown in
2. Table 23.108-2: Overlay Zones. Overlay zones impose additional regulations on properties beyond what is required by the underlying district.
3. As shown in
4. Table 23.108-2: Overlay Zones, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (Overlay Zones). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.

**TABLE 23.108-2: OVERLAY ZONES**

| OVERLAY ZONE SYMBOL | NAME OF OVERLAY ZONE | LOCATION IN ZONING ORDINANCE |
|---------------------|----------------------|------------------------------|
|---------------------|----------------------|------------------------------|

| <b>Overlay Zones that Apply in Two or More Districts</b> |               |                                                                                   |
|----------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|
| H                                                        | Hillside      | 23.210.020– Hillside Overlay Zone                                                 |
| C                                                        | Civic Center  | 23.210.030– Civic Center District Overlay Zone                                    |
| <b>Overlay Zones that Apply in One District</b>          |               |                                                                                   |
| D                                                        | Dealership    | 23.204.100.B.5– C-SA South Area Commercial District (Automobile/Motorcycle Sales) |
| DA                                                       | Downtown Arts | 23.204.130– C-DMU Downtown Mixed-Use District (Arts Overlay District)             |

5. If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.

D. **Vacated Streets.** Where a public street or alley is officially vacated or abandoned, the land area of the street or alley acquires the district classification of the property to which it reverts.

**23.108.030 – Zoning Map**

- A. **Adoption.** The City Council hereby adopts the City of Berkeley Zoning Map (“Zoning Map”), which establishes the boundaries of all districts and overlay zones provided for in the Zoning Ordinance.
- B. **Incorporation by Reference.** The Zoning Map, including all legends, symbols, notations, references, and other information shown on the map, is incorporated by reference and made a part of the Zoning Ordinance.
- C. **Location.** The Zoning Map is kept, maintained, and updated electronically by the City Clerk, and is available for viewing by the public at the Planning and Development Department and on the official City of Berkeley website.

## DIVISION 2: ZONING DISTRICTS

### **23.202: Residential Districts**

- 23.202.010– Chapter Purpose
- 23.202.020– Allowed Land Uses
- 23.202.030– Additional Permit Requirements
- 23.202.040– Use-Specific Regulations
- 23.202.050– R-1 Single-Family Residential District
- 23.202.060– R-1A Limited Two-Family Residential District
- 23.202.070– ES-R Environmental Safety-Residential District
- 23.202.080– R-2 Restricted Two-Family Residential District
- 23.202.090– R-2A Restricted Multiple-Family Residential District
- 23.202.100– R-3 Multiple-Family Residential District
- 23.202.110– R-4 Multi-Family Residential District
- 23.202.120– R-5 High-Density Residential District
- 23.202.130– R-S Residential Southside District
- 23.202.140– R-SMU Residential Southside District

### **23.204: Commercial Districts**

- 23.204.010– Chapter Purpose
- 23.204.020– Allowed Land Uses
- 23.204.030– Additional Permit Requirements
- 23.204.040– Use-Specific Permit Requirements and Regulations
- 23.204.050– C-C Corridor Commercial District
- 23.204.060– C-U University Commercial District
- 23.204.070– C-N Neighborhood Commercial District
- 23.204.080– C-E Elmwood Commercial District
- 23.204.090– C-NS North Shattuck Commercial District
- 23.204.100– C-SA South Area Commercial District
- 23.204.110– C-T Telegraph Avenue Commercial District
- 23.204.120– C-SO Solano Avenue Commercial District
- 23.204.130– C-DMU Downtown Mixed-Use District
- 23.204.140– C-W West Berkeley Commercial District
- 23.204.150– C-AC Adeline Corridor Commercial District

### **23.206: Manufacturing Districts**

- 23.206.010– Chapter Purpose
- 23.206.020– Allowed Land Uses and Permit Requirements

- 23.206.030– Additional Permit Requirements
- 23.206.040– Use-Specific Regulations
- 23.206.050– Protected Uses
- 23.206.060– M Manufacturing District
- 23.206.070– MM Mixed Manufacturing District
- 23.206.080– MU-LI Mixed Use-Light Industrial District
- 23.206.090– MU-R Mixed Use-Residential District
- 23.206.100– Permit Findings

**23.208: Special Purpose Districts**

- 23.208.010– Specific Plan District
- 23.208.020– Unclassified District

**23.210: Overlay Zones**

- 23.210.010– Purpose of Overlay Zones
- 23.210.020– Hillside Overlay Zone
- 23.210.030– Civic Center District Overlay Zone



## 23.202 RESIDENTIAL DISTRICTS

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### Sections:

- 23.202.010– Chapter Purpose
- 23.202.020– Allowed Land Uses
- 23.202.030– Additional Permit Requirements
- 23.202.040– Use-Specific Regulations
- 23.202.050– R-1 Single-Family Residential District
- 23.202.060– R-1A Limited Two-Family Residential District
- 23.202.070– ES-R Environmental Safety-Residential District
- 23.202.080– R-2 Restricted Two-Family Residential District
- 23.202.090– R-2A Restricted Multiple-Family Residential District
- 23.202.100– R-3 Multiple-Family Residential District
- 23.202.110– R-4 Multi-Family Residential District
- 23.202.120– R-5 High-Density Residential District
- 23.202.130– R-S Residential Southside District
- 23.202.140– R-SMU Residential Southside District

### 23.202.010 – Chapter Purpose

This chapter identifies allowed land uses, permit requirements, and development standards for residential districts.

### 23.202.020 – Allowed Land Uses

- A. **Allowed Land Uses.** Table 23.202-1: Allowed Land Uses in Residential Districts identifies allowed land uses and required permits in the Residential Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements.
- B. **Unlisted Land Uses.** Any land use not listed in Table 23.202-1: Allowed Land Uses in Residential Districts is not permitted in the Residential District

**TABLE 23.202-1: ALLOWED LAND USES IN RESIDENTIAL DISTRICTS**

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply | RESIDENTIAL DISTRICTS                      |        |        |                                     |                                            |        |            |        |        |        | USE-SPECIFIC REGULATIONS<br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------|--------|-------------------------------------|--------------------------------------------|--------|------------|--------|--------|--------|-----------------------------------------------------------------------------------------------------------|
|                                                                                                                                             | R-1                                        | R-1A   | ES-R   | R-2                                 | R-2A                                       | R-3    | R-4        | R-5    | R-S    | R-SMU  |                                                                                                           |
| <b>Residential Uses</b>                                                                                                                     |                                            |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Accessory Dwelling Unit                                                                                                                     | See 23.306—Accessory Dwelling Units        |        | NP     | See 23.306—Accessory Dwelling Units |                                            |        |            |        |        |        |                                                                                                           |
| <b>Dwellings</b>                                                                                                                            |                                            |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Single-Family                                                                                                                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Two-Family                                                                                                                                  | NP                                         | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Multi-Family                                                                                                                                | NP                                         | NP     | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Group Living Accommodation                                                                                                                  | NP                                         | NP     | NP     | NP                                  | NP                                         | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Senior Congregate Housing                                                                                                                   | NP                                         | NP     | NP     | NP                                  | See 23.302.070.H– Use-Specific Regulations |        |            |        |        |        |                                                                                                           |
| Mixed-Use Residential                                                                                                                       | NP                                         | NP     | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| <b>Public and Quasi-Public Uses</b>                                                                                                         |                                            |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Child Care Center                                                                                                                           | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Club/Lodge                                                                                                                                  | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Columbaria                                                                                                                                  | AUP*                                       | AUP*   | NP     | AUP*                                | AUP*                                       | AUP*   | AUP*       | AUP*   | AUP*   | AUP*   | 23.302.070.C– Use-Specific Regulations                                                                    |
| Community Care Facility                                                                                                                     | See 23.202.040.A– Use-Specific Regulations |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Community Center                                                                                                                            | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Emergency Shelter                                                                                                                           | NP                                         | NP     | NP     | NP                                  | NP                                         | NP     | See 23.308 |        |        |        |                                                                                                           |
| Family Day Care Home, Large                                                                                                                 | ZC                                         | ZC     | ZC     | ZC                                  | ZC                                         | ZC     | ZC         | ZC     | ZC     | ZC     |                                                                                                           |
| Family Day Care Home, Small                                                                                                                 | ZC                                         | ZC     | ZC     | ZC                                  | ZC                                         | ZC     | ZC         | ZC     | ZC     | ZC     |                                                                                                           |
| Hospital                                                                                                                                    | NP                                         | NP     | NP     | NP                                  | NP                                         | UP(PH) | UP(PH)     | UP(PH) | NP     | UP(PH) |                                                                                                           |
| Library                                                                                                                                     | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Nursing Home                                                                                                                                | NP                                         | NP     | NP     | –                                   | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Park/Playground                                                                                                                             | ZC                                         | ZC     | UP     | ZC                                  | ZC                                         | ZC     | ZC         | ZC     | ZC     | ZC     |                                                                                                           |
| Public Safety and Emergency Service                                                                                                         | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Public Utility Substation/Tank                                                                                                              | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |

| ZC = Zoning Certificate<br><b>AUP = ADMINISTRATIVE USE PERMIT</b><br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply | RESIDENTIAL DISTRICTS |             |             |             |             |             |             |             |             |             | <b>USE-SPECIFIC REGULATIONS</b><br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                    | R-1                   | R-1A        | ES-R        | R-2         | R-2A        | R-3         | R-4         | R-5         | R-S         | R-SMU       |                                                                                                                  |
| Religious Assembly                                                                                                                                 | UP(PH)                | UP(PH)      | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      |                                                                                                                  |
| School                                                                                                                                             | UP(PH)                | UP(PH)      | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      |                                                                                                                  |
| <b>Commercial Uses</b>                                                                                                                             |                       |             |             |             |             |             |             |             |             |             |                                                                                                                  |
| Alcoholic Beverage Service                                                                                                                         | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | 23.310—Alcoholic Beverage Sales and Service                                                                      |
| Food Products Store                                                                                                                                | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | 23.202.140.B.3–R-SMU Residential Southside District                                                              |
| Food Service Establishment                                                                                                                         | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | 23.302.070.E–Use-Specific Regulations                                                                            |
| Hotel, Tourist                                                                                                                                     | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      |                                                                                                                  |
| Laundromat and Cleaner                                                                                                                             | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)      |                                                                                                                  |
| Office                                                                                                                                             | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | NP          | UP(PH)      |                                                                                                                  |
| Parking Lot/Structure                                                                                                                              | UP(PH)<br>*           | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | 23.302.070.G–Unenclosed Accessory Structures in Residential Districts<br><br>23.322.100– On-site Loading Spaces  |
| Personal and Household Service, General                                                                                                            | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | ZC*         | 23.202.140.B.2–R-SMU Residential Southside District                                                              |
| Retail, General                                                                                                                                    | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | 23.202.040.B–Use-Specific Regulations                                                                            |
| Veterinary Clinic                                                                                                                                  | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)      |                                                                                                                  |
| Video Tape/Disk Rental                                                                                                                             | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)      |                                                                                                                  |

| ZC = Zoning Certificate<br><b>AUP = ADMINISTRATIVE USE PERMIT</b><br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply | RESIDENTIAL DISTRICTS                         |        |        |        |        |        |        |        |        |        | <b>USE-SPECIFIC REGULATIONS</b><br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                    | R-1                                           | R-1A   | ES-R   | R-2    | R-2A   | R-3    | R-4    | R-5    | R-S    | R-SMU  |                                                                                                                  |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                        |                                               |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Commercial Excavation                                                                                                                              | UP(PH)                                        | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                                  |
| <b>Other Uses</b>                                                                                                                                  |                                               |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Accessory Uses                                                                                                                                     | See 23.302.020.A– General Use Regulations     |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Home Occupations                                                                                                                                   | See 23.302.040– Home Occupations              |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Short-Term Rental                                                                                                                                  | ZC*                                           | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | 23.314—Short-Term Rentals                                                                                        |
| Temporary Uses                                                                                                                                     | See 23.302.030– Temporary Uses and Structures |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Urban Agriculture, Low-Impact                                                                                                                      | ZC*                                           | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | 23.318—Urban Agriculture                                                                                         |
| Urban Agriculture, High-Impact                                                                                                                     | AUP*                                          | AUP*   | NP     | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | 23.318—Urban Agriculture                                                                                         |
| Wireless Telecommunication Facility                                                                                                                | See 23.332—Wireless Communication Facilities  |        |        |        |        |        |        |        |        |        |                                                                                                                  |

- C. **Use-Specific Regulations.** Uses subject to supplemental regulations are shown in Table 23.202-1: Allowed Land Uses in Residential Districts with an asterisk (\*) following the permit requirement (e.g., UP\*). The Use-Specific Regulations column in **Error! Reference source not found.** identifies the location of these regulations in the Zoning Ordinance.

### **23.202.030 – Additional Permit Requirements**

- A. **Residential Additions.** See Section 23.502.020.A– Defined Terms (“A” Terms) for residential addition definitions.

#### **1. Permits Required.**

- a. In all Residential Districts except for the ES-R district, residential additions require permits as follows:
  - i. Residential additions (up to 15 percent of lot area or 600 square feet, whichever is less): Zoning Certificate.
  - ii. Major residential additions (more than 15 percent of lot area or 600 square feet, whichever is less): AUP.
- b. In the ES-R district, residential additions require permits as follows:
  - i. Residential additions up to 10 percent of lot area or 200 square feet, whichever is less: Zoning Certificate.
  - ii. Major residential additions more than 10 percent of lot area or 200 square feet, whichever is less: Use Permit.

#### **2. Basis for AUP Decision.**

- a. To deny an AUP for a residential addition in all residential districts except for the ES-R district, the review authority must find that although the proposed residential addition satisfies all other Zoning Ordinance requirements, the residential addition would unreasonably obstruct sunlight, air, or views.
- b. To approve an AUP for a residential addition in the ES-R district, the review authority must make the finding in Subsection 23.202.070.H.6– ES-R Environmental Safety-Residential District (Land Use Intensification).

#### **B. Adding Bedrooms.**

1. In the R-1, R-1A, R-2, R-2A, and R-3 districts, adding a bedroom to a lot requires permits as follows:
  - a. Adding a first, second, third, or fourth bedroom to a lot: no permit required.
  - b. Adding a fifth bedroom to a lot: AUP.
  - c. Adding a bedroom to a lot beyond the fifth: Use Permit.

2. See Section 23.502.020.B– Defined Terms (“B” Terms) for bedroom definition.
  3. In the ES-R district, any alteration to create a new bedroom in a single-family detached home on a single lot requires an AUP. See Section 23.202.070.H.6 (Land Use Intensification) for required finding.
- C. **Changes to Nonconforming Structures.** See Section 23.324.050– Nonconforming Structures and Buildings for permits required to modify structures that do not conform to setback, height, and other development standards.
- D. **Accessory Structures.** For accessory structure permit requirements, see the following:
1. Section 23.304.060– Accessory Buildings and Enclosed Accessory Structures.
  2. Section 23.304.070– Unenclosed Accessory Structures in Residential Districts
  3. Section 23.304.080– Fences.

### **23.202.040 – Use-Specific Regulations**

#### **A. Community Care Facilities.**

1. **Permits Required.** Community care facilities in a Residential District require permits as follows:
  - a. Change of use: Zoning Certificate.
  - b. New construction: Use Permit.
2. **ES-R District.** Community care facilities in the ES-R district must comply with the following standards:
  - a. Maximum of six residents.
  - b. Permitted pursuant to Health and Safety Code Section 1566.3 when occupying a legally established existing single-family dwelling.

#### **B. General Retail.** In the R-4, R-5, R-S, and R-SMU districts, general retail uses must be:

1. Accessory to another use;
2. Contained within a building with no street access; and
3. Without displays of merchandise visible from the street.

### **23.202.050 – R-1 Single-Family Residential District**

#### **A. District Purpose.** The purpose of the Single-Family Residential (R-1) district is to:

1. Recognize and protect the existing pattern of development in the low-density, single-family residential areas of the city consistent with the General Plan;

2. Make housing available for persons who desire detached housing and a relatively large amount of usable open space;
3. Protect adjacent properties from unreasonable obstruction of light and air; and
4. Permit community facilities such as religious assembly uses, schools, parks, and libraries which serve the local population and are not detrimental to the immediate neighborhood.

**B. Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts

**C. Additional Permit Requirements.** See Subsection A of Section 23.202.030– Additional Permit Requirements (Residential Additions) and Subsection B of Section 23.202.030– Additional Permit Requirements (Adding Bedrooms).

**D. Development Standards.**

1. **Basic Standards.** See Table 23.202-2: R-1 Development Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-1 district are noted in Table 23.202-2: R-1 Development Standards.

**TABLE 23.202-2: R-1 DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                          | SUPPLEMENTAL STANDARDS        |
|----------------------------------------------|--------------------------|-------------------------------|
| Lot Area for New Lots, Minimum               | 5,000 sq. ft.            | 23.304.020– Lot Requirements  |
| Usable Open Space per Dwelling Unit, Minimum | 400 sq. ft.              | 23.304.090– Usable Open Space |
| Floor Area Ratio, Maximum                    | No maximum               |                               |
| Main Building Height, Average                |                          | 23.304.050– Building Height   |
| New Buildings or Non-Residential Additions   | 28 ft. and 3 stories [1] |                               |
| Residential Additions                        | 14 ft. [2]               |                               |
| Lot Line Setbacks, Minimum                   |                          | 23.304.030– Setbacks          |
| Front                                        | 20 ft.                   |                               |
| Rear                                         | 20 ft.                   |                               |
| Interior Side                                | 4 ft.                    |                               |
| Street Side                                  | 4 ft.                    |                               |
| Building Separation, Minimum                 | No minimum               |                               |
| Lot Coverage, Maximum                        | 40%                      | 23.304.120– Lot Coverage      |

| BASIC STANDARDS                                                                                                                                                                     | SUPPLEMENTAL STANDARDS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Notes:<br>[1] Maximum 35 ft. with an AUP.<br>[2] Height greater than 14 ft. up to 28 ft. allowed with an AUP. Height greater than 28 ft up to 35 ft allowed with an additional AUP. |                        |

**23.202.060 – R-1A Limited Two-Family Residential District**

- A. **District Purpose.** The purpose of the Limited Two-Family Residential (R-1A) district is to:
  1. Recognize and protect the existing pattern of low medium-density residential areas characterized by reasonable open and spacious type of development consistent with the General Plan;
  2. Protect adjacent properties from unreasonable obstruction of light and air;
  3. Allow flexibility in the use of property for residential purposes by permitting two dwelling units on one lot under limited conditions; and
  4. Appropriately regulate the rear and side setback areas for the construction of a dwelling unit in areas west of San Pablo Avenue.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts
- C. **Additional Permit Requirements.** See Subsection A (Residential Additions) and Subsection B (Adding Bedrooms) of Section 23.202.030– Additional Permit Requirements.
- D. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-3: R-1A Development Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-1A district are noted in Table 23.202-3: R-1A Development Standards.

**TABLE 23.202-3: R-1A DEVELOPMENT STANDARDS**

| BASIC STANDARDS        |                   | SUPPLEMENTAL STANDARDS       |
|------------------------|-------------------|------------------------------|
| Lot Area, Minimum      |                   | 23.304.020– Lot Requirements |
| New Lots               | 5,000 sq. ft.     |                              |
| For Two Dwelling Units | 4,500 sq. ft. [1] |                              |



| BASIC STANDARDS                                                                                                                        |                          | SUPPLEMENTAL STANDARDS                                   |
|----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------------------------------------|
| Usable Open Space Per Dwelling Unit, Minimum                                                                                           | 400 sq. ft. [2]          | 23.304.090– Usable Open Space                            |
| Floor Area Ratio, Maximum                                                                                                              | No maximum               |                                                          |
| Main Building Height, Average                                                                                                          |                          | 23.304.050– Building Height                              |
| New Buildings and Non-Residential Additions                                                                                            | 28 ft. and 3 stories [3] |                                                          |
| Rear Main Buildings                                                                                                                    | 22 ft. and 2 stories     |                                                          |
| Residential Additions                                                                                                                  | 14 ft. [4]               |                                                          |
| Lot Line Setbacks, Minimum                                                                                                             |                          | 23.304.030– Setbacks                                     |
| Front                                                                                                                                  | 20 ft.                   |                                                          |
| Rear                                                                                                                                   | 20 ft.                   |                                                          |
| Interior Side                                                                                                                          | 4 ft.                    |                                                          |
| Street Side                                                                                                                            | 4 ft.                    |                                                          |
| Interior and Street Side for Rear Main Building                                                                                        | 6 ft.                    |                                                          |
| Building Separation, Minimum                                                                                                           |                          | 23.304.040– Building Separation in Residential Districts |
| 1 story                                                                                                                                | 8 ft.                    |                                                          |
| 2 stories                                                                                                                              | 12 ft.                   |                                                          |
| 3 stories                                                                                                                              | 16 ft.                   |                                                          |
| Lot Coverage, Maximum                                                                                                                  |                          | 23.304.120– Lot Coverage                                 |
| Interior and Through Lot                                                                                                               | 40%                      |                                                          |
| Corner Lot                                                                                                                             | 45%                      |                                                          |
| Notes:                                                                                                                                 |                          |                                                          |
| [1] Maximum two units per lot.                                                                                                         |                          |                                                          |
| [2] Open space is not required for accessory dwelling unit.                                                                            |                          |                                                          |
| [3] Maximum 35 ft. with an AUP.                                                                                                        |                          |                                                          |
| [4] Height greater than 14 ft. up to 28 ft. allowed with an AUP. Height greater than 28 ft up to 35 ft allowed with an additional AUP. |                          |                                                          |
|                                                                                                                                        |                          |                                                          |

## 23.202.070 – ES-R Environmental Safety-Residential District

### A. District Purpose.

1. **General.** Because of its substandard vehicular access, steep slopes, inadequate water pressure and proximity to the Hayward Fault and vegetated wildlands, the Panoramic Hill area is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards. Panoramic Hill also includes one of Berkeley's most architecturally significant residential districts, which is listed in the National Register of Historic Places because of its association with the Arts and Crafts movement of the Bay Area Tradition.
2. **Specific.** The specific purpose of the Environmental Safety-Residential (ES-R) district is to:
  - a. Provide a means to implement the General Plan and the Hazard Mitigation Plan to reduce the potential for life loss, injury, and economic damage to Berkeley residents from earthquakes, wildfires, and landslides and to protect the City's unique character and values from being compromised by hazard events by reducing the vulnerability of one of the most unique and inaccessible neighborhoods in the Hill Hazardous Fire Area;
  - b. Protect the lives and property of Panoramic Hill residents in Berkeley and adjoining parts of Oakland and avoid destruction or damage to the natural environment through the application of special development regulations and by ensuring that the review of new development and alterations or additions to existing structures will require analysis and mitigation of geologic, seismic, and fire hazards;
  - c. Limit the uses of land permitted to those which are necessary to serve the housing and access needs of the district's inhabitants and will not put either current or future residents at risk due to the area's inadequate infrastructure and special vulnerability to natural hazards;
  - d. Protect the health and safety of current and future residents by ensuring that no new dwelling units will be built and no land may be subdivided to allow the construction of additional dwelling units until plans are in place that identify the future distribution, location, and extent of development in the Berkeley and Oakland neighborhoods of Panoramic Hill, including provisions to develop and maintain a system of public facilities and services adequate to meet the needs of the future population;
  - e. Establish procedures to ensure that the development review process provides for consideration of the cumulative impact of new construction, alterations, and changes in use that have the potential to increase the population or intensify the use of land in the district together with the impacts of other

projects on Panoramic Hill and within adjacent areas of Berkeley and Oakland;

- f. Restrict the size and occupancy of residential structures by imposing standards that reflect the district's limited capacity to accommodate additional population due to poor access, inadequate infrastructure, vulnerability to natural hazards and the fact that a majority of the existing development does not conform to standards that the City adopted in 1979;
- g. Assure the effective use of emergency measures available to save lives and property;
- h. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area; and
- i. Protect the integrity of the Panoramic Hill Historic District by ensuring that alterations to existing buildings and new construction maintain the existing pattern of development, are appropriate to the hillside setting, and do not impair the architectural significance of contributing structures.

**B. Interpretation.** Nothing in this section is intended or may be construed to overturn, nullify, or affect any recorded limitation of property in favor of the City. In case of conflict between this section and other provisions of the Zoning Ordinance, the more restrictive standards apply.

**C. Allowed Land Uses.**

- 1. **General.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- 2. **Rental of Rooms.** Rooms may be rented to a maximum of four persons on a single property. Occupancy of a single dwelling unit by a single household as defined in Chapter 23.502—Glossary is permitted.

**D. Additional Permit Requirements.** See Section 23.202.030.A— Additional Permit Requirements (Residential Additions) and 23.202.030.B (Adding Bedrooms).

**E. Specific Plan Required.**

- 1. The City may not approve an AUP, Use Permit, Parcel Map, or Tentative Map to allow a new dwelling unit in the ES-R district until the City Council adopts a Panoramic Hill Specific Plan (“the Plan”) in compliance with applicable law.
- 2. At a minimum, the Plan shall:
  - a. Show the proposed distribution, location, and extent of land uses in the ES-R district and the location and extent of the public facilities and services required to serve the land uses;

- b. Include proposals for water, wastewater, and stormwater systems and for a circulation system adequate to accommodate projected traffic and to provide emergency access to the ES-R district and a program of implementation actions including finance measures necessary to carry out those proposal; and
  - c. Include consideration of the needs and future growth of adjacent areas in the City of Oakland that are now or can feasibly be served by the proposed facilities and services.
3. The Zoning Adjustments Board (ZAB) may approve a new residential unit in the ES-R district only after finding that:
- a. The project is consistent with the Plan; and
  - b. The public facilities and services that the Plan requires have been provided or will be developed as a condition of approval.

**F. Environmental Assessment.**

**1. General.**

- a. Due to Panoramic Hill's inadequate infrastructure and special vulnerability to natural hazards, a project that is ordinarily insignificant in its impact on the environment may be significant if it occurs in the ES-R district.
- b. Any discretionary entitlement under the Zoning Ordinance or Subdivision Ordinance (Municipal Code Title 21) will not be considered exempt from environmental review pursuant to the California Environmental Quality Act, except for alterations to create bedrooms and residential additions with a gross floor area of up to 10 percent of the lot area or 200 square feet, whichever is less, and which otherwise meet all applicable standards of this section.
- c. Environmental review shall be based on documentation in the record including the reports as described in this section where applicable. Environmental review shall include consideration of the cumulative impact of new construction, alterations, and changes in use that would result in intensification of land use in combination with other projects on Panoramic Hill and adjacent areas that affect conditions in the area.
- d. For purposes of this section, any project that increases habitable floor area, increases the size or number of sleeping rooms, or has the potential to increase vehicular trips in the area is considered an intensification of land use.

2. **Reports Required.** All applications for construction and development in the ES-R district that are not exempt from environmental review require the following special studies:

- a. **New Construction.** All new construction requires a soils report, a geologic report, and a traffic impact study subject to the requirements in this section.
  - b. **Additions and Accessory Structures.** All new accessory structures and additions to existing structures that require the installation of a foundation require a soils report, subject to the requirements below. The Building Official may waive this requirement for additions with less than 50 square feet of gross floor area or detached non-habitable structures with less than 225 square feet of gross floor area.
3. **Soils Report.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a soils report shall be prepared by a civil engineer registered with the State of California, subject to the following requirements:
    - a. **Contents.** Based upon adequate test borings or excavations, the report shall assess the potential for landslides, ground shaking, and surface faulting. If the soils report indicates the presence of soil conditions which, if not corrected, could lead to structural defects, the report shall recommend corrective action that is likely to prevent structural damage to each structure proposed to be constructed.
    - b. **Review of Report.** The report shall be reviewed and approved by the City before issuance of any discretionary permit under the Zoning Ordinance, or before issuance of a building or grading permit if a discretionary permit is not required. The City may have the soils report independently reviewed by a licensed geotechnical engineer, registered by the state of California, the cost of which shall be borne by the applicant. The report’s recommended action shall be incorporated in the construction of each structure as a condition to the issuance of any building permit.
  4. **Geologic Report.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a geologic report in compliance with the Alquist-Priolo Earthquake Fault Zoning Act and related regulations shall be prepared by a certified engineering geologist, subject to the following requirements:
    - a. **Contents.** The report shall identify, describe, and illustrate potential hazards of surface fault rupture, seismic shaking, liquefaction or landslide.
    - b. **Review Conditions.** The report shall review of the local and regional seismic and other geological conditions that significantly affect the proposed use.
    - c. **Assessment.** The report shall assess conditions on or near the site that would contribute to the potential for damage to a proposed use from a seismic or other geological event, or the potential for a new use to create adverse effects upon existing uses because of identified geologic hazards. The

conditions assessed are to include, where applicable, rainfall, soils, slopes, water table, bedrock geology, and any other substrate conditions that may affect seismic response, landslide risk, or liquefaction potential.

- d. **Recommendations.** The report shall recommend building techniques, site preparation and mitigation measures, or setbacks necessary to reduce risks to life and structural damage to property.

5. **Traffic Impact Study.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a traffic study shall be prepared by a qualified traffic engineer or transportation planner for any project that may generate new trips, subject to the following requirements:

- a. **Content.** The report shall identify, describe, and illustrate traffic, parking, and roadway conditions in the project vicinity including design characteristics, topography, parking and traffic regulation, accident rates, and pavement condition and width.
- b. **Assessment.** The report shall assess how the project will affect traffic operations and emergency access based on the size, use, and location, and the proposed site design including driveway locations, turn movements to and from the project site, surrounding uses, locations of nearby intersections, and potential to create unsafe traffic conditions.
- c. **Recommendations.** The report shall recommend measures to reduce the project’s impact on traffic safety including site design, location of parking and driveways, and off-site improvements necessary to ensure that the project would not exacerbate traffic safety problems in the area.

**G. Projects in the Panoramic Hill Historic District.**

**1. Landmarks Preservation Commission Review.**

- a. Before the Zoning Officer or the ZAB may take action on AUP or Use Permit for a project in the Panoramic Hill Historic District that involves new construction, exterior alteration, or demolition, the Zoning Officer shall submit the application to the Landmarks Preservation Commission for review and an advisory recommendation.
- b. The purpose of this review is to ensure that proposed buildings, structures, landscaping, and other architectural and site design features are compatible with the design and appearance of existing buildings and structures in the Panoramic Hill Historic District that have established and contribute to its significant character.
- c. This requirement is in addition to but does not supersede any authority or responsibility the Landmarks Preservation Commission has pursuant to Municipal Code Chapter 3.2—Landmarks Preservation Commission.

2. **Parking Expansion.** An AUP is required for any project in the Panoramic Hill Historic District that expands an existing parking area or structure or creates additional parking to comply with the requirements of Chapter 23.322—Parking and Loading.
3. **Findings.** To approve any project involving exterior alterations, construction, demolition or site plan revisions within the Panoramic Hill Historic District, the review authority must find that:
  - a. The proposed work will not adversely affect the exterior architectural features of the subject property or the relationship between the subject structure or feature and its neighboring structures and surroundings, including facade, massing, scale, materials, setbacks, height, orientation, site design, and landscaping; and
  - b. The proposed work will not detract from or adversely affect the special historical, architectural and aesthetic characteristics of the Panoramic Hill Historic District.

**H. Development Standards.**

1. **Basic Standards.** See
2. Table 23.202-4: ES-R Development Standards
3. **Supplemental Standards.** Supplemental development standards that apply in the ES-R district are noted in
4. Table 23.202-4: ES-R Development Standards.

**TABLE 23.202-4: ES-R DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                          | SUPPLEMENTAL STANDARDS                                                                        |
|----------------------------------------------|--------------------------|-----------------------------------------------------------------------------------------------|
| Lot Area for New Lots, Minimum               | 25,000 sq. ft.           | 23.304.020– Lot Requirements<br>23.202.070.H.3 (Minimum Lot Area Per Dwelling Unit Exception) |
| Usable Open Space Per Dwelling Unit, Minimum | 400 sq. ft.              | 23.304.090– Usable Open Space                                                                 |
| Floor Area Ratio, Maximum                    | 0.3                      | 23.202.070.H.4 (Lots under 5,000 Square Feet)                                                 |
| Main Building Height, Average                |                          | 23.304.050– Building Height                                                                   |
| New Buildings and Non-Residential Additions  | 24 ft. and 2 stories [1] |                                                                                               |

|                                                                                                                                                                                      |            |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------------------------------------------------|
| Residential Additions                                                                                                                                                                | 14 ft. [2] |                                                          |
| Main Building Height, Maximum                                                                                                                                                        | 35 ft.     |                                                          |
| Lot Line Setbacks, Minimum                                                                                                                                                           |            | 23.304.030– Setbacks                                     |
| Front                                                                                                                                                                                | 20 ft.     |                                                          |
| Rear                                                                                                                                                                                 | 20 ft.     |                                                          |
| Interior Side                                                                                                                                                                        | 15 ft.     |                                                          |
| Street Side                                                                                                                                                                          | 15 ft.     |                                                          |
| Building Separation, Minimum                                                                                                                                                         | 30 ft.     | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                | 30%        | 23.304.120– Lot Coverage                                 |
| Notes:                                                                                                                                                                               |            |                                                          |
| [1] Maximum building height of 35 ft. allowed with an AUP. See 23.202.070.H.5– ES-R Environmental Safety-Residential District (Height Increases) for findings.                       |            |                                                          |
| [2] Height greater than 14 ft. up to 28 ft. allowed with a Use Permit. Height greater than 28 ft up to 35 ft allowed with an additional Use Permit. See 23.202.070.H.5 for findings. |            |                                                          |

5. **Minimum Lot Area Per Dwelling Unit Exception.** A legally-created lot less than 25,000 square feet may be developed in compliance with ES-R district requirements if, on the effective date of the regulations that made it substandard, it was in single ownership separate from any abutting lot under the same ownership.
6. **Lots Under 5,000 Square Feet.** Lots less than 5,000 square feet are allowed no more than one dwelling unit of no more than 1,000 square feet of gross floor area. Accessory Dwelling Units as defined in Section 23.306 (Accessory Dwelling Units) are not subject to this restriction.
7. **Height Increases.** To approve an AUP or Use Permit to allow an increase in building height, the review authority must find that the increased height is:
  - a. Justified due to the topography of the site; and
  - b. Consistent with the purposes of the ES-R district as stated in Section 23.202.070.A – ES-R Environmental Safety-Residential District (District Purpose).
8. **Land Use Intensification.** To approve any project that increases habitable floor area, increases the size or number of bedrooms, may increase vehicular trips in the area, or will otherwise intensify the use of land in the ES-R district, the review authority must find that the project individually or together with other projects



within or adjacent to the ES-R district will not threaten the safety and general welfare of Panoramic Hill residents.

**9. Nonconforming Uses and Structures.**

- a. Additions and enlargements to structures that contain a nonconforming use are not permitted.
- b. Alteration, addition, or enlargement of a nonconforming structure that contains a conforming use is allowed provided that:
  - i. The project complies with Section 23.324.050.D– Nonconforming Structures and Buildings (Expansion); and
  - ii. All findings required for the project by the Zoning Ordinance can be made.

**23.202.080 – R-2 Restricted Two-Family Residential District**

- A. **District Purpose.** The purpose of the Restricted Two-Family Residential (R-2) district is to:
  - 1. Implement the General Plan by encouraging the development of low medium-density residential areas characterized by a reasonably open and spacious type of development with a pattern of housing types ranging from single-family to duplexes and small apartment structures;
  - 2. Make available housing for persons who desire a range of housing choice with a relatively large amount of open space; and
  - 3. Protect adjacent properties from unreasonable obstruction of light and air.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts
- C. **Additional Permit Requirements.** See Subsection A of Section 23.202.030 (Residential Additions) and Subsection B of 23.202.030 (Adding Bedrooms).
- D. **Development Standards.**
  - 1. **Basic Standards.** See Table 23.202-5: R-2 Lot and Height Standards, Table 23.202-6: R-2 Setback and Building Separation Standards, and Table 23.202-7: R-2 Lot Coverage Standards for development standards in the R-2 district.
  - 2. **Supplemental Standards.** Supplemental development standards that apply in the R-2 district are noted in Table 23.202-5: R-2 Lot and Height Standards, Table 23.202-6: R-2 Setback and Building Separation Standards, and Table 23.202-7: R-2 Lot Coverage Standards.

**TABLE 23.202-5: R-2 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                                          |                          | SUPPLEMENTAL STANDARDS        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                                                                                        |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                                                 | 5,000 sq. ft.            |                               |
| Per Dwelling Unit                                                                                                                                        | 2,500 sq. ft. [1]        |                               |
| Usable Open Space Per Dwelling Unit, Minimum                                                                                                             | 400 sq. ft.              | 23.304.090– Usable Open Space |
| Floor Area Ratio, Maximum                                                                                                                                | No maximum               |                               |
| Main Building Height, Average                                                                                                                            |                          | 23.304.050– Building Height   |
| New Buildings and Non-Residential Additions                                                                                                              | 28 ft. and 3 stories [2] |                               |
| Residential Additions                                                                                                                                    | 14 ft. [3]               |                               |
| Notes:                                                                                                                                                   |                          |                               |
| [1] One additional dwelling unit is allowed for any remaining lot area between 2,000 and 2,500 square feet.                                              |                          |                               |
| [2] Maximum 35 ft. with an AUP.                                                                                                                          |                          |                               |
| [3] Addition height greater than 14 ft. up to 28 ft. allowed with an AUP. Addition height greater than 28 ft up to 35 ft allowed with an additional AUP. |                          |                               |

**TABLE 23.202-6: R-2 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|------------------------------|-----------------------------|-----------------|-----------------|----------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                          |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                                                          |
| Front                        | 20 ft.                      | 20 ft.          | 20 ft.          | 23.304.030– Setbacks                                     |
| Rear                         | 20 ft.                      | 20 ft.          | 20 ft.          |                                                          |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           |                                                          |
| Street Side                  | 10 ft.                      | 10 ft.          | 10 ft.          |                                                          |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040– Building Separation in Residential Districts |

**TABLE 23.202-7: R-2 LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lot | 45%                               | 40%       | 35%       |                          |
| Corner Lot               | 50%                               | 45%       | 40%       |                          |

**23.202.090 – R-2A Restricted Multiple-Family Residential District**

- A. **District Purpose.** The purpose of the Restricted Multiple-Family Residential (R-2A) district is to:
  1. Implement the General Plan by encouraging the development of medium-density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development;
  2. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
  3. Protect adjacent properties from unreasonable obstruction of light and air; and
  4. Permit only land use intensity which is compatible with existing low-density residential structures and is not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Subsection A of Section 23.202.030 (Residential Additions) and Subsection B of 23.202.030 (Adding Bedrooms).
- D. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-8: R-2A Lot and Height Standards, Table 23.202-9: R-2A Setback and Building Separation Standards, and Table 23.202-10: R-2A Lot Coverage Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-2A district are noted in Table 23.202-8: R-2A Lot and Height Standards, Table 23.202-9: R-2A Setback and Building Separation Standards, and Table 23.202-10: R-2A Lot Coverage Standards.

**TABLE 23.202-8: R-2A LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                                          |                          | SUPPLEMENTAL STANDARDS         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------|
| Lot Area, Minimum                                                                                                                                        |                          |                                |
| New Lots                                                                                                                                                 | 5,000 sq. ft.            | 23.304.010                     |
| Per Dwelling Unit                                                                                                                                        | 1,650 sq. ft. [1]        |                                |
| Usable Open Space Per Dwelling Unit, Minimum                                                                                                             | 300 sq. ft.              | 23.304.090                     |
| Main Building Height, Average                                                                                                                            |                          |                                |
| New Buildings and Non-Residential Additions                                                                                                              | 28 ft. and 3 stories [2] | 23.304.050–<br>Building Height |
| Residential Additions                                                                                                                                    | 14 ft. [3]               |                                |
| Notes:                                                                                                                                                   |                          |                                |
| [1] One additional dwelling unit is allowed for remaining lot area between 1,300 and 1,650 square feet.                                                  |                          |                                |
| [2] Maximum 35 ft. with an AUP.                                                                                                                          |                          |                                |
| [3] Addition height greater than 14 ft. up to 28 ft. allowed with an AUP. Addition height greater than 28 ft up to 35 ft allowed with an additional AUP. |                          |                                |

**TABLE 23.202-9: R-2A SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS                                      |
|------------------------------|-----------------------------|-----------------|-----------------|-------------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                             |
| Lot Line Setbacks, Minimum   |                             |                 |                 | 23.304.030–<br>Setbacks                                     |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          |                                                             |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          |                                                             |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           |                                                             |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          |                                                             |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040–<br>Building Separation in Residential Districts |

TABLE 23.202-10: R-2A LOT COVERAGE STANDARDS

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS |
|---------------------------|-----------------------------------|-----------|-----------|------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                        |
| Lot Coverage, Maximum     |                                   |           |           | 23.304.120             |
| Interior and Through Lots | 45%                               | 40%       | 35%       |                        |
| Corner Lots               | 50%                               | 45%       | 40%       |                        |

### 23.202.100 – R-3 Multiple-Family Residential District

- A. **District Purpose.** The purpose of the Multiple-Family Residential (R-3) district is to:
1. Implement the General Plan by encouraging development of relatively high-density residential areas;
  2. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;
  3. Protect adjacent properties from unreasonable obstruction of light and air;
  4. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which meet City requirements for this type of housing; and
  5. Permit the construction of specialized care and treatment facilities such as senior congregate housing, nursing homes, and hospitals when such are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Subsections A of Section 23.202.030 (Residential Additions) and 23.202.030 (Adding Bedrooms).
- D. **Design Review.** Within the Southside Plan boundaries, all mixed-use and community and institutional use projects, as defined in Chapter 23.502 Glossary require Design Review. See Figure 23.202-1: R-3 Areas Subject to Design Review.

FIGURE 23.202-1: R-3 AREAS SUBJECT TO DESIGN REVIEW



Multiple-family Residential (R-3)
  Design Review In Southside Plan Area
 Parcel boundaries as of [adoption date]

**E. Development Standards.**

1. **Basic Standards.** See Table 23.202-11: R-3 Lot and Height Standards, Table 23.202-12: R-3 Setback and Building Separation Standards, and Table 23.202-13: R-3 Lot Coverage Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-3 district are noted in Table 23.202-11: R-3 Lot and Height Standards, Table 23.202-12: R-3 Setback and Building Separation Standards, and Table 23.202-13: R-3 Lot Coverage Standards.

TABLE 23.202-11: R-3 LOT AND HEIGHT STANDARDS

| BASIC STANDARDS                         |                 | SUPPLEMENTAL STANDARDS       |
|-----------------------------------------|-----------------|------------------------------|
| Lot Area, Minimum                       |                 | 23.304.020– Lot Requirements |
| New Lots                                | 5,000 sq. ft.   |                              |
| Per Group Living Accommodation Resident | 350 sq. ft. [1] |                              |
| Usable Open Space, Minimum              |                 | 23.304.090– Usable Open      |
| Per Dwelling Unit                       | 200 sq. ft.     |                              |

| BASIC STANDARDS                                                                                                                             |                      | SUPPLEMENTAL STANDARDS         |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------|
| Per Group Living Accommodation Resident                                                                                                     | 90 sq. ft.           | Space                          |
| Floor Area Ratio, Maximum                                                                                                                   | No maximum           |                                |
| Main Building Height, Average                                                                                                               |                      | 23.304.050–<br>Building Height |
| New Buildings and Non-Residential Additions                                                                                                 | 35 ft. and 3 stories |                                |
| Residential Additions                                                                                                                       | 16 ft. [2]           |                                |
| Notes:<br>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.<br>[2] Maximum 35 ft. with an AUP. |                      |                                |

**TABLE 23.202-12: R-3 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS         |
|------------------------------|-----------------------------|-----------------|-----------------|--------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                                |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          | 23.304.030–<br>Setbacks        |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          |                                |
| Interior Side                | 4 ft.                       | 4 ft.           | 6 ft.           |                                |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          |                                |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040–<br>Building Height |

**TABLE 23.202-13: R-3 LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           |                          |
| Interior and Through Lot | 45%                               | 45%       | 30%       | 23.304.120– Lot Coverage |
| Corner Lot               | 50%                               | 50%       | 45%       |                          |

3. **Increase in Lot Coverage.** Lot coverage may be increased for a project in an R-3 district located within the Southside Plan boundaries if an AUP is obtained with one or both of the following findings:
  - a. The increased coverage would enable a new rear dwelling on the lot; or
  - b. It would enable moving a historic building onto the lot.

### **23.202.110 – R-4 Multi-Family Residential District**

- A. **District Purpose.** The purpose of the Multi-Family Residential (R-4) district is to:
  1. Implement the General Plan by encouraging development of relatively high-density residential areas;
  2. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;
  3. Protect adjacent properties from unreasonable obstruction of light and air;
  4. Permit the construction of residential structures, such as residential hotels, which will provide housing opportunities for transient or seasonal residents; and
  5. Permit the construction of institutional and office uses that are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).
- D. **Design Review.** All commercial and mixed-use projects in the R-4 district require Design Review.
- E. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-14: R-4 Lot and Height Standards, Table 23.202-15: R-4 Setback and Building Separation Standards, and Table 23.202-16: R-4 Lot Coverage Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-4 district are noted in Table 23.202-14: R-4 Lot and Height Standards, Table 23.202-15: R-4 Setback and Building Separation Standards, and Table 23.202-16: R-4 Lot Coverage Standards.



**TABLE 23.202-14: R-4 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                    |                          | SUPPLEMENTAL STANDARDS        |
|------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                                                                  |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                           | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident                                                                                            | 350 sq. ft. [1]          |                               |
| Usable Open Space, Minimum                                                                                                         |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                                                  | 200 sq. ft.              |                               |
| Per Group Living Accommodation Resident                                                                                            | 90 sq. ft.               |                               |
| Floor Area Ratio, Maximum                                                                                                          | No maximum               |                               |
| Main Building Height, Average                                                                                                      |                          | 23.304.050– Building Height   |
| New Buildings and Non-Residential Additions                                                                                        | 35 ft. and 3 stories [2] |                               |
| Residential Additions                                                                                                              | 16 ft. [3]               |                               |
| Notes:                                                                                                                             |                          |                               |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.                                     |                          |                               |
| [2] Maximum 65 ft and six stories allowed with Use Permit.                                                                         |                          |                               |
| [3] Height greater than 14 ft. up to 35 ft. allowed with an AUP. Height greater than 35 ft. up to 65 ft allowed with a Use Permit. |                          |                               |

**TABLE 23.202-15: R-4 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> | 5 <sup>TH</sup> | 6 <sup>TH</sup> |                                                          |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                 |                 |                 | 23.304.030– Setbacks                                     |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          |                                                          |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          | 17 ft.          | 19 ft.          | 21 ft.          |                                                          |
| Interior Side                | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.          | 12 ft.          |                                                          |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 12 ft.          | 14 ft.          | 15 ft.          |                                                          |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.          | 28 ft.          | 23.304.040– Building Separation in Residential Districts |

TABLE 23.202-16: R-4 LOT COVERAGE STANDARDS

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|--------------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES | 6 STORIES |                             |
| Lot Coverage, Maximum    |                                   |           |           |           |           |           | 23.304.120–<br>Lot Coverage |
| Interior and Through Lot | 45%                               | 45%       | 40%       | 35%       | 35%       | 35%       |                             |
| Corner Lot               | 50%                               | 50%       | 45%       | 40%       | 40%       | 40%       |                             |

### 23.202.120 – R-5 High-Density Residential District

A. **District Purpose.** The purpose of the High-Density Residential (R-5) district is to:

1. Foster development of high-density, multi-story residential areas close to major shopping, transportation, and employment centers, in accordance with the General Plan;
2. Make available housing for persons who desire convenience of location and who require relatively small amounts of usable open space;
3. Assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
4. Protect adjacent properties from unreasonable obstruction of light and air;
5. Permit the construction of residential structures, such as apartments and hotels, which provide housing opportunities for transient or seasonal residents; and
6. Permit the construction of institutional and office uses when such uses are not detrimental to the immediate neighborhood.

B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Development Standards.**

1. **Basic Standards.** See Table 23.202-17: R-5 Lot and Height Standards, Table 23.202-18: R-5 Setback and Building Separation Standards, and Table 23.202-19: R-5 Lot Coverage Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-5 district are noted in Table 23.202-17: R-5 Lot and Height Standards, Table 23.202-18: R-5 Setback and Building Separation Standards, and Table

23.202-19: R-5 Lot Coverage Standards.

**TABLE 23.202-17: R-5 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                    |                          | SUPPLEMENTAL STANDARDS        |
|------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                                                                  |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                           | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident                                                                                            | 175 sq. ft. [1]          |                               |
| Usable Open Space, Minimum                                                                                                         |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                                                  | 100 sq. ft.              |                               |
| Per Group Living Accommodation Resident                                                                                            | 35 sq. ft.               |                               |
| Floor Area Ratio, Maximum                                                                                                          | No maximum               |                               |
| Main Building Height, Average                                                                                                      |                          | 23.304.050– Building Height   |
| New Construction                                                                                                                   | 40 ft. and 4 stories [2] |                               |
| Residential Additions                                                                                                              | 18 ft. [3]               |                               |
| Notes:                                                                                                                             |                          |                               |
| [1] One additional person is allowed for remaining lot area between 100 and 175 square feet.                                       |                          |                               |
| [2] Maximum 65 feet and 6 stories allowed with a Use Permit.                                                                       |                          |                               |
| [3] Height greater than 18 ft. up to 40 ft. allowed with an AUP. Height greater than 40 ft. up to 65 ft allowed with a Use Permit. |                          |                               |

**TABLE 23.202-18: R-5 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> | 5 <sup>TH</sup> | 6 <sup>TH</sup> |                                                          |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                 |                 |                 | 23.304.030– Setbacks                                     |
| Front                        | 10 ft.                      | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.          |                                                          |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          | 17 ft.          | 19 ft.          | 21 ft.          |                                                          |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.          | 12 ft.          |                                                          |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.          |                                                          |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.          | 28 ft.          | 23.304.040– Building Separation in Residential Districts |

TABLE 23.202-19: R-5 LOT COVERAGE STANDARDS

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|---------------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES | 6 STORIES |                             |
| Lot Coverage, Maximum     |                                   |           |           |           |           |           | 23.304.120–<br>Lot Coverage |
| Interior and Through Lots | 55%                               | 55%       | 50%       | 45%       | 40%       | 40%       |                             |
| Corner Lots               | 60%                               | 60%       | 55%       | 50%       | 45%       | 45%       |                             |

**23.202.130 – R-S Residential Southside District**

A. **District Purpose.** The purpose of the Residential Southside (R-S) district is to:

1. Implement General Plan and Southside Plan policy by encouraging relatively high and moderate-density, multi-story residential development close to major shopping, transportation, and employment centers;
2. Make housing available for persons who desire a convenient location with relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
3. Protect adjacent properties from unreasonable obstruction of light and air;
4. Permit the construction of residential structures, such as apartments, and residential hotels, which will provide housing opportunities for transient or seasonal residents;
5. Encourage the construction of new housing on vacant properties and surface parking lots;
6. Encourage the redevelopment of single-story structures that are not historically significant resources with more dense housing development; and
7. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.

B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Design Review.** All mixed-use and community and institutional projects, as defined in Chapter 23.502—Glossary, require Design Review.

E. **Development Standards.**

1. **Basic Standards.** See
2. Table 23.202-20: R-S Lot and Height Standards, Table 23.202-21: R-S Setback and Building Separation Standards, and Table 23.202-22: R-S Lot Coverage Standards.
3. **Supplemental Standards.** Supplemental development standards that apply in the R-S district are noted in
4. Table 23.202-20: R-S Lot and Height Standards, Table 23.202-21: R-S Setback and Building Separation Standards, and Table 23.202-22: R-S Lot Coverage Standards.

**TABLE 23.202-20: R-S LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                         |                          | SUPPLEMENTAL STANDARDS        |
|-----------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                       |                          | 23.304.020– Lot Requirements  |
| New Lots                                | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident | 350 sq. ft. [1]          |                               |
| Usable Open Space, Minimum              |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                       | 50 sq. ft.               |                               |
| Per Group Living Accommodation Resident | 20 sq. ft.               |                               |
| Floor Area Ratio, Maximum               | No maximum               |                               |
| Main Building Height, Maximum           |                          | 23.304.050– Building Height   |
| New Construction                        | 35 ft. and 3 stories [2] |                               |
| Residential Additions                   | 16 ft. [3]               |                               |

Notes:

- [1] One additional person is allowed for remaining lot area between 350 and 200 square feet.
- [2] Maximum 45 feet and 4 stories allowed with a Use Permit if at least 50 percent of the total building floor area is designated for residential use and the ZAB finds that the project meets the purpose of the district.
- [3] Maximum 35 feet and 3 stories allowed with an AUP. Maximum 45 feet and 4 stories allowed with a Use Permit if at least 50 percent of the total building floor area is designated for residential use and the ZAB finds that the project meets the purpose of the district.

**TABLE 23.202-21: R-S SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 | SUPPLEMENTAL STANDARDS                                      |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-------------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> |                                                             |
| Lot Line Setback, Minimum    |                             |                 |                 |                 | 23.304.030–<br>Setbacks                                     |
| Front                        | 10 ft.                      | 10 ft.          | 10 ft.          | 10 ft.          |                                                             |
| Rear                         | 10 ft.                      | 10 ft.          | 10 ft.          | 17 ft.          |                                                             |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           |                                                             |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 10 ft.          |                                                             |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 23.304.040–<br>Building Separation in Residential Districts |

**TABLE 23.202-22: R-S LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lot | 65%                               | 65%       | 60%       | 55%       |                          |
| Corner Lot               | 70%                               | 70%       | 65%       | 60%       |                          |

**23.202.140 – R-SMU Residential Southside District**

- A. **District Purpose.** The purpose of the Residential Southside Mixed Use (R-SMU) district is to:
1. Implement General Plan and Southside Plan policy by encouraging high-density, multi-story residential development close to major shopping, transportation, and employment centers;
  2. Make housing available for persons who desire a convenient location, but who require relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
  3. Protect adjacent properties from unreasonable obstruction of light and air;
  4. Permit the construction of residential structures, such as apartments and residential hotels, which will provide housing opportunities for transient or seasonal residents;
  5. Permit the construction of institutional, neighborhood serving retail, and office uses when such uses are not detrimental to the immediate neighborhood;
  6. Provide locations for relocation of office space from other locations in the Southside Plan area;
  7. Encourage the construction of new housing and mixed-use development on vacant properties and surface parking lots;
  8. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development; and
  9. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.
- B. **Allowed Land Uses.**
1. **General.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
  2. **Commercial Uses.**
    - a. Any project that creates new commercial floor area requires a Use Permit. Creating new floor area includes constructing a new building or accessory building, adding floor area to an existing building, or installing a new floor or mezzanine level within or onto an existing building.
    - b. Tenant space reconfiguration of an existing commercial building requires an AUP.
  3. **Food Product Stores.** Food product stores are limited to 3,000 square feet in the R-SMU district.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Design Review.** All commercial, mixed-use, and community and institutional use projects, as defined in Chapter 23.502—Glossary, require Design Review.

E. **Development Standards.**

1. **Basic Standards.**

- a. Table 23.202-23: R-SMU Lot and Height Standards shows lot and height standards that apply in all areas in the R-SMU district.

**TABLE 23.202-23: R-SMU LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                   |                      | SUPPLEMENTAL STANDARDS        |
|---------------------------------------------------------------------------------------------------|----------------------|-------------------------------|
| Lot Area, Minimum                                                                                 |                      | 23.304.020– Lot Requirements  |
| New Lots                                                                                          | 5,000 sq. ft.        |                               |
| Per Group Living Accommodation Resident                                                           | 175 sq. ft. [1]      |                               |
| Floor Area Ratio, Maximum                                                                         |                      | No maximum                    |
| Usable Open Space, Minimum                                                                        |                      | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                 | 40 sq. ft.           |                               |
| Per Group Living Accommodation Resident                                                           | 20 sq. ft.           |                               |
| Main Building Height, Maximum                                                                     |                      | 23.304.050– Building Height   |
| New Buildings                                                                                     | 60 ft. and 4 stories |                               |
| Residential Additions                                                                             | 16 ft. [2]           |                               |
| Notes:                                                                                            |                      |                               |
| [1] One additional person is allowed for between 100 and 175 square feet of remaining lot area.   |                      |                               |
| [2] Maximum 60 feet and 4 stories allowed with an AUP, or up to the district limit with a UP(PH). |                      |                               |

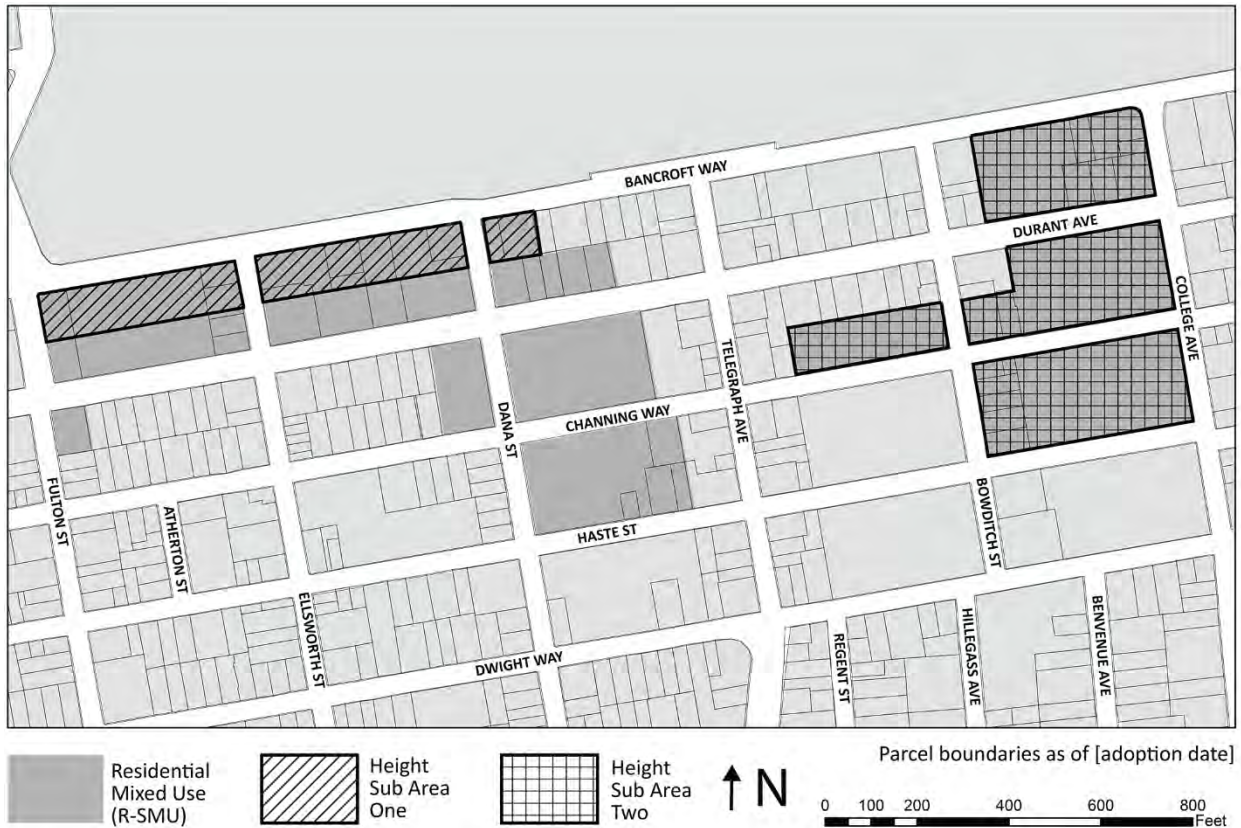
- b. Table 23.202-24 and Table 23.202-25 show setback, building separation, and lot coverage standards that apply to main buildings:

- i.* With dwelling units or group living accommodations; or
- ii.* Are located north of Durant Avenue



2. **Supplemental Standards.** Supplemental development standards that apply in the R-SMU district are noted in Table 23.202-23 to Table 23.202-27.
3. **Increase in Building Height.**
  - a. The ZAB may approve a Use Permit to increase the allowed height of a main building or residential addition in the two subareas shown in Figure 23.202-2: R-SMU Subareas. Maximum allowed height is:
    - i. 75 feet and 5 stories in Subarea One; and
    - ii. 65 feet and 5 stories in Subarea Two.

**FIGURE 23.202-2: R-SMU SUBAREAS**



- b. To approve the Use Permit for increased building height, the ZAB must make the following findings:
      - i. At least 50 percent of the total floor area is designated for residential use.
      - ii. The project meets the purposes of the R-SMU district as stated in Section 23.202.140.A (District Purpose).
4. **Increase in Density for Group Living Accommodation.** The ZAB may approve a Use Permit to increase the density of a group living accommodation use (i.e.,

decrease the minimum lot area per group living accommodation room as shown in Table 23.202-23: R-SMU Lot and Height Standards). To approve the Use Permit, the ZAB must make the following findings:

- a. At least 50 percent of the total building floor area is designated for residential use.
- b. The increased density will not be detrimental to the immediate neighborhood.
- c. The project meets the purposes of the R-SMU district as stated in Section 23.202.140.A – R-SMU Residential Southside District (District Purpose).

**TABLE 23.202-24: R-SMU SETBACK AND BUILDING SEPARATION STANDARDS FOR MAIN BUILDINGS WITH DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED NORTH OF DURANT AVENUE**

|                                                                                                                                                                                                             | STANDARDS BY BUILDING STORY |                 |                 |                 |                     | SUPPLEMENTAL STANDARDS                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------|-----------------|-----------------|---------------------|-------------------------------------------------------------|
|                                                                                                                                                                                                             | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> | 5 <sup>TH</sup> [1] |                                                             |
| Lot Line Setbacks, Minimum                                                                                                                                                                                  |                             |                 |                 |                 |                     |                                                             |
| Front                                                                                                                                                                                                       | 10 ft.                      | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.              | 23.304.030–<br>Setbacks                                     |
| Rear                                                                                                                                                                                                        | 10 ft.                      | 10 ft.          | 10 ft.          | 17 ft.          | 19 ft.              |                                                             |
| Interior                                                                                                                                                                                                    | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.              |                                                             |
| Street Side                                                                                                                                                                                                 | 6 ft.                       | 8 ft.           | 10 ft.          | 10 ft.          | 10 ft.              |                                                             |
| Building Separation, Minimum                                                                                                                                                                                | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.              | 23.304.040–<br>Building Separation in Residential Districts |
| [1] The 5 <sup>th</sup> story regulations are not applicable to buildings with less than 50% residential floor area nor for buildings outside of Subareas 1 and 2 (even if located north of Durant Avenue). |                             |                 |                 |                 |                     |                                                             |

**TABLE 23.202-25: R-SMU LOT COVERAGE STANDARDS FOR MAIN BUILDINGS WITH DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED NORTH OF DURANT AVENUE**

|                       | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|-----------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------------------------|
|                       | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES |                             |
| Lot Coverage, Maximum |                                   |           |           |           |           | 23.304.120–<br>Lot Coverage |

|                           |     |     |     |     |     |  |
|---------------------------|-----|-----|-----|-----|-----|--|
| Interior and Through Lots | 55% | 55% | 50% | 45% | 40% |  |
| Corner Lots               | 60% | 60% | 55% | 50% | 45% |  |

d. Table 23.202-26 and Table 23.202-27 show setback, building separation, and lot coverage standards that apply to main buildings:

- i. Without dwelling units or group living accommodations: or
- ii. Located south of Durant Avenue.

**TABLE 23.202-26: R-SMU SETBACK AND BUILDING SEPARATION STANDARDS FOR MAIN BUILDINGS WITHOUT DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED SOUTH OF DURANT AVENUE**

|                              | BUILDING STORY STANDARD |                 |                 |                 | SUPPLEMENTAL STANDARDS                                      |
|------------------------------|-------------------------|-----------------|-----------------|-----------------|-------------------------------------------------------------|
|                              | 1 <sup>ST</sup>         | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> |                                                             |
| Lot Line Setback, Minimum    |                         |                 |                 |                 |                                                             |
| Front                        | 15 ft.                  | 15 ft.          | 15 ft.          | 15 ft.          | 23.304.030–<br>Setbacks                                     |
| Rear                         | 15 ft.                  | 15 ft.          | 15 ft.          | 17 ft.          |                                                             |
| Interior                     | 4 ft.                   | 4 ft.           | 6 ft.           | 8 ft.           |                                                             |
| Street Side                  | 6 ft.                   | 8 ft.           | 10 ft.          | 10 ft.          |                                                             |
| Building Separation, Minimum | 8 ft.                   | 12 ft.          | 16 ft.          | 20 ft.          | 23.304.040–<br>Building Separation in Residential Districts |

**TABLE 23.202-27: R-SMU LOT COVERAGE STANDARDS FOR MAIN BUILDINGS WITHOUT DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED SOUTH OF DURANT AVENUE**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           |           | SUPPLEMENTAL STANDARDS      |
|--------------------------|-----------------------------------|-----------|-----------|-----------|-----------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES |                             |
| Lot Coverage, Maximum    |                                   |           |           |           |                             |
| Interior and Through Lot | 45%                               | 50%       | 40%       | 35%       | 23.304.120–<br>Lot Coverage |
| Corner Lot               | 50%                               | 50%       | 45%       | 40%       |                             |

**5. Increase in Lot Coverage.**

- a. An AUP may be approve to increase lot coverage up to 100 percent for a main building that contains dwelling units, contains group living accommodations, or is located north of Durant Avenue.
- b. To approve an AUP, a finding must be made that the increase is appropriate given the setbacks and architectural design of surrounding buildings.

## 23.204 COMMERCIAL DISTRICTS

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### Sections:

- 23.204.010– Chapter Purpose
- 23.204.020– Allowed Land Uses
- 23.204.030– Additional Permit Requirements
- 23.204.040– Use-Specific Permit Requirements and Regulations
- 23.204.050– C-C Corridor Commercial District
- 23.204.060– C-U University Commercial District
- 23.204.070– C-N Neighborhood Commercial District
- 23.204.080– C-E Elmwood Commercial District
- 23.204.090– C-NS North Shattuck Commercial District
- 23.204.100– C-SA South Area Commercial District
- 23.204.110– C-T Telegraph Avenue Commercial District
- 23.204.120– C-SO Solano Avenue Commercial District
- 23.204.130– C-DMU Downtown Mixed-Use District
- 23.204.140– C-W West Berkeley Commercial District
- 23.204.150– C-AC Adeline Corridor Commercial District

### 23.204.010 – Chapter Purpose

This chapter identifies allowed land uses, permit requirements, and development standards for the Commercial Districts.

### 23.204.020 – Allowed Land Uses

- A. **Allowed Land Use Table.** Table 23.204-1: Allowed Uses in the Commercial Districts identifies allowed land uses and required permits in the Commercial Districts. All land uses are defined in Chapter 23.502 (Glossary). Permit requirements are described in Chapter 23.406 (Specific Permit Requirements). Permits required for land uses shown in Table 23.204-1 apply to both:
1. The initial establishment of a land use in a new building; and
  2. The change of use in an existing building or portion of a building.

**TABLE 23.204-1: ALLOWED USES IN THE COMMERCIAL DISTRICTS**

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS                |             |        |        |        |             |        |        |        |                        |        | USE-SPECIFIC REGULATIONS          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------|--------|--------|--------|-------------|--------|--------|--------|------------------------|--------|-----------------------------------|
|                                                                                                                                                                                                                                     | C-C                                 | C-U         | C-N    | C-E    | C-NS   | C-SA        | C-T    | C-SO   | C-DMU  | C-W                    | C-AC   |                                   |
| <b>Residential Uses</b>                                                                                                                                                                                                             |                                     |             |        |        |        |             |        |        |        |                        |        |                                   |
| Accessory Dwelling Unit                                                                                                                                                                                                             | See 23.306—Accessory Dwelling Units |             |        |        |        |             |        |        |        |                        |        |                                   |
| Dwellings                                                                                                                                                                                                                           |                                     |             |        |        |        |             |        |        |        |                        |        |                                   |
| Single-Family                                                                                                                                                                                                                       | UP(PH)                              | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)                 | UP(PH) | 23.204.060.B.3                    |
| Two-Family                                                                                                                                                                                                                          | UP(PH)                              | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)                 | UP(PH) | 23.204.060.B.3                    |
| Multi-Family                                                                                                                                                                                                                        | UP(PH)                              | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)                 | UP(PH) | 23.204.060.B.3                    |
| Group Living Accommodation                                                                                                                                                                                                          | UP(PH)                              | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)                 | UP(PH) | 23.204.060.B.3                    |
| Hotel, Residential                                                                                                                                                                                                                  | UP(PH)                              | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)                 | UP(PH) | 23.204.060.B.3                    |
| Mixed-Use Residential                                                                                                                                                                                                               | UP(PH)                              | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | See Table<br>23.204-41 | UP(PH) | 23.204.060.B.3;<br>23.204.100.B.4 |
| Senior Congregate Housing                                                                                                                                                                                                           | See 23.302.070.H                    |             |        |        |        |             |        |        |        |                        |        |                                   |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                                 |                                     |             |        |        |        |             |        |        |        |                        |        |                                   |
| Child Care Center                                                                                                                                                                                                                   | UP(PH)                              | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) | UP(PH) | UP(PH)                 | UP(PH) |                                   |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                        | NP                                  | NP          | NP     | NP     | NP     | NP          | NP     | NP     | NP     | NP                     | NP     |                                   |
| Club/Lodge                                                                                                                                                                                                                          | UP(PH)                              | UP(PH)      | UP(PH) | UP(PH) | NP     | UP(PH)      | UP(PH) | NP     | UP(PH) | UP(PH)                 | UP(PH) |                                   |
| Columbaria                                                                                                                                                                                                                          | See 23.302.070.C                    |             |        |        |        |             |        |        |        |                        |        |                                   |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA   | C-T    | C-SO   | C-DMU  | C-W    | C-AC   |                          |
| Community Care Facility                                                                                                                                                                                                             | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | ZC     | AUP    |                          |
| Community Center                                                                                                                                                                                                                    | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Emergency Shelter                                                                                                                                                                                                                   | See 0                |        | -      | -      | See 0  |        |        |        |        |        |        |                          |
| Family Day Care Home, Large                                                                                                                                                                                                         | ZC                   | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     |                          |
| Family Day Care Home, Small                                                                                                                                                                                                         | ZC                   | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     |                          |
| Hospital                                                                                                                                                                                                                            | UP(PH)               | UP(PH) | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH) | UP(PH) | NP     |                          |
| Library                                                                                                                                                                                                                             | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Mortuaries and Crematories                                                                                                                                                                                                          | UP(PH)               | UP(PH) | NP     | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH) | NP     |                          |
| Municipal Animal Shelter                                                                                                                                                                                                            | -                    | -      | -      | -      | -      | -      | -      | -      | -      | -      | --     |                          |
| Nursing Home                                                                                                                                                                                                                        | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Park/Playground                                                                                                                                                                                                                     | ZC                   | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     | AUP    | ZC     |                          |
| Public Safety and Emergency Service                                                                                                                                                                                                 | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Public Utility Substation/Tank                                                                                                                                                                                                      | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Religious Assembly                                                                                                                                                                                                                  | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | AUP    | UP(PH) |                          |
| School                                                                                                                                                                                                                              | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |



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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------|-------------|---------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------------------------------------------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U         | C-N         | C-E     | C-NS        | C-SA        | C-T         | C-SO        | C-DMU       | C-W         | C-AC        |                                                                        |
| School, Vocational                                                                                                                                                                                                                  | AUP                  | AUP         | AUP         | AUP     | AUP         | AUP         | AUP         | AUP         | AUP         | UP(PH)      | AUP         |                                                                        |
| <b>Retail Uses</b>                                                                                                                                                                                                                  |                      |             |             |         |             |             |             |             |             |             |             |                                                                        |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                      | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)* | UP(PH)<br>* | UP(PH)<br>* | NP          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | 23.204.060.B.2; 23.310                                                 |
| Cannabis Retailer                                                                                                                                                                                                                   | ZC*                  | ZC*         | ZC*         | ZC*     | ZC*         | ZC*         | ZC*         | ZC*         | ZC*         | ZC*         | ZC*         | 23.320; 12.21; and 12.22                                               |
| Cannabis Retailer, Delivery Only                                                                                                                                                                                                    | ZC*                  | ZC*         | ZC*         | ZC*     | ZC*         | ZC*         | ZC*         | ZC*         | ZC*         | ZC*         | --          | 23.320; 12.21; and 12.22                                               |
| Firearm/Munitions Business                                                                                                                                                                                                          | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | NP          | UP(PH)      | UP(PH)<br>* | 23.302.070.D                                                           |
| Industrial and Mining Products                                                                                                                                                                                                      | -                    | -           | -           | -       | -           | -           | -           | -           | -           | -           | --          |                                                                        |
| Pawn Shop/Auction House                                                                                                                                                                                                             | UP(PH)               | -           | NP          | NP      | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | NP          |                                                                        |
| Pet Store                                                                                                                                                                                                                           | UP(PH)               | UP(PH)      | UP(PH)      | UP(PH)  | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | ZC [3]      | UP(PH)      |                                                                        |
| Retail, General                                                                                                                                                                                                                     | ZC [1]               | ZC [1]      | ZC* [2]     | ZC* [2] | ZC* [2]     | ZC [1]      | ZC          | ZC* [2]     | ZC          | ZC* [3]     | ZC*         | 23.204.040.E (for department stores)<br>23.204.040.F (for drug stores) |
| Smoke Shop                                                                                                                                                                                                                          | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | NP          | UP(PH)<br>* | UP(PH)<br>* | 23.302.070.I                                                           |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                          |                      |             |             |         |             |             |             |             |             |             |             |                                                                        |
| Personal and Household Services,                                                                                                                                                                                                    | ZC [1]               | ZC [1]      | ZC [2]      | ZC [2]  | ZC [2]      | ZC [1]      | ZC          | ZC [2]      | ZC          | ZC [5]      | ZC          |                                                                        |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------|---------|---------|---------|-------------|-------------|---------|--------|-------------|--------|------------------------------------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U         | C-N     | C-E     | C-NS    | C-SA        | C-T         | C-SO    | C-DMU  | C-W         | C-AC   |                                                      |
| <b>General</b>                                                                                                                                                                                                                      |                      |             |         |         |         |             |             |         |        |             |        |                                                      |
| <b>Kennels and Pet Boarding</b>                                                                                                                                                                                                     | NP                   | NP          | NP      | NP      | NP      | NP          | NP          | NP      | NP     | UP(PH)      | NP     |                                                      |
| <b>Laundromats and Cleaners</b>                                                                                                                                                                                                     | AUP                  | AUP         | UP(PH)  | UP(PH)  | UP(PH)  | AUP         | AUP         | UP(PH)  | UP(PH) | AUP [4]     | AUP    |                                                      |
| <b>Veterinary Clinic</b>                                                                                                                                                                                                            | UP(PH)               | UP(PH)      | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)      | UP(PH)      | UP(PH)  | UP(PH) | UP(PH)      | UP(PH) |                                                      |
| <b>Video Tape/Disk Rental</b>                                                                                                                                                                                                       | ZC [1]               | ZC [1]      | ZC [2]  | AUP     | ZC [2]  | -           | ZC          | ZC [2]  | ZC     | ZC [5]      | NP     |                                                      |
| <b>Office Uses</b>                                                                                                                                                                                                                  |                      |             |         |         |         |             |             |         |        |             |        |                                                      |
| <b>Business Support Services</b>                                                                                                                                                                                                    | ZC [1]               | ZC [1]      | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]      | ZC*         | ZC [2]  | ZC     | ZC [5]      | ZC [6] | 23.204.110.B.6                                       |
| <b>Banks and Financial Services, Retail</b>                                                                                                                                                                                         | AUP                  | AUP         | UP(PH)  | UP(PH)  | UP(PH)  | ZC [1]      | AUP*        | UP(PH)  | ZC*    | AUP         | ZC     | 23.204.110.B.6;<br>23.204.130.B.3;<br>23.204.130.D.3 |
| <b>Insurance Agents, Title Companies, Real Estate Agents, Travel Agents</b>                                                                                                                                                         | ZC [1]               | ZC [1]      | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]      | ZC*         | ZC* [2] | ZC*    | ZC [5]      | ZC [6] | 23.204.040.D;23.204.110.B.6;<br>23.204.130.D.3       |
| <b>Medical Practitioners</b>                                                                                                                                                                                                        | ZC [1]               | ZC [1]      | AUP     | NP      | UP(PH)  | ZC [1]      | AUP*        | UP(PH)  | ZC*    | ZC [5]      | ZC [6] | 23.204.040.D;<br>23.204.110.B.6;<br>23.204.130.D.3   |
| <b>Non-Chartered Financial Institutions</b>                                                                                                                                                                                         | UP(PH)<br>*          | UP(PH)<br>* | NP      | NP      | NP      | UP(PH)<br>* | UP(PH)<br>* | NP      | NP     | UP(PH)<br>* | UP(PH) | 23.302.070.F<br>23.204.110.B.6                       |
| <b>Office, Business and Professional</b>                                                                                                                                                                                            | ZC [1]               | ZC [1]      | AUP*    | AUP*    | AUP*    | ZC [1]      | AUP*        | AUP*    | ZC*    | ZC [5]      | ZC [6] | 23.204.040.B;<br>23.204.110.B.6;<br>23.204.130.D.3   |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------|-------------|--------|---------|-------------|-------------|--------|-------------|-------------|--------|--------------------------------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U         | C-N         | C-E    | C-NS    | C-SA        | C-T         | C-SO   | C-DMU       | C-W         | C-AC   |                                                  |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                          |                      |             |             |        |         |             |             |        |             |             |        |                                                  |
| Adult-oriented Business                                                                                                                                                                                                             | UP(PH)<br>*          | UP(PH)<br>* | NP          | NP     | NP      | NP          | NP          | NP     | UP(PH)<br>* | UP(PH)<br>* | NP     | 23.302.070.A                                     |
| Amusement Device<br>Arcade                                                                                                                                                                                                          | UP(PH)<br>*          | UP(PH)<br>* | NP          | NP     | NP      | UP(PH)<br>* | NP          | NP     | UP(PH)<br>* | UP(PH)<br>* | UP(PH) | 23.302.070.B                                     |
| Bar/Cocktail<br>Lounge/Tavern                                                                                                                                                                                                       | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | -      | NP      | UP(PH)<br>* | UP(PH)<br>* | NP     | UP(PH)<br>* | UP(PH)<br>* | UP(PH) | 23.204.100.B.3;<br>23.204.110.B.2;<br><br>23.310 |
| Commercial Recreation<br>Center                                                                                                                                                                                                     | See 23.204.040.A     |             |             |        |         |             |             |        |             |             |        |                                                  |
| Dance/Exercise/Martial<br>Arts/Music Studio                                                                                                                                                                                         | ZC [1]               | ZC [1]      | ZC [2]      | AUP    | AUP [4] | ZC [1]      | ZC          | AUP    | ZC          | ZC [7]      | ZC     |                                                  |
| Entertainment<br>Establishment                                                                                                                                                                                                      | UP(PH)               | UP(PH)      | UP(PH)      | NP     | UP(PH)  | UP(PH)      | UP(PH)      | UP(PH) | UP(PH)      | UP(PH)      | UP(PH) |                                                  |
| Food Service<br>Establishment                                                                                                                                                                                                       | See 23.204.040.E     |             |             |        |         |             |             |        |             |             |        |                                                  |
| Group Class Instruction                                                                                                                                                                                                             | ZC [1]               | ZC [1]      | AUP         | AUP    | AUP*    | ZC [1]      | ZC*         | AUP    | ZC*         | ZC          | ZC     | 23.204.040.B                                     |
| Gym/Health Club                                                                                                                                                                                                                     | See 23.204.040.C     |             |             |        |         |             |             |        |             |             |        |                                                  |
| Hotels, Tourist                                                                                                                                                                                                                     | UP(PH)               | UP(PH)      | UP(PH)      | UP(PH) | UP(PH)  | UP(PH)      | UP(PH)      | UP(PH) | UP(PH)      | UP(PH)      | UP(PH) |                                                  |
| Motels, Tourist                                                                                                                                                                                                                     | UP(PH)               | UP(PH)      | NP          | NP     | NP      | NP          | NP          | NP     | UP(PH)      | UP(PH)      | NP     |                                                  |
| Theater                                                                                                                                                                                                                             | UP(PH)               | UP(PH)      | UP(PH)      | UP(PH) | NP      | UP(PH)      | UP(PH)      | NP     | AUP         | UP(PH)      | UP(PH) |                                                  |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|-------------|-----|--------|--------|-------------|--------|------------------------------------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA        | C-T | C-SO   | C-DMU  | C-W         | C-AC   |                                                      |
| <b>Vehicle Service and Sales Uses</b>                                                                                                                                                                                               |                      |        |        |        |        |             |     |        |        |             |        |                                                      |
| Alternative Fuel Station                                                                                                                                                                                                            | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)      | NP* | UP(PH) | NP     | AUP*        | UP(PH) | 23.204.110.B.4;<br>23.204.140.B.3                    |
| Electric Vehicle Charging Station                                                                                                                                                                                                   | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP         | AUP | AUP    | AUP    | AUP*        | AUP    |                                                      |
| Gasoline Fuel Stations                                                                                                                                                                                                              | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)      | NP* | UP(PH) | NP     | UP(PH)<br>* | UP(PH) | 23.204.140.B.3                                       |
| Large Vehicle Sales and Rental                                                                                                                                                                                                      | AUP                  | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | AUP*<br>[8] | NP     | 23.204.140.B.3                                       |
| Small Vehicle Sales and Service                                                                                                                                                                                                     | AUP                  | NP     | NP     | NP     | NP     | UP(PH)<br>* | NP  | NP     | UP(PH) | UP(PH)<br>* | NP     | 23.204.100.B.5;<br>23.204.140.B.3                    |
| Tire Sales and Service                                                                                                                                                                                                              | UP(PH)               | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | UP(PH)<br>* | NP     | 23.204.140.B.3                                       |
| Vehicle Parts Store                                                                                                                                                                                                                 | ZC [1]               | NP     | ZC [2] | ZC [2] | ZC [2] | ZC [1]      | ZC  | ZC [2] | NP     | AUP*<br>[8] | ZC     |                                                      |
| Vehicle Rentals                                                                                                                                                                                                                     | AUP                  | NP     | NP     | NP     | NP     | NP          | NP  | NP     | UP(PH) | AUP*<br>[8] | NP     | 23.204.140.B.3                                       |
| Vehicle Repair and Service                                                                                                                                                                                                          | AUP                  | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | AUP*<br>[8] | NP     |                                                      |
| Vehicle Sales, New                                                                                                                                                                                                                  | AUP                  | NP     | NP     | NP     | NP     | UP(PH)<br>* | NP  | NP     | UP(PH) | AUP*<br>[8] | NP     | 23.204.140.B.3                                       |
| Vehicle Sales, Used                                                                                                                                                                                                                 | AUP                  | NP     | NP     | NP     | NP     | UP(PH)<br>* | NP  | NP     | UP(PH) | UP(PH)<br>* | NP     | 23.204.100.B.5;<br>23.204.140.B.3;<br>23.204.140.D.4 |
| Vehicle Wash                                                                                                                                                                                                                        | UP(PH)               | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | UP(PH)<br>* | NP     | 23.204.140.B.3                                       |
| Vehicle Wrecking                                                                                                                                                                                                                    | NP                   | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | NP          | NP     |                                                      |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|---------|--------|--------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA   | C-T    | C-SO   | C-DMU  | C-W     | C-AC   |                          |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                         |                      |        |        |        |        |        |        |        |        |         |        |                          |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                                  | -                    | -      | -      | -      | -      | -      | -      | -      | -      | -       | --     |                          |
| Commercial Excavation                                                                                                                                                                                                               | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | -      | NP      | UP(PH) |                          |
| Contractors Yard                                                                                                                                                                                                                    | -                    | -      | -      | -      | -      | -      | -      | -      | -      | AUP     | --     |                          |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                      | UP(PH)               | UP(PH) | NP     | -      | UP(PH) | NP     | NP     | NP     | UP(PH) | NP      | NP     |                          |
| Laboratory                                                                                                                                                                                                                          |                      |        |        |        |        |        |        |        |        |         |        |                          |
| Commercial Physical or Biological                                                                                                                                                                                                   | AUP                  | AUP    | NP     | NP     | NP     | NP     | NP     | NP     | AUP    | NP      | NP     |                          |
| Cannabis Testing                                                                                                                                                                                                                    | AUP                  | AUP    | NP     | NP     | NP     | NP     | NP     | NP     | AUP    | AUP [9] | NP     |                          |
| Manufacturing                                                                                                                                                                                                                       |                      |        |        |        |        |        |        |        |        |         |        |                          |
| Construction Products                                                                                                                                                                                                               | -                    | -      | -      | -      |        | -      | -      | -      | -      | UP(PH)  | --     |                          |
| Light Manufacturing                                                                                                                                                                                                                 | -                    | -      | -      | -      |        | -      | -      | -      | -      | AUP [8] | --     |                          |
| Pesticides/Herbicides /Fertilizers                                                                                                                                                                                                  | -                    | -      | -      | -      |        | -      | -      | -      | -      | UP(PH)  | --     |                          |
| Petroleum Refining and Products                                                                                                                                                                                                     | -                    | -      | -      | -      |        | -      | -      | -      | -      | UP(PH)  | --     |                          |
| Pharmaceuticals                                                                                                                                                                                                                     | -                    | -      | -      | -      |        | -      | -      | -      | -      | UP(PH)  | --     |                          |
| Primary Production Manufacturing                                                                                                                                                                                                    | -                    | -      | -      | -      | NP     | -      | -      | -      | -      | UP(PH)  | --     |                          |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|--------|--------|--------|-------------|---------|--------|--------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA   | C-T    | C-SO   | C-DMU       | C-W     | C-AC   |                          |
| Semiconductors                                                                                                                                                                                                                      | -                    | -      | -      | -      | NP     | -      | -      | -      | -           | UP(PH)  | --     |                          |
| Material Recovery Enterprise                                                                                                                                                                                                        | -                    | -      | -      | -      | -      | -      | -      | -      | -           | -       | --     |                          |
| Media Production                                                                                                                                                                                                                    | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)<br>* | AUP     | UP(PH) | 23.204.130.B.4           |
| Mini-storage                                                                                                                                                                                                                        | UP(PH)               | NP     | NP     | NP     | NP     | NP     | NP     | -      | UP(PH)      | NP      | NP     |                          |
| Recycled Materials Processing                                                                                                                                                                                                       | -                    | -      | -      | -      | -      | -      | -      | -      | -           | -       | --     |                          |
| Recycling Redemption Center                                                                                                                                                                                                         | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | AUP         | AUP     | AUP    |                          |
| Repair Service, Non-Vehicle                                                                                                                                                                                                         | -                    | -      | -      | -      | -      | -      | -      | -      | -           | AUP     | --     |                          |
| Research and Development                                                                                                                                                                                                            | -                    | -      | -      | -      | -      | -      | -      | -      | -           | AUP     | --     |                          |
| Services to Buildings and Dwellings                                                                                                                                                                                                 | -                    | -      | -      | -      | -      | -      | -      | -      | -           | AUP     | --     |                          |
| Warehouse                                                                                                                                                                                                                           | UP(PH)               | NP     | NP     | NP     | NP     | NP     | NP     | -      | UP(PH)      | NP      | NP     |                          |
| Warehouse-Based Non-Store Retailer                                                                                                                                                                                                  | -                    | -      | -      | -      | -      | -      | -      | -      | -           | -       | --     |                          |
| Wholesale Trade                                                                                                                                                                                                                     | -                    | -      | -      | -      | --     | -      | -      | -      | -           | AUP [8] | --     |                          |
| <b>Incidental Uses</b>                                                                                                                                                                                                              |                      |        |        |        |        |        |        |        |             |         |        |                          |
| Amusement Devices                                                                                                                                                                                                                   | AUP*                 | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*        | AUP*    | UP(PH) | 23.302.070.B             |
| Alcoholic Beverage                                                                                                                                                                                                                  | See 23.310           |        |        |        |        |        |        |        |             |         |        |                          |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS |        |             |         |        |        |        |        |             |        |        | USE-SPECIFIC REGULATIONS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|-------------|---------|--------|--------|--------|--------|-------------|--------|--------|--------------------------|
|                                                                                                                                                                                                                                     | C-C                  | C-U    | C-N         | C-E     | C-NS   | C-SA   | C-T    | C-SO   | C-DMU       | C-W    | C-AC   |                          |
| Service                                                                                                                                                                                                                             |                      |        |             |         |        |        |        |        |             |        |        |                          |
| Cafeteria, On-Site                                                                                                                                                                                                                  | UP(PH)               | UP(PH) | UP(PH)      | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | AUP    | UP(PH) |                          |
| Columbaria                                                                                                                                                                                                                          | See 23.302.070.C     |        |             |         |        |        |        |        |             |        |        |                          |
| Food and Beverage for Immediate Consumption                                                                                                                                                                                         | ZC                   | ZC     | AUP         | UP(PH)  | UP(PH) | ZC     | AUP    | UP(PH) | ZC          | ZC     | ZC     |                          |
| Food Service Establishment                                                                                                                                                                                                          | See 23.302.070.E     |        |             |         |        |        |        |        |             |        |        |                          |
| Live Entertainment                                                                                                                                                                                                                  | See 23.302.020.D     |        |             |         |        |        |        |        |             |        |        |                          |
| Manufacturing                                                                                                                                                                                                                       | AUP                  | AUP    | UP(PH)      | UP(PH)  | NP     | UP(PH) | AUP    | AUP    | AUP         | AUP    | AUP    |                          |
| Retail Sale of Goods Manufactured On-Site                                                                                                                                                                                           | ZC [1]               | ZC [1] | ZC [2]      | ZC [2]  | ZC [2] | ZC [1] | ZC     | ZC [2] | ZC          | AUP    | ZC     |                          |
| Storage of Goods (>25% gross floor area)                                                                                                                                                                                            | AUP*                 | AUP*   | AUP*        | AUP*    | AUP*   | AUP*   | AUP*   | AUP*   | AUP*        | AUP*   | AUP    | 23.302.020.C             |
| Wholesale Activities                                                                                                                                                                                                                | AUP*                 | AUP*   | UP(PH)<br>* | UP(PH)* | NP     | AUP*   | AUP*   | AUP*   | AUP*        | AUP    | AUP    | 23.204.080.B.3           |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                     |                      |        |             |         |        |        |        |        |             |        |        |                          |
| Art/Craft Studio                                                                                                                                                                                                                    | AUP                  | AUP    | AUP         | AUP     | AUP    | AUP    | AUP    | AUP    | AUP         | AUP    | ZC [6] |                          |
| ATM, Exterior and Attached to Bank                                                                                                                                                                                                  | AUP                  | AUP    | AUP         | UP(PH)  | AUP    | AUP    | AUP    | AUP*   | AUP         | AUP    | AUP    | 23.204.120.B.2           |
| ATM, Interior or Exterior and Not With Bank                                                                                                                                                                                         | UP(PH)               | UP(PH) | UP(PH)      | NP      | UP(PH) | UP(PH) | UP(PH) | NP     | UP(PH)<br>* | AUP    | UP(PH) | 23.204.130.B.2           |
| Circus/Carnival                                                                                                                                                                                                                     | UP(PH)               | UP(PH) | UP(PH)      | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)      | UP(PH) | UP(PH) |                          |
| Drive-in Uses                                                                                                                                                                                                                       | UP(PH)               | NP     | NP          | NP      | UP(PH) | UP(PH) | NP     | UP(PH) | NP          | NP     | UP(PH) |                          |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | COMMERCIAL DISTRICTS                         |      |      |      |      |      |      |      |       |         |      | USE-SPECIFIC REGULATIONS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|------|------|------|------|------|------|------|-------|---------|------|--------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | C-C                                          | C-U  | C-N  | C-E  | C-NS | C-SA | C-T  | C-SO | C-DMU | C-W     | C-AC |                          |
| Home Occupations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | See 23.302.040                               |      |      |      |      |      |      |      |       |         |      |                          |
| Live/Work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | See 23.312                                   |      |      |      |      |      |      |      |       |         |      |                          |
| Parking Lot/Structure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | See 23.302.070.G                             |      |      |      |      |      |      |      |       |         |      |                          |
| Public Market, Open Air                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | AUP                                          | AUP  | AUP  | AUP  | AUP  | AUP  | AUP  | AUP  | AUP   | UP(PH)  | AUP  |                          |
| Public Market, Enclosed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | AUP                                          | AUP  | AUP  | AUP  | AUP  | AUP  | AUP  | AUP  | AUP   | AUP [9] | AUP  |                          |
| Short-Term Rental                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | See 23.314                                   |      |      |      |      |      |      |      |       |         |      |                          |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ZC*                                          | ZC*  | ZC*  | ZC*  | ZC*  | ZC*  | ZC*  | ZC*  | ZC*   | ZC      | ZC   | 23.318                   |
| Urban Agriculture, High-Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | AUP*                                         | AUP* | AUP* | AUP* | AUP* | AUP* | AUP* | AUP* | AUP*  | AUP     | AUP  | 23.318                   |
| Wireless Telecommunication Facility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | See 23.332—Wireless Communication Facilities |      |      |      |      |      |      |      |       |         |      |                          |
| <b>Notes:</b><br>[1] Change of use of floor area over 3,000 square feet requires an AUP.<br>[2] Change of use of floor area over 2,000 square feet requires an AUP.<br>[3] Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft.<br>[4] Requires a Use Permit if 5,000 sq. ft. or more.<br>[5] Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft.<br>[6] Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline.<br>[7] Requires a Use Permit if 7,500 square feet or more.<br>[8] Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area.<br>[9] Requires a Use Permit if more than 10,000 sq. ft. |                                              |      |      |      |      |      |      |      |       |         |      |                          |



**Unlisted Land Uses.** Any use not listed in Table 23.204-1: Allowed Uses in the Commercial Districts is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.

**B. Use-Specific Regulations.** Uses subject to supplemental regulations are shown in Table 23.204-1: Allowed Uses in the Commercial Districts with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Regulations column in Table 23.204-1 identifies the location of these regulations in the Zoning Ordinance.

### **23.204.030 – Additional Permit Requirements**

#### **A. Change of Use.**

1. Uses subject to additional permit requirements with a change of use are shown in Table 23.204-1: Allowed Uses in the Commercial Districts with a note [1] or [2] following the permit requirement (e.g., ZC [1]).
2. A change of use means a change to a different category of commercial or manufacturing use but does not include changes between uses that are classified in the same category of commercial or manufacturing use. For example, changing a pet store (in “Retail Use” category) to a medical practitioner (in “Offices” category) is subject to change of use permit requirements in Table 23.204-1. Changing a pet store to general retail (also in “Retail Use” category) is not subject to the change of use permit requirements.

#### **B. New Floor Area.**

1. **When Permit is Required.** A project that creates new floor area for any use requires permits as shown in Table 23.204-2: New Floor Area Permit Requirements. Creation of new floor area includes:
  - a. Construction of new main buildings or accessory buildings;
  - b. Additions to existing buildings; or
  - c. The installation of new floor or mezzanine levels within or onto existing buildings.

TABLE 23.204-2: NEW FLOOR AREA PERMIT REQUIREMENTS

| DISTRICT/NEW GROSS FLOOR AREA                                                                                                                  | PERMIT REQUIRED FOR NEW FLOOR AREA |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| C-C, C-U                                                                                                                                       |                                    |
| Less than 5,000 sq. ft.                                                                                                                        | ZC                                 |
| 5,000 sq. ft. or more                                                                                                                          | UP(PH)                             |
| C-N, C-E, C-SO (any amount of new floor area)                                                                                                  | UP(PH)                             |
| C-NS                                                                                                                                           |                                    |
| Less than 2,000 sq. ft.                                                                                                                        | ZC                                 |
| 2,000 sq. ft. or more                                                                                                                          | UP(PH)                             |
| C-SA                                                                                                                                           |                                    |
| Less than 3,000 sq. ft.                                                                                                                        | ZC                                 |
| 3,000 sq. ft. or more                                                                                                                          | UP(PH)                             |
| C-T                                                                                                                                            | -                                  |
| Less than 1,500 sq. ft.                                                                                                                        | AUP                                |
| 1,500 sq. ft. or more                                                                                                                          | UP(PH)                             |
| C-DMU                                                                                                                                          |                                    |
| Less than 10,000 sq. ft.                                                                                                                       | ZC                                 |
| 10,000 sq. ft. or more                                                                                                                         | UP(PH)                             |
| C-W                                                                                                                                            |                                    |
| 5,000 sq. ft. or more except when an AUP is required below                                                                                     | UP(PH)                             |
| 7,500 sq. ft. or less in a building containing only retail uses                                                                                | AUP                                |
| 20,000 sq. ft. or less in a building with residential and retail space that is more than 15% and less than 33% of the floor area being created | AUP                                |
| C-AC                                                                                                                                           |                                    |
| New Main Building or New Dwelling Unit                                                                                                         | UP(PH)                             |
| Addition of 5,000 sq ft or more                                                                                                                | UP(PH)                             |

2. **C-DMU Findings.** To approve a Use Permit for new floor area in the C-DMU district, the ZAB must find that:
  - a. The addition or new building is compatible with the visual character and form of the district; and

- b. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.
- 3. **C-W Findings.** To approve an AUP or Use Permit for new floor area in the C-W district, the review authority must find that the new use or structure provides an intensity of development which does not underutilize the property.
- 4. **C-AC Findings.** To approve a Use Permit for new floor area in the C-AC district, the review authority must find that the proposed use or structure will:
  - a. Be compatible with the purposes of the District;
  - b. Be compatible with the design and character within the District and the adjacent residential neighborhoods;
  - c. Encourage utilization of public transit and off-street parking facilities in the area of the proposed building; and
  - d. If a new residential development, that the proposed use or structure facilitates construction of affordable housing as defined by the US Department of Housing and Urban Development (HUD) Guidelines.

**C. Tenant Space Reconfiguration.**

- 1. Reconfiguration of tenant space in an existing building requires a permit as listed in Table 23.204-3: Tenant Space Reconfiguration Permit Requirements.
- 2. As used in this section, tenant reconfiguration means any physical change to an existing building’s walls separating leased spaces so as to change:
  - a. The number of lease spaces for commercial businesses; or
  - b. The square footage of leasable floor area of an existing commercial lease space.

**TABLE 23.204-3: TENANT SPACE RECONFIGURATION PERMIT REQUIREMENTS**

| District                                            | Permit Required for Tenant Space Reconfiguration Project |
|-----------------------------------------------------|----------------------------------------------------------|
| C-C, C-U                                            |                                                          |
| Less than 5,000 sq. ft.                             | ZC                                                       |
| 5,000 sq. ft. or greater                            | AUP                                                      |
| C-N, C-E, C-NS, C-SO (All reconfiguration projects) | AUP                                                      |
| C-SA, C-DMU, C-AC                                   | No additional permit required                            |

|                                                                               |     |
|-------------------------------------------------------------------------------|-----|
| C-T                                                                           |     |
| Increasing the number of individual tenant spaces                             | ZC  |
| 5,000 sq. ft. or greater                                                      | AUP |
| Creating a tenant space less than 1,000 sq. ft.                               | AUP |
| C-W                                                                           |     |
| Less than 5,000 sq. ft                                                        | ZC  |
| In existing buildings in a designated node affecting 5,000 sq. ft. or greater | AUP |

#### D. Major Residential Additions.

##### 1. Where Allowed/Required Permits.

- a. Major residential additions in the C-W district require an AUP.
- b. No additional permits are required for major residential additions in all other C districts.

2. **Findings.** To deny an AUP for a major residential addition in the C-W district, the review authority must find that although the proposed major residential addition satisfies all other standards of the Zoning Ordinance, the addition would unreasonably obstruct sunlight, air, or views.

E. **Changes to Nonconforming Structures.** See Section 23.324.050– Nonconforming Structures and Buildings for permits required to modify structures that do not conform to setback, height, and other development standards.

F. **Accessory Structures.** For accessory structure permit requirements, see the following:

1. Section 23.304.060– Accessory Buildings and Enclosed Accessory Structures.
2. Section 23.304.070– Unenclosed Accessory Structures in Residential Districts.
3. Section 23.304.080– Fences.

### 23.204.040 – Use-Specific Permit Requirements and Regulations

A. **Commercial Recreation Centers.** See Table 23.204-4: Commercial Recreation Center Permit Requirements for commercial recreation centers in the Commercial Districts.

**TABLE 23.204-4: COMMERCIAL RECREATION CENTER PERMIT REQUIREMENTS**

| DISTRICT/USE SIZE                                         | PERMIT REQUIRED |
|-----------------------------------------------------------|-----------------|
| C-C, C-U, C-T, C-DMU, C-W                                 |                 |
| Under 5,000 sq. ft indoor use                             | ZC              |
| 5,000 to 10,000 sq. ft. indoor use                        | AUP             |
| Over 10,000 sq. ft. indoor use or outdoor use of any size | UP(PH)          |
| C-N, C-E, C-NS, C-SA, C-SO, C-AC                          |                 |
| Under 3,000 sq. ft indoor use                             | AUP             |
| Over 3,000 sq. ft. indoor use or outdoor use of any size  | UP(PH)          |

**B. Group Class Instruction.**

- C-NS and C-DMU Districts.** When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage, storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
- C-NS District.** Group class instruction uses in the C-NS may not exceed 2,500 square feet.
- C-T District.** Group class instruction uses in the C-T district are not permitted on the ground floor.

**C. Gyms and Health Clubs.**

- Permits Required.** Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

**TABLE 23.204-5: GYM AND HEALTH CLUB PERMIT REQUIREMENTS**

| DISTRICT/USE SIZE         | PERMIT REQUIRED [1] |
|---------------------------|---------------------|
| C-C, C-U, C-DMU           |                     |
| Under 7,500 sq. ft        | ZC                  |
| 7,500 sq. ft. and greater | AUP                 |
| C-N, C-E, C-NS, C-SO      | AUP                 |
| C-SA, C-T, C-AC           | ZC                  |
| C-W                       |                     |
| Under 7,500 sq. ft        | ZC                  |

|                                                                                                                                                                                                                                                                                                                                                                                                         |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 7,500 sq. ft. and greater                                                                                                                                                                                                                                                                                                                                                                               | UP(PH) |
| <p>Note:<br/>                 [1] Change of use permit requirements as described in Section – Additional Permit Requirements. A (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p> |        |

2. **C-DMU District.** When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

D. **Transparency Requirement for Office Uses.** When office uses shown in are located on the ground floor adjacent to a street frontage, storefront windows shall either:

1. Include a storefront window display; or
2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**TABLE 23.204-6: OFFICE USES SUBJECT TO TRANSPARENCY REQUIREMENT**

| OFFICE USE                                                           | DISTRICT                        |
|----------------------------------------------------------------------|---------------------------------|
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents | CN, C-E, C-NS, CT, C-SO, C-DMU  |
| Medical Practitioners                                                | C-T                             |
| Office, Business and Professional                                    | CN, C-E, C-NS, C-T, C-SO, C-DMU |

E. **Department Stores.** Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

**TABLE 23.204-7: DEPARTMENT STORE PERMIT REQUIREMENTS**

| DISTRICT/USE SIZE     | PERMIT REQUIRED [1] |
|-----------------------|---------------------|
| C-SA, C-T             |                     |
| 3,000 sq. ft. or less | ZC                  |
| Over 3,000 sq. ft.    | AUP                 |
| C-E, C-NS, C-SO       |                     |

|                                                                                                                                                                                                                                                                                                                                                                                                             |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 3,000 sq. ft. or less                                                                                                                                                                                                                                                                                                                                                                                       | ZC            |
| Over 3,000 sq. ft.                                                                                                                                                                                                                                                                                                                                                                                          | Not Permitted |
| C-N                                                                                                                                                                                                                                                                                                                                                                                                         |               |
| 3,000 sq. ft. or less                                                                                                                                                                                                                                                                                                                                                                                       | AUP           |
| Over 3,000 sq. ft.                                                                                                                                                                                                                                                                                                                                                                                          | Not Permitted |
| C-C, C-U                                                                                                                                                                                                                                                                                                                                                                                                    | ZC            |
| C-AC                                                                                                                                                                                                                                                                                                                                                                                                        |               |
| 3,000 sq ft or less                                                                                                                                                                                                                                                                                                                                                                                         | ZC            |
| Over 3,000 sq ft                                                                                                                                                                                                                                                                                                                                                                                            | UP(PH)        |
| <p>Note:<br/>                     [1] Change of use permit requirements as described in Section – Additional Permit Requirements. A (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p> |               |

F. **Drugstores.** The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

1. **Where Prohibited.** A new or expanded drugstore is not permitted if it is:
  - a. Over 5,000 square feet in gross floor area; and
  - b. Within 1,000 feet of any property containing an existing drugstore.
2. **Measurement of Distance.** Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

**23.204.050 – C-C Corridor Commercial District**

A. **District Purpose.** The purpose of the Corridor Commercial (C-C) district is to:

1. Implement the General Plan’s designations for Avenue Commercial areas;
2. Provide locations for a wide variety of activities along thoroughfares;
3. Encourage development in underutilized neighborhood and community shopping areas; and
4. Promote development compatible with adjacent commercial and residential areas.

B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-8: C-C Development Standards. For residential-only projects, see also Table 23.204-9: C-C Setbacks and Building Separation for Residential-Only Uses and Table 23.204-10: C-C Lot Coverage Standards for Residential-Only Uses.
2. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.

**TABLE 23.204-8: C-C DEVELOPMENT STANDARDS**

|                                         | PROJECT LAND USE     |                              |                      | SUPPLEMENTAL STANDARDS |
|-----------------------------------------|----------------------|------------------------------|----------------------|------------------------|
|                                         | NON-RESIDENTIAL      | MIXED USE                    | RESIDENTIAL ONLY     |                        |
| Lot Area Minimum                        |                      |                              |                      | 23.304.020             |
| New Lots                                | No minimum           |                              | 5,000 sq. ft         |                        |
| Per Group Living Accommodation Resident | 350 sq. ft. [1]      |                              |                      |                        |
| Usable Open Space, Minimum              |                      |                              |                      | 23.304.090             |
| Per Dwelling Unit                       | 200 sq. ft.          | 200 sq. ft. [2]              | 200 sq. ft.          |                        |
| Per Group Living Accommodation Resident | 90 sq. ft.           |                              |                      |                        |
| Floor Area Ratio, Maximum               | 3.0                  |                              | No maximum           |                        |
| Main Building Height, Minimum           | No minimum           |                              |                      |                        |
| Main Building Height, Maximum           | 40 ft. and 2 stories | 40 ft. and 3 stories [3] [4] | 35 ft. and 3 stories | 23.304.050             |
| Lot Line Setbacks, Minimum              |                      |                              |                      | 23.304.030– Setbacks   |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                               | PROJECT LAND USE   |           |                  | SUPPLEMENTAL STANDARDS                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------|------------------|----------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                               | NON-RESIDENTIAL    | MIXED USE | RESIDENTIAL ONLY |                                                          |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                                                                                                                                                                                               | No minimum         |           |                  |                                                          |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                                                                                                                                                                                   | See 23.304.130.C.2 |           |                  |                                                          |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                  | No minimum         |           |                  | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                         | 100%               |           |                  | 23.304.120– Lot Coverage                                 |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Minimum open space for mixed use projects can be reduced with a UP(PH). See 23.204.050.D.3.</p> <p>[3] In mixed use buildings, the third and higher stories must be used for residential purposes.</p> <p>[4] The maximum height of a mixed use project can be increased to 50 ft and 4 stories with the issuance of a UP(PH).</p> |                    |           |                  |                                                          |

**TABLE 23.204-9: C-C SETBACKS AND BUILDING SEPARATION FOR RESIDENTIAL-ONLY USES**

|                            | STANDARDS BY BUILDING STORY [1] |                 |                 | SUPPLEMENTAL STANDARDS |
|----------------------------|---------------------------------|-----------------|-----------------|------------------------|
|                            | 1 <sup>ST</sup>                 | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                        |
| Lot Line Setbacks, Minimum |                                 |                 |                 | 23.304.030– Setbacks   |
| Front                      | 15 ft.                          | 15 ft.          | 15 ft.          |                        |
| Rear                       | 15 ft.                          | 15 ft.          | 15 ft.          |                        |
| Interior                   | 4 ft.                           | 4 ft.           | 6 ft.           |                        |

|                                                                                                     |       |        |        |                                                          |
|-----------------------------------------------------------------------------------------------------|-------|--------|--------|----------------------------------------------------------|
| Street Side                                                                                         | 6 ft. | 8 ft.  | 10 ft. |                                                          |
| Building Separation, Minimum                                                                        | 8 ft. | 12 ft. | 16 ft. | 23.304.040– Building Separation in Residential Districts |
| [1] Development standards included in this table may be modified with a UP(PH). See 23.204.050.D.3. |       |        |        |                                                          |

**TABLE 23.204-10: C-C LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                     | STANDARD BASED ON BUILDING HEIGHT [1] |           |           | SUPPLEMENTAL STANDARDS   |
|-----------------------------------------------------------------------------------------------------|---------------------------------------|-----------|-----------|--------------------------|
|                                                                                                     | 1 STORY                               | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum                                                                               |                                       |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lots                                                                           | 45%                                   | 45%       | 40%       |                          |
| Corner Lots                                                                                         | 50%                                   | 50%       | 45%       |                          |
| [1] Development standards included in this table may be modified with a UP(PH). See 23.204.050.D.3. |                                       |           |           |                          |

**3. Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.**

- a. The ZAB may modify the following standards with a Use Permit:
  - i. Minimum usable open space for mixed use projects shown in Table 23.204-8.
  - ii. Any standard for residential-only projects in Table 23.204-9 and Table 23.204-10.
- b. To approve the modification, the ZAB must find that the modification achieves one or more of the following:
  - i. Encourages use of the ground floor for commercial purposes where appropriate.
  - ii. Encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building.
  - iii. Facilitates the construction of residential or tourist hotel uses where appropriate.



**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the C-U district only in conjunction with a restaurant or general food product store.
3. **Residential Uses.**
  - a. **Ground Floor Residential Uses.** Ground floor residential uses, including leasing and management offices and other similar resident-serving uses, require a Use Permit.
  - b. **University Avenue Node Area.** In the University Avenue Node Area shown in Figure 23.204-1: C-U District Sub-Areas, new residential uses must be integrated with non-residential uses in a mixed-use development.
  - c. **Outside of Node Area.** Single use residential projects are permitted outside of the University Avenue Node Area with a Use Permit.

**FIGURE 23.204-1: C-U DISTRICT SUB-AREAS**



C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-11: C-U Development Standards and Table 23.204-12: C-U Setback Standards. For residential-only projects, see also Table 23.204-13: C-U Setback and Building Separation Standards for Residential Only Uses and Table 23.204-14: C-U Lot Coverage Standards for Residential-Only Uses. See Figure 23.204-1 for C-U district sub-area boundaries.

**TABLE 23.204-11: C-U DEVELOPMENT STANDARDS**

|                                                         | PROJECT LAND USE             |                  | SUPPLEMENTAL STANDARDS       |
|---------------------------------------------------------|------------------------------|------------------|------------------------------|
|                                                         | NON-RESIDENTIAL OR MIXED USE | RESIDENTIAL ONLY |                              |
| Lot Area, Minimum                                       |                              |                  | 23.304.020– Lot Requirements |
| New Lots                                                | No minimum                   | 5,000 sq. ft.    |                              |
| Per Group Living Accommodation Resident                 | 350 sq. ft. [1]              |                  |                              |
| Floor Area Ratio, Maximum                               |                              |                  |                              |
| Avenue Mixed Use Area – North Side of University Avenue | 2.2                          | No maximum       |                              |
| Avenue Mixed Use Area – South Side of University Avenue | 2.5                          |                  |                              |
| Node Area – North Side of University Avenue             | 2.5                          |                  |                              |
| Node Area – South Side of University Avenue             | 3.0                          |                  |                              |
| Main Building Height, Minimum                           | 30 ft. and 2 stories         |                  |                              |
| Main Building Height, Maximum                           |                              |                  | 23.304.050– Building Height  |
| Avenue Mixed Use Area, All Uses                         | 36 ft. and 3 stories [2]     | N/A              |                              |
| Node Area, Non-Residential                              | 40 ft. and 3 stories         |                  |                              |

|                                                                                                                                                                                                                                                                                                                                                                | PROJECT LAND USE             |                                                                                           | SUPPLEMENTAL STANDARDS                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------------------------------------------------------------|----------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                | NON-RESIDENTIAL OR MIXED USE | RESIDENTIAL ONLY                                                                          |                                                          |
| Node Area, Mixed Use                                                                                                                                                                                                                                                                                                                                           | 48 ft. and 4 stories [2]     |                                                                                           |                                                          |
| Residential Only                                                                                                                                                                                                                                                                                                                                               | N/A                          | 36 ft. and 3 stories                                                                      |                                                          |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                                                                                     | See Table 23.204-12          | See Table 23.204-13                                                                       | 23.304.030– Setbacks                                     |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                   | No minimum                   |                                                                                           | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                          | 100%                         | See Table 23.204-14 Table 23.204-14: C-U Lot Coverage Standards for Residential-Only Uses | 23.304.120– Lot Coverage                                 |
| Usable Open Space, Minimum                                                                                                                                                                                                                                                                                                                                     |                              |                                                                                           | 23.304.090– Usable Open Space                            |
| Per Dwelling Unit                                                                                                                                                                                                                                                                                                                                              | 200 sq. ft. [3]              |                                                                                           |                                                          |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                                                                        | 90 sq. ft. [3]               |                                                                                           |                                                          |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] In mixed-use buildings, the third and higher floors must be used for residential purposes.</p> <p>[3] Minimum usable open space for mixed use and exclusive residential uses may be modified with a UP(PH). See 23.204.060.D.3.</p> |                              |                                                                                           |                                                          |

**TABLE 23.204-12: C-U SETBACK STANDARDS**

| LOT LINE & PROJECT CONDITIONS | REQUIRED SETBACK |
|-------------------------------|------------------|
| Front                         |                  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Ground-floor non-residential uses fronting University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Average 2 ft.<br>2 ft. at all sidewalk pedestrian entries                            |
| Ground-floor residential uses fronting University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Average 2 ft.<br>Maximum 10 ft.[1]                                                   |
| Fronting a street other than University Avenue and confronting a non-residential district                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | No min.                                                                              |
| <b>Rear</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                      |
| Lots on south side of University Avenue abutting lot in residential district                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Average 20 ft. [2] [3]                                                               |
| Lots on south side of University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | See 23.204.060.D.5– C-U University Commercial District (Solar Access)                |
| All other lots                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 10 ft. or 10% of lot depth, whichever is greater                                     |
| Interior Side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | No minimum                                                                           |
| Street Side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2 ft. average                                                                        |
| All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                            | As required by 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) [4] |
| <p>Notes:</p> <p>[1] A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.</p> <p>[2] Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.</p> <p>[3] See 23.304.030.C.2.b for allowed reductions.</p> <p>[4] If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.</p> |                                                                                      |

**TABLE 23.204-13: C-U SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL ONLY USES [1]**

|                            | STANDARDS BY BUILDING STORY      |                 |                 | SUPPLEMENTAL STANDARDS |
|----------------------------|----------------------------------|-----------------|-----------------|------------------------|
|                            | 1 <sup>ST</sup>                  | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                        |
| Lot Line Setbacks, Minimum |                                  |                 |                 | 23.304.030– Setbacks   |
| Front                      | Average 2 ft. and 10 ft max. [2] |                 |                 |                        |
| Rear                       | 15 ft.                           | 15 ft.          | 15 ft.          |                        |

|                                                                                                                                                                                                                                                                                  |       |        |        |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------|--------|--|
| Interior                                                                                                                                                                                                                                                                         | 4 ft. | 4 ft.  | 6 ft.  |  |
| Street Side                                                                                                                                                                                                                                                                      | 6 ft. | 8 ft.  | 10 ft. |  |
| Building Separation, Minimum                                                                                                                                                                                                                                                     | 8 ft. | 12 ft. | 16 ft. |  |
| Notes:<br>[1] Development standards included in this table may be modified with a UP(PH). See 23.204.060.D.3<br>[2] Setback area must be used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor. |       |        |        |  |

**TABLE 23.204-14: C-U LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                     | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS |
|-----------------------------------------------------------------------------------------------------|-----------------------------------|-----------|-----------|------------------------|
|                                                                                                     | 1 STORY                           | 2 STORIES | 3 STORIES |                        |
| Lot Coverage, Maximum [1]                                                                           |                                   |           |           | 23.304.120             |
| Interior and Through Lots                                                                           | 45%                               | 45%       | 40%       |                        |
| Corner Lots                                                                                         | 50%                               | 50%       | 45%       |                        |
| [1] Development standards included in this table may be modified with a UP(PH). See 23.204.060.D.3. |                                   |           |           |                        |

**2. Lots Abutting or Fronting a Residential District.**

- a. See 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) for additional setback and building feature requirements for lots:
  - i.* With a front lot line on University Avenue; and
  - ii.* That abut or confront a residential district.
- b. If the front lot line is not on University Avenue, 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) does not apply.

**3. Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.**

- a. The ZAB may modify the following standards with a Use Permit:
  - i.* Minimum usable open space for mixed use projects and exclusive residential uses in Table 23.204-11.





|                                                                                                                                                                                                                                            |                            |                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------------------------|
| Minimum floor to ceiling height                                                                                                                                                                                                            | 12 ft.                     | 12 ft.                     |
| Minimum floor area [1]                                                                                                                                                                                                                     | 15%<br>10% with Use Permit | 30%<br>20% with Use Permit |
| Minimum street frontage [2]                                                                                                                                                                                                                | 50%                        | 75%                        |
| Minimum area for retail sales, personal and household services, or food service [3]                                                                                                                                                        | No minimum                 | 75%<br>50% with Use Permit |
| Maximum area for office use [3]                                                                                                                                                                                                            | No maximum                 | 25%                        |
| <p>Notes:</p> <p>[1] Calculated as percent of project land area.</p> <p>[2] Calculated as percent of project's University Avenue frontage.</p> <p>[3] Calculated as percentage of minimum required ground floor commercial floor area.</p> |                            |                            |

- b. Ground level commercial space shall be designed to allow for the space to be easily divided or assembled.

**7. Ground Floor Commercial Uses – Minimum Floor Area Reductions.**

- a. The ZAB may allow a reduction in the minimum required floor area to no less than indicated in Table 23.204-15 with a Use Permit for projects on lots that are:
  - i. Less than 7,500 square feet; and
  - ii. Without side street access (internal lots).
- b. To approve the reduction, the ZAB must find that:
  - i. Parking cannot be efficiently provided at grade and project parking conflicts with the requirement for ground floor commercial space;
  - ii. The reduced commercial area will result in a project with an enhanced commercial configuration; and
  - iii. The reduced commercial area promotes pedestrian-oriented activity along University Avenue through the mix of commercial uses, and/or the commercial uses will remain open beyond standard business hours, such as into the evening and on weekends, and the uses will be visible from University Avenue frontage.

**8. Ground Floor Commercial Uses – Minimum Frontage Reduction.** The ZAB may allow a reduction in the minimum required frontage requirement along

University Avenue as shown in Table 23.204-15 with a Use Permit upon finding that the minimum frontage requirement conflicts with:

- a. Minimum project site egress requirements;
- b. Minimum required driveway access to parking areas; or
- c. Project utility needs.

9. **Parking Areas for Residential-Only Projects.** All residential-only projects shall limit ground level parking uses directly fronting on University Avenue to no more than 25 percent of the project’s University Avenue frontage. All parking garage walls adjacent to University Avenue or side streets shall be articulated through design elements or material detailing to avoid blank walls extending more than 12 feet along the University Avenue or side street frontage.

10. **Open Space.** Projects shall provide open space features as shown in Table 23.204-16: C-U Open Space Features to enhance project entries and the University Avenue frontage.

**TABLE 23.204-16: C-U OPEN SPACE FEATURES**

| OPEN SPACE FEATURE                                                                                                                                                                                                                                       | MINIMUM REQUIREMENT |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>Mixed Use and Residential-Only Projects</b>                                                                                                                                                                                                           |                     |
| Minimum open space that is either:<br><ul style="list-style-type: none"> <li>a. at street level; or</li> <li>b. on a parking podium directly connected to the project entries at the street level [1]</li> </ul>                                         | 10%                 |
| Minimum open space open to sky [1]                                                                                                                                                                                                                       | 75%                 |
| <b>Projects with 100 feet or more of University Avenue Frontage</b>                                                                                                                                                                                      |                     |
| Minimum area of pedestrian-oriented open spaces and improvements open to the sidewalk [2]                                                                                                                                                                | 1%                  |
| Minimum width and length of street level plaza or entry courtyard                                                                                                                                                                                        | 6 ft.               |
| <p>Notes:</p> <p>[1] Calculated as percentage of minimum resident-serving open spaced required by Section 23.304.090– Usable Open Space. Open space must be accessible to building occupants.</p> <p>[2] Calculated percentage of project land area.</p> |                     |

11. **Sidewalk/Curb and Gutter.** Projects shall provide sidewalk, curb and gutter, and street corner bulb-out improvements as necessary to comply with the current City standards.

12. **Sidewalk Amenities.** Projects shall provide sidewalk amenities as necessary to comply with the current City standards. Required improvement may include:

- a. Pedestrian-scaled lighting to illuminate the sidewalk areas;
- b. New street trees and grates; and
- c. Benches and bicycle racks.

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-U district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

- 1. Is compatible with the purpose of the district;
- 2. Is compatible with the surrounding uses and buildings;
- 3. Does not interfere with the continuity of retail and service facilities at the ground level; and
- 4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

**23.204.070 – C-N Neighborhood Commercial District**

A. **District Purpose.** The purpose of the Neighborhood Corridor (C-N) district is to:

- 1. Implement the General Plan’s designations for Neighborhood Commercial areas;
- 2. Provide locations for uses supplying convenience goods and services for residents of the immediate area;
- 3. Provide locations for other activities compatible with allowed commercial uses;
- 4. Minimize traffic and parking problems for the adjacent residential areas; and
- 5. Promote compatibility between commercial areas and nearby residential areas.

B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-17: C-N Development Standards. For

residential-only projects, see also Table 23.204-18: C-N Setback and Building Separation Standards for Residential-Only Uses and

2. Table 23.204-19: C-N Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-17: C-N DEVELOPMENT STANDARDS**

|                                                 | Project Land Use     |                          |                      | Supplemental Standards        |
|-------------------------------------------------|----------------------|--------------------------|----------------------|-------------------------------|
|                                                 | Non-Residential      | Mixed Use                | Residential Only     |                               |
| Lot Area, Minimum                               |                      |                          |                      | 23.304.020– Lot Requirements  |
| New Lots                                        | No minimum           |                          | 5,000 sq. ft.        |                               |
| Per Group Living Accommodation Resident         | 350 sq. ft. [1]      |                          |                      |                               |
| Usable Open Space, Minimum                      |                      |                          |                      | 23.304.090– Usable Open Space |
| Per Dwelling Unit                               | 200 sq. ft.          | 200 sq. ft.[2]           | 200 sq. ft.          |                               |
| Per Group Living Accommodation Resident         | 90 sq. ft.           | 90 sq. ft. [2]           | 90 sq. ft.           |                               |
| Floor Area Ratio, Maximum                       | 3.0                  |                          | No maximum           |                               |
| Main Building Height, Maximum                   | 35 ft. and 2 stories | 35 ft. and 3 stories [3] | 35 ft. and 3 stories | 23.304.050– Building Height   |
| Lot Line Setbacks, Minimum                      |                      |                          |                      |                               |
| Abutting/Confronting a Non-residential District | No minimum           |                          | See Table 23.204-18  |                               |
| Abutting/Confronting a Residential District     | See 23.304.030.C.2   |                          |                      |                               |
| Building Separation, Minimum                    | No minimum           |                          |                      |                               |
| Lot Coverage, Maximum                           | 100%                 |                          | See Table 23.204-19  |                               |

|                                                                                                  | Project Land Use |           |                  | Supplemental Standards |
|--------------------------------------------------------------------------------------------------|------------------|-----------|------------------|------------------------|
|                                                                                                  | Non-Residential  | Mixed Use | Residential Only |                        |
| Notes:                                                                                           |                  |           |                  |                        |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.   |                  |           |                  |                        |
| [2] Minimum open space for mixed use projects can be modified with a UP(PH). See 23.204.070.D.3. |                  |           |                  |                        |
| [3] In mixed use buildings, the third and higher stories must be used for residential purposes.  |                  |           |                  |                        |

**TABLE 23.204-18: C-N SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                     | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|-----------------------------------------------------------------------------------------------------|-----------------------------|-----------------|-----------------|----------------------------------------------------------|
|                                                                                                     | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                          |
| Lot Line Setbacks, Minimum [1]                                                                      |                             |                 |                 | 23.304.030– Setbacks                                     |
| Front                                                                                               | 15 ft.                      | 15 ft.          | 15 ft.          |                                                          |
| Rear                                                                                                | 15 ft.                      | 15 ft.          | 15 ft.          |                                                          |
| Interior                                                                                            | 4 ft.                       | 4 ft.           | 6 ft.           |                                                          |
| Street Side                                                                                         | 6 ft.                       | 8 ft.           | 10 ft.          |                                                          |
| Building Separation, Minimum [1]                                                                    | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040– Building Separation in Residential Districts |
| [1] Development standards included in this table can be modified with a UP(PH). See 23.204.070.D.3. |                             |                 |                 |                                                          |

**TABLE 23.204-19: C-N LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|---------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum [1] |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lots | 45%                               | 45%       | 40%       |                          |

|                                                                                                     |     |     |     |  |
|-----------------------------------------------------------------------------------------------------|-----|-----|-----|--|
| Corner Lots                                                                                         | 50% | 50% | 45% |  |
| [1] Development standards included in this table can be modified with a UP(PH). See 23.204.070.D.3. |     |     |     |  |

3. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.
4. **Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.**
  - a. The ZAB may modify the following standards with a Use Permit:
    - i.* Minimum usable open space for mixed use projects shown in Table 23.204-17: C-N Development Standards.
    - ii.* Any standard for residential-only projects in Table 23.204-18: C-N Setback and Building Separation Standards for Residential-Only Uses and
    - iii.* Table 23.204-19: C-N Lot Coverage Standards for Residential-Only Uses.
  - b. To approve the modification, the ZAB must find that the modification achieves one or more of the following:
    - i.* Encourages use of the ground floor for commercial purposes where appropriate.
    - ii.* Encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building.
    - iii.* Facilitates the construction of residential or tourist hotel uses where appropriate.
    - iv.* Permits consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.
- E. **Permit Findings.** To approve any AUP or Use Permit for a project in the C-N district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:
  1. Is compatible with the purpose of the district;
  2. Is compatible with the surrounding uses and buildings;
  3. Does not interfere with the continuity of retail and service facilities at the ground level; and

4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

**23.204.080 – C-E Elmwood Commercial District**

- A. District Purpose.** The purpose of the Elmwood Commercial (C-E) district is to:
1. Implement the General Plan’s designation for a community commercial district in this area;
  2. Maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods by:
    - a. Providing locations for retail goods and service establishments to serve surrounding neighborhoods;
    - b. Preventing development which exceeds the amount and intensity of use that is compatible with adjacent residential neighborhoods;
    - c. Limiting the space occupied by businesses that generate high traffic and/or parking demands;
    - d. Controlling the proliferation of establishments which, if not limited, might expand to displace establishments needed to serve surrounding neighborhoods; and
    - e. Permitting other uses which serve this objective; and
  3. Ensure that new buildings, alterations, and additions to existing buildings harmonize with their surroundings.
- B. Land Use Regulations.**
1. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
  2. **Numerical and Size Limitations.**
    - a. Table 23.204-20 shows land uses subject to numerical and size limitations in the C-E district.

**TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS**

| USE                                                      | NUMBER LIMIT | MAXIMUM SIZE  | PERMIT REQUIRED |
|----------------------------------------------------------|--------------|---------------|-----------------|
| Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops | No limit     | 1,500 sq. ft. | ZC              |
| Bookstores, Periodical Stands                            | No limit     | 2,000 sq. ft. | ZC              |



|                                                                                                                                                                                                                                                                    |          |               |                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------|--------------------|
| Food Service Establishments [1]                                                                                                                                                                                                                                    | 25 total | No max.       | No permit required |
| Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services                                                                                                                                                                                               | No limit | 1,000 sq. ft. | ZC                 |
| Notes:<br>[1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20.<br>[2] Change of use of over 3,000 square feet requires Use Permit |          |               |                    |

- b. The ZAB may allow a use to exceed the limitations in Table 23.204-20 with a Use Permit upon finding that:
  - i. The use will result in the positive enhancement of the purposes of the district; and
  - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

3. **Incidental Wholesale Activities.** In the C-E district, wholesale activities incidental to a primary use require permits as follows:

- a. Six or fewer employees: Zoning Certificate.
- b. Seven or more employees: AUP.
- c. New construction: Use Permit.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-21: C-E Development Standards. For residential-only projects, also see Table 23.204-22: C-E Setback and Building Separation Standards for Residential-Only Uses and Table 23.204-23: C-E Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-21: C-E DEVELOPMENT STANDARDS**

|                   | Project Land Use              |                  | Supplemental Standards |
|-------------------|-------------------------------|------------------|------------------------|
|                   | Non-Residential and Mixed Use | Residential Only |                        |
| Lot Area, Minimum | No minimum                    | 5,000 sq. ft.    | 23.304.020–            |

|                                                                                                                                                                                                                                                                                                                    |                          |                      |                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------|------------------------------|
| New Lots                                                                                                                                                                                                                                                                                                           | No minimum               | 5,000 sq. ft.        | Lot Requirements             |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                            | 350 sq. ft. [1]          |                      |                              |
| Usable Open Space                                                                                                                                                                                                                                                                                                  |                          |                      | 23.304.090–Usable Open Space |
| Per Dwelling Unit                                                                                                                                                                                                                                                                                                  | 200 sq. ft. [2]          |                      |                              |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                            | 90 sq. ft.[ 2]           |                      |                              |
| Floor Area Ratio, Maximum                                                                                                                                                                                                                                                                                          |                          |                      |                              |
| Corner Lot                                                                                                                                                                                                                                                                                                         | 1.0                      | No maximum           |                              |
| All Other Lot                                                                                                                                                                                                                                                                                                      | 0.8                      |                      |                              |
| Main Building Height, Minimum                                                                                                                                                                                                                                                                                      | No minimum               | No minimum           |                              |
| Main Building Height, Maximum                                                                                                                                                                                                                                                                                      | 28 ft. and 2 stories [3] | 35 ft. and 3 stories |                              |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                                         |                          |                      | 23.304.030–Setbacks          |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                                                    | No minimum               | See Table 23.204-22  |                              |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                                        | See Table 23.304-3       |                      |                              |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                       | No minimum               | See Table 23.204-22  |                              |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                              | 100%                     | See Table 23.204-23  | 23.304.120–Lot Coverage      |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.060.D.3</p> <p>[3] A basement level devoted exclusively to parking is not counted as a story.</p> |                          |                      |                              |

**TABLE 23.204-22: C-E SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES**

|  | STANDARDS BY BUILDING STORY | SUPPLEMENTAL STANDARDS |
|--|-----------------------------|------------------------|
|--|-----------------------------|------------------------|

|                              | 1 <sup>ST</sup> | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                                   |
|------------------------------|-----------------|-----------------|-----------------|-------------------------------------------------------------------|
| Lot Line Setbacks, Minimum   |                 |                 |                 | 23.304.030–<br>Setbacks                                           |
| Front                        | 15 ft.          | 15 ft.          | 15 ft.          |                                                                   |
| Rear                         | 15 ft.          | 15 ft.          | 15 ft.          |                                                                   |
| Interior                     | 4 ft.           | 4 ft.           | 6 ft.           |                                                                   |
| Street Side                  | 6 ft.           | 8 ft.           | 10 ft.          |                                                                   |
| Building Separation, Minimum | 8 ft.           | 12 ft.          | 16 ft.          | 23.304.040–<br>Building Separation<br>in Residential<br>Districts |

**TABLE 23.204-23: C-E LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS      |
|---------------------------|-----------------------------------|-----------|-----------|-----------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                             |
| Lot Coverage, Maximum     |                                   |           |           | 23.304.120– Lot<br>Coverage |
| Interior and Through Lots | 45%                               | 45%       | 40%       |                             |
| Corner Lots               | 50%                               | 50%       | 45%       |                             |

2. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
3. **Modifications to Standards – Mixed Use Open Space.** The ZAB may modify the usable open space requirement shown in Table 23.204-21 for mixed-use projects by finding that the modification achieves one or more of the following:
  - a. The modification encourages and maintains the present street frontage and pedestrian orientation of the district.
  - b. The modification is compatible in design and character with the commercial district and the adjacent residential neighborhoods.
  - c. The modification is compatible with the purposes set forth in Section 23.204.080.A (District Purpose) and the existing character of the district.
4. **Ground Floor Residential Uses.** A ground floor residential use must be setback at least 20 feet from a property line along College or Ashby Avenue.

**5. Projections into Right-of-Way.**

- a. Bay windows and balconies 11 feet or more above the sidewalk grade may project 3 feet into a street right-of-way.
- b. A maximum 60 percent of the length of a building frontage may project beyond the property line.
- c. All projections require a revocable encroachment permit from the City Council.

**E. Permit Findings.** To approve an AUP or Use Permit for a project in the C-E district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find the following:

- 1. The proposed use or structure will:
  - a. Encourage and maintain the present street frontage and pedestrian orientation of the district;
  - b. Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and
  - c. Be compatible with the purposes set forth in Section 23.204.080.A (District Purpose) and the existing character of the district.
- 2. The proposed use or structure will not:
  - a. Interfere with the continuity of retail or compatible service facilities at the ground level;
  - b. Interrupt a continuous wall of building facades;
  - c. Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;
  - d. Result in domination of this district by one type of use; and
  - e. Generate objectionable odors nor excessive levels of noise.

**23.204.090 – C-NS North Shattuck Commercial District**

**A. District Purpose.** The purpose of the North Shattuck Commercial (C-NS) district is to:

- 1. Implement the General Plan's designations for Community Commercial and Commercial/Residential in this area;

2. Encourage the maintenance and establishment of retail and service activities that provide goods and services to serve the residents of the adjacent and outlying neighborhoods; but do not generate high traffic volume;
3. Provide locations for other activities compatible with these commercial activities;
4. Promote compatibility between such commercial areas and adjacent residential neighborhoods;
5. Limit the space occupied by businesses that generate high traffic volumes;
6. Support the retention of types of businesses serving adjacent neighborhoods;
7. Limit space occupied by commercial uses, especially offices, that are more appropriately located in the downtown business district;
8. Prevent development of commercial spaces exceeding the amount and intensity of use that can be served by available traffic capacity and potential parking supply;
9. Encourage an adequate commercial and residential mix along Shattuck Avenue; and
10. Ensure that new buildings and additions to existing buildings harmonize with their surroundings.

B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-24: C-NS Development Standards. See also Table 23.204-25: C-NS Setback Standards for Residential-Only Uses and Building Separation Standards for Mixed Use and Residential-Only Uses and Table 23.204-26: C-NS Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-24: C-NS DEVELOPMENT STANDARDS**

|                                         | Project Land Use              |                  | Supplemental Standards |
|-----------------------------------------|-------------------------------|------------------|------------------------|
|                                         | Non-Residential and Mixed Use | Residential Only |                        |
| Lot Area, Minimum                       |                               |                  | 23.304.020             |
| New Lots                                | 4,000 sq. ft.                 | 5,000 sq. ft.    |                        |
| Per Group Living Accommodation Resident | 350 sq. ft. [1]               |                  |                        |

|                                                                                                                                                                                                                                                                                                                                                                                                   | Project Land Use              |                      | Supplemental Standards        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------|-------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                   | Non-Residential and Mixed Use | Residential Only     |                               |
| Usable Open Space, Minimum                                                                                                                                                                                                                                                                                                                                                                        |                               |                      | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                                                                                                                                                                                                                                                                                                                 | 200 sq. ft.                   | 200 sq. ft.          |                               |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                                                                                                           | No minimum                    | 90 sq. ft.           |                               |
| Floor Area Ratio, Maximum                                                                                                                                                                                                                                                                                                                                                                         | 1.0                           | No maximum           |                               |
| Main Building Height [2]                                                                                                                                                                                                                                                                                                                                                                          |                               |                      |                               |
| Minimum                                                                                                                                                                                                                                                                                                                                                                                           | 2 stories                     | No minimum           |                               |
| Maximum                                                                                                                                                                                                                                                                                                                                                                                           | 35 ft. and 3 stories          | 28 ft. and 2 stories |                               |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                                                                                                                        |                               |                      | 23.304.030                    |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                                                                                                                                   | No minimum                    | See Table 23.204-25  |                               |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                                                                                                                       | See 23.304.030.C.2            |                      |                               |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                                                      | No minimum [4]                | See Table 23.204-25  | 23.304.040                    |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                                                             | 100%                          | See Table 23.204-26  | 23.304.120                    |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Basement levels devoted exclusively to parking are not counted as a story.</p> <p>[3] For mixed-use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25</p> <p>[4] No dimension may be less than 6 feet.</p> |                               |                      |                               |

**TABLE 23.204-25: C-NS SETBACK STANDARDS FOR RESIDENTIAL-ONLY USES AND BUILDING SEPARATION STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES**

|                            | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS |
|----------------------------|-----------------------------|-----------------|-----------------|------------------------|
|                            | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                        |
| Lot Line Setbacks, Minimum |                             |                 |                 | 23.304.030–            |

|                              |        |        |        |                                                          |
|------------------------------|--------|--------|--------|----------------------------------------------------------|
| Front                        | 15 ft. | 15 ft. | 15 ft. | Setbacks                                                 |
| Rear                         | 15 ft. | 15 ft. | 15 ft. |                                                          |
| Interior                     | 4 ft.  | 4 ft.  | 6 ft.  |                                                          |
| Street Side                  | 6 ft.  | 8 ft.  | 10 ft. |                                                          |
| Building Separation, Minimum | 8 ft.  | 12 ft. | 16 ft. | 23.304.040– Building Separation in Residential Districts |

**TABLE 23.204-26: C-NS LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lot | 45%                               | 45%       | 40%       |                          |
| Corner Lot               | 50%                               | 50%       | 45%       |                          |

1. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.
2. **Ground Floor Dwelling Units in Mixed-Use Buildings.** Ground floor dwelling units in a mixed-use building shall be located at least 20 feet from a property line next to a public right-of-way.
3. **Residential Window Setback.** Mixed-use buildings shall be setback at least ten feet from an interior property line opposite a required window in any habitable room of a residential use.

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-NS district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:

1. Is compatible in design and character with the commercial district and the adjacent residential neighborhoods;
2. Is compatible with the purposes and the existing character of the district.
3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;

4. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

### **23.204.100 – C-SA South Area Commercial District**

A. **District Purpose.** The purpose of the South Area Commercial (C-SA) district is to:

1. Implement the General Plan's designations for Community Commercial, and the Commercial/Residential areas, as well as the policies of the South Berkeley Area Plan;
2. Provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area;
3. Provide an area of neighborhood and lower intensity community commercial uses, serving as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue;
4. Encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley;
5. Encourage residential development for persons who desire both the convenience of location and more open space than is available in the Downtown;
6. Provide limited locations for other activities such as offices which may be compatible with both retail and residential uses;
7. Encourage development and amenities that support pedestrian-oriented uses;
8. Encourage appropriate mixed-use development (retail/office/residential) on appropriate sites in the district; and
9. Increase the opportunities for the establishment of businesses which are owned and operated by local residents.

B. **Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts
2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.
3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.
4. **Mixed-Use Permits Required.**



- a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:
  - i.* Complies with all applicable standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29;
  - ii.* Includes only residential uses above the ground floor; and
  - iii.* Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.
- b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100.E– C-SA South Area Commercial District (Permit Findings).

5. **Automobile/Motorcycle Sales.**

a. **Applicability.**

- i.* In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
- ii.* All new or relocated automobile or motorcycle sales in the C-SA district shall comply with the requirements of this subsection.
- iii.* Expansions or modifications of existing automobile or motorcycle sales are:
  - 1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
  - 2. Shall not increase or exacerbate a non-conformity with these standards.

- b. **Where Allowed.** New or relocated automobile or motorcycle sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory, are limited to the Dealership Overlay Area as shown in Figure 23.204-2: C-SA Dealership Overlay Area.

FIGURE 23.204-2: C-SA DEALERSHIP OVERLAY AREA



c. **Standards.**

- i.* **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.
- ii.* **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;
- iii.* **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.
- iv.* **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.
- v.* **Repair Activities.** All vehicle repair activities shall be conducted indoors.
- vi.* **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.
- vii.* **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.
- viii.* **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.

d. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:

- i.* Is necessary to facilitate incorporation of an existing structure;
- ii.* Achieve greater consistency with the surrounding street pattern;
- iii.* Buffers impacts to an adjacent residential district; or
- iv.* Is needed to accommodate dealership operations.

C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

#### D. Development Standards.

1. **Basic Standards.** See Table 23.204-27: C-SA Development Standards and Table 23.204-28: C-SA Maximum Building Height. For residential-only projects, see also Table 23.204-29: C-SA Setback and Building Separation Standards for Mixed Use and Residential-Only Uses and Table 23.204-30: C-SA Lot Coverage Standards for Mixed Use and Residential-Only Uses.

**TABLE 23.204-27: C-SA DEVELOPMENT STANDARDS**

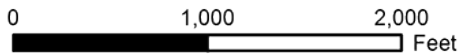
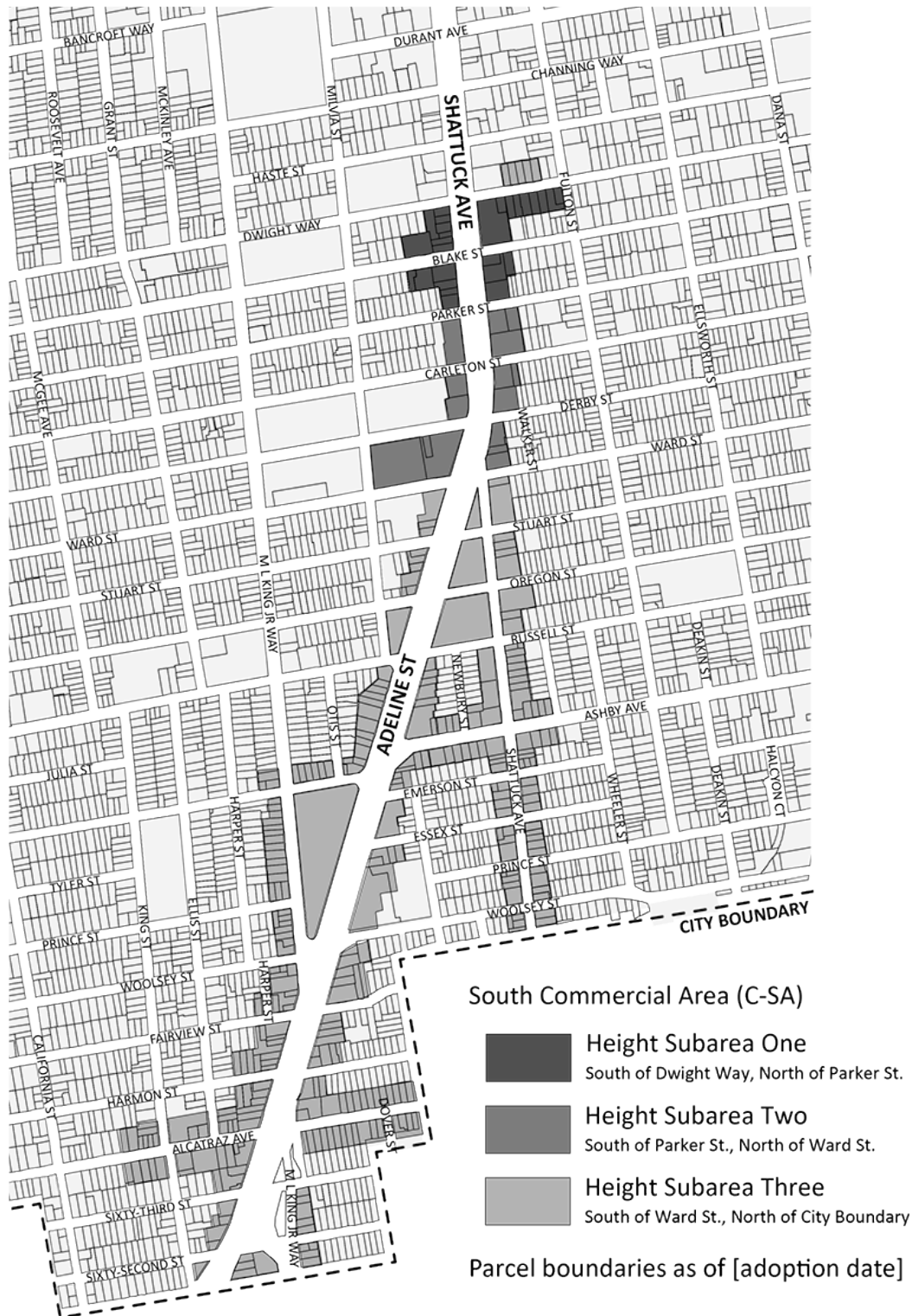
|                                                 | Project Land Use    |                     |                  | Supplemental Standards        |
|-------------------------------------------------|---------------------|---------------------|------------------|-------------------------------|
|                                                 | Non-Residential     | Mixed Use           | Residential Only |                               |
| Lot Area, Minimum                               |                     |                     |                  | 23.304.020                    |
| New Lots                                        | No minimum          | No minimum          | 5,000 sq. ft.    |                               |
| Per Group Living Accommodation Resident         | No minimum          | 350 sq. ft. [1]     |                  |                               |
| Usable Open Space, Minimum                      |                     |                     |                  | 23.304.090– Usable Open Space |
| Per Dwelling Unit                               | N/A                 | 40 sq. ft. [3]      | 200 sq. ft.      |                               |
| Per Group Living Accommodation Resident         | N/A                 | No minimum          | 90 sq. ft.       |                               |
| Floor Area Ratio, Maximum                       | 4.0                 | 4.0                 | No maximum       |                               |
| Main Building Height, Minimum                   | No minimum          |                     |                  |                               |
| Main Building Height, Maximum                   | See Table 23.204-28 |                     |                  |                               |
| Lot Line Setbacks, Minimum                      |                     |                     |                  | 23.304.030– Setbacks          |
| Abutting/Confronting a Non-residential District | No minimum          | See Table 23.204-29 |                  |                               |
| Abutting/Confronting a Residential District     | See 23.304.030. C.2 |                     |                  |                               |

|                                                                                                                                                                                                                                                                                        | Project Land Use |                     |                  | Supplemental Standards                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|---------------------|------------------|-------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                        | Non-Residential  | Mixed Use           | Residential Only |                                                             |
| Building Separation, Minimum                                                                                                                                                                                                                                                           | No minimum       | See Table 23.204-29 |                  | 23.304.040–<br>Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                  | 100%             | See Table 23.204-30 |                  | 23.304.120–<br>Lot Coverage                                 |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] For mixed-use projects, minimum building separation shall be as required for residential-only projects</p> <p>[3] No dimension may be less than 6 feet.</p> |                  |                     |                  |                                                             |

**TABLE 23.204-28: C-SA MAXIMUM BUILDING HEIGHT**

| BUILDING LAND USE                                                                                                          | MAXIMUM HEIGHT       |                      |                      |
|----------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------|----------------------|
|                                                                                                                            | SUBAREA 1            | SUBAREA 2            | SUBAREA 3            |
| Non-Residential Uses                                                                                                       | 36 and 3 stories     | 24 and 2 stories     | 24 and 2 stories     |
| Mixed Use and Residential Only                                                                                             | 60 and 5 stories [1] | 50 and 4 stories [1] | 36 and 3 stories [1] |
| <p>Notes:</p> <p>[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.</p> |                      |                      |                      |

FIGURE 23.204-3: C-SA BUILDING HEIGHT SUB-AREAS



**TABLE 23.204-29: C-SA SETBACK AND BUILDING SEPARATION STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 |                 |                 | Supplemental Standards                                      |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------------------------------------------------------|
|                              | 1 <sup>st</sup>             | 2 <sup>nd</sup> | 3 <sup>rd</sup> | 4 <sup>th</sup> | 5 <sup>th</sup> | 6 <sup>th</sup> |                                                             |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                 |                 |                 | 23.304.030–<br>Setbacks                                     |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          |                                                             |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          |                                                             |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.          | 12 ft.          |                                                             |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 12 ft.          | 14 ft.          | 15 ft.          |                                                             |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.          | 28 ft.          | 23.304.040–<br>Building Separation in Residential Districts |

**TABLE 23.204-30: C-SA LOT COVERAGE STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|---------------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES | 6 STORIES |                             |
| Lot Coverage, Maximum     |                                   |           |           |           |           |           | 23.304.120–<br>Lot Coverage |
| Interior and Through Lots | 45%                               | 45%       | 35%       | 35%       | 35%       | 35%       |                             |
| Corner Lots               | 50%                               | 50%       | 45%       | 40%       | 40%       | 40%       |                             |

2. **Modification for Mixed Use and Residential Projects.** The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.204-30 for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:
  - a. The project encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building;
  - b. The modification allows consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose;

- c. The modification facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines; or
  - d. The modification provides consistency with the purposes of the district as listed in Section 23.204.100.A (District Purpose).
- E. **Findings.** To approve an AUP or Use Permit for a project in the C-SA district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
- 1. Is compatible with the purposes of the district;
  - 2. Is compatible in design and character with the district and the adjacent residential neighborhoods; and
  - 3. Will not result in the domination of one type of commercial/retail use in any one area of the district.

### **23.204.110 – C-T Telegraph Avenue Commercial District**

- A. **District Purpose.** The purpose of the Telegraph Avenue Commercial (C-T) district is to:
- 1. Implement the General Plan's designation of Avenue Commercial for this area;
  - 2. Implement the Southside Plan's designation for the Telegraph Avenue Commercial Subarea;
  - 3. Regulate development in the Telegraph Avenue area to satisfy the needs of the population groups using the district, especially the University population and the surrounding resident population;
  - 4. Encourage the availability of a variety of goods and services which serve residents in the district and the University population but do not generate a high volume of vehicular traffic;
  - 5. Allow for uses which maintain the cultural quality of the district giving it its regional appeal without generating substantial vehicular traffic;
  - 6. Discourage uses which, because of size, the type of the products sold, vehicular traffic generated or other considerations, are more appropriately located elsewhere in the city;
  - 7. Encourage a mix of goods and services which will prevent the dominance of any one type of use and which will produce variations within the same category of uses;



8. Encourage the establishment and maintenance of uses which will satisfy the needs of all age groups and attract a range of users and interests;
9. Encourage the creation of additional housing in the district which is affordable, including housing for those who work or study nearby;
10. Encourage those uses and structural architecture that reinforce, and discourage those uses and architecture that interrupt, the pedestrian orientation of the district;
11. Encourage mixed commercial and residential uses;
12. Encourage the construction of new housing in mixed use development on vacant properties and surface parking lots;
13. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed use development;
14. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character;
15. Encourage the establishment and survival of small, locally-owned businesses, thereby contributing to the vitality and diversity of the district;
16. Discourage the type of commercial use whose establishment will contribute to the displacement of businesses that supply neighboring residents with essential goods and services;
17. Ensure that new buildings, additions and renovations harmonize with and enhance the unique character of the district;
18. Provide environmental protection for the residents of mixed residential commercial structures and surrounding residents from such detriments as noise, fumes and litter;
19. Preserve the ethnic diversity of the resident population and users of the district and of the types of businesses providing ethnically diverse goods and services in the district;
20. Protect and encourage the development of properties accessible to the disabled for both residential and commercial use;
21. Discourage uses which are widely available in other shopping districts throughout the Bay Area and detract from the unique type and mix of goods and services available in the district.

**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.
3. **Drug Paraphrenia Stores.** Any use involving the sale or distribution of drug paraphrenia is not permitted in the C-T district.
4. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.
5. **Residential-Only Buildings.** Residential-only buildings are not permitted in the C-T district. Dwelling units and group living accommodations are allowed only above the ground floor in a mixed-use building.
6. **Office Uses.**
  - a. Table 23.204-31 shows permits required for office uses in the C-T district.

**TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS**

| Building Location            | Permit Required               |                    |
|------------------------------|-------------------------------|--------------------|
|                              | First and Second Story        | Above Second Story |
| Adjacent to Bancroft Way     | As required by Table 23.204-1 | AUP                |
| Not adjacent to Bancroft Way |                               | UP(PH)             |

- b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:
      - i.* Include a window display; or
      - ii.* Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
7. **Upper Story Uses.**
  - a. Floor area above the ground floor may be occupied only by a residential or office uses.
  - b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
    - i.* Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
    - ii.* Does not exceed the ground-floor area of the use.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-32: C-T Development Standards.

**TABLE 23.204-32: C-T DEVELOPMENT STANDARDS**

| BASIC STANDARDS                                 |                      | SUPPLEMENTAL STANDARDS        |
|-------------------------------------------------|----------------------|-------------------------------|
| Lot Area Minimum                                |                      | 23.304.020– Lot Requirements  |
| New Lots                                        | No minimum           |                               |
| Per Group Living Accommodation Resident         | 350 sq. ft. [1]      |                               |
| Usable Open, Minimum                            |                      | 23.304.090– Usable Open Space |
| Space Per Dwelling Unit                         | 40 sq. ft. [4]       |                               |
| Per Group Living Accommodation Resident         | No minimum           |                               |
| Floor Area Ratio, Maximum                       |                      |                               |
| South of Dwight Way                             | 4.0                  |                               |
| North of Dwight Way                             | 5.0 [2]              |                               |
| Telegraph/Channing Parking Garage [3]           | No maximum           |                               |
| Main Building Height, Minimum                   | 35 ft.               |                               |
| Main Building Height, Maximum                   |                      | 23.304.050– Building Height   |
| South of Dwight Way                             | 50 ft. [2]           |                               |
| North of Dwight Way                             | 65 ft. [2]           |                               |
| Telegraph/Channing Parking Garage [3]           | 85 ft. and 7 stories |                               |
| Lot Line Setbacks, Minimum                      |                      | 23.304.030– Setbacks          |
| Abutting/Confronting a Non-residential District | No minimum           |                               |
| Abutting/Confronting a Residential District     | See 23.304.030.C.2   |                               |

|                                                                                                                                                                                                                                                                                    |            |                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------------------------------------------------------------|
| Building Separation, Minimum                                                                                                                                                                                                                                                       | No minimum | 23.304.040–<br>Building Separation<br>in Residential<br>Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                              | 100%       | 23.304.120– Lot<br>Coverage                                       |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Increased FAR and height allowed with Use Permit. See Table 23.204-33.</p> <p>[3] APN 55-1879-6-1.</p> <p>[4] No dimension may be less than 6 feet.</p> |            |                                                                   |

2. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.

3. **Increased Group Living Density.**

- a. Projects with group living accommodations occupying 50 percent or more of the total building floor area are eligible for increased density.
- b. To approve a Use Permit to increase the density of a group living accommodation the ZAB must make the following findings:
  - i. The increase in density will not be detrimental to the immediate neighborhood; and
  - ii. The project meets the purposes of the district.

4. **Height and FAR Increases.**

- a. Projects with 50 percent or more of the total building floor area for residential use are eligible for increased building height and FAR as shown in Table 23.204-33.

**TABLE 23.204-33: C-T ALLOWED HEIGHT AND FAR INCREASES**

| Project Location    | Allowed Increase     |                     |
|---------------------|----------------------|---------------------|
|                     | Height               | FAR                 |
| South of Dwight Way | 65 ft. and 5 stories | No increase allowed |
| North of Dwight Way | 75 ft. and 6 stories | 6.0                 |

- b. The ZAB may allow the increased height and FAR with a Use Permit upon finding that the project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks.

5. **Shade Studies.**

- a. A shade study is required for all proposed buildings exceeding three stories or 40 feet.
- b. Based on the findings of the shade study, the ZAB may require the fourth or higher story of a building to be set back to minimize shade impacts on adjacent properties or the public right-of-way.

6. **Environmental Impacts.** Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP).

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-T district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

- 1. Is compatible with the purposes of the district;
- 2. Encourages and maintains the present street frontage of the district;
- 3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;
- 4. Does not interrupt a continuous wall of building facades;
- 5. Is compatible in design and character with the district and the adjacent residential neighborhoods;
- 6. Does not generate traffic or parking demand significantly beyond the capacity of the district or significantly increase impacts on adjacent residential neighborhoods; and
- 7. Complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

**23.204.120 – C-SO Solano Avenue Commercial District**

A. **District Purpose.** The purpose of the Solano Avenue Commercial (C-SO) district is to:

- 1. Implement the General Plan's designations for Community Commercial and Commercial Service areas;
- 2. Maintain a scale and balance of commercial activity on Solano Avenue that will:

- a. Enhance the surrounding neighborhood and serve its residents;
- b. Encourage the location of businesses on Solano Avenue that serve the everyday needs of local residents;
- c. Discourage the location of businesses on Solano Avenue that serve a larger regional clientele, and should more appropriately be located in the Central Business District;
- d. Limit the number of businesses on Solano Avenue that generate traffic or parking demand in excess of commercial parking availability, causing the overflow of traffic circulation and parking onto adjacent residential streets;
- e. Encourage location of late night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a 11:00 p.m. closing time for businesses on Solano Avenue; and
- f. Ensure that all construction, alterations, or additions to buildings will be in functional and aesthetic harmony with adjacent buildings and areas; and
- g. Protect local residents from commercial noise, offensive odors and parking and traffic problems.

**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Automatic Teller Machines (ATM).** A maximum of two exterior ATMs are allowed per bank establishment and only when off-street parking is provided.

**C. Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

**D. Development Standards.**

1. **Basic Standards.** See
2. Table 23.204-34: C-SO Development Standards. For residential-only projects, see also
3. Table 23.204-35: C-SO Setback and Building Separation Standards for Residential-Only Uses and Table 23.204-36: C-SO Lot Coverage Standards for Residential-Only Uses.

TABLE 23.204-34: C-SO DEVELOPMENT STANDARDS

|                                                 | Project Land Use              |                     |                      | Supplemental Standards                                   |
|-------------------------------------------------|-------------------------------|---------------------|----------------------|----------------------------------------------------------|
|                                                 | Non-Residential and Mixed Use | Mixed-Use [1]       | Residential Only [1] |                                                          |
| Lot Area, Minimum                               |                               |                     |                      |                                                          |
| New Lots                                        | No minimum                    |                     | 5,000 sq. ft         | 23.304.020– Lot Requirements                             |
| Per Group Living Accommodation Resident         | 350 sq. ft. [2]               |                     |                      |                                                          |
| Usable Open Space, Minimum                      |                               |                     |                      | 23.304.090– Usable Open Space                            |
| Per Dwelling Unit                               | 40 sq. ft. [4]                | 200 sq. ft.         |                      |                                                          |
| Per Group Living Accommodation Resident         | No minimum                    | 90 sq. ft.          |                      |                                                          |
| Floor Area Ratio, Maximum                       | 2.0                           | No maximum          |                      |                                                          |
| Main Building Height, Minimum                   | No minimum                    |                     |                      |                                                          |
| Main Building Height, Maximum                   | 28 ft. and 2 stories          |                     |                      | 23.304.050– Building Height                              |
| Lot Line Setbacks, Minimum                      |                               |                     |                      | 23.304.030– Setbacks                                     |
| Abutting/Confronting a Non-residential District | No minimum                    | See Table 23.204-35 |                      |                                                          |
| Abutting/Confronting a Residential District     | See 23.304.030.C.2            |                     |                      |                                                          |
| Building Separation, Minimum                    | No minimum [3]                | See Table 23.204-35 |                      | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                           | 100%                          | See Table 23.204-36 |                      | 23.304.120– Lot Coverage                                 |

|  | Project Land Use              |               |                      | Supplemental Standards |
|--|-------------------------------|---------------|----------------------|------------------------|
|  | Non-Residential and Mixed Use | Mixed-Use [1] | Residential Only [1] |                        |

Notes-

- [1] For mixed use and residential only projects, development standards included in this table may be modified. See 23.204.120.D.2.
- [2] One additional resident is allowed for remaining lot area between 200 and 350 square feet.
- [3] For mixed-use projects, minimum building separation shall be as required for residential-only projects
- [4] No dimension may be less than 6 feet.

**TABLE 23.204-35: C-SO SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                  | STANDARDS BY BUILDING STORY |        |        | SUPPLEMENTAL STANDARDS                                   |
|----------------------------------|-----------------------------|--------|--------|----------------------------------------------------------|
|                                  | 1ST                         | 2ND    | 3RD    |                                                          |
| Lot Line Setbacks, Minimum [1]   |                             |        |        | 23.304.030– Setbacks                                     |
| Front                            | 15 ft.                      | 15 ft. | 15 ft. |                                                          |
| Rear                             | 15 ft.                      | 15 ft. | 15 ft. |                                                          |
| Interior                         | 4 ft.                       | 4 ft.  | 6 ft.  |                                                          |
| Street Side                      | 6 ft.                       | 8 ft.  | 10 ft. | 23.304.040– Building Separation in Residential Districts |
| Building Separation, Minimum [1] | 8 ft.                       | 12 ft. | 16 ft. |                                                          |

[1] For mixed use and residential-only projects, development standards included in this table may be modified. See 23.204.120.D.2.

**TABLE 23.204-36: C-SO LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|---------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum [1] |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lots | 45%                               | 45%       | 40%       |                          |



|                                                                                                                                    |     |     |     |  |
|------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|--|
| Corner Lots                                                                                                                        | 50% | 50% | 45% |  |
| [1] For mixed use and residential-only projects, development standards included in this table may be modified. See 23.204.120.D.2. |     |     |     |  |

1. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
2. **Modification to Standards –Mixed Use and Residential-Only Projects.** The ZAB may modify development standards in
3. Table 23.204-34,
4. Table 23.204-35, and Table 23.204-36 for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:
  - a. The modification will encourage public transit utilization and existing off-street parking facilities in the area of the proposed building.
  - b. The modification will facilitate the construction of residential or tourist hotel uses where appropriate.
  - c. The modification will permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.
5. **Ground Floor Residential Uses.** A ground floor residential uses shall be setback at least 320 feet from a street side property line.
6. **Projections into Right-of-Way.**
  - a. Bay windows and balconies 11 feet or more above the sidewalk grade may project 3 feet into a street right-of-way.
  - b. A maximum 60 percent of the length of a building frontage may project beyond the property line.
  - c. All projections require an encroachment permit from the Public Works Department.
7. **Limitations Adjacent to a R District.** The following requirements apply to commercial uses adjacent to a residential district or fronting any street other than Solano Avenue.
  - a. All openings other than fixed windows and required fire exits must be setback at least 50 feet from any property located in an Residential District to reduce noise and odor problems in residential areas

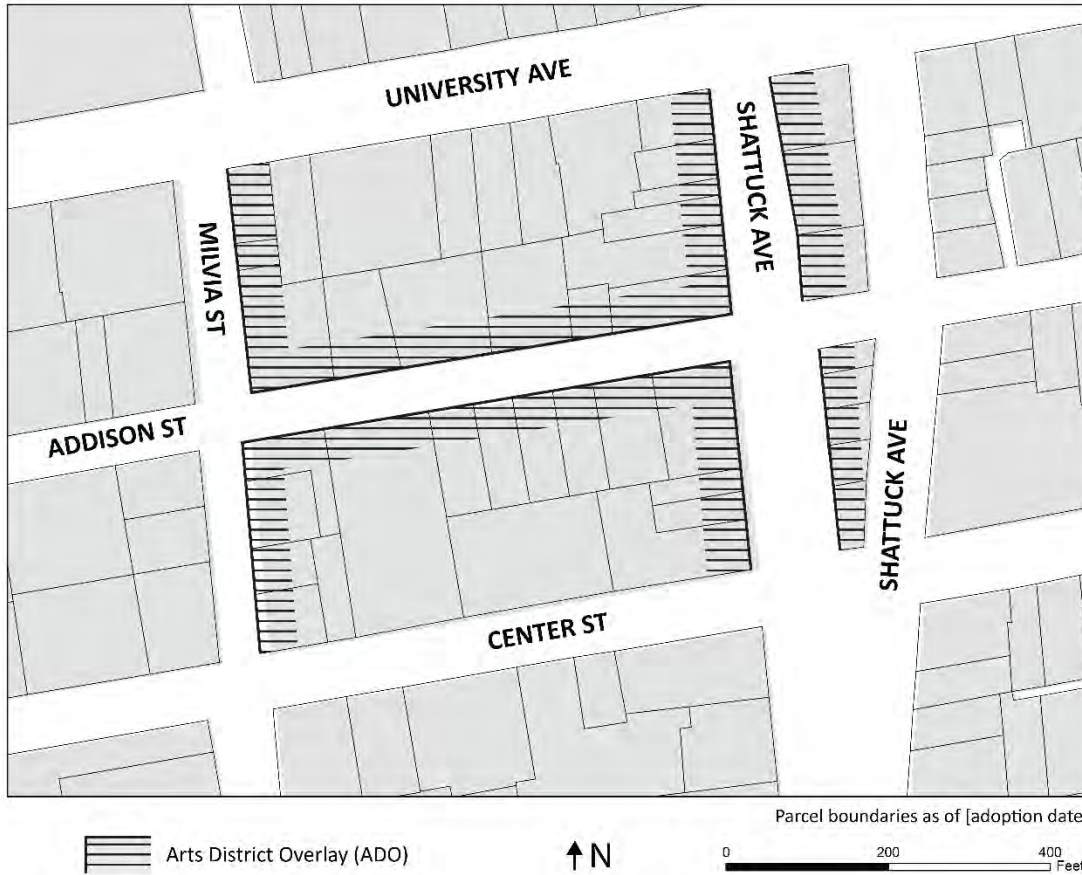
- b. Customer use of rear or side exits which open onto residential streets (with the exception of emergency access) is not permitted.
  - c. Garbage and recycled materials may not be placed for collection on residential streets from storage areas located at the rear of any building. All such materials shall be stored in an enclosed area for health and sanitation reasons.
  - d. Deliveries to non-residential establishments from residential streets are not permitted.
- E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-SO district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
- 1. Encourages and maintains the character of the street frontage and pedestrian orientation of the district;
  - 2. Is compatible in design and character with the district and the adjacent residential neighborhood;
  - 3. Is compatible with the purposes set forth in this set of regulations and the existing character of Solano Avenue;
  - 4. Does not interfere with the continuity of retail or compatible service facilities at the ground level, or interrupt a continuous wall of building facades; and
  - 5. Does not generate traffic and parking demand to significantly increase impacts on adjacent residential neighborhoods.

### **23.204.130 – C-DMU Downtown Mixed-Use District**

- A. **District Purpose.** The purpose of the C-DMU district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.
- B. **Allowed Land Use.**
- 1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
  - 2. **Automatic Teller Machines (ATM).** An ATM inside a non-bank building is allowed with an AUP.
  - 3. **Banks and Financial Services, Retail.** Retail banks and financial services in the C-DMU require permits as follows:

- i.* Under 7,500 square feet outside of the Arts District Overlay: Zoning Certificate.
  - ii.* All other retail banks and financial service uses: AUP.
- 4. **Media Production.** Recording studios are allowed with an AUP. Broadcast studios require a Use Permit.
- C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.
- D. **Arts Overlay District.**
  - 1. **Purpose.** The purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities and supportive retail and commercial uses in the C-DMU district. The ADO is intended to generate more pedestrian vitality in the downtown, promote Berkeley’s regional leadership in the arts, and encourage broader economic revitalization of the area. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, seated food service, and uses which provide pedestrian scale and siting.
  - 2. **Boundaries.** The boundaries of the ADO are shown in Figure 23.204-4: C-DMU Downtown Arts District Overlay Boundaries.

FIGURE 23.204-4: C-DMU DOWNTOWN ARTS DISTRICT OVERLAY BOUNDARIES



3. **Use Limitations; Findings.** Food service establishments and offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that
  - a. The project meets the purposes of the Arts Overlay District as set forth above; and
  - b. The location, size, type, appearance, and signage of the proposed use will:
    - i. Animate and enhance the pedestrian experience on the street; and
    - ii. Be generally open to the public evenings and on weekends, whenever practicable.

**E. Development Standards.**

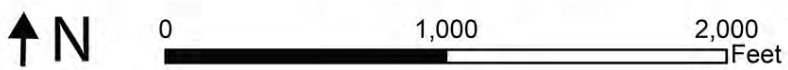
**1. Height.**

- a. **Height Limits.** Table 23.204-37: C-DMU Height Limits shows height limits in the C-DMU district, except as otherwise allowed by Paragraph 2 below. See Figure 23.204-5: C-DMU Sub-Areas for district sub-area boundaries.

FIGURE 23.204-5: C-DMU SUB-AREAS



- C-DMU Subareas
- Core Area
  - Outer Core
  - Corridor
  - Buffer



Parcel boundaries as of [adoption date]

TABLE 23.204-37: C-DMU HEIGHT LIMITS

| SUB-AREA   | MINIMUM    | MAXIMUM | MAXIMUM WITH USE PERMIT |
|------------|------------|---------|-------------------------|
| Core Area  | 50 ft.     | 60 ft.  | 75 ft.                  |
| Outer Core | 40 ft.     |         |                         |
| Corridor   | 40 ft.     |         |                         |
| Buffer     | No minimum | 50 ft.  | 60 ft.                  |

- b. **Parapet Walls.** For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.
- c. **Minimum Height.** The minimum height standard applies to new buildings only, measured to the top of the plate. Theater and museum buildings are exempt.

## 2. Increased Height Allowance.

- a. **Allowed Height.** The ZAB may issue a Use Permit for up to five buildings that exceed the C-DMU height limits as shown in Table 23.204-38: C-DMU Increased Height Allowance.

TABLE 23.204-38: C-DMU INCREASED HEIGHT ALLOWANCE

| Sub-Area                     | Number of Buildings | Height  |         |
|------------------------------|---------------------|---------|---------|
|                              |                     | Minimum | Maximum |
| Combined Core and Outer Core | 2                   | 75 ft.  | 120 ft. |
| Core                         | 3                   | 120 ft. | 180 ft. |

- b. **Application Process.**
- i. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six-month intervals until the first application has been submitted. Once the first

application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.

- ii. A project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and beginning construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.
- iii. Failure of a permit holder to strictly comply with the schedule established by the Use Permit is grounds for revocation of the Use Permit pursuant to Chapter 23.404.080 (Permit Revocation).

**c. Community Benefit Required.**

- i. To approve a Use Permit for increased building height under this section, the ZAB must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City.
- ii. Significant community benefits may include, but are not limited to affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.
- iii. This community benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement with the City that shall be binding on all successors in interest.

**3. Setbacks.**

**Basic Standards.** Table 23.204-39 shows minimum required lot line setbacks in the C-DMU district. Additional standards are listed in 23.204.130.3.d.

**TABLE 23.204-39:C-DMU SETBACK STANDARDS**

| PORTION OF BUILDING AT HEIGHT OF: | FRONT OR STREET SIDE   | MINIMUM INTERIOR SIDE          |                            | MINIMUM REAR |
|-----------------------------------|------------------------|--------------------------------|----------------------------|--------------|
|                                   |                        | 65' AND LESS FROM LOT FRONTAGE | OVER 65' FROM LOT FRONTAGE |              |
| Zero to 20 feet                   | No minimum. 5 ft. max. | No minimum                     |                            |              |

|                     |             |            |        |
|---------------------|-------------|------------|--------|
| 21 feet to 75 feet  | No minimum. | No minimum | 5 ft.  |
| 76 feet to 120 feet | 15 ft. min. | 5 ft.      | 15 ft. |
| Over 120 feet       | 15 ft. min. | 15 ft.     |        |

- a. **Modifications to Standards.** The ZAB may modify the setback standards in Table 23.204-39 with a Use Permit upon finding that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.
- b. **Residential Transitions.** The setback standards in Table 23.204-39 shall not apply to commercial lots abutting or confronting residential zoning. Such lots shall comply with Section 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts).
- c. **Additional Standards.**
- i. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
  - ii. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
  - iii. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
  - iv. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
  - v. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50 percent of the surface area of the side of the building on which the projections are located.



4. **Usable Open Space.** Table 23.204-40 shows minimum required usable open space in the C-DMU district.

**TABLE 23.204-40: C-DMU USABLE OPEN SPACE REQUIREMENTS**

|                                                                                                                                                                                             | MINIMUM USABLE OPEN SPACE                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Residential Uses                                                                                                                                                                            | 80 sq. ft./unit [1]                                                                     |
| Non-Residential Uses                                                                                                                                                                        | 1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area. |
| <p>Note:<br/>                     [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space.</p> |                                                                                         |

5. **Privately-Owned Public Open Space.**

- a. If a privately-owned public open space is indoors or enclosed, it shall include natural light in the form of windows, skylights, entryways, or other openings.
- b. Privately-owned public open space must be:
  - i. Clearly identified with signage in a publicly conspicuous location at street level indicating the area that is open to the public, the hours the space is open, and the party responsible for maintenance; and
  - ii. Separated from the grade of the public sidewalk by a height no greater than 3 vertical feet unless an AUP is obtained.

6. **Open Space Alternatives.**

- a. In lieu of providing the open space required by this section on-site, an applicant may either:
  - i. Pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP); and/or
  - ii. Construct public improvement consistent with the SOSIP.
- b. To allow payment of in-lieu fee, the ZAB must find that the payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
- c. To allow construction of public improvements, the ZAB must find that the public improvements:

- i.* Will be located within the vicinity of the project and are consistent with the SOSIP;
- ii.* Will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
- iii.* Will be finished before issuance of a certificate of occupancy for the project, unless otherwise allowed by the project conditions of approval.


**7. Ground Floor Street Frontage.**

- a. Special ground floor street frontage requirements in Paragraph (b) below apply to the following uses in the C-DMU district:
  - i.* Insurance Agents, Title Companies, Real Estate Agents, Travel Agents
  - ii.* Office, Business and Professional
  - iii.* Group Class Instruction
  - iv.* Gym/Health Club
- b. New ground floor uses listed in paragraph (a) above that are adjacent to a street frontage shall either:
  - i.* Include a storefront window display; or
  - ii.* Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

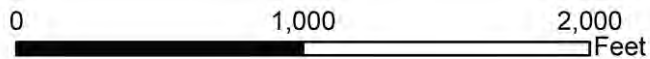
- 8. Residential Entrance Limitations.** In new buildings constructed on public serving frontages, as shown in Figure 23.204-6, entrances to individual dwelling units and to living quarters in group living accommodations are not permitted on the street-facing side of the street-level floor.

FIGURE 23.204-6: C-DMU PUBLIC SERVING FRONTAGES



 Public-Serving Frontage Required

Parcel boundaries as of [adoption date]



F. **Streets and Open Space Improvement Plan (SOSIP) Fee.** In addition to any other requirement of this section, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan.

G. **Green Building Provisions.**

1. **New Buildings.** Construction of any new building shall attain either:
  - a. LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
  - b. Building performance equivalent to this rating, as determined by the Zoning Officer.
2. **Additions 20,000 Square Feet or Less.** Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.
3. **Additions More than 20,000 Square Feet.** Additions of more than 20,000 square feet shall attain either:
  - a. LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
  - b. Building performance equivalent to this rating, as determined by the Zoning Officer.

H. **Environmental Impacts.** Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program for the Downtown Area Plan.

- I. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-DMU district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
1. Is compatible with the purposes of the district; and
  2. Is compatible with the surrounding uses and buildings.

**23.204.140 – C-W West Berkeley Commercial District**

- A. **District Purpose.** The purpose of the West Berkeley Commercial (C-W) district is to:
1. Implement the West Berkeley Plan Commercial District designation;
  2. Provide locations for commercial services which primarily serve area residents and/or businesses;
  3. Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
  4. Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
  5. Provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
  6. Encourage the intensification of commercial activity at designated nodes to help develop more pedestrian-oriented environments at those locations;
  7. Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
  8. Encourage appropriately intense development in underutilized portions of commercial streets;
  9. Promote development compatible with adjacent commercial, residential and industrial areas;
  10. Provide a location for cultural and performing arts activities; and
  11. promote environmental protection for the residents and workers both within and adjacent to the district from such detriments as noise, fumes, and other detrimental environmental effects.
- B. **Land Use Regulations.**
1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
  2. **Mixed-Use Residential.**
    - a. See Table 23.204-41 for mixed-use residential permit requirements in the C-W district.

**TABLE 23.204-41: C-W MIXED-USE RESIDENTIAL PERMIT REQUIREMENTS**

| Total Project Floor Area                                                                                             | Permit Required |
|----------------------------------------------------------------------------------------------------------------------|-----------------|
| Projects with both residential and retail uses where the retail space comprises 15% to 33% of total gross floor area |                 |
| Less than 20,000 square feet                                                                                         | ZC              |
| 20,000 square feet or more                                                                                           | UP(PH)          |
| All other mixed-use residential projects                                                                             |                 |
| Less than 5,000 square feet                                                                                          | ZC              |
| 5,000 to 9,000 square feet                                                                                           | AUP             |
| More than 9,000 square feet                                                                                          | UP(PH)          |

- b. All new retail uses in an existing mixed-use development are subject to the permit requirements for mixed use development as shown in Table 23.204-41.

**3. Automotive Uses.**

- a. As used in this paragraph, “automotive use” means a use classified in Table Table 23.204-1 as a vehicle service and sales use. “Automotive site” means a site which was legally used or approved for use as an automotive use as of March 1, 1997.
- b. On lots in the C-W district with frontage on San Pablo Avenue:
- i.* An automotive use may be established only on an automotive site; and
  - ii.* If an automotive use on an automotive site is discontinued for a period of two years or more, it may not be re-established.

**4. Langendorf Building.** See Section 23.206.030.D– Additional Permit Requirements (Langendorf Building).

**C. Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

**D. Designated Nodes.**

1. **Purpose.** The purposes of the designated nodes in the C-W district are to:
- a. Intensify retail, commercial, and mixed-use activity around major intersections;

- b. Reflect and reinforce the major existing and developing concentrations of pedestrian-oriented uses;
  - c. Encourage intensified development around transit transfer points;
  - d. Help define the urban form of San Pablo Avenue by developing identifiable areas of concentrated development.
2. **Location.** Properties designated as nodes in the C-W district are shown in Figure 23.204-7: C-W Designated Nodes.
3. **Ground Floor Uses.** The ground floor of buildings in designated nodes may be used only for the following:
  - a. Retail sales
  - b. Personal and household services
  - c. Retail financial services (banks)
  - d. Food and alcohol service
  - e. Lodging
  - f. Entertainment and assembly uses
  - g. Gasoline/vehicle fuel stations
  - h. Vehicle repair uses
  - i. New car sales
  - j. Used vehicles sales
  - k. Required access to and lobbies serving upper-story uses
4. **Prohibited Uses.** The following uses are not permitted in designated nodes:
  - a. Vehicle rentals
  - b. Used vehicle sales when not principally in buildings
  - c. Vehicle washes
  - d. Tire sales and service
  - e. Open air markets
  - f. Circus/carnivals
  - g. Public utility substation buildings, tanks
5. **Findings.** To approve a Use Permit or AUP for a project in a designated node, the review authority must find that the project supports the development of a

strong retail commercial and pedestrian-oriented environment at the node.

Factors the review authority should consider when making this finding include:

- a. The placement of store entrances relative to the street and parking lots; and
- b. The size and prominence of display windows and areas facing the sidewalk.



FIGURE 23.204-7: C-W DESIGNATED NODES

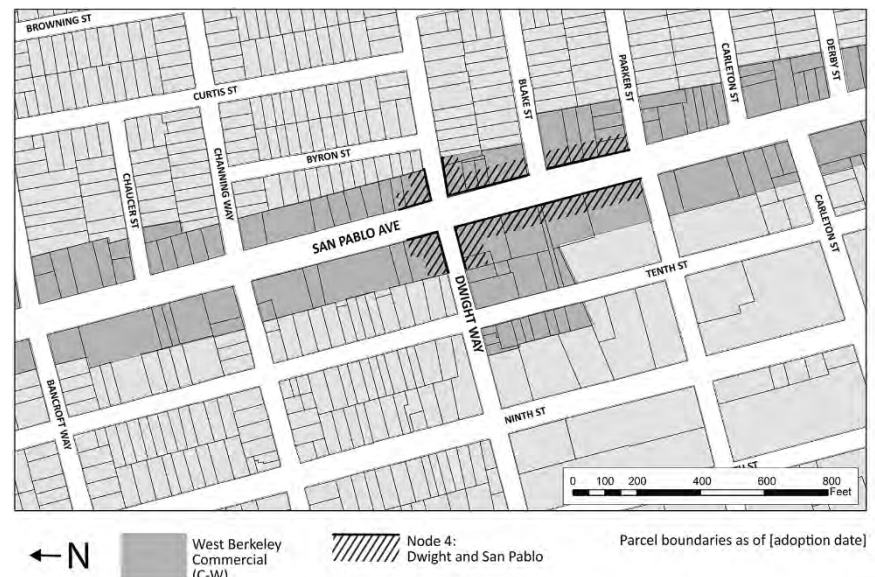
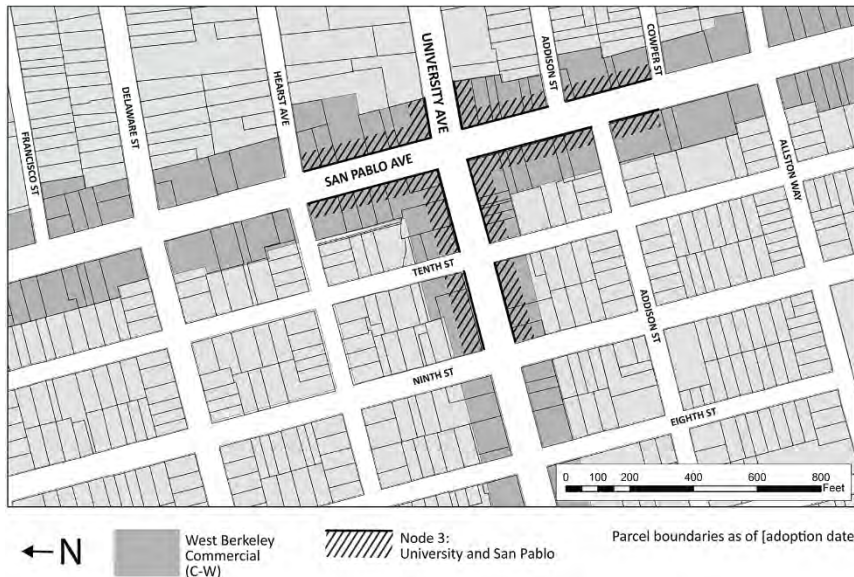
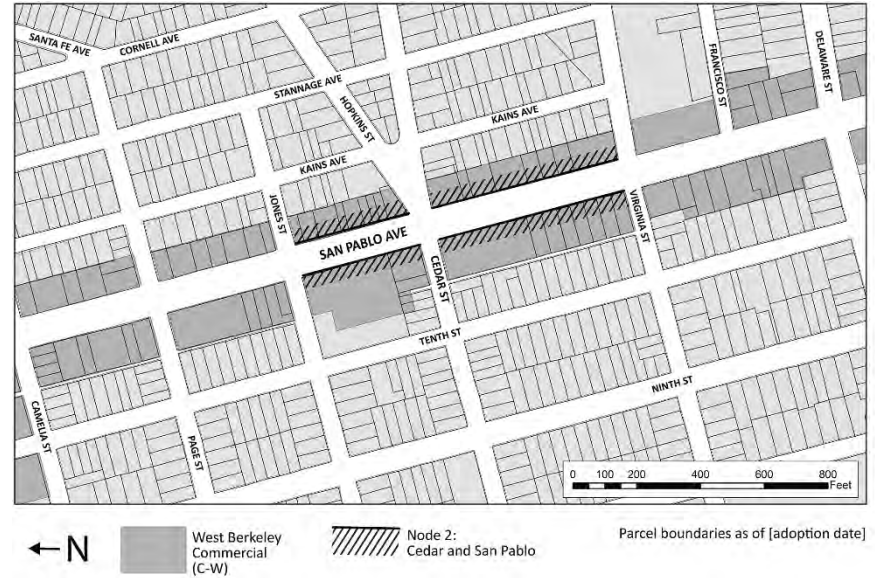
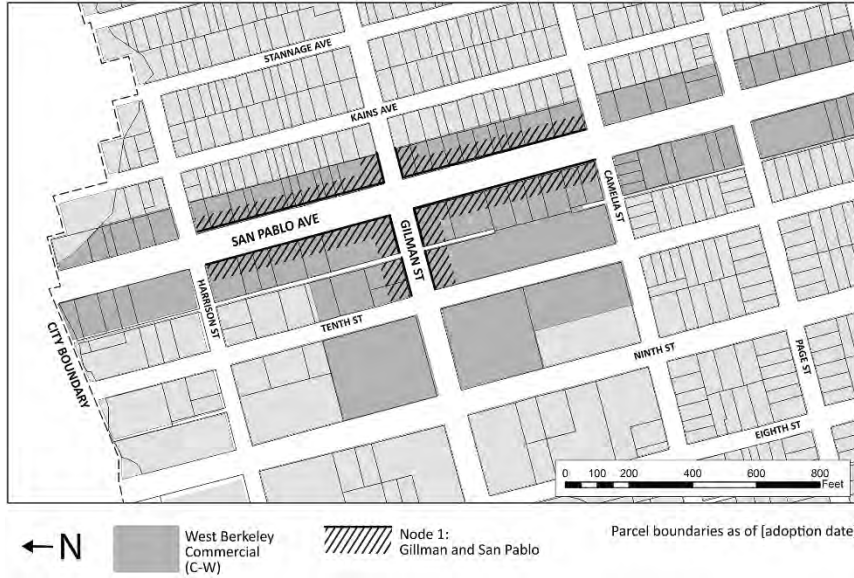
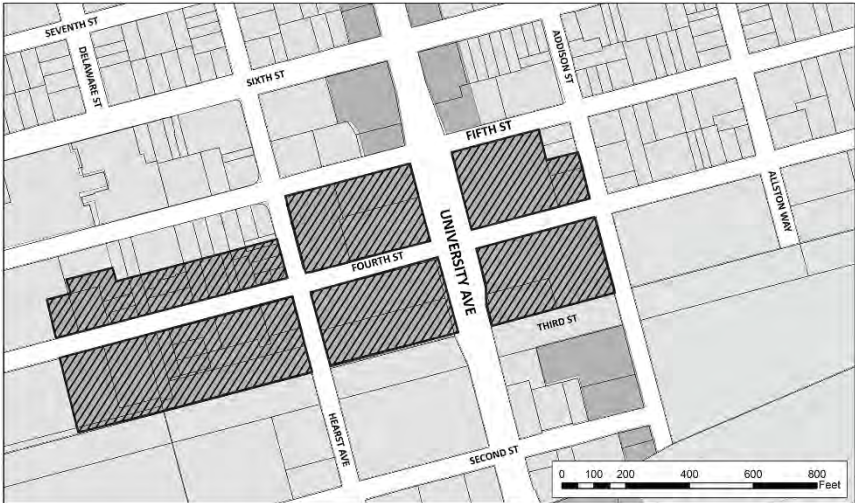


FIGURE 23.204-8: C-W DESIGNATED NODES



← N  
 West Berkeley Commercial (C-W)  
 Node 5: Ashby and San Pablo  
 Parcel boundaries as of [adoption date]



← N  
 West Berkeley Commercial (C-W)  
 Node 6: 4th Street and University  
 Parcel boundaries as of [adoption date]

### E. Development Standards.

1. **Basic Standards.** See Table 23.204-42 for development standards in the C-W district.

**TABLE 23.204-42: C-W DEVELOPMENT STANDARDS**

| BASIC STANDARDS                                                                                                                  |                            | SUPPLEMENTAL STANDARDS        |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------------|
| Lot Area Minimum                                                                                                                 |                            | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                         | No minimum                 |                               |
| Per Group Living Accommodation Resident                                                                                          | 350 sq. ft.                |                               |
| Usable Open Space, Minimum                                                                                                       |                            | 23.304.090– Usable Open Space |
| Per Dwelling Unit or Live/Work Unit                                                                                              | 40 sq. ft.                 |                               |
| Per Group Living Accommodation Resident                                                                                          | No minimum                 |                               |
| Floor Area Ratio, Maximum                                                                                                        | 3.0                        |                               |
| Main Building Height, Minimum                                                                                                    | No minimum                 |                               |
| Main Building Height, Maximum                                                                                                    | 40 ft. and 3 stories [1,2] | 23.304.050– Building Height   |
| Lot Line Setbacks, Minimum                                                                                                       |                            | 23.304.030– Setbacks          |
| Abutting/Confronting a Non-residential District                                                                                  | No minimum                 |                               |
| Abutting/Confronting a Residential District                                                                                      | See 23.304.030.C.2         |                               |
| Building Separation, Minimum                                                                                                     | No minimum                 |                               |
| Lot Coverage, Maximum                                                                                                            | 100%                       | 23.304.120– Lot Coverage      |
| Notes:                                                                                                                           |                            |                               |
| [1] 50 ft. and 4 stories allowed for mixed-use projects. The fourth floor must be used for residential or live/work purposes.    |                            |                               |
| [2] On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 and 054-1763-003-03 the maximum height is 50 feet and 4 stories. |                            |                               |

2. **Parking Lot Design.** See 23.322.080.E.3 (C-W District).



3. **Minimum Height in Designated Nodes.** All newly constructed main structures in designated nodes, except gasoline stations, shall be at least two stories or 25 feet in height.

F. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-W district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

1. Is consistent with the purposes of the district;
2. Is compatible with the surrounding uses and buildings;
3. Complies with the adopted West Berkeley Plan;
4. Supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible;
5. Does not substantially degrade the existing urban fabric of the street and area;
6. Provides an intensity of development which does not underutilize the property (for with new floor area);
7. Meets any applicable performance standards for off-site impacts; and
8. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

### **23.204.150 – C-AC Adeline Corridor Commercial District**

A. **District Purpose.** The purpose of the Adeline Corridor Commercial (C-AC) district is to:

1. Implement the General Plan's designation for Adeline Corridor Mixed Use area, as well as the policies of the Adeline Corridor Specific Plan;
2. Preserve the unique character and cultural legacy of the Adeline Corridor, sustaining the community as a place where all people can live, work, play, learn, worship, dine, shop and thrive;
3. Promote equitable access to housing by preserving existing affordable housing, preventing displacement, and producing a substantial number of new affordable housing units;
4. Foster economic opportunity for South Berkeley residents and businesses by facilitating job training and workforce development, active community spaces, and a thriving environment for commerce along the Adeline Street/South Shattuck Corridor;

5. Provide safe, equitable transportation options that meet the mobility needs of all residents, regardless of age, means and abilities, and that further the attainment of greenhouse gas emission reduction goals;
6. Provide safe, sustainable, beautiful, healthy, and inclusive public spaces that encourage social interaction, provide opportunities for recreation and environmental health, and support active community life in South Berkeley;
7. Encourage development and amenities that support pedestrian-oriented uses; and
8. Maintain and encourage a wide range of community and commercial services, including basic goods and services. Provide locations for both community-serving and regional-serving: businesses, cultural and religious institutions, and non-profit organizations.

**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Mixed Use Buildings.**
  - a. In all mixed use buildings, all stories above the second story shall be used for residential uses.
  - b. All mixed use developments require a Use Permit.
3. **Permitted Ground Floor Uses.**
  - a. **Commercial and Active Commercial Required.** In addition to other requirements of the C-AC district, the first 30 feet of depth of the ground floor, as measured from the frontage which abuts the portions of Adeline Street, Shattuck Avenue, MLK, Jr. Way or Ashby Avenue identified in Table 23.204-43: C-AC Permitted Ground Floor Uses shall be reserved for either Active Commercial Uses, or for commercial uses. Ground floor tenant spaces with frontages on streets not identified below can be used for any use permitted in the district.

**TABLE 23.204-43: C-AC PERMITTED GROUND FLOOR USES**

| AREA                                      | PERMITTED GROUND FLOOR USE |
|-------------------------------------------|----------------------------|
| Shattuck Avenue between Dwight and Derby  | Commercial Uses            |
| Shattuck between Ward and Russell         | Active Commercial Uses     |
| Adeline between Russell and City boundary |                            |
| Ashby, east of Adeline                    |                            |
| North side of Ashby, west of Adeline      |                            |

- b. **Active Commercial Uses Defined.** Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: Retail Sales; Personal and Household Services; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, Retail, and Vehicle Parts Stores.
  - c. **Active Commercial Exceptions with Zoning Certificate.** The following uses are permitted on the ground floor in areas designated Active Commercial with a Zoning Certificate:
    - i. Office uses in tenant space 2,500 sf or less in area and 50 feet or less in width;
    - ii. Residential amenities (2,500 sf or less in area and 50 feet or less in width), associated with a residential use.
  - d. **Active Commercial Exceptions with AUP.** The following uses are permitted on the ground floor in areas designated Active Commercial with an AUP:
    - i. Office uses over 2,500 square feet in area or 50 feet in width.
    - ii. Art/Craft Studio.
  - e. **Affordable Residential Projects Allowed.** Residential uses where at least 50 percent of the units are affordable are permitted on the ground floor in areas designated commercial with an AUP.
  - f. **Live/Work Units Prohibited.** Live/Word units are not permitted on the ground floor in areas designated Active Commercial or commercial.
4. **Alcoholic Beverage Retail Sales.** The sale of distilled alcoholic beverages is not permitted along Adeline Street, south of Ashby Avenue.
- C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.
- D. **Adeline Corridor Specific Plan Subareas.** The Adeline Corridor Specific Plan identifies four distinct subareas which have different physical characteristics and contexts. Different use limitations and development standards may apply to these subareas. See the Adeline Corridor Specific Plan for more specific information about each subarea.
- 1. **South Shattuck:** Parcels that have a frontage abutting Shattuck Avenue.
  - 2. **North Adeline.**
    - a. West of Adeline: Parcels located between Derby Street and Ashby Avenue, which do not front Shattuck Avenue.

- b. East of Adeline: Parcels located entirely between Russell Street and the point 110 feet south of Essex Street.

3. **Ashby BART.**

- a. West of Adeline: Parcels bounded by Ashby, MLK Jr. Way and Adeline.
- b. **East of Adeline:** Parcels located entirely between Tremont, Woolsey and Adeline, and at least 110 feet south of Essex.

- 4. **South Adeline:** Parcels located south of Woolsey Street.

E. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-44: C-AC South Shattuck Subarea Development Standards, and

3. Table 23.204-45: C-AC North and South Adeline Subarea Development Standards.
4. **Affordability Calculation.** Development standards are based on the percentage of affordable units and shall not exceed the requirements for each subarea. The minimum on-site affordable housing requirement applies to all residential and mixed use projects and must be provided as a mix of 50 percent at Low Income and 50 percent at Very Low Area Median Income (AMI) levels.
5. **Ashby BART Subarea.** Development standards for any future development in the Ashby BART area would be subject to process outlined in the MOU with BART and AB 2923.
6. **Parapet Walls.** For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.
7. **Lots Abutting or Confronting a Residential District.**
  - a. **Setbacks.** The following standards supersede requirements in Section 23.304.030.C.2.– Setbacks (Lots Adjacent to Residential Districts).
    - i. When a lot confronts a residentially-zoned lot, any portion of new construction that exceeds 45 feet in height shall be setback 10 feet from the front property line.
    - ii. When a lot abuts a residentially-zoned lot, the setback shall be 10 feet from the shared lot line.
    - iii. When a lot abuts a residentially-zoned lot, any portion of new construction that exceeds 35 feet in height shall be setback 20 feet from the shared lot line.
  - b. **Building Features.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for building feature requirements for lots that abut or confront a Residential District.



**TABLE 23.204-44: C-AC SOUTH SHATTUCK SUBAREA DEVELOPMENT STANDARDS**

|                                         | PROJECT LAND USE [5]                                                |                                                         |                                                         |                                                         |                                                   |                                |                 | SUPPLEMENTAL STANDARDS        |
|-----------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|--------------------------------|-----------------|-------------------------------|
|                                         | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation [6] | Non-Residential |                               |
| Lot Area Minimum                        |                                                                     |                                                         |                                                         |                                                         |                                                   |                                |                 | 23.304.020– Lot Requirements  |
| New Lots                                | No minimum                                                          |                                                         |                                                         |                                                         |                                                   | 350 sq. ft.                    |                 |                               |
| Per Group Living Accommodation Resident | N/A                                                                 |                                                         |                                                         |                                                         |                                                   | 350 sq. ft. [1]                |                 |                               |
| Usable Open Space, Minimum [3]          | 40 sq. ft.                                                          |                                                         |                                                         |                                                         |                                                   |                                |                 |                               |
| Per Dwelling Unit/GLA Resident [4]      | 40 sq. ft.                                                          |                                                         |                                                         |                                                         |                                                   |                                |                 | 23.304.090– Usable Open Space |
| Floor Area Ratio, Maximum               | 2.5                                                                 | 4.0                                                     | 5.0                                                     | 5.5                                                     | 5.5                                               | 2.5                            | 2.5             |                               |

|                                                 | PROJECT LAND USE [5]                                                |                                                         |                                                         |                                                         |                                                   |                                                |                      | SUPPLEMENTAL STANDARDS         |
|-------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|------------------------------------------------|----------------------|--------------------------------|
|                                                 | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation [6]                 | Non-Residential      |                                |
| Main Building Height, Maximum                   | 4 stories<br>45 feet                                                | 6 stories<br>65 feet                                    | 7 stories<br>75 feet                                    | 8 stories<br>85 feet                                    | 8 stories<br>90 feet                              | 4 stories<br>45 feet                           | 4 stories<br>45 feet | 23.304.050–<br>Building Height |
| Residential Density, Maximum (du/acre) [2]      | 120                                                                 | 210                                                     | 250                                                     | 300                                                     | 300                                               | 1 GLA<br>resident per<br>350 sf of lot<br>area | N/A                  |                                |
| Lot Line Setbacks, Minimum                      |                                                                     |                                                         |                                                         |                                                         |                                                   |                                                |                      | 23.304.030–<br>Setbacks        |
| Abutting/Confronting a Non-residential District | No minimum                                                          |                                                         |                                                         |                                                         |                                                   |                                                |                      |                                |
| Abutting/Confronting a Residential District     | See 23.204.150.G                                                    |                                                         |                                                         |                                                         |                                                   |                                                |                      |                                |
| Building Separation, Minimum                    | No minimum                                                          |                                                         |                                                         |                                                         |                                                   |                                                |                      |                                |
| Lot Coverage, Maximum                           |                                                                     |                                                         |                                                         |                                                         |                                                   |                                                |                      | 23.304.120–<br>Lot Coverage    |
| Interior Lot                                    | 60%                                                                 | 90%                                                     | 90%                                                     | 90%                                                     | 90%                                               | 60%                                            | 100%                 |                                |
| Corner Lot                                      | 70%                                                                 | 90%                                                     | 90%                                                     | 95%                                                     | 95%                                               | 70%                                            | 100%                 |                                |

|  | PROJECT LAND USE [5]                                                |                                                         |                                                         |                                                         |                                                   |                                |                 | SUPPLEMENTAL STANDARDS |
|--|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|--------------------------------|-----------------|------------------------|
|  | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation [6] | Non-Residential |                        |

Notes:

- [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.
- [2] For the purposes of calculating the State Density Bonus the Tier 1 density shall constitute the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).
- [3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.
- [4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.
- [5] Affordable units calculated as percentage of total units

**TABLE 23.204-45: C-AC NORTH AND SOUTH ADELINE SUBAREA DEVELOPMENT STANDARDS**

|                                            | Project Land Use [6]                                                |                                                         |                                                         |                                                         |                                                   |                                       |                 | Supplemental Standards |
|--------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|---------------------------------------|-----------------|------------------------|
|                                            | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation            | Non-Residential |                        |
| Lot Area Minimum                           |                                                                     |                                                         |                                                         |                                                         |                                                   |                                       |                 | 23.304.020             |
| New Lots                                   | No minimum                                                          |                                                         |                                                         |                                                         |                                                   |                                       |                 |                        |
| Per Group Living Accommodation Resident    | N/A                                                                 |                                                         |                                                         |                                                         |                                                   | 350 sq. ft. [1]                       | N/A             |                        |
| Usable Open Space, Minimum [3]             | 40 sq. ft.                                                          |                                                         |                                                         |                                                         |                                                   |                                       |                 |                        |
| Per Dwelling Unit/GLA Resident [4]         | N/A                                                                 |                                                         |                                                         |                                                         |                                                   | 40 sq. ft.                            |                 | 23.304.090             |
| Floor Area Ratio, Maximum                  | 2.0                                                                 | 3.5                                                     | 4.0                                                     | 5.0                                                     | 5.0                                               | 2.5                                   | 2.8             |                        |
| Residential Density, Maximum (du/acre) [2] | 100                                                                 | 150                                                     | 210                                                     | 250                                                     | 250                                               | 1 GLA resident per 350 sf of lot area | N/A             |                        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                               |                      |                      |                      |                      |                      |                      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|------------------------------|
| Main Building Height, Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 3 stories<br>35 feet                                                                                                                          | 5 stories<br>55 feet | 6 stories<br>65 feet | 7 stories<br>75 feet | 7 stories<br>80 feet | 4 stories<br>45 feet | 3 stories<br>45 feet |                              |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                               |                      |                      |                      |                      |                      |                      |                              |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No minimum                                                                                                                                    |                      |                      |                      |                      |                      |                      | 23.304.030                   |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 10 ft<br>20 ft from any shared lot line for any portion exceeding 35 feet<br>45 ft from front property line for any portion exceeding 45 feet |                      |                      |                      |                      | N/A                  |                      | 23.304.030<br>23.204.150.E.4 |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | No minimum                                                                                                                                    |                      |                      |                      |                      |                      |                      | 23.304.040                   |
| Interior Lot                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 60%                                                                                                                                           | 90%                  | 90%                  | 90%                  | 90%                  | 60%                  | 100%                 |                              |
| Corner Lot                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 70%                                                                                                                                           | 90%                  | 90%                  | 95%                  | 95%                  | 70%                  | 100%                 |                              |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 100%                                                                                                                                          |                      |                      |                      |                      |                      |                      |                              |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] For the purpose State Density Bonus calculation, the Tier 1 density is the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).</p> <p>[3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.</p> <p>[4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.</p> <p>[5] Affordable units calculated as percentage of total units</p> |                                                                                                                                               |                      |                      |                      |                      |                      |                      |                              |

## F. Design Standards.

1. **Adeline Corridor Specific Plan.** New buildings and additions shall be reviewed for conformance to the design guidelines in the Adeline Corridor Specific Plan.
2. **Ground Floor Frontages.**
  - a. **All New Buildings.** Except as set forth below, ground floor frontages of all new buildings are subject to the following design standards:
    - i.* Blank walls along the ground floor shall be less than 30 feet in length along sidewalks, pedestrian paths, or open space.
    - ii.* Ground floors shall have a minimum floor to floor height of 12 feet.
    - iii.* Facades shall provide at least 30 percent transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between the sidewalk areas and building interiors. Dark or mirrored glass will not satisfy this requirement.
    - iv.* Window glazing shall provide a high degree of light transmittance and be non-reflective.
  - b. **Active Commercial Areas.** Ground floor frontages in areas identified as Active Commercial in Table 23.204-43 shall meet the requirements of 23.304.150.I.1 except:
    - i.* Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
    - ii.* Facades shall provide at least 75 percent transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior. Dark or mirrored glass will not satisfy this requirement.
  - c. **Commercial Use Areas.** Ground floor frontages in areas identified as commercial in Table 23.204-43 shall meet the requirements of 23.204.150.I.1 except:
    - i.* Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
    - ii.* Facades shall provide at least 65% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior of office spaces. Dark or mirrored glass will not satisfy this requirement.
  - d. **Exceptions.** The Design Review Committee or Design Review staff may grant exceptions to the blank wall and transparency requirements.

## G. Permit Findings.

1. **General.** To approve any AUP or Use Permit for a project in the C-AC district, the review authority must make the findings in Section 23.406.040– Master Use Permits and find that the proposed use or structure:
  - a. Is consistent with the purpose of the district;
  - b. Is compatible in design and character with the district and the adjacent residential neighborhoods;
  - c. Encourages utilization of public transit and off-street parking facilities in the area of the proposed building; and
  - d. Complies with the Adeline Corridor Specific Plan’s adopted Mitigation Monitoring and Reporting Program (MMRP).
2. **New Residential Development.** In addition to the findings above, the ZAB shall find, for each Use Permit for new residential development, that the proposed use or structure facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines.
3. **Office Uses.**
  - a. To approve an AUP for an office use over 2,500 square feet or over 50 feet wide on the ground floor of an Active Commercial area, the Zoning Officer must find that the use supports the development of a strong retail commercial, pedestrian-oriented environment.
  - b. Factors the Zoning Officer should consider shall include, but are not limited to, pedestrian activity that is expected to be generated at the site, the placement of store entrances relative to the street and the parking lots, and the size and prominence of display windows and areas facing the sidewalk.
4. **All-Electric Buildings.** An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building. To approve an AUP, the Zoning Officer must find that:
  - a. No other placement of the features to support construction of an all-electric building, including solar photovoltaic (PV) energy systems and water tanks for heat pump water heating, on the property is possible; and
  - b. Placement of the features to support construction of an all-electric building elsewhere on the property is not financially feasible.

## **23.206 MANUFACTURING DISTRICTS**

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### **Sections:**

- 23.206.010– Chapter Purpose
- 23.206.020– Allowed Land Uses and Permit Requirements
- 23.206.030– Additional Permit Requirements
- 23.206.040– Use-Specific Regulations
- 23.206.050– Protected Uses
- 23.206.060– M Manufacturing District
- 23.206.070– MM Mixed Manufacturing District
- 23.206.080– MU-LI Mixed Use-Light Industrial District
- 23.206.090– MU-R Mixed Use-Residential District
- 23.206.100– Permit Findings

### **23.206.010 – Chapter Purpose**

This chapter identifies allowed land uses, permit requirements, and development standards for the Manufacturing Districts.

### **23.206.020 – Allowed Land Uses and Permit Requirements**

- A. **Allowed Land Uses.** Table 23.206-1 identifies allowed land uses and required permits in the Manufacturing Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements. Permits required for land uses shown in Table 23.206-1 apply to both:
1. The initial establishment of a land use in a new building; and
  2. The change of use in an existing building or portion of a building.



**TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS**

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |                   | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b>       |                                                                                                                |
| <b>Residential Uses</b>                                                                                                                                                                                                           |                                |           |              |                   |                                                                                                                |
| Accessory Dwelling Unit                                                                                                                                                                                                           | P                              | NP        | NP           | See 23.306        |                                                                                                                |
| Dwellings                                                                                                                                                                                                                         |                                |           |              |                   |                                                                                                                |
| Single-Family                                                                                                                                                                                                                     | NP                             | NP        | NP           | AUP*              | 23.206.090.B.8                                                                                                 |
| Two Family                                                                                                                                                                                                                        | NP                             | NP        | NP           | AUP*              | 23.206.090.B.8                                                                                                 |
| Multi-Family                                                                                                                                                                                                                      | NP                             | NP        | NP           | UP(PH)*           | 23.206.090.B.7&8                                                                                               |
| Group Living Accommodation                                                                                                                                                                                                        | NP                             | NP        | NP           | UP(PH)*           | 23.206.090.B.8                                                                                                 |
| Hotel, Residential                                                                                                                                                                                                                | NP                             | NP        | NP           | NP                |                                                                                                                |
| Mixed-Use Residential                                                                                                                                                                                                             | NP                             | NP        | NP           | UP(PH)*           | 23.206.090.B.8&9                                                                                               |
| Senior Congregate Housing                                                                                                                                                                                                         | NP                             | NP        | NP           | See 23.302.040 .H |                                                                                                                |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                               |                                |           |              |                   |                                                                                                                |
| Child Care Center                                                                                                                                                                                                                 | NP                             | NP        | AUP*         | UP(PH)*           | 23.206.040.B&C                                                                                                 |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                      | NP                             | NP        | NP           | NP                |                                                                                                                |
| Club/Lodge                                                                                                                                                                                                                        | UP(PH)*                        | UP(PH)*   | UP(PH)*      | UP(PH)            | 23.206.040.E                                                                                                   |
| Columbaria                                                                                                                                                                                                                        | NP                             | NP        | NP           | –                 |                                                                                                                |
| Community Care Facility                                                                                                                                                                                                           | NP                             | NP        | NP           | ZC*               | 23.206.090.B.3                                                                                                 |
| Community Center                                                                                                                                                                                                                  | NP                             | NP        | NP           | UP(PH)            |                                                                                                                |
| Emergency Shelter                                                                                                                                                                                                                 | NP                             | NP        | NP           | –                 |                                                                                                                |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | MANUFACTURING DISTRICTS |         |             |          | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|-------------|----------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI       | MU-R     |                                                                                                                |
| Family Day Care Home, Large                                                                                                                                                                                                       | NP                      | NP      | ZC*         | AUP*     | 23.206.040.C                                                                                                   |
| Family Day Care Home, Small                                                                                                                                                                                                       | NP                      | NP      | ZC*         | ZC*      | 23.206.040.C                                                                                                   |
| Hospital                                                                                                                                                                                                                          | NP                      | NP      | NP          | NP       |                                                                                                                |
| Library                                                                                                                                                                                                                           | NP                      | NP      | NP          | UP(PH)   |                                                                                                                |
| Mortuaries and Crematories                                                                                                                                                                                                        | NP                      | NP      | NP          | UP(PH)*  | 23.206.090.B.6                                                                                                 |
| Municipal Animal Shelter                                                                                                                                                                                                          | UP(PH)                  | UP(PH)  | UP(PH)      | –        |                                                                                                                |
| Nursing Home                                                                                                                                                                                                                      | NP                      | NP      | NP          | UP(PH)   |                                                                                                                |
| Park/Playground                                                                                                                                                                                                                   | NP                      | NP      | NP          | UP(PH)*  | 23.206.040.C                                                                                                   |
| Public Safety and Emergency Service                                                                                                                                                                                               | UP(PH)                  | UP(PH)  | UP(PH)      | UP(PH)   |                                                                                                                |
| Public Utility Substation/Tank                                                                                                                                                                                                    | UP(PH)                  | UP(PH)  | UP(PH)      | UP(PH)   |                                                                                                                |
| Religious Assembly                                                                                                                                                                                                                | NP                      | NP      | NP          | UP(PH)   |                                                                                                                |
| School                                                                                                                                                                                                                            | NP                      | NP      | NP          | UP(PH)*  | 23.206.040.C                                                                                                   |
| School, Vocational                                                                                                                                                                                                                | NP                      | NP      | ZC* [1]     | UP(PH)   | 23.206.080.B.12                                                                                                |
| <b>Retail Uses</b>                                                                                                                                                                                                                |                         |         |             |          |                                                                                                                |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                    | NP                      | NP      | UP(PH)* [2] | NP *     | 23.206.080.B.3;<br>23.206.090.B.2; 23.310                                                                      |
| Firearm/Munitions Business                                                                                                                                                                                                        | NP                      | NP      | NP          | NP       |                                                                                                                |
| Industrial and Mining Products                                                                                                                                                                                                    | AUP [2]                 | AUP [2] | AUP [4]     | NP       |                                                                                                                |
| Pawn Shop/Auction House                                                                                                                                                                                                           | NP                      | NP      | NP          | NP       |                                                                                                                |
| Pet Store                                                                                                                                                                                                                         | NP                      | NP –    | NP          | NP       |                                                                                                                |
| Retail, General                                                                                                                                                                                                                   | NP                      | NP      | AUP* [5]    | AUP* [3] | 23.206.080.B.6;                                                                                                |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|---------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI   | MU-R    |                                                                                                                |
|                                                                                                                                                                                                                                   |                         |         |         |         | 23.206.090.B.4                                                                                                 |
| Smoke Shop                                                                                                                                                                                                                        | NP                      | NP      | NP      | NP      |                                                                                                                |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                        |                         |         |         |         |                                                                                                                |
| Personal and Household Services, General                                                                                                                                                                                          | NP                      | NP      | NP      | AUP     |                                                                                                                |
| Kennels and Pet Boarding                                                                                                                                                                                                          | NP                      | NP      | NP      | UP(PH)  |                                                                                                                |
| Laundromats and Cleaners                                                                                                                                                                                                          | NP                      | NP      | NP      | AUP     |                                                                                                                |
| Veterinary Clinic                                                                                                                                                                                                                 | NP                      | NP      | NP      | UP(PH)  |                                                                                                                |
| Video Tape/Disk Rental                                                                                                                                                                                                            | NP                      | NP      | NP      | NP      |                                                                                                                |
| <b>Office Uses</b>                                                                                                                                                                                                                |                         |         |         |         |                                                                                                                |
| Business Support Services                                                                                                                                                                                                         | NP                      | NP      | AUP [6] | AUP [3] |                                                                                                                |
| Banks and Financial Services, Retail                                                                                                                                                                                              | NP                      | NP      | –       | NP      |                                                                                                                |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents                                                                                                                                                              | NP                      | NP      | –       | –       |                                                                                                                |
| Medical Practitioners                                                                                                                                                                                                             | NP                      | NP      | NP      | AUP [3] |                                                                                                                |
| Non-Chartered Financial Institutions                                                                                                                                                                                              | NP                      | NP      | –       | –       |                                                                                                                |
| Office, Business and Professional                                                                                                                                                                                                 | NP                      | ZC* [4] | AUP [4] | AUP [3] | 23.206.070.B.2                                                                                                 |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                        |                         |         |         |         |                                                                                                                |
| Adult-oriented Business                                                                                                                                                                                                           | -                       | -       | NP      | NP      |                                                                                                                |
| Amusement Device Arcade                                                                                                                                                                                                           | NP                      | NP      | –       | NP      |                                                                                                                |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|--------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI   | MU-R   |                                                                                                                |
| Bar/Cocktail Lounge/Tavern                                                                                                                                                                                                        | NP                      | NP      | –       | –      |                                                                                                                |
| Commercial Recreation Center                                                                                                                                                                                                      | NP                      | NP      | –       | NP     |                                                                                                                |
| Dance/Exercise/Martial Arts/Music Studio                                                                                                                                                                                          | NP                      | NP      | –       | UP(PH) |                                                                                                                |
| Entertainment Establishment                                                                                                                                                                                                       | NP                      | NP      | –       | UP(PH) |                                                                                                                |
| Food Service Establishment                                                                                                                                                                                                        | See 23.302.040.E        |         |         |        |                                                                                                                |
| Group Class Instruction                                                                                                                                                                                                           | NP                      | NP      | –       | UP(PH) |                                                                                                                |
| Gym/Health Club                                                                                                                                                                                                                   | NP                      | NP      | –       | NP     |                                                                                                                |
| Hotel, Tourist                                                                                                                                                                                                                    | NP                      | NP      | NP      | NP     |                                                                                                                |
| Motel, Tourist                                                                                                                                                                                                                    | NP                      | NP      | NP      | NP     |                                                                                                                |
| Theater                                                                                                                                                                                                                           | NP                      | NP      | UP(PH)* | NP     | 23.206.080.B.10                                                                                                |
| <b>Vehicle Service and Sale Uses</b>                                                                                                                                                                                              |                         |         |         |        |                                                                                                                |
| Alternative Fuel Station                                                                                                                                                                                                          | AUP [4]                 | AUP [4] | AUP [4] | AUP    |                                                                                                                |
| Gasoline/Vehicle Fuel Station                                                                                                                                                                                                     | NP                      | NP      | NP      | NP     |                                                                                                                |
| Large Vehicle Sales and Rental                                                                                                                                                                                                    | –                       | NP      | AUP [4] | NP     |                                                                                                                |
| Small Vehicle Sales and Rental                                                                                                                                                                                                    | –                       | NP      | NP      | NP     |                                                                                                                |
| Tire Sales and Service                                                                                                                                                                                                            | –                       | –       | –       | NP     |                                                                                                                |
| Vehicle Parts Store                                                                                                                                                                                                               | NP                      | NP      | NP      | UP(PH) |                                                                                                                |
| Vehicle Repair and Service                                                                                                                                                                                                        | UP(PH)                  | UP(PH)  | UP(PH)  | UP(PH) |                                                                                                                |
| Vehicle Rentals                                                                                                                                                                                                                   | NP                      | –       | –       | NP     |                                                                                                                |
| Vehicle Sales, New                                                                                                                                                                                                                | AUP* [7]                | NP      | NP      | NP     | 23.206.060.B.3                                                                                                 |
| Vehicle Sales, Used                                                                                                                                                                                                               | AUP* [7]                | NP      | NP      | NP     | 23.206.060.B.3                                                                                                 |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|----------|----------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI    | MU-R     |                                                                                                                |
| Vehicle Wash                                                                                                                                                                                                                      | NP                      | NP      | NP       | NP       |                                                                                                                |
| Vehicle Wrecking                                                                                                                                                                                                                  | AUP [7]                 | AUP [4] | AUP* [4] | NP       | 23.206.080.B.11                                                                                                |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                       |                         |         |          |          |                                                                                                                |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                                | AUP [8]                 | AUP [8] | AUP* [4] | UP(PH)   | 23.206.080.B.4                                                                                                 |
| Commercial Excavation                                                                                                                                                                                                             | UP(PH)                  | UP(PH)  | UP(PH)   | NP       |                                                                                                                |
| Contractors Yard                                                                                                                                                                                                                  | AUP [7]                 | AUP [7] | AUP [4]  | UP(PH)   |                                                                                                                |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                    | ZC* [9]                 | ZC [9]  | ZC [1]   | UP(PH)   | 23.206.060.B.2                                                                                                 |
| Laboratory                                                                                                                                                                                                                        |                         |         |          |          |                                                                                                                |
| Commercial Physical or Biological                                                                                                                                                                                                 | NP                      | AUP [4] | UP(PH)*  | NP       | 23.206.080.B.5                                                                                                 |
| Cannabis Testing                                                                                                                                                                                                                  | NP                      | AUP [4] | UP(PH)   | NP       |                                                                                                                |
| Manufacturing                                                                                                                                                                                                                     |                         |         |          |          |                                                                                                                |
| Construction Products                                                                                                                                                                                                             | ZC* [9]                 | ZC* [9] | UP(PH)*  | NP       |                                                                                                                |
| Light Manufacturing                                                                                                                                                                                                               | ZC* [7]                 | ZC* [7] | ZC* [1]  | AUP* [3] | 23.206.090.B.5                                                                                                 |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                 | NP                      | NP      | NP       | -        |                                                                                                                |
| Petroleum Refining and Products                                                                                                                                                                                                   | NP                      | NP      | NP       | -        |                                                                                                                |
| Pharmaceuticals                                                                                                                                                                                                                   | AUP [4]                 | AUP [4] | AUP* [4] | -        | 23.206.080.B.7                                                                                                 |
| Primary Production Manufacturing                                                                                                                                                                                                  | AUP [4]                 | AUP [4] | NP       | NP       |                                                                                                                |
| Semiconductors                                                                                                                                                                                                                    | UP(PH)                  | UP(PH)  | NP       | -        |                                                                                                                |
| Material Recovery Enterprise                                                                                                                                                                                                      | -                       | -       | UP(PH)   | -        |                                                                                                                |
| Media Production                                                                                                                                                                                                                  | ZC [10]                 | ZC [10] | ZC [10]  | AUP [11] |                                                                                                                |
| Mini-storage                                                                                                                                                                                                                      | NP                      | NP      | NP       | NP       |                                                                                                                |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------|------------------|-------------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM        | MU-LI            | MU-R              |                                                                                                                |
| Recycled Materials Processing                                                                                                                                                                                                     | ZC* [9]                 | ZC* [9]   | UP(PH)*          | –                 | 23.206.040.H;<br>23.206.080.B.9                                                                                |
| Recycling Redemption Center                                                                                                                                                                                                       | AUP [7]                 | ZC [9]    | UP(PH)*          | AUP               | 23.206.080.B.9                                                                                                 |
| Repair Service, Non-Vehicle                                                                                                                                                                                                       | ZC* [9]                 | ZC* [9]   | ZC* [1]          | AUP               | 23.206.040.G                                                                                                   |
| Research and Development                                                                                                                                                                                                          | -                       | ZC [12]   | ZC [12]          | –                 |                                                                                                                |
| Services to Buildings and Dwellings                                                                                                                                                                                               | AUP                     | AUP       | AUP              | AUP               |                                                                                                                |
| Warehouse                                                                                                                                                                                                                         | ZC [9]                  | ZC [9]    | ZC [1]           | UP(PH)            |                                                                                                                |
| Warehouse-Based Non-Store Retailer                                                                                                                                                                                                | ZC [9]                  | ZC [9]    | ZC [1]           | –                 |                                                                                                                |
| Wholesale Trade                                                                                                                                                                                                                   | ZC [9]                  | ZC [9]    | ZC* [1]          | AUP [3]           | 23.206.080.B.13                                                                                                |
| <b>Incidental Uses</b>                                                                                                                                                                                                            |                         |           |                  |                   |                                                                                                                |
| Amusement Devices                                                                                                                                                                                                                 | NP                      | NP        | AUP              | AUP               |                                                                                                                |
| Alcoholic Beverage Service                                                                                                                                                                                                        | See 23.310              |           |                  |                   |                                                                                                                |
| Cafeteria, On-Site                                                                                                                                                                                                                | ZC [2]                  | AUP [2]   | ZC [2]           | AUP               |                                                                                                                |
| Child Care Center                                                                                                                                                                                                                 | NP                      | NP        | See 23.206.040.B |                   |                                                                                                                |
| Columbaria                                                                                                                                                                                                                        | –                       | –         | –                | –                 |                                                                                                                |
| Food and Beverage for Immediate Consumption                                                                                                                                                                                       | –                       | AUP [2]   | –                | –                 |                                                                                                                |
| Food Service Establishment                                                                                                                                                                                                        | AUP [2]                 | -         | AUP [2]          | AUP               |                                                                                                                |
| Home Occupations                                                                                                                                                                                                                  | NP                      | NP        | NP               | See<br>23.206.040 |                                                                                                                |
| Live Entertainment                                                                                                                                                                                                                | NP                      | NP        | UP(PH)*          | UP(PH)*           | 23.302.020.D                                                                                                   |
| Retail Sales of Goods Manufactured On-Site                                                                                                                                                                                        | AUP* [13]               | AUP* [14] | AUP* [14]        | AUP*              | 23.206.040.I                                                                                                   |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|--------------|----------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI        | MU-R     |                                                                                                                |
| Storage of Goods Manufactured On-Site (>25% gross floor area)                                                                                                                                                                     | ZC                      | ZC      | ZC           | AUP      |                                                                                                                |
| Wholesale Activities                                                                                                                                                                                                              | ZC                      | ZC      | ZC           | AUP      |                                                                                                                |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                   |                         |         |              |          |                                                                                                                |
| Art/Craft Studio                                                                                                                                                                                                                  | ZC* [10]                | ZC [10] | ZC* [10]     | AUP [11] | 23.206.040.A                                                                                                   |
| ATM, Exterior and Attached to Bank                                                                                                                                                                                                | AUP                     | AUP     | -            | AUP      |                                                                                                                |
| ATM, Interior or Exterior and Not With Bank                                                                                                                                                                                       | AUP                     | AUP     | AUP          | AUP      |                                                                                                                |
| Circus/Carnival                                                                                                                                                                                                                   | NP                      | NP      | UP(PH)*      | UP(PH)   | 23.206.040.D                                                                                                   |
| Drive-in Uses                                                                                                                                                                                                                     | NP                      | NP      | NP           | NP       |                                                                                                                |
| Live/Work                                                                                                                                                                                                                         | NP                      | NP      | See 23.312   |          |                                                                                                                |
| Parking Lot/Structure                                                                                                                                                                                                             | See 23.302.070.G        |         |              |          |                                                                                                                |
| Public Market, Open Air                                                                                                                                                                                                           | -                       | -       | UP(PH)* [15] | -        | 23.206.080.B.8                                                                                                 |
| Public Market, Enclosed                                                                                                                                                                                                           | -                       | -       | AUP [5]      | -        |                                                                                                                |
| Short-Term Rental                                                                                                                                                                                                                 | -                       | -       | -            | ZC*      | 23.314                                                                                                         |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                     | ZC                      | ZC      | ZC           | ZC       |                                                                                                                |
| Urban Agriculture, High-Impact                                                                                                                                                                                                    | AUP                     | AUP     | AUP          | AUP      |                                                                                                                |
| <b>Notes:</b>                                                                                                                                                                                                                     |                         |         |              |          |                                                                                                                |
| [1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.                                                                                                        |                         |         |              |          |                                                                                                                |
| [2] Not permitted 20,000 sq. ft. or more.                                                                                                                                                                                         |                         |         |              |          |                                                                                                                |
| [3] Requires a Use Permit if 5,000 sq. ft. or more                                                                                                                                                                                |                         |         |              |          |                                                                                                                |
| [4] Requires a Use Permit for uses more than 20,000 sq. ft.                                                                                                                                                                       |                         |         |              |          |                                                                                                                |
| [5] Not permitted over 2,000 sq. ft.                                                                                                                                                                                              |                         |         |              |          |                                                                                                                |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | MANUFACTURING DISTRICTS |    |       |      | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|----|-------|------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | M                       | MM | MU-LI | MU-R |                                                                                                                |
| [6] Not permitted over 3,000 sq. ft.<br>[7] Requires a Use Permit for uses more than 40,000 sq. ft.<br>[8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.<br>[9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.<br>[10] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.<br>[11] Allowed with Zoning Certificate if under 1,000 sq. ft.. Requires Use Permit if over 20,000 sq. ft.<br>[12] Requires an AUP for uses more than 20,000 sq. ft.<br>[13] Not permitted 1,500 sq. ft. or more.<br>[14] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.<br>[15] Requires Use Permit for markets over 5,000 sq. ft. |                         |    |       |      |                                                                                                                |



- B. **Unlisted Land Uses.** Any use not listed in Table 23.206-1 is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.
- C. **Use-Specific Regulations.** Uses subject to supplemental regulations are shown in in Table 23.206-1 with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Standards column in Table 23.206-1 identifies the location of these standards in the Zoning Ordinance.

**23.206.030 – Additional Permit Requirements**

- A. **New Floor Area.** A project that creates new floor area for any use requires additional permits as shown in Table 23.206-1. Creation of new floor area includes:
  1. Construction of new main buildings or accessory buildings;
  2. Additions to existing buildings; or
  3. The installation of new floor or mezzanine levels within or onto existing buildings.

**TABLE 23.206-2: NEW FLOOR AREA PERMIT REQUIREMENTS**

| District/New Gross Floor Area      | Permit Required for New Floor Area |
|------------------------------------|------------------------------------|
| M, MM                              |                                    |
| Less than 20,000 sq. ft.           | ZC                                 |
| 20,000 to less than 40,000 sq. ft. | AUP                                |
| 40,000 sq. ft. or more             | UP(PH)                             |
| MU-LI                              |                                    |
| Less than 10,000 sq. ft.           | ZC                                 |
| 10,000 to less than 20,000 sq. ft. | AUP                                |
| 20,000 sq. ft. or more             | UP(PH)                             |
| MU-R                               |                                    |
| Less than 5,000 sq. ft.            | ZC                                 |
| 5,000 to less than 10,000 sq. ft.  | AUP                                |
| 10,000 sq. ft. or more             | UP(PH)                             |

**B. Tenant Space Reconfiguration.**

1. Reconfiguration of tenant space in an existing building in the M, MM, and MU-LI districts requires a permit as listed in Table 23.206-3.

2. In the MU-R district, tenant space reconfiguration projects affecting 5,000 square or more require a Use Permit.
3. As used in this section, tenant reconfiguration means any physical change to an existing building’s walls separating leased spaces so as to change:
  - a. The number of lease spaces for commercial businesses; or
  - b. The square footage of leasable floor area of an existing commercial lease space.

**TABLE 23.206-3: TENANT SPACE RECONFIGURATION REQUIREMENTS IN THE M, MM, AND MU-LI DISTRICTS**

| Tenant Space Reconfiguration Project                     | Permit Required for Tenant Space Reconfiguration Project |
|----------------------------------------------------------|----------------------------------------------------------|
| Previously separated spaces combined into a larger space | ZC                                                       |
| Creating 2 to 5 separate new tenant spaces               | ZC                                                       |
| Creating 6 to 9 separate new tenant spaces               | AUP                                                      |
| Creating 10 or more separate new tenant spaces           | UP(PH)                                                   |

4. **MM District Findings.** To approve an AUP or Use Permit for a tenant reconfiguration project in the MM district, the review authority must find that the conversion is necessary to implement the purpose of the district.
5. **MU-LI District Findings.** To approve a Use Permit for a tenant reconfiguration project in the MU-LI district, the review authority must find that the reconfiguration would not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted and either:
  - a. The reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact; or
  - b. The reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

**C. Major Residential Additions.**

1. **Where Allowed/Required Permits.**
  - a. Major residential additions in the MU-R district require an AUP.
  - b. Major residential additions are not permitted in MU-LI district.

- c. Major residential additions in the M and MM districts are subject to the requirement in Section 23.324 (Nonconforming Uses, Structures, and Buildings).
  2. **Findings.** To deny an AUP for a major residential addition in the MU-R district, the review authority must find that:
    - a. The proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M or MM district; or
    - b. Existing or reasonably foreseeable adjacent land uses in the M and/or MM district would have a material adverse effect on the use of the proposed addition.
  3. **Recorded Acknowledgement.** For a residential addition in the MU-R district, the residential property owner shall record an acknowledgement on the title that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.
- D. **Langendorf Building.** The following applies to the property occupied by the Langendorf Building (2929 Seventh Street, APN 053-0164300102):
1. Commercial physical and biological laboratories are allowed with a Use Permit if at least 6,000 square feet of gross floor area is occupied by a permitted use.
  2. Retail, office, and food and alcohol service uses allowed in the C-W district are allowed in the MU-LI portion of the property if the total gross floor area of these uses are less than 10,000 square feet.
- E. **Changes to Nonconforming Structures.** See Section 23.324.050 (Nonconforming Structures and Buildings) for permits required to modify structures that do not conform to setback, height, and other development standards.
- F. **Accessory Structures.** For accessory structure permit requirements, see the following:
1. Section 23.304.060 (Accessory Buildings and Enclosed Accessory Structures).
  2. Section 23.304.070 (Unenclosed Accessory Structures in Residential Districts).
  3. Section 23.304.080 (Fences).

### 23.206.040 – Use-Specific Regulations

- A. **Art/Craft Studios in the M and MU-LI Districts.** Art/craft studios are allowed in the M and MU-LI districts only as workspaces. Live/work is not permitted.

- B. **Child Care Centers in the MU-LI and MU-R Districts.** Table 23.206-4 shows permit requirements for child care centers in the MU-LI and MU-R districts.

**TABLE 23.206-4: MU-LI AND MU-R CHILD-CARE CENTER PERMIT REQUIREMENTS**

| Use Characteristic                     | Permit Required |
|----------------------------------------|-----------------|
| Incidental Use                         |                 |
| Providing childcare for employees only | ZC              |
| Providing childcare for non-employees  | AUP             |
| Principal Use                          | UP(PH)          |

C. **Child-Serving Uses in the MU-LI and MU-R Districts.**

1. As used in this section, “child-serving use” means a school, child care center, family day care, or park/recreational facility used by children.
  2. Before acting on an application to establish or expand a child-serving use in the MU-LI or MU-R districts, the applicant shall prepare and submit to the City an appropriate risk analysis or risk assessment, as determined by the City, that evaluates the risk to children in the use from other activities near the site.
  3. All child-serving uses in the MU-LI and MU-R districts must notify in writing, on a form approved by the City, all parents of children in the child-serving use that the use is in the MU-LI or MU-R district, light manufacturing is a permitted activity in the district, and that primary production manufacturing or construction products manufacturing may be permitted uses in adjacent districts. The child-serving use must require each parent or guardian to confirm in writing that they have read and understood this information. Written confirmations shall be returned to the child-serving use and maintained at the use for City review.
  4. To approve an AUP or Use Permit to establish or expand a child-serving use, the review authority must find that:
    - a. The child-serving use is not incompatible with adjacent and nearby uses, including industrial uses;
    - b. The risk analysis or risk assessment shows that there is not significant risk to children in the use from other activities near the site; and
    - c. The applicant has made adequate provisions to comply with the parent/guardian notification requirement in Paragraph (3) above.
- D. **Circuses and Carnival in the MM and MU-LI Districts.** Circuses and carnivals are allowed in the MM and MU-LI districts only as a temporary use.

- E. **Club and Lodges in the M, M-M, and MU-LI Districts.** Clubs and lodges are allowed in the M, M-M, and MU-LI districts only for persons working in the district.
- F. **Manufacturing Uses in the M, MM, and MU-LI Districts.** For manufacturing uses in the M, MM, and MU-LI districts otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- G. **Non-Vehicle Repair Service in the M, MM, and MU-LI Districts.** Retail sales associated with a non-vehicle repair service are not permitted in the M, MM, and MU-LI districts.
- H. **Recycled Materials Processing in the M and MM Districts.** For recycled materials processing facilities under 10,000 square feet in the M and MM districts, an AUP is required if processing occurs outside of a building.
- I. **Retail Sale of Goods Manufactured On-Site.** The following requirements apply to incidental retail sales in all Manufacturing Districts:
  - 1. The size and character of signs for the retail use shall clearly indicate that the retail use is not the primary use of the site
  - 2. Maximum retail floor area: 10 percent of total gross floor area.
  - 3. Outdoor sales or food service is not permitted.
- J. **Storage, Wholesale, Manufacturing as Incidental Use.** If a storage, wholesale, or manufacturing use is allowed in the M, MM, and MU-R district with a Zoning Certificate, the use is allowed incidental to another permitted use without the need to obtain an AUP or Use Permit.
- K. **Noise.** For purposes of the Noise Ordinance, Municipal Code Chapter 13.40, the Manufacturing Districts are considered Industry Districts.

**23.206.050 – Protected Uses**

- A. **Protected Industrial Uses in the MM and MU-LI Districts.** The industrial use protections in this subsection apply in the MM and MU-LI districts.
  - 1. **Uses Subject to Protection.** Table 23.206-5 identifies protected industrial uses in the MM and MU-LI districts and when the requirements in this subsection apply to these uses. Protections apply only to legally-established uses.

**TABLE 23.206-5: PROTECTED INDUSTRIAL USES**

| Zoning District | Protected Industrial Uses                   | Applicability of Requirements                               |
|-----------------|---------------------------------------------|-------------------------------------------------------------|
| MM              | Manufacturing, warehousing, wholesale trade | Ground-level protected uses on or after January 1, 1988 [1] |

|                                                                                                                     |                                                                           |                                                                  |
|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------------------------|
| MU-LI                                                                                                               | Material recovery enterprise, manufacturing, warehousing, wholesale trade | Buildings with 33% protected use on or after January 1, 1996 [1] |
| <p><u>Note:</u><br/>[1] Includes protected uses that were previously used on or after this date but now vacant.</p> |                                                                           |                                                                  |

- a. In the MM district, requirements in this subsection apply if protected use space is used, or has been used, for the manufacture, assembly, processing, repair, testing (including prototype manufacturing), storage, display (other than in retail stores) or distribution of goods. Requirements do not apply in the MM district if the protected use is or was demonstrably ancillary to another use.

- 2. **Permits Required.** Table 23.206-6 identifies permits required if a protected industrial use is changed to any use that is not a protected industrial use.

**TABLE 23.206-6: PERMITS REQUIRED FOR CHANGES TO PROTECTED LAND USES**

| Zoning District | Change to Protected Use                                                       | Permit Required |
|-----------------|-------------------------------------------------------------------------------|-----------------|
| MM              | Change any amount of ground-floor protected use to a non-protected use        | UP(PH)          |
| MU-LI           | Change 20,000 sq. ft. or less and 25% of protected use to a non-protected use | AUP             |
|                 | Change over 20,000 sq. ft. or 25% of protected use to a non-protected use     | UP(PH)          |

**3. Permit Findings.**

- a. To approve a permit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.
- b. To approve a Use Permit for a change of 25 percent more to a protected use in the MU-LI district, the Zoning Adjustments Board (ZAB) must also find that either:
  - i. The City has approved necessary Use Permits to provide comparable quality replacement space in Berkeley at a comparable rent that will be available before the demolition or change of use of the space; or
  - ii. Both of the following:

1. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.
2. Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
4. **Replacement Space.** Floor area occupied by a protected industrial use that is changed to a non-protected use must be replaced, in the West Berkeley Plan area, by a comparable space devoted to one or more of protected industrial uses.
5. **Minimum Protected Use Floor Area – MM District.** For properties in the MM district where 25 percent or more of the total gross floor area was occupied by a protected industrial use as of January 1, 1996, protected industrial uses may not be reduced to less than 25 percent of the total gross floor area on the property.
6. **Cumulative Limitations – MU-LI District.** Permit requirements for changes to protected industrial uses in the MU-LI district are cumulative.
7. **Exceptions.** Changes to protected industrial uses in the MM and MU-LI districts described below are exempt from the requirements in Paragraphs 2-6 above.
  - a. **Changes to R&D Uses.**

A protected warehouse or wholesale trade use established before January 1, 2010 may be changed to a research and development (R&D) use with the permits shown in Table 23.206-7.

**TABLE 23.206-7: PERMITS FOR CHANGES FROM PROTECTED TO R&D USES**

| Change in Protected Use<br>Gross Floor Area | Permit Required |
|---------------------------------------------|-----------------|
| 20,000 square feet or less                  | AUP             |
| Over 20,000 square feet                     | UP(PH)          |

- i.* A maximum of 150,000 square feet of protected warehouse or wholesale trade space occupied on or after August 1, 2011 may be converted to R&D. This maximum applies regardless of whether or not the protected warehouse or wholesale trade space was legally established.
  - b. Changes to Warehouse-Based Non-Store Retail, Art/Craft Studio, and Contractor Uses.** A protected industrial use may be changed to a warehouse-based non-store retail, art/craft studio, or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements).
  - c. Langendorf Building.** Protected industrial uses in the Langendorf Building (2929 Seventh Street) may be changed to a non-protected use if at least 30,000 square feet of total gross floor area remains as a protected industrial use.
  - d. MU-LI Lots with Multiple Owners.** Protected industrial uses in the MU-LI district may be changed to a non-protected use if:
    - i.* The protected industrial use is on a lot or group of abutting and confronting lots under single ownership and with more than one building; and
    - ii.* 25 percent or less of the total gross floor area in all buildings on the lot(s) remains as a protected industrial use.
  - e. Prior Protections Remain.** Establishing a new non-protected use under 23.206.050.A.7 (Exceptions) does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.

**8. Reports to City Council.**

- a.** The Planning and Development Department will report to the City Council once a cumulative total of 50,000 square feet in the MM and MU-LI districts of protected warehousing or wholesale trade use is converted to a R&D use (or at the end of one year, whichever occurs first). The Department will provide additional reports in the same increments after this first report. The reports will include the gross square footage of building space converted and the number and type of jobs expected to be created.
  - b.** No later than April 15, 2016, the City Manager will provide a cumulative report to the City Council and schedule an action item for the Council's consideration so that it can provide direction as to what, if any, modifications it wishes to make to this section.

**B. Protected Industrial Uses in the MU-R District.**



1. **Protected Industrial Uses Defined.** Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally-established uses.
2. **Permit Required.** Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.
3. **Permit Findings.** To approve a Use Permit when required by Section 23.206.050.B.2 (Permit Required), the review authority must find that:
  - a. The change of use will not have a materially detrimental impact on the character of the MU-R district as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the district that is contiguous with the site; and
  - b. Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
4. **Exempt from Permit Requirement.** A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.

**C. Protected Non-Industrial Uses in the MU-LI and MU-R Districts.**

1. **Protected Non-Industrial Uses Defined.** A use in the MU-LI or MU-R districts listed in Table 23.206-8 is classified as a protected non-industrial use, provided the use:
  - a. Was legally established as of July 6, 1989; and
  - b. Exists as a single stand-alone use or is combined with residential use in a live/work unit.

**TABLE 23.206-8: PROTECTED NON-INDUSTRIAL USES**

| Category   | Protected Uses                                                                                                                                                                                             |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category 1 | Art/craft studio                                                                                                                                                                                           |
| Category 2 | 1) Art galleries, ancillary to art/craft studios and when located in the same building<br>2) Child care facility<br>3) Family day care home<br>4) Fine arts performance, instruction and rehearsal studios |

|  |                                                                                                  |
|--|--------------------------------------------------------------------------------------------------|
|  | (dance, music, theater)<br>5) Theaters, stage performance, but excluding motion picture theaters |
|--|--------------------------------------------------------------------------------------------------|

**2. Permit Required for Change of Use.**

- a. Table 23.206-9 shows permits required to change a protected non-industrial use.

**TABLE 23.206-9: PERMITS REQUIRED FOR CHANGE TO PROTECTED NON-INDUSTRIAL USE**

| Existing Protected Use Gross Floor Area | New Use                              |                                         |                                                                                         |
|-----------------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------------|
|                                         | A protected use in the same category | A protected use in a different category | A non-protected use that occupies all of the non-residential floor area in the building |
| Less than 5,000 sq. ft.                 | ZC                                   | AUP                                     | AUP                                                                                     |
| 5,000 sq. ft. or more                   | AUP                                  | UP(PH)                                  | UP(PH)                                                                                  |

- 3. **Owner-Occupied Exemption.** A protected non-industrial use which is owner-occupied and occupies all of the non-residential floor area in a building is exempt from the requirements of this section.

**4. Findings.**

- a. To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. Such replacement space may not qualify for exemption under Paragraph 3 (Owner-Occupied Exemption) above or by reason of having been established after July 6, 1989.
- b. When making additional findings required by Chapter 23.406 (Specific Permit and Approval Requirements), the review authority may only consider the potential detriment associated with the new use. Dislocation of any specific previous occupant or use may not be a basis for finding detriment.

**23.206.060 – M Manufacturing District**

**A. District Purpose.** The purpose of the Manufacturing (M) district is to:

- 1. Implement the West Berkeley Plan Manufacturing District designation;

2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Consistent with other goals expressed in these purposes, encourage development of a manufacturing district dedicated to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well-paid (often unionized) industrial jobs for people without advanced degrees;
5. To the greatest degree possible and consistent with other goals expressed in these purposes, retain the stock of manufacturing and industrial buildings and/or sites, especially large buildings and sites, for manufacturing and industrial uses;
6. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers;
8. Support the development of retail automobile sales uses because they contribute to the economic viability of the area and provide sales tax revenues for the City; and
9. Provide opportunities for vehicle sales uses when it will not unduly interfere with manufacturing uses.

**B. Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Dry Cleaning and Laundry Plants.** Retail service at a dry cleaning and laundry plant in the M district is not permitted.
3. **Vehicle Sales.** The following standards apply to both new and used vehicle sales in the M district.
  - a. Permits required for vehicle sales in the M district is determined by size of lot, not floor area.
  - b. Vehicle sales are not permitted on City-owned land used for a materials recovery enterprise or solid waste transfer station as of January 1, 2008.
  - c. When a project results in construction of a new building with more than 10,000 square feet of new gross floor area, the following standards apply to the new building:

- i.* A minimum building frontage of 40 percent of the project's primary street frontage is required within 25 feet of the public right-of-way. The primary street frontage is the frontage towards which the primary building entrance is oriented.
  - ii.* Along Gilman Street a minimum building frontage of 50 percent of the Gilman Street frontage is required within 25 feet of the public right-of-way.
  - iii.* The minimum building height is 20 feet within 25 feet of the public right-of-way along the primary street frontage.
- d. Adequate landscaping and/or fencing shall be used to screen views from street level of dealership operations that are not located within a building. Outdoor vehicle storage and display does not need screening. Such screening is not required to obscure all visibility of interior activities but shall provide some filtering of outdoor dealership operations.
- e. For the purposes of this section and Design Review, areas used for outdoor vehicle storage and display are not considered parking areas.
- f. Appropriate site design measures shall be installed to the maximum extent practicable to ensure clean water standards are met. Permanent stormwater best management practices and on-site storm water treatment shall be used for all runoff generated by new impermeable surfaces. Runoff from automobile washing and maintenance activities shall be properly collected and treated, consistent with the requirements of the Public Works Department and the Toxics Management Division of the Planning Department. When new paving is proposed, pervious paving shall be used where feasible and shall be reviewed and approved by the Public Works Department and Office of Transportation.
- g. All noise-generating activities and equipment, such as vehicle repair, shall be shielded by noise-attenuating construction or equipment. Outdoor amplification is not permitted.
- h. Exterior light standards and fixtures shall not be taller than 20 feet, light cutoffs shall be used to control light spillover onto adjacent properties, and low energy light fixtures consistent with Berkeley's goals for energy efficiency shall be used.
- i. Vehicle test drives shall not be conducted in adjacent Residential Districts.
- j. Facilities for the loading and unloading of deliveries shall be provided on-site and may not occupy street parking or block public or private streets. On-street unloading is permitted with an AUP. To approve the AUP, the Zoning Officer must find that:

- i. On-street loading will not be unreasonably disruptive or detrimental to activities in the vicinity; and
  - ii. On-site deliveries are not feasible due to specific site or roadway constraints.
- k. To approve an AUP or Use Permit for an automobile sales use in the M district, the review authority must find that:
  - i. The project will not result in unreasonable impacts on circulation and parking on adjacent streets or in the immediate neighborhood;
  - ii. The project will not result in a substantial adverse impact on existing uses in the immediate vicinity;
  - iii. The project will not generate objectionable odors or excessive levels of noise;
  - iv. Site design reflects the urban form of the surrounding area and new construction, materials and/or building forms reflect the area’s industrial character;
  - v. New construction along Gilman Street reflects the importance of a defined street wall along this main entry corridor to the city; and
  - vi. The project will not materially interfere with the activities of the City-owned solid waste center.

C. **Additional Permit Requirements.** See Section 23.206.030 (Additional Permit Requirements).

D. **Development Standards.** See Table 23.206-10 for development standards in the M district.

**TABLE 23.206-10: M DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                | SUPPLEMENTAL STANDARDS       |
|----------------------------------------------|----------------|------------------------------|
| Lot Area, Minimum                            | 20,000 sq. ft. | 23.304.020– Lot Requirements |
| Usable Open Space Per Dwelling Unit, Minimum | n/a            |                              |
| Floor Area Ratio, Maximum                    | 2.0            |                              |
| Main Building Height, Maximum                | 45 ft.         | 23.304.050– Building Height  |
| Lot Line Setbacks, Minimum                   |                | 23.304.030– Setbacks         |

|                              |            |  |
|------------------------------|------------|--|
| Front                        | No minimum |  |
| Rear                         | No minimum |  |
| Interior Side                | No minimum |  |
| Street Side                  | No minimum |  |
| Building Separation, Minimum | No minimum |  |
| Lot Coverage, Maximum        | 100%       |  |

E. **Permit Findings.** See – Permit Findings (Permit Findings).

### 23.206.070 – MM Mixed Manufacturing District

A. **District Purpose.** The purpose of the Mixed Manufacturing (MM) district is to:

1. Implement the West Berkeley Plan MM designation;
2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry;
6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

B. **Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Office Uses.**

- a. Office uses are allowed in the MM district only above the ground floor. Ground floor office uses are not permitted unless ancillary to a permitted use.
- b. If the office use is established above a non-manufacturing use or replaces an existing manufacturing, warehousing or wholesale trade use, an AUP is required.

C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.

D. **Development Standards.** See Table 23.206-11 for development standards in the MM district.

**TABLE 23.206-11: MM DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                | SUPPLEMENTAL STANDARDS       |
|----------------------------------------------|----------------|------------------------------|
| Lot Area, Minimum                            | 20,000 sq. ft. | 23.304.020– Lot Requirements |
| Usable Open Space Per Dwelling Unit, Minimum | n/a            |                              |
| Floor Area Ratio, Maximum                    | 2.0            |                              |
| Main Building Height, Maximum                | 45 ft.         | 23.304.050– Building Height  |
| Lot Line Setbacks, Minimum                   |                | 23.304.030– Setbacks         |
| Front                                        | No minimum     |                              |
| Rear                                         | No minimum     |                              |
| Interior Side                                | No minimum     |                              |
| Street Side                                  | No minimum     |                              |
| Building Separation, Minimum                 | No minimum     |                              |
| Lot Coverage, Maximum                        | 100%           |                              |

E. **Permit Findings.** See Section 23.206.100– Permit Findings.

**23.206.080 – MU-LI Mixed Use-Light Industrial District**

A. **District Purpose.** The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

- 1. Implement the West Berkeley Plan Light Manufacturing District designation;

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

**B. Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Use Permit Not Required.** An existing use in the MU-LI district may be modified or intensified without a Use Permit if:
  - a. A Use Permit is not required by this chapter; and
  - b. The Zoning Officer determines that the modification or intensification of the use can reasonably be expected not to increase any impact regulated under environmental performance standards.
3. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-LI district only when incidental to food product stores.
4. **Bus/Cab/Truck/Public Utility Depot.** A Use Permit is required for a bus/cab/truck/public utility depot in the MU-LI district if the lot is over 20,000 square feet, regardless of use floor area.
5. **Commercial Physical or Biological Laboratories.** Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.



6. **General Retail.** Allowed general retail uses the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted.
  7. **Pharmaceuticals Manufacturing.** Pharmaceuticals manufacturing is allowed in the MU-LI district only in locations at least 500 feet from a Residential District or the MU-R district.
  8. **Public Market, Open Air.** Open air markets in the MU-LI district with 5,000 square feet or less of lot area are allowed with AUP.
  9. **Recycling Facilities.** Recycled materials processing and recycling redemption centers are allowed in the MU-LI district only on lots greater than 20,000 square feet.
  10. **Theaters.** Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.
  11. **Vehicle Wrecking.** Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.
  12. **Vocational Schools.** A vocational school in the MU-LI district must provide training for occupations and/or industries found in the West Berkeley Plan area.
  13. **Wholesale Trade Proximity to Residential Use.** For wholesale trade use in the MU-LI district otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.
- D. **Outdoor Recreation Sub-Zone.**
1. An Outdoor Recreation Sub-zone may be designated by the City Council, upon recommendation of the Planning Commission. In an Outdoor Recreation Sub-zone, parks and outdoor recreational uses are permitted with a Use Permit.
  2. Properties designated as an Outdoor Recreation Sub-zone must be:
    - a. Designated specifically for outdoor recreational use in the West Berkeley Plan;
    - b. Owned or under acquisition by a public agency which is subject to the Zoning Ordinance;
    - c. At least 5 contiguous acres in area;
    - d. Not primarily occupied by a conforming use as designated in the West Berkeley Plan; and

- e. At least 1,000 feet from any other Outdoor Recreation Sub-zone.
- 3. The initial designation of an Outdoor Recreation Sub-zone expires five years from the designation date. To permit outdoor recreational uses after that date, the Council must renew the Outdoor Recreation Sub-zone designation.

E. **Development Standards.** See Table 23.206-12 for development standards in the MU-LI district.

**TABLE 23.206-12: MU-LI DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |            | SUPPLEMENTAL STANDARDS       |
|----------------------------------------------|------------|------------------------------|
| Lot Area, Minimum                            | No minimum | 23.304.020– Lot Requirements |
| Usable Open Space Per Dwelling Unit, Minimum | n/a        |                              |
| Floor Area Ratio, Maximum                    | 2.0        |                              |
| Main Building Height, Maximum                | 45 ft.     | 23.304.050– Building Height  |
| Lot Line Setbacks, Minimum                   |            | 23.304.030– Setbacks         |
| Front                                        | No minimum |                              |
| Rear                                         | No minimum |                              |
| Interior Side                                | No minimum |                              |
| Street Side                                  | No minimum |                              |
| Building Separation, Minimum                 | No minimum |                              |
| Lot Coverage, Maximum                        | 100%       |                              |

F. **Permit Findings.** See Section 23.206.100– Permit Findings

**23.206.090 – MU-R Mixed Use-Residential District**

- A. **District Purpose.** The purpose of the Mixed Manufacturing (MU-R) district is to:
- 1. Implement the West Berkeley Plan Mixed Residential District designation;
  - 2. Support the continued development of a mixed-use district which combines residential, live/work, light industrial, arts and crafts and other compatible uses;
  - 3. Strengthen residential concentrations which exist within the district;
  - 4. Provide appropriate locations for a broad range of live/work activities to occur;
  - 5. Provide a transitional district between the Residential Districts to the east of the district and the Manufacturing Districts to the west of the district;

6. Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district;
7. Support the development of businesses of all types which contribute to the maintenance and improvement of the environment;
8. Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed-use West Berkeley context;
9. To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully; and
10. Permit retail and food service activities which are either limited and small scale, primarily serving persons living and/or working in the district, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the district.

**B. Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-R district only as ancillary sale of products produced or bottled on site with a Use Permit.
3. **Community Care Facility.** Community care facilities are allowed in the MU-R district only as a change of use. New construction is not permitted.
4. **General Retail.** Allowed types of general retail uses the MU-R district are limited to food product stores, building materials and garden supply stores, and arts and craft supplies. Other types of general retail uses are not permitted.
5. **Manufacturing Use Findings.** To approve an AUP or Use Permit to establish or expand a manufacturing use abutting one or more dwelling units located in the MU-R District, the review authority must find:
  - a. The manufacturer is capable of meeting all applicable performance standards; and
  - b. Permit conditions will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.
6. **Mortuaries and Crematories.** Only mortuaries are permitted in the MU-R district. Crematories are not allowed.
7. **Multi-Family Dwellings.** Table 23.206-13 shows permits required for multi-family dwellings in the MU-R district.

**TABLE 23.206-13: MU-R MULTI-FAMILY DWELLING PERMIT REQUIREMENTS**

| NUMBER OF UNITS | PERMIT REQUIRED |
|-----------------|-----------------|
| 3 or 4          | AUP             |
| 5 or more       | UP(PH)          |

**8. Residential Uses.**

- a. A Use Permit is required to establish a dwelling unit, group living accommodation, or live/work unit MU-R that is within 150 feet of:
  - i. An M or MM district; or
  - ii. A construction product manufacturing or primary product manufacturing use.
- b. To deny a Use Permit required by Paragraph (a) above, the ZAB must find that:
  - i. The proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M or MM district; or
  - ii. Existing or reasonably foreseeable adjacent land uses in the M or MM district would have a material adverse effect on the proposed residential use.
- c. As a condition of approval for a Use Permit required by Paragraph (a) above, the residential property owner shall record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M or MM district may create noise, dust, odors, light/glare, and other impacts that will not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.

**9. Residential Mixed-Use.** To approve an AUP or Use Permit to establish or expand of a residential mixed-use building in the MU-R district, the review authority must find that the specific combination of proposed residential and non-residential uses will not be hazardous or detrimental to persons living and/or working on the site or within the project vicinity.

**C. Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.

**D. Development Standards.** See Table 23.206-14: MU-R Development Standards for development standards in the MU-R district.

**TABLE 23.206-14: MU-R DEVELOPMENT STANDARDS**

| BASIC STANDARDS | SUPPLEMENTAL STANDARDS |
|-----------------|------------------------|
|-----------------|------------------------|

|                                                                                                                                              |                          |                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------|
| Lot Area, Minimum                                                                                                                            |                          | 23.304.020– Lot Requirements<br>23.304.020 |
| New Lot                                                                                                                                      | No minimum               |                                            |
| Per Dwelling Unit or Live/Work Unit                                                                                                          | 1,250 sq. ft. [1]        |                                            |
| Lot Width, Minimum                                                                                                                           |                          | 40 ft.                                     |
| Usable Open Space, Minimum                                                                                                                   |                          | 23.304.090– Usable Open Space              |
| Per Dwelling Unit                                                                                                                            | 150 sq. ft.              |                                            |
| Per Live/Work Unit                                                                                                                           | 40 sq. ft.               |                                            |
| Floor Area Ratio, Maximum                                                                                                                    |                          | 1.0 [2]                                    |
| Main Building Height, Maximum                                                                                                                |                          | 23.304.050– Building Height                |
| Live/work                                                                                                                                    | 28 ft. and 3 stories [3] |                                            |
| Residential or mixed-use [4]                                                                                                                 | 35 ft. and 3 stories     |                                            |
| All other uses                                                                                                                               | 35 ft. and 2 stories [5] |                                            |
| Lot Line Setbacks, Minimum                                                                                                                   |                          | 23.304.030– Setbacks                       |
| Front                                                                                                                                        | 5 ft.                    |                                            |
| Rear                                                                                                                                         | No minimum [6]           |                                            |
| Interior Side                                                                                                                                | No minimum               |                                            |
| Street Side                                                                                                                                  | 5 ft.                    |                                            |
| Building Separation, Minimum                                                                                                                 |                          | No minimum                                 |
| Lot Coverage, Maximum                                                                                                                        |                          | 100%                                       |
| Notes:                                                                                                                                       |                          |                                            |
| [1] One additional dwelling unit allowed for remaining lot area between 750 and 1,250 square feet.                                           |                          |                                            |
| [2] Maximum 1.5 for buildings with 50 percent or more residential or live/work floor area                                                    |                          |                                            |
| [3] Maximum 35 ft. with a Use Permit.                                                                                                        |                          |                                            |
| [4] Mixed use is defined here as a building with 50 percent or more of gross floor area used for residential (including live/work) purposes. |                          |                                            |
| [5] Maximum 3 stories for arts/craft studios and light manufacturing (with no other non-residential uses) on a block without dwelling units. |                          |                                            |
| [6] Minimum 5 ft. if rear of lot abuts a street.                                                                                             |                          |                                            |
| [7] Setbacks required when abutting or confronting a Residential District. See 23.304.030.C.2.                                               |                          |                                            |

E. **Permit Findings.** See Section 23.206.100– Permit Findings.

**23.206.100 – Permit Findings**

- A. All Manufacturing Districts. To approve an AUP or a Use Permit in a Manufacturing District, the review authority must find that the project:
1. Is consistent with the purposes of the district;
  2. Is compatible with the surrounding uses and buildings;
  3. Complies with the adopted West Berkeley Plan; and
  4. Meets any applicable performance standards for off-site impacts.
- B. **Additional Findings.** In addition to the findings in Section 23.206.100.A (All Manufacturing Districts), the review authority must also make the following findings to approve an AUP or Use Permit in each of the Manufacturing Districts.
1. **M and MM Districts.** The project:
    - a. Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
    - b. Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site.
  2. **MU-LI District.** The project:
    - a. Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses;
    - b. Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site; and
    - c. If the building and/or site is split between the MU-LI district and the C-W district, there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI district and the portions within the C-W district.
  3. **MU-R District.** The project:
    - a. Is unlikely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses; and

- b. Is designed to be supportive of the character and purposes of the district.

## 23.208 SPECIAL PURPOSE DISTRICTS

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### Sections:

23.208.010– Specific Plan District

23.208.020– Unclassified District

### 23.208.010 – Specific Plan District

- A. **Purpose.** The Specific Plan (SP) district establishes allowed use and permit requirements in areas subject to an adopted Specific Plan.
- B. **Allowed Uses.** Allowed uses and permit requirements in the SP district are as established in the applicable Specific Plan.
2. If the applicable Specific Plan is silent on a use allowed in another district, the use is allowed with a Use Permit.
- C. **Required Permits.**
1. Before approving a permit application in a SP district, the City must approve a Master Development Plan Permit consistent with the applicable Specific Plan. To approve a Master Development Plan Permit, the review authority must make all findings required by the Specific Plan.
  2. Applications for a Master Development Plan Permit and subsequent required permits shall be submitted and processed in accordance with Section 23.404—Common Permit Requirements and 23.406—Specific Permit Requirements.

### 23.208.020 – Unclassified District

- A. **Purpose.** The purpose of the Unclassified (U) district is to:
1. Implement the General Plan designations for areas included in the U district zoning classification; and
  2. Provide a district designation until such areas are classified into a residential, commercial, or manufacturing district.
- B. **Allowed Uses.**
1. All uses not prohibited by law are permitted in the U district.
  2. A Use Permit is required to establish any use, consistent with the procedures in this section.
- C. **Use Permit Procedures.** The City shall review and act on Use Permit applications in the U district as follows:
1. Each application shall be first submitted to the Planning Commission with the Planning Commission making a report to the ZAB. If the Planning Commission



fails to take an action on the report within 30 days after a Use Permit application is deemed complete, the ZAB will consider the application without a Planning Commission report.

2. After Planning Commission review, the ZAB shall take an action to approve, conditionally approve, or deny the application. The ZAB's decision is not effective until after action by the City Council. ZAB decisions may not be appealed.
  3. The ZAB will send a report of its decision, including findings and any conditions, together with the Planning Commission report, to the City Clerk within 14 days of final action.
  4. The City Council will review and act on the application within 30 days of the ZAB decision.
  5. The Council may affirm, reverse, or modify the ZAB decision.
- D. **Development Standards.** All development standards in the U District shall be set forth in the Use Permit, including lot size, density, building height, setbacks, building separation, lot coverage, floor area ratio (FAR), usable open space, and off-street parking.
- E. **Use Permit Findings.** To approve a Use Permit in the U district, the ZAB, Planning Commission, and City Council must all make the findings in Section 23.406.030.F—Administrative Use Permits (Findings for Approval).

## 23.210 OVERLAY ZONES

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### Sections:

23.210.010– Purpose of Overlay Zones

23.210.020– Hillside Overlay Zone

23.210.030– Civic Center District Overlay Zone

### 23.210.010 – Purpose of Overlay Zones

- A. **General.** An overlay zone is a defined geographic area shown on the Zoning Map where special requirements or limitations apply, in addition to the underlying base district requirements.
- B. **Conflicting Requirements.** Whenever a requirement of an overlay zone conflicts with a requirement of the underlying base district, the overlay zone requirement controls.

### 23.210.020 – Hillside Overlay Zone

- A. **Purpose.** The purpose of the Hillside (H) overlay zone is to:
  1. Implement General Plan policies for hillside development;
  2. Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
  3. Protect the character of Berkeley’s hillside areas and their immediate environs;
  4. Give reasonable protection to views yet allow appropriate development of all property;
  5. Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
- B. **Allowed Uses.**
  1. **General.** Allowed uses in the H overlay zone are the same as the underlying base district except as provided in this subsection.
  2. **Multiple Dwellings in R-2.** When the H overlay zone is combined with the R-2 district, multiple dwellings on a single property are not permitted.
- C. **Development Standards.**
  1. **General.** Development standards in the H overlay zone are the same as the underlying base district except as provided in this subsection.
  2. **Main Building Height.**

- a. Table 23.210-1 shows the maximum allowed building height in the H overlay zone.
- b. The Zoning Officer may approve an AUP to increase the allowed average and maximum main building height upon finding the project is consistent with the purpose of the H overlay zone as stated in 23.210.020.A (Purpose).

**TABLE 23.210-1: H OVERLAY ZONE MAXIMUM ALLOWED HEIGHT**

| UNDERLYING BASE DISTRICT      | ALLOWED HEIGHT                                                                                   |         | MAXIMUM STORIES |
|-------------------------------|--------------------------------------------------------------------------------------------------|---------|-----------------|
|                               | AVERAGE                                                                                          | MAXIMUM |                 |
| New Buildings                 |                                                                                                  |         |                 |
| R-1, R-1A, R-2, R-2A          | 28 ft.                                                                                           | 35 ft.  | 3 stories       |
| R-3, R-4, R-5, R-S, C-N, C-NS | 35 ft.                                                                                           | 35 ft.  | 3 stories       |
| Residential Additions         | As required by the base district or the highest existing portion of the roof, whichever is lower | 20 ft.  | N/A             |

- c. For a residential addition located above the lowest existing story that is partially or fully above grade, not habitable, and projects beyond the footprint of the habitable portion of the building, the average height is measured from the floor plate of the lowest habitable story. Maximum height is measured from grade in all cases.
- d. Height provisions in Section 23.304.050– Building Height apply in the H overlay zone.

**3. Accessory Building Height.**

- a. Accessory buildings are limited to 12 feet in average height and one story.
- b. The Zoning Officer may approve an AUP to increase the allowed height and/or stories upon finding that the proposed accessory building:
  - i. Will not be detrimental to the light, air, privacy, and view of adjacent property; and
  - ii. Is consistent with the purpose of the H overlay zone as stated in Section 23.210.020.A – Hillside Overlay Zone (Purpose).

#### 4. **Setbacks and Building Separation.**

- a. The Zoning Officer may approve an AUP to reduce the minimum required main building lot line setbacks and the minimum required building separation in the underlying base district upon finding that the reduction is consistent with the purpose of the H overlay zone as stated in 23.210.020.A (Purpose).
- b. Setback provisions in Section 23.304.030– Setbacks apply in the H overlay zone.

### 23.210.030 – Civic Center District Overlay Zone

#### A. **Purpose.**

1. **General.** The general purpose of the Civic Center District (CCD) overlay zone is to implement General Plan Policy LU-22 to "Maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities" and Downtown Area Plan Policy LU-1.4 to "Focus City government and civic activity in the Civic Center area, and recognize Downtown's central role in providing community services."
2. **Specific.** The specific purpose of the CCD overlay zone is to:
  - a. Preserve and protect the integrity of the City of Berkeley Historic Civic Center through preservation of existing buildings and open space listed in the Civic Center Historic District;
  - b. Allow a set of uses, which are civic in nature, and support active community use;
  - c. Promote uses, which combined or individually will maintain public access to the historic buildings and resources;
  - d. Promote appropriate uses which respect the Civic Center's historic significance in unifying the community and forming a link to Berkeley's past;
  - e. Promote the cultural and architectural heritage of the Civic Center;
  - f. Preserve the Civic Center District as a place for government functions, community activities, cultural and educational uses, and civic functions and facilities; and
  - g. Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources.

- B. **Applicability.** The CCD overlay zone boundaries are coterminous with the Civic Center Historic District designated under Municipal Code Chapter 3.24 and apply to the following parcels:

1. APN 057 201701601 (Old City Hall/Courthouse/Public Safety Building)
2. APN 057 202202000 (Veterans Memorial Building)
3. APN 057 202200600 (State Farm Insurance Building/City offices, 1947 Center Street)
4. APN 057 202100200 (Civic Center Park)
5. APN 057 202100100 (Civic Center Building)
6. APN 057 202601500 (Downtown Berkeley YMCA)
7. Portion of APN 057 202000503 which contains the Berkeley Community Theater/Florence Schwimley Little Theater
8. APN 057 202000400 (Berkeley High School)
9. APN 057 202700500 (Berkeley Main Post Office)

C. **Definitions.** The following definitions apply only in the CCD overlay zone:

1. **Live Performance Theatre.** An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.
2. **Museum.** A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates, and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study, and enjoyment.
3. **Public Market.** An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as:
  - a. At least 75 percent of retail space is devoted to the sale of general or specialized food products; and
  - b. No more than 25 percent of retail space is devoted to one or more of the following incidental uses:
    - i.* Owner operated and/or independent food service establishment selling food from local and regional producers; and
    - ii.* Sales of retail products from local and regional produce.

D. **Allowed Uses.**

E. Table 23.210-2 shows allowed uses and permit requirements in the CCD overlay zone. All properties in the CCD overlay zone are restricted to the uses in

F. Table 23.210-2, regardless of uses permitted in the underlying base district.

TABLE 23.210-2: CCD OVERLAY ZONE ALLOWED USES

| ALLOWED USE                                                                              | REQUIRED PERMIT |
|------------------------------------------------------------------------------------------|-----------------|
| Libraries                                                                                | UP(PH)          |
| Judicial Courts                                                                          | AUP             |
| Museums                                                                                  | UP(PH)          |
| Parks and Playgrounds                                                                    | ZC              |
| Public Safety and Emergency Services                                                     | UP(PH)          |
| Government Agencies and Institutions                                                     | AUP             |
| Public Schools/Educational Facilities                                                    | UP(PH)          |
| Non-Profit Cultural, Arts, Environmental, Community Service and Historical Organizations | UP(PH)          |
| Live Performance Theatre                                                                 | UP(PH)          |
| Public Market                                                                            | UP(PH)          |

#### G. Development Standards.

1. **General.** Development standards in the CCD overlay zone are the same as the underlying base district except as provided in this subsection.
2. **Building Height.** All new buildings and building additions are subject to a maximum building height of 50 feet.

## **DIVISION 3: CITYWIDE PROVISIONS**

### **23.302: Supplemental Use Regulations**

- 23.302.010– Purpose
- 23.302.020– General Use Regulations
- 23.302.030– Temporary Uses and Structures
- 23.302.040– Home Occupations
- 23.302.050– Bed and Breakfast Establishments in Residential Districts
- 23.302.060– Sidewalk Cafe Seating
- 23.302.070– Use-Specific Regulations

### **23.304: General Development Standards**

- 23.304.010– Purpose
- 23.304.020– Lot Requirements
- 23.304.030– Setbacks
- 23.304.040– Building Separation in Residential Districts
- 23.304.050– Building Height
- 23.304.060– Accessory Buildings and Enclosed Accessory Structures
- 23.304.070– Unenclosed Accessory Structures in Residential Districts
- 23.304.080– Fences
- 23.304.090– Usable Open Space
- 23.304.100– Site Features in Residential Districts
- 23.304.110– Dormers
- 23.304.120– Lot Coverage
- 23.304.130– Non-Residential Districts Abutting a Residential District
- 23.304.140– Area Plans

### **23.306: Accessory Dwelling Units**

- 23.306.010– Purposes
- 23.306.020– Applicability
- 23.306.030– Permit Procedures

### **23.308: Emergency Shelters**

- 23.308.010– Chapter Purpose
- 23.308.020– Applicability and Nonconformities
- 0 C. Required Permits**
- 23.308.030– Standards for Emergency Shelters

**23.310: Alcoholic Beverage Sales and Service**

- 23.310.010– Chapter Purpose
- 23.310.020– General Requirements Excluding Incidental Beer and Wine Service
- 23.310.030– Alcoholic Beverage Service When Incidental to Food Service

**23.312: Live/Work**

- 23.312.010– Chapter Purpose
- 23.312.020– Applicability
- 23.312.030– Required Permits
- 23.312.040– Standards for Live/Work
- 23.312.050– Findings

**23.314: Short-Term Rentals**

- 23.314.010– Chapter Purpose
- 23.314.020– Definitions
- 23.314.030– Applicability
- 23.314.040– General Regulations
- 23.314.050– Operating Standards and Requirements
- 23.314.060– Violations and Remedies

**23.316: Percentage for Public Art on Private Projects**

- 23.316.010– Chapter Purpose
- 23.316.020– Applicability
- 23.316.030– Definitions
- 23.316.040– General Requirements
- 23.316.050– Required Permits
- 23.316.060– In-Lieu Fees
- 23.316.070– Administrative Regulations (Guidelines)

**23.318: Urban Agriculture**

- 23.318.010– Chapter Purpose
- 23.318.020– Applicability
- 23.318.030– Urban Agriculture Uses and Levels of Discretion
- 23.318.040– Thresholds
- 23.318.050– Operation Standards
- 23.318.060– Complaints

**23.320: Cannabis Uses**

- 23.320.010– Chapter Purpose
- 23.320.020– Cannabis Retail
- 23.320.030– Commercial Cannabis Cultivation
- 23.320.040– Cannabis Manufacturers, Testing Labs, and Distributors



23.320.050– Microbusinesses

**23.322: Parking and Loading**

23.322.010– Chapter Purpose

23.322.020– Applicability

23.322.030– Required Parking Spaces

23.322.040– General Requirements

23.322.050– Parking Reductions

23.322.060– C-DMU Parking and Transportation Demand Management

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23.322.080– Parking Layout and Design

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- 23.330.020– Definitions
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## 23.302 SUPPLEMENTAL USE REGULATIONS

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### Sections:

- 23.302.010– Purpose
- 23.302.020– General Use Regulations
- 23.302.030– Temporary Uses and Structures
- 23.302.040– Home Occupations
- 23.302.050– Bed and Breakfast Establishments in Residential Districts
- 23.302.060– Sidewalk Cafe Seating
- 23.302.070– Use-Specific Regulations

### 23.302.010 – Purpose

This chapter establishes land use regulations that apply in addition to regulations in Chapter 23.202—23.210 Zoning Districts.

### 23.302.020 – General Use Regulations

#### A. Accessory Uses.

1. **Long-Term Rental of Rooms in a Dwelling Unit.** Renting rooms and/or providing board in a dwelling unit to persons not living as a household is permitted by right as an accessory use in all Residential Districts. The room rental/boarding must comply with the following requirements:
  - a. Minimum time period for rental: 14 days.
  - b. Maximum number of renters: four persons.
  - c. A rented room:
    - i.* Must be fully integrated within the dwelling unit such that it has interior access to the rest of the dwelling unit;
    - ii.* May not have a separate kitchen; and
    - iii.* May not have separate assigned street addresses.
  - d. All requirements for off-street parking must be met.
2. **Non-Processed Edibles.** The sale or donation of non-processed edibles grown or raised on the premises is permitted by right as an accessory use in all residential districts. All sale and donation activities must comply with the following requirements:
  - a. Sales and donations must be directly to the end consumer of the non-processed edibles.
  - b. Sales and donation-related activities must occur between the hours of 8am and 8pm.

- c. Sales and donation-related activities must be located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot.
- d. The sale or donation of non-processed edibles may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.
- e. The sale or donation of non-processed edibles may not involve more than ten customer visits to the premises in one day.

**3. Chair Massage.**

- a. Chair massage is permitted by right as an accessory use when incidental to a retail use in the commercial districts and the MU-R district.
- b. No additional parking is required.

**4. Commercial Uses in Residential Districts.** A commercial use is allowed in a Residential District as an accessory use only if the use is specifically allowed by the Zoning Ordinance.

**B. Hours of Operation.**

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district.

**Exceptions.** The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1.

2. **Alcohol Sales in C-T District.** A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business’s ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the district.

**TABLE 23.302-1: ALLOWED HOURS OF OPERATION**

| DISTRICT                                | ALLOWED HOURS OF OPERATION | PERMIT REQUIRED TO EXTEND HOURS |
|-----------------------------------------|----------------------------|---------------------------------|
| C-C, C-U                                | 7:00 a.m. – 12:00 midnight | AUP                             |
| C-N, C-E, C-NS, C-SO, C-W outside nodes | 7:00 a.m. – 11:00 p.m.     | UP                              |

|                                                            |                                                                                                    |     |
|------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-----|
| C-W nodes                                                  | 6:00 a.m. – 12:00 midnight with Zoning Certificate                                                 | UP  |
| C-SA                                                       | 7:00 a.m. – 12:00 midnight Sundays through Thursdays<br>7:00 a.m. – 12:00 Fridays and Saturday     | UP  |
| C-AC                                                       | 7:00 a.m. – 12:00 midnight Sundays through Thursdays<br>7:00 a.m. – 2:00 a.m. Fridays and Saturday | UP  |
| C-T between Bancroft Way and the north side of Dwight Way  | 24 hours per day 7 days a week                                                                     | N/A |
| C-T between the south side of Dwight Way and Parker Street | 7:00 a.m. – 12:00 midnight                                                                         | AUP |
| C-DMU                                                      | 6:00 a.m. and 2:00 a.m.                                                                            | AUP |
| MU-R                                                       | 6:00 a.m. and 10:00 p.m.                                                                           | AUP |

3. **C-T District Findings.** The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.

4. **Hours of Operation Defined.**

- a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.
- b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:
  - i. The delivery, maintenance, security, product preparation and other pre-opening activities, and
  - ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- c. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

- C. **Indoor Storage of Goods.** In the Commercial Districts, an AUP is required for the indoor storage of goods as an incidental use occupying over 25 percent of the gross floor area.

D. **Live Entertainment.**

**Permits Required.** Live entertainment incidental to a permitted use is allowed as shown in

Table 23.302-2.

**TABLE 23.302-2: PERMIT REQUIREMENTS FOR LIVE ENTERTAINMENT**

| ZONES                                  | PERMIT REQUIRED |               |
|----------------------------------------|-----------------|---------------|
|                                        | AMPLIFIED       | UNAMPLIFIED   |
| C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC | AUP             | ZC            |
| C-N, C-NS, C-W                         | UP(PH)          | ZC            |
| C-E                                    | Not Permitted   | ZC            |
| M, MM                                  | Not Permitted   | Not Permitted |
| MU-LI, MU-R                            | UP(PH)          | UP(PH)        |

**1. Allowed Activities.**

- a. In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.
- b. In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.

**E. Outdoor Uses.**

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
  - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
  - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.**
4. Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.

TABLE 23.302-3: PERMIT REQUIREMENTS FOR OUTDOOR USES

| DISTRICT/USE CHARACTERISTICS [1]                                                                                 | PERMIT REQUIRED |
|------------------------------------------------------------------------------------------------------------------|-----------------|
| All Commercial Districts Except for C-W                                                                          |                 |
| Not abutting a residential district                                                                              | AUP             |
| Abutting a residential district                                                                                  | UP(PH)          |
| C-W                                                                                                              |                 |
| Not abutting a residential district and less than 10,000 s. ft.                                                  | AUP             |
| Abutting a residential district                                                                                  | UP(PH)          |
| 10,000 sq. ft. or more                                                                                           | UP(PH)          |
| M, MM [2]                                                                                                        |                 |
| Less than 20,000 sq. ft.                                                                                         | ZC              |
| 20,000 sq. ft. or more                                                                                           | AUP             |
| MU-LI                                                                                                            |                 |
| Less than 20,000 sq. ft.                                                                                         | ZC              |
| 20,000 to 30,000 sq. ft.                                                                                         | AUP             |
| More than 30,000 sq. ft.                                                                                         | UP(PH)          |
| MU-R                                                                                                             |                 |
| Not abutting a residential district                                                                              | AUP             |
| Abutting a residential district                                                                                  | UP(PH)          |
| Notes:                                                                                                           |                 |
| [1] Size is measured as the lot area of the outdoor activity or storage                                          |                 |
| [2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use. |                 |

5. **C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.
6. **M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

### 23.302.030 – Temporary Uses and Structures

#### A. Permitted By Right.

1. **Temporary Uses.** The following temporary uses are permitted by right:

- a. Using a dwelling, school, church, community center, or other facility as a polling or voting place for an election conducted by the City or other government agency.
- b. Conducting a garage, yard, or rummage sale on a residential property or a block sale of several properties. A sale may not exceed two days and is limited to one sale in any month's period of time.
- c. Temporary sidewalk sales conducted adjacent to, and in conjunction with, an approved commercial retail lease space, when all other City regulations are met.
- d. The use of a property as temporary parking during football games in the University of California Memorial Stadium under the provisions of Ordinance # 2435-N.S.
- e. A temporary retail use where:
  - i. The temporary sales are on the same property with an established commercial business holding a valid City business license; and
  - ii. The temporary sales conform with the approved permit for the commercial business.

2. **Temporary Structures.** The following accessory and temporary structures are permitted by right as long as they do not change the character of, and are in keeping with the purposes of the district in which they are located:

- a. Lines, wires, poles and devices to transmit electricity, telephone/telecommunications or cable television, including pipelines, conduits and appurtenances to containing such wires and devices. Allowed activities include installing, maintaining, undergrounding, and repairing such facilities. A Use Permit or AUP is required for wireless telecommunication antennas other than those located within the public right-of-way.
- b. Pipelines or conduits and appurtenances to transport oil, gas, sewage or water.
- c. Temporary construction offices, scaffolding, utility connections, on-site construction material yards and/or debris containers for not more than the time period authorized in a valid building permit.

#### B. **AUP Required.**

1. **When Required.** An AUP is required to establish, maintain, or operate a temporary use or structure not identified in Subsection A (Permitted By Right) above.



2. **Scope of Approval.** An AUP for a temporary use or structure applies only to the circumstances of the temporary use or structure existing at the time the application is granted.
  3. **Seasonal Product Sales.** Temporary seasonal product sales activity may not exceed a 45-day period and may not be established in any Residential district.
  4. **Time Period.**
    - a. The AUP shall specify the time period for the temporary use or structure, including a required ending date.
    - b. A time extension is not allowed unless approved by the Zoning Officer.
  5. **Findings.** To approve the AUP, the Zoning Officer must make the findings in Section 23.406.030.F– Administrative Use Permits (Findings for Approval). When making this finding, the Zoning Officer shall consider whether the temporary nature of the use or structure will make it not detrimental.
  6. **Appeals.**
    - a. An AUP decision for seasonal product sales of pumpkins and Christmas trees, including the temporary use of a structure for an office, may not be appealed.
    - b. All other AUP decisions for a temporary uses and structures may be appealed as provided in Chapter 23.410—Appeals and Certifications.
- C. **Violations.** Permits for temporary uses may be revoked for non-compliance with any conditions of approval and the Zoning Officer may issue an immediate cease and desist order.
- D. **Temporary Outdoor Uses on Private Property -- COVID-19 Local Emergency.**
1. **Applicability.**
    - a. This subsection is valid during and up to 90 days after a locally-declared state of emergency related to COVID 19.
    - b. An eligible business must:
      - i. Have a valid City of Berkeley Business License;
      - ii. Be located on private property in one of the following districts:
        1. Any commercial zoning district; or
        2. The Manufacturing (M) District, the Mixed Manufacturing (MM) district, or the Mixed-Use Light Industrial (MU-LI) district; and



- d. Permits issued pursuant to this subsection must be posted in plan view within the commercial establishment for which the permit has been issued.

**4. Operating Standards.**

- a. A business must comply with State and local regulations for normal business operations, including previously-imposed conditions of approval related to hours of operation and other conditions of approval not in conflict with the allowances in this subsection, in addition to State regulations for outdoor operations.
- b. A business must follow the Governor's Executive Orders, Public Health Orders, and the City of Berkeley Public Health Orders, including Appendices.
- c. A business must comply with American with Disabilities Act (ADA) requirements and the Berkeley Building Code.
- d. A Temporary Outdoor Use must maintain a 10-foot setback adjacent to any property in a residential district.
- e. A Food Service Establishment with incidental beverage service must comply with all applicable regulations of the California Department of Alcohol Beverage Control and obtain a COVID-19 temporary catering authorization.
- f. Operating Hours for a Temporary Outdoor Use are limited to 9 a.m. to 9 p.m. Operating Hours include the time that the business is open for customer access to the departure of the last patron.
  - i. Operating Hours limitations do not apply to delivery, maintenance, security, product preparation and other pre-opening activities, and cleanup, shutdown and other post-closure activities which do not involve the presence of customers.
- g. Temporary Outdoor Uses must be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to, commercial noise and offensive odors.
- h. Smoking is prohibited in areas designated for Temporary Outdoor Uses (BMC Section 12.70.030).
- i. Temporary outdoor lighting fixtures must be oriented in a manner to direct light away from adjacent parcels.

**5. Sanitation.**

- a. A business must provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
- b. A Food Service Establishment must provide restrooms and sanitation during hours of operation.

- c. A Food Service Establishment must comply with BMC Ch. 11.64 (Single Use Foodware and Litter Reduction).
6. **Existing Parking and Loading.** Non-residential parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.
7. **Temporary Fixtures and Structures.**
  - a. Movable fixtures such as tables and chairs, umbrellas, heaters, generators, trucks or trailers must be stored in a secure place on private property when not in use.
  - b. Fixed structures, such as semi-permanent tents, shipping containers, portable sinks and toilets, must occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use, in order to allow for social distancing.
  - c. The location, type and operation of Temporary Fixtures and Structures must comply with requirement of, and be inspected by, the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department, as applicable.
8. **Safety.**
  - a. If a Temporary Outdoor Use is located within an active parking lot, a business must provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.
  - b. If a Temporary Outdoor Use fully occupies a parking lot, a business must provide temporary barriers to prevent vehicle traffic from entering the parking lot.
9. **Remedies.**
  - a. A Zoning Certificate for a Temporary Outdoor Use may be revoked for non-compliance with any conditions in this subsection, and the Zoning Officer may issue a cease and desist order immediately.
  - b. A Temporary Outdoor Use that meets the nuisance criteria set forth in 23.414.404.B (Nuisances Prohibited) is subject to abatement, a set forth in 23.414 (Nuisance Abatement).

## **23.302.040 – Home Occupations**

### **A. Definitions.**

1. **Home Occupation.** A home occupation is a business use conducted on property developed with Residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally

established dwelling, accessory dwelling unit, accessory building, or group living accommodation room and is operated only by the residents of the subject residence. There are three classifications of Home Occupations. For the purposes of this section, a “customer” is considered a single paying customer, but may include more than one person receiving the services at the same time:

- a. **Class I Home Occupations.** A Class I home occupation involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
- b. **Class II Home Occupations.** A Class II home occupation involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
- c. **Class III Home Occupation.** A Class III home occupation involves one or both of the following:
  - i. More than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site.
  - ii. Shipping of goods directly from the subject residence regardless of the number of customer visits per day.

2. **Permits Required.** Table 23.302-4 shows permits required for home occupations.

**TABLE 23.302-4: PERMIT REQUIREMENTS FOR HOME OCCUPATIONS**

| HOME OCCUPATION                                  | PERMIT REQUIRED |
|--------------------------------------------------|-----------------|
| Class I                                          | ZC              |
| Class II                                         | AUP             |
| In the Hillside Overlay                          | Not Permitted   |
| ES-R District                                    | Not Permitted   |
| Class III                                        |                 |
| All Commercial Districts and MU-R District       | UP (PH)         |
| All other Districts, and in the Hillside Overlay | Not Permitted   |

3. **Additional Findings -- Class II and Class III Home Occupations.** To approve an AUP for a Class II home occupation or a Use Permit for a Class III home

occupation, the Zoning Officer or the ZAB must make the permit findings in Section 23.406 (Specific Permit Requirements) and find that, based on the circumstances of the specific use and property:

- a. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the home occupation; and
- b. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- c. If the proposed home occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- d. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshall.

**B. General Provisions.**

1. **Where Allowed.** A home occupation is allowed in any dwelling unit, accessory dwelling unit, accessory building, or group living accommodation room.
2. **Incidental Use.** A home occupation in compliance with this section is considered a lawful incidental use of a primary residence and is not considered a change of use thereof.

**C. Standards for All Home Occupations.** The following standard apply to all home occupations.

1. A home occupation is allowed as an incidental use within a dwelling unit, accessory dwelling units, accessory building, or group living accommodation room.
2. No firearm/munitions business may operate as a home occupation
3. Customer visits are not allowed in the ES-R district.
4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the dwelling unit, accessory dwelling units, accessory building, or group living accommodation room from which it operates.

5. Only residents of the subject dwelling unit, accessory dwelling units, accessory building, or group living accommodation room, who live in the unit or room full-time, may operate a home occupation business.
6. Customer visits may occur only between the hours of 10am and 8pm.
7. Storage, services, repairs and other business activities, other than permitted arrival and departure of customers and goods in transit, may not be conducted outdoors.
8. A home occupation shall not involve hazardous materials or waste as defined by Municipal Code Section 15.08.060 (Hazardous Materials or Waste), or any other materials or waste that is deemed by the Hazardous Material Manager (or their designee or successor) to be inappropriate or unsafe in a residential setting.
9. A home occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt, electrical or other disturbance perceptible by the average person beyond the unit in which the home occupation is permitted.
10. No on-site signs identifying or advertising the home occupation are allowed.
11. The operator of a Home Occupation shall pay gross receipts tax pursuant to the City's business license tax ordinance in Municipal Code Chapter 9.04 (Business Licenses).
12. A lessee in possession of a property may apply for a permit without the property owner's signature; however, home occupations are not exempt from conditions in rental and lease agreements which may limit or prohibit home occupations.

**D. Complaints and Imposition of Conditions.**

1. **General.** Home occupations are subject to review, the imposition of conditions, or revocation. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.
2. **Class I and Class II Home Occupations.** The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing Class I and Class II home occupations, and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit if adequate conditions of approval are not available.
3. **Class III Home Occupations.** The ZAB shall review documented complaints, business operations, and other factors when reviewing Class III home occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit if adequate conditions of approval are not available.

**23.302.050 – Bed and Breakfast Establishments in Residential Districts**

**A. Section Purpose.**

1. The purpose of this section is to sanction the time-limited continued operation of bed and breakfast establishments (B&Bs) in residential districts that meet the requirements in this section.
2. This section is intended solely to alleviate the hardship that might occur if the owners of B&Bs were required to cease operation immediately, as would otherwise be required by the Zoning Ordinance.
3. The purpose of this section is not to permanently legalize such B&Bs.

**B. Continued Operation**

1. **Eligibility.** B&Bs in operation in Berkeley as of December 13, 2003 are eligible for continued operation subject to this section if, and only so long as, they satisfy the following conditions:
  - a. The B&B has been in consistent operation since January 1, 2003.
  - b. The building or buildings of which the B&B consists are legally constructed and comply with all applicable building, fire and housing code requirements, or are brought into compliance with those requirements within a reasonable time, as determined by the City.
  - c. The B&B complies with all laws related to food service and food handling.
  - d. There is no City record of complaints about the B&B within the three years before January 1, 2003.
2. **Application.** To be granted continued operation under this section, owners of eligible B&Bs must:
  - a. Apply for continued operation no later than 90 days after November 13, 2003;
  - b. Identify all owners and operators of the B&B; and
  - c. Pay all transient occupancy and business license taxes, penalties and interest due and owing, as determined by the City Council.

**C. Regulations.** B&Bs that are allowed to continue in operation under Subsection B (Continued Operation) above shall comply with the following requirements.

1. The owner of the property on which the B&B is located must live there as their primary residence and must be the primary operator of the B&B.
2. No part of a B&B may be rented for social events or functions.
3. A B&B may not be expanded beyond the number of rooms or units in existence as of January 1, 2003.



4. Food service, if provided by the operator, may be provided only to paying guests.
5. A B&B shall comply with all applicable laws, ordinance and regulations concerning the preparation and service of food.
6. A B&B shall comply with all applicable disability access requirements.
7. A B&B shall pay all transient occupancy and business license taxes as they become due.

**D. Determinations by City Manager.**

1. The City Manager or his/her designee shall make the determinations required by this section, and their decision shall be final.
2. The City Manager may give applicants under this section a reasonable period, but not to exceed six months, in which to bring the B&B into compliance with the requirements of Subsections B (Continued Operation) and C (Regulations).

**E. Status of B&B Uses Under This Section.**

1. Any continued operation allowed under this section does not constitute a permit and shall not run with the land, but is limited to the owner(s)/operator(s) thereof identified under Subsection B.2 (Application) and is subject to the requirements in this section.
2. A B&B sanctioned by this section shall be treated as a lawful nonconforming use, subject to automatic termination of the B&B use as provided in this section.
3. The owner shall file a deed restriction with the County Recorder, in a form approved by the City's Zoning Officer, notifying purchasers of the effect of this section.

**F. Future Regulations Applicable.** By seeking and accepting continued operation under this section, and thereafter operating a B&B, owners of B&Bs expressly agree that they will be subject to any and all additional regulations that may be adopted by the City to permit and regulate new B&Bs, to the extent the City so requires.

**G. Automatic Repeal.** If the limitation of Subsection E (Status of B&B Uses Under This Section) above is declared unlawful or invalidated by any court of competent jurisdiction, this section shall be deemed automatically repealed, and all B&B uses sanctioned by it shall immediately terminate.

**23.302.060 – Sidewalk Cafe Seating**

**A. Section Purpose and Intent.**

1. This section establishes a process to terminate an AUP previously issued for sidewalk cafe seating and identifies new permits required for this use.

2. It is the intent of the City to discontinue issuance of new and terminate existing AUPs for sidewalk cafe seating because the City did not intend to create a land use entitlement which ran with the land for this use, which occurs on the public right-of-way. The City also intends to eliminate the discretionary aspect of permit issuance for sidewalk cafe seating and to simplify the permit process by incorporating specific, identifiable standards for issuance of permits.

**B. Termination of AUPs for Sidewalk Cafe Seating.**

1. **Automatic Termination.** Without any action required by the City, an AUP for sidewalk cafe seating terminates upon:
  - a. The abandonment, revocation, or termination of the food service establishment which the sidewalk cafe seating serves;
  - b. The replacement of the food service establishment with another use; or
  - c. The transfer of ownership of the food service establishment.
2. **Termination by Zoning Officer.**
  - a. After providing reasonable notice and an opportunity to be heard, the Zoning Officer may terminate an AUP for sidewalk cafe seating upon determining that the permit holder has not complied with the terms of the AUP or any applicable requirement of the Zoning Ordinance.
  - b. A decision by the Zoning Officer to terminate an AUP for sidewalk cafe seating may be appealed in accordance with Chapter 23.410 (Appeals and Certification).

**C. New Permit Required.**

1. After an AUP for sidewalk cafe seating is terminated, the sidewalk cafe seating may continue or resume only after the food service establishment obtains a permit under Municipal Code Chapter 14.48 (Miscellaneous Use of Streets and Sidewalks).
2. Any sidewalk cafe seating that does not obtain required permits is a prohibited encroachment under Municipal Code Chapter 16.18 (Right-Of-Way Encroachments and Encroachment Permits).

**23.302.070 – Use-Specific Regulations**

**A. Adult-Oriented Businesses.**

1. **General Limitations.** An adult-oriented business may not be established:
  - a. Within 300 feet of the boundary of a Residential District, as measured along the public right-of-way;
  - b. Within a radius of 1,000 feet from any other adult-oriented business; or

c. Within a radius of 600 feet of any public park, public health clinic, public library, school or religious assembly use.

2. **District Limitations.** Adult-oriented businesses are not permitted:

- a. On lots with frontage on San Pablo Avenue in the C-W district; and
- b. On public-serving frontages in the C-DMU district.

**B. Amusement Devices Arcade.**

- 1. **Distance from Schools.** An amusement device arcade may not be established within a radius of 600 feet of a primary or secondary school.
- 2. **Incidental Use.** Table 23.302-5 shows permits required and maximum number of amusement devices allowed as an incidental use in the non-residential districts.

**TABLE 23.302-5: PERMIT REQUIREMENTS FOR AMUSEMENT DEVICES AS INCIDENTAL USES**

| DISTRICT                | PERMIT REQUIRED | MAXIMUM NUMBER |
|-------------------------|-----------------|----------------|
| C-C, C-U, C-N, C-T, C-W | AUP             | 3              |
| C-E, C-NS, C-SA, C-SO   | UP(PH)          | 3              |
| MU-LI                   | AUP             | No max.        |
| MU-R                    | AUP             | 3              |
| M, MM                   | Not Permitted   |                |

C. **Columbaria.** Columbaria require the permits shown in Table 23.302-6.

**TABLE 23.302-6: COLUMBARIA PERMIT REQUIREMENTS**

| PROJECT                                                                                                                                                                     | PERMIT REQUIRED |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Columbaria that are incidental to a community and institutional use, limited to 400 niches, no more than 5% of the subject property area, and located in the main building. | ZC              |
| All other columbaria                                                                                                                                                        | AUP             |

D. **Firearms/Munitions Business.** In all districts, a firearms/munition business is not permitted on a property containing a residential use.

**E. Food Service Establishments.**

- 1. **Maximum Size in R-SMU.** Food service establishments in the R-SMU district may not exceed 1,200 square feet.

2. **Permits Required in Commercial Districts.** Table 23.302-7 shows permits required for food service establishments in the commercial districts.

**TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS**

| DISTRICT/USE SIZE                                                                                                                                          | PERMIT REQUIRED |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| C-C, C-U, C-T, C-W                                                                                                                                         |                 |
| Under 1,500 sq. ft                                                                                                                                         | ZC              |
| 1,500 sq. ft. or more                                                                                                                                      | AUP             |
| C-N, C-NS, C-SA, C-SO                                                                                                                                      |                 |
| Under 1,000 sq. ft                                                                                                                                         | ZC              |
| 1,000 sq. ft. or more                                                                                                                                      | AUP             |
| C-AC, South Shattuck and North Adeline Subareas                                                                                                            |                 |
| 3,000 sq ft or less                                                                                                                                        | ZC              |
| Over 3,000 sq ft                                                                                                                                           | AUP             |
| C-AC, South Adeline Subarea                                                                                                                                |                 |
| 1,500 sq ft or less                                                                                                                                        | ZC              |
| Over 1,500 sq ft                                                                                                                                           | AUP             |
| C-E                                                                                                                                                        | AUP [1]         |
| C-DMU                                                                                                                                                      |                 |
| Under 3,000 sq. ft outside the Arts District Overlay                                                                                                       | ZC              |
| 3,000 sq. ft. or more                                                                                                                                      | AUP             |
| Any size within the Arts District Overlay                                                                                                                  | AUP [2]         |
| Notes:                                                                                                                                                     |                 |
| [1] All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store. |                 |
| [2] See 23.204.130.D.3 for required findings.                                                                                                              |                 |

3. **Notification of Decision.** Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
4. **Carry Out Limitations in C-U District.** Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.

5. **Outdoor Cafe Seating.**

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
  - i.* Zoning Certificate when seating does not abut a residential district.
  - ii.* AUP when seating abuts a residential district.
- b. Outdoor seating is not permitted for food service establishments in the MU-LI District.
- c. Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

6. **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.

7. **C-W District Requirements.**

- a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.
- b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:
  - i.* The project does not conflict with the goals and policies of the C-W district;
  - ii.* The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;
  - iii.* The project supports pedestrian-oriented development;
  - iv.* The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and
  - v.* For projects which include construction of new buildings, the project design:
    - 1. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets;
    - 2. Provides pedestrian scale and siting; and
    - 3. Incorporates continuity in street facades.

8. **Permits Required in Manufacturing Districts.** Table 23.302-8 shows permits required for food service establishments in the manufacturing districts.

**TABLE 23.302-8: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS**

| USE TYPE AND SIZE                                          | DISTRICT |           |         |         |
|------------------------------------------------------------|----------|-----------|---------|---------|
|                                                            | M        | MM        | MU-LI   | MU-R    |
| Incidental Use                                             |          |           |         |         |
| Under 20,000 sq. ft.                                       | AUP [1]  | AUP [1,2] | AUP [1] | AUP [1] |
| 20,000 sq. ft. or more                                     | -        | -         | -       | AUP     |
| Carry Out Food Service (Primary Use)                       |          |           |         |         |
| Under 5,000 sq. ft.                                        | -        | -         | AUP     | AUP     |
| 5,000 sq. ft. or more                                      | -        | -         | UP      | UP      |
| Quick Service Restaurant (Primary Use)                     |          |           |         |         |
| Under 5,000 sq. ft.                                        | -        | -         | AUP     | AUP     |
| 5,000 sq. ft. or more                                      | -        | -         | UP      | UP      |
| Full-Service Restaurant (Primary Use)                      |          |           |         |         |
| -                                                          | -        | -         | UP      | UP      |
| Notes:                                                     |          |           |         |         |
| [1] Outdoor food service is not permitted.                 |          |           |         |         |
| [2] Limited to food or beverage for immediate consumption. |          |           |         |         |

**9. MU-LI and MU-R District – Findings.**

- a. To approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

**F. Non-Chartered Financial Institutions.**

1. No more than four non-chartered financial institutions are permitted in the city.
2. Non-chartered financial institutions may not be located within a radius of 1,320 feet of another non-chartered financial institutions.

**G. Parking Lot/Structure.**

1. **Permits Required.**

2. Table 23.302-9 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

**TABLE 23.302-9: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES**

| DISTRICT                                                                                             | PERMIT REQUIRED                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Districts</b>                                                                         |                                                                                                                                                                                                                                                                                                                                  |
| R-3                                                                                                  | Use Permit for all parking lots and structures. [1]                                                                                                                                                                                                                                                                              |
| R-S, R-SMU                                                                                           | Use Permit for parking structures only. Parking lots are not permitted.                                                                                                                                                                                                                                                          |
| All other residential districts                                                                      | Use Permit for all parking lots and structures.                                                                                                                                                                                                                                                                                  |
| <b>Commercial Districts</b>                                                                          |                                                                                                                                                                                                                                                                                                                                  |
| C-C, C-U                                                                                             | Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.                                                                                                                                                                                                                    |
| C-SO                                                                                                 | AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.                                                                                                                                                                                                                                   |
| C-DMU                                                                                                | AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.                                                                                                                                                                                                  |
| C-N, C-E, C-NS, C-SA                                                                                 | Use Permit for all parking lots and structures.                                                                                                                                                                                                                                                                                  |
| C-T                                                                                                  | Use Permit for all parking structures. All parking lots not permitted.                                                                                                                                                                                                                                                           |
| C-W                                                                                                  | AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.                                                                                                                                                                                                |
| <b>Manufacturing Districts</b>                                                                       |                                                                                                                                                                                                                                                                                                                                  |
| M, MM                                                                                                | AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.                                                                                                                 |
| MU-LI                                                                                                | Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district. |
| MU-R                                                                                                 | Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.                                                                                                                                                    |
| Notes:<br>[1] Parking lots and structures in the R-3 district are not permitted within the Southside |                                                                                                                                                                                                                                                                                                                                  |

Plan area

3. **Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

H. **Senior Congregate Housing.** Table 23.302-10 shows permits required for senior congregate housing.

**TABLE 23.302-10: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING**

| PROJECT                                                                          | PERMIT REQUIRED |
|----------------------------------------------------------------------------------|-----------------|
| Change of use from an existing dwelling unit to accommodate six or fewer people  | ZC              |
| Change of use from an existing dwelling unit to accommodate seven or more people | AUP             |
| New construction to accommodate any number of people                             | UP(PH)          |

I. **Smoke Shops.** In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

J. **Warehouse Storage for Retail Use.**

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
  - a. An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
  - b. Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.



## 23.304 GENERAL DEVELOPMENT STANDARDS

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### Sections:

- 23.304.010– Purpose
- 23.304.020– Lot Requirements
- 23.304.030– Setbacks
- 23.304.040– Building Separation in Residential Districts
- 23.304.050– Building Height
- 23.304.060– Accessory Buildings and Enclosed Accessory Structures
- 23.304.070– Unenclosed Accessory Structures in Residential Districts
- 23.304.080– Fences
- 23.304.090– Usable Open Space
- 23.304.100– Site Features in Residential Districts
- 23.304.110– Dormers
- 23.304.120– Lot Coverage
- 23.304.130– Non-Residential Districts Abutting a Residential District
- 23.304.140– Area Plans

### 23.304.010 – Purpose

This chapter contains development standards that apply generally in Berkeley.

### 23.304.020 – Lot Requirements

#### A. All Districts.

1. **Lot Changes.** A lot may not be subdivided or reduced in size and a lot line may not be adjusted or redrawn in a manner that conflicts with the Zoning Ordinance or:
  - a. Reduces the lot area, lot width, or lot depth below the district minimum requirement;
  - b. Reduces the area per dwelling unit, area for off-street parking spaces, or usable open space area below the district minimum requirement;
  - c. Reduces the setback or driveway dimension below minimum district requirements for any existing building; or
  - d. Creates a building site where setbacks or driveways for a new building would require a Use Permit or Variance.
2. **Transactions Contrary to Minimum Lot Size Requirements.** Any deed of conveyance, sale or contract to sell made contrary to the minimum lot size requirements of the Zoning Ordinance is voidable at the sole option of the grantee, buyer or person contracting to buy, their heirs, personal representative or trustee in insolvency or bankruptcy within one year after the date of execution of the deed of conveyance, sale, or contract.

3. **Front Lot Line Determination for Corner Lots.** For the purpose of determining lot frontage and setback requirements, the shorter of the two intersecting lot lines along the rights-of-way of a corner lot is considered the front of the lot. For lots with equal frontage, or for irregularly shaped corner lots, the Zoning Officer shall designate the front lot line in a manner to best promote the orderly development of the immediate area.
4. **Condominium Lots.** For condominium projects with a common area, all buildings and the common area together are treated as a single lot for the purpose of calculating minimum lot size, setback, density, FAR, coverage, usable open space and off-street parking requirements.
5. **Projections Over Lot Lines.** A building or structure may not project over a lot line except that:
  - a. Awnings and other architectural features may project over a lot line into the public right-of-way, and
  - b. Fences may be erected on shared lot lines.

**B. Residential Districts.**

1. **Lot Line Designations for Flag and Irregular Lots.** The Zoning Officer shall designate the front, side, and rear lot line for flag lots and irregular interior lots in a manner to best protect light, air, and privacy.

**23.304.030 – Setbacks**

- A. **All Districts.** A building or structure may not project into a required setback area except as specifically permitted by the Zoning Ordinance.

**B. Residential Districts.**

1. **Corner Lots with a Rear Lot Line Abutting a Key Lot.** For corner lots in the R-1, R-1A, R-2 and R-2A districts with a rear lot line abutting a key lot, the minimum street side setback is either:
  - a. One-half the front setback required or existing on the key lot, whichever is less; or
  - b. Four feet if the corner lot maintains 50 feet or more rear setback.
2. **Setback Reductions.** Lot line setback reductions are only permitted as shown in Table 23.304-1. Otherwise, they are not permitted.

**TABLE 23.304-1: ALLOWED SETBACK REDUCTIONS IN RESIDENTIAL DISTRICTS**

| DISTRICT WHERE ALLOWED          | WHEN ALLOWED                                                                                                                 | MINIMUM SETBACK WITH REDUCTION | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1]                                                                                                                                                          |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Front Setback Reductions</b> |                                                                                                                              |                                |                 |                                                                                                                                                                                           |
| ES-R                            | On any lot                                                                                                                   | No minimum.                    | UP(PH) [2]      | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-S; R-SMU                      | On any lot                                                                                                                   | No minimum                     | AUP             | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings                                                                                   |
| R-SMU                           | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum                     | AUP             | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings                                                                                   |
| <b>Rear Setback Reductions</b>  |                                                                                                                              |                                |                 |                                                                                                                                                                                           |
| ES-R [3]                        | On any lot                                                                                                                   | No minimum                     | UP(PH) [2]      | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-1, R-1A                       | On a lot less than 100 ft. deep                                                                                              | 20% of lot depth               | ZC              | None                                                                                                                                                                                      |

| DISTRICT WHERE ALLOWED               | WHEN ALLOWED                                                                                                                 | MINIMUM SETBACK WITH REDUCTION                  | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1]                                                                                                                                                          |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R-1A                                 | To construct a dwelling unit                                                                                                 | 12 ft.                                          | AUP             | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.                                                                |
| R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU | On a lot with two or more main buildings with dwelling units                                                                 | No minimum                                      | AUP             | No additional findings                                                                                                                                                                    |
| R-SMU                                | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum                                      | AUP             | The reduction is appropriate given the setbacks and architectural design of surrounding buildings                                                                                         |
| <b>Side Setback Reductions</b>       |                                                                                                                              |                                                 |                 |                                                                                                                                                                                           |
| ES-R [3]                             | Any lot                                                                                                                      | No minimum                                      | UP(PH) [2]      | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-1, R-1A                            | Lot width less than 40 ft. [4]                                                                                               | 10% of lot width or 3 ft., whichever is greater | ZC              | None                                                                                                                                                                                      |
| R-1A                                 | West of San Pablo Avenue to construct a dwelling unit                                                                        | No minimum                                      | AUP             | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.                                                                |

| DISTRICT WHERE ALLOWED | WHEN ALLOWED                                                                                                                 | MINIMUM SETBACK WITH REDUCTION                                                                | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1]                                                                        |
|------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------|
| R-2, R-2A              | Lot width less than 40 ft.                                                                                                   | First and second stories: 10% of lot width or 3 ft., whichever is greater; Third story: 5 ft. | ZC              | None                                                                                                    |
| R-SMU                  | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum                                                                                    | AUP             | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings |

Notes:

- [1] Findings are in addition to any AUP or Use Permit findings required in 23.406-Specific Permit Requirements.
- [2] Fire Department must review and approve reduced setbacks in respect to fire safety.
- [3] For lots less than 5,000 square feet, reductions are not allowed for property lines abutting a property under different ownership.
- [4] Not permitted for rear main buildings in the R-1A district.

3. **Allowed Building Projections.** Table 23.304-2 shows building features which may project into a required setback. All projecting features must maintain a minimum 3-foot distance from an interior side lot line.

**TABLE 23.304-2: ALLOWED BUILDING PROJECTIONS**

| BUILDING FEATURE                                                        | MAXIMUM PROJECTION INTO REQUIRED SETBACK (MUST MAINTAIN 3 FT MINIMUM FROM INTERIOR SIDE LOT LINE) |         |               |             |
|-------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|---------|---------------|-------------|
|                                                                         | FRONT                                                                                             | REAR    | INTERIOR SIDE | STREET SIDE |
| Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment | 2.5 ft.                                                                                           | 2.5 ft. | 1.5 ft.       | 2.5 ft.     |

|                                                                                                                                                                                                                                                                 |         |         |         |         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|
| Eaves, Cornices, Canopies, Awnings and Bay Windows [1]                                                                                                                                                                                                          | 2.5 ft. | 2.5 ft. | 1.5 ft. | 2.5 ft. |
| Uncovered decks, porches, landings and stairs when 30 inches or more above grade at any point [2]                                                                                                                                                               | 6 ft.   | 6 ft.   | 1.5 ft. | 2.5 ft. |
| Balconies and fire escapes [1]                                                                                                                                                                                                                                  | 6 ft.   | 6 ft.   | 1.5 ft. | 2.5 ft. |
| Notes:<br>[1] Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.<br>[2] Uncovered decks, porches, landings and stairs less than 30 inches in height are not subject to minimum setback requirements. |         |         |         |         |

4. **Accessibility for Persons with Disabilities.** Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities may project into a required setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:
  - a. One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot.
  - b. The projection may not block access to or encroach into any required off-street parking space or driveway leading to such space.
5. **Building Groups.** Where two or more main buildings are constructed as part of a single project, the Zoning Officer may approve an AUP to reduce the minimum side setback requirement if:
  - a. Each building is constructed on a separate contiguous lot; and
  - b. Each building satisfies the requirements of the Berkeley Fire Code and Berkeley Building Code.
6. **Subterranean Structures.**
  - a. A subterranean structure may project into required front, side, and rear setbacks if:
    - b. The structure has a roof;
    - c. The roof elevation does not exceed 3 feet above finished grade; and
    - d. The roof is landscaped and developed so as to qualify as usable open space in conformance with 23.304.090 (Usable Open Space).

- e. A subterranean structure that projects into a required setback must be setback at least 6 feet from the front, side, and rear lot lines.
- 7. **Solar Energy Equipment.** The Zoning Officer may approve an AUP for solar energy equipment to project into a required setback upon finding that:
  - a. The projection is necessary to install the solar energy equipment;
  - b. The proposed structures and equipment are installed with the primary purpose to collect, store, and use solar energy; and
  - c. The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO).

**C. Non-Residential Districts.**

- 1. **Single-Use Residential Development.** Allowed setback reductions and projections in 23.304.030.B (Residential Districts) also apply to single-use residential development in a Non-Residential District.
- 2. **Lots Adjacent to Residential Districts.**
  - a. **Standards.** Table 23.304-3 shows minimum setbacks on lots in a Non-Residential District that abut or confront one or more lots in a Residential District. Required setbacks apply to structures occupied by any use, including residential-only buildings.

**TABLE 23.304-3: SETBACKS ADJACENT TO RESIDENTIAL DISTRICTS**

| District                                                                                                                                                                                                                                                                                     | Minimum Lot Line Setback when Lot Line Abuts or Confronts a Lot in a Residential District |                                                        |               |                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------|-------------------------------------------------------|
|                                                                                                                                                                                                                                                                                              | Front                                                                                     | Rear                                                   | Interior Side | Street Side                                           |
| All Commercial Districts, MU-LI                                                                                                                                                                                                                                                              | Same as required in adjacent Residential District [1]                                     | 10 feet or 10% of the lot depth, whichever is less     | 5 ft.         | Same as required in adjacent Residential District [1] |
| MU-R                                                                                                                                                                                                                                                                                         | 10 ft. [1]                                                                                | 10 feet or 10% of the lot width, whichever is less [2] |               |                                                       |
| <p><u>Notes:</u></p> <p>[1] In the MU-LI and MU-R districts, setback may be reduced to the smaller of front setbacks on abutting lot with an AUP.</p> <p>[2] This applies to lots that abut or confront a lot either in a Residential District or containing one or more dwelling units.</p> |                                                                                           |                                                        |               |                                                       |

- b. **Modifications in Commercial Districts.** For lots in a Commercial District that abut or confront one or more lots in a Residential District, the Zoning

Adjustments Board (ZAB) may approve a Use Permit to allow setbacks smaller than required in Table 23.304-2 upon finding that the reduced setback would provide greater privacy or improved amenities to a lot in the Residential District.

**23.304.040 – Building Separation in Residential Districts**

A. Table 23.304-4 shows permits required to reduce to minimum building separation standards in Residential Districts, and when these reductions are allowed.

**TABLE 23.304-4: PERMITS REQUIRED FOR BUILDING SEPARATION REDUCTIONS IN RESIDENTIAL DISTRICTS**

| DISTRICT WHERE ALLOWED               | WHEN ALLOWED                                                  | PERMIT REQUIRED | FINDINGS [1]                                                                                                                                                                                                                                                                                      |
|--------------------------------------|---------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R-1A                                 | On a lot with two or more main buildings with a dwelling unit | AUP             | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.                                                                                                                                                                        |
| R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU | On a lot with two or more main buildings with a dwelling unit | AUP             | No additional findings                                                                                                                                                                                                                                                                            |
| ES-R [2]                             | Any lot                                                       | UP(PH)          | 1) The reduced building separation is necessary to allow economic use of property for residential purposes; 2) the development complies with all other applicable setback, coverage, and floor requirements; and 3) the reduced building separation is consistent with the ES-R district purpose. |

Notes:

[1] Findings in addition to AUP or Use Permit findings required in in 23.406.

[2] Fire Department must review and approve reduced setbacks in respect to fire safety.

**23.304.050 – Building Height**

A. **Projections Above Height Limits.** Table 23.304-5 shows features that may project above allowed height limits. For rules that apply to wireless telecommunication facilities, see Chapter 23.332 (Wireless Telecommunication Facilities).



**TABLE 23.304-5: ALLOWED PROJECTIONS ABOVE HEIGHT LIMIT**

| Structures Allowed Above Height Limit                                                                                                                                        | Maximum Projection Above Height Limit                         |                           | Limitations                                                                                                                                                                                                                |                           | Permit Required |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------------|
|                                                                                                                                                                              | Residential Districts                                         | Non-Residential Districts | Residential Districts                                                                                                                                                                                                      | Non-Residential Districts |                 |
| Towers, antennas, poles used for the transmission of electricity, telephone, cable television or other messages                                                              | No maximum                                                    |                           | None                                                                                                                                                                                                                       |                           | None            |
| Flag poles, skylights, solar energy equipment, and similar structures                                                                                                        | No maximum                                                    |                           | None                                                                                                                                                                                                                       |                           | None            |
| Chimneys, water tanks, heating and air conditioning equipment, vents, pipes and necessary mechanical roof appurtenances                                                      | 4 ft. or the minimum height required by the Building Code [1] | No maximum                | Maximum 3 ft. in width [1]                                                                                                                                                                                                 | No additional limitations | None            |
| Other building and site features, including but not limited to, mechanical penthouses, elevator equipment rooms and cupolas, domes, turrets and other architectural elements | No maximum                                                    |                           | May not exceed 15% of the average floor area of all of the building's stories. No tower or similar structure may be used as habitable space or for any commercial purpose, other than the mechanical needs of the building |                           | AUP             |

Notes:

[1] May exceed allowed height and width with an AUP.

- B. **Rooftop Structures in Residential Districts.** Decks, railings, trellises, pergolas, and other similar structures may be built above a roof but less than the residential addition height limit of the district. These structures may exceed the residential addition height limit with an AUP.

**23.304.060 – Accessory Buildings and Enclosed Accessory Structures**

- A. **Applicability.** This section applies to accessory buildings and enclosed accessory structures as defined in 23.502 (Glossary). See Section 23.304.070 (Unenclosed Accessory Structures in Residential Districts) and Section 23.304.080 (Fences) and for requirements that apply to other unenclosed accessory structures and fences.

**B. All Districts.**

- 1. **Attached or Close to Main Building.** An accessory building or enclosed accessory structure, other than a subterranean structure, that is attached to or within 3 feet of a wall of a main building, is considered a part of the main building for the purposes of setback requirements.
- 2. **Demolition.** See 23.326.030.C (Accessory Buildings) and 23.326.070.B (Accessory Buildings) for permits required to demolish accessory buildings.

**C. Residential Districts.**

- 1. **Permits Required.** Table 23.304-6 shows permits required for accessory buildings and accessory structures in Residential Districts.

**TABLE 23.304-6: PERMIT REQUIREMENTS FOR ACCESSORY BUILDINGS AND ENCLOSED ACCESSORY STRUCTURES**

| District Location and Building/Structure Type                         | Permit Required |
|-----------------------------------------------------------------------|-----------------|
| All Residential Districts Except ES-R                                 |                 |
| New accessory buildings                                               | AUP             |
| Alterations to existing accessory buildings                           | ZC              |
| Enclosed accessory structures on a lot with a main building           | ZC              |
| Enclosed accessory structures on a vacant lot without a main building | AUP             |
| Horse stables                                                         | AUP [1]         |
| Accessory buildings and structures with Urban Agriculture             | ZC              |
| ES-R District                                                         |                 |
| Under 100 sq. ft.                                                     | ZC              |

|                                                                                     |        |
|-------------------------------------------------------------------------------------|--------|
| 100 sq. ft. or more                                                                 | UP(PH) |
| On a vacant lot without a main building                                             | UP(PH) |
| <u>Notes:</u><br>[1] Horse stables are not permitted in the R-S and R-SMU districts |        |

**2. Development and Use Standards.**

- a. Development Standards.** Table 23.304-7 shows development standards for accessory buildings and enclosed accessory structures in Residential Districts.

**TABLE 23.304-7: ACCESSORY BUILDING AND ENCLOSED ACCESSORY STRUCTURE STANDARDS IN RESIDENTIAL DISTRICTS**

| <b>Building/Structure Feature</b>                                                     | <b>Standards</b>                                                                                                                                                   |
|---------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Average Height, Maximum                                                               |                                                                                                                                                                    |
| Less than 4 ft. from lot line                                                         | 10 ft.                                                                                                                                                             |
| 4 ft. to less than 10 ft. from lot line                                               | 12 ft.                                                                                                                                                             |
| 10 ft. or more from lot line                                                          | 24 ft.                                                                                                                                                             |
| Setbacks, Minimum                                                                     |                                                                                                                                                                    |
| Front of Interior Lot                                                                 | 50% of lot dept                                                                                                                                                    |
| Front of Through Lot                                                                  | 25% of lot dept                                                                                                                                                    |
| Front of Corner Lot                                                                   | The setback existing or required on the adjacent lot, whichever is smaller, <u>and</u> the existing setback of main building on the lot                            |
| Street Side, Corner Lot                                                               | The existing setback of main building on the lot                                                                                                                   |
| Interior Side                                                                         | 4 ft. for building/structures within 75 feet of front lot line; as required by Berkeley Building Code for buildings/structures 75 feet or more from front lot line |
| Edge of Alley                                                                         | 5 ft.                                                                                                                                                              |
| Building Length [1]                                                                   | 24 ft.                                                                                                                                                             |
| <u>Notes:</u><br>[1] Applies to building walls generally parallel to a side lot line. |                                                                                                                                                                    |

**b. Deviation from Standards.**

- i.* In all Residential Districts except for the ES-R district, the Zoning Officer

may approve an AUP to allow an accessory building or enclosed accessory structure to deviate from the standards in Table 23.304-7. In the ES-R district, deviations require ZAB approval of a Use Permit.

- ii. To approve the deviation, the review authority must find that the proposed building or structure will not be detrimental to the light, air, privacy, and view of adjacent properties.
- c. **Bathroom and Kitchen Facilities.** An accessory building may contain a full bathroom, including handwashing sink, toilet, and tub or shower, as well as cooking facilities, as long as the cooking facilities do not constitute a kitchen.
- d. **Rentals.** An accessory building may be rented only as a short-term rental as allowed in Section 23.314—Short-Term Rentals.

## 2. Rebuilding and Replacement.

- a. Notwithstanding the setback standards in this section and the coverage area standards in Chapter 23.202—Residential Districts, an accessory building or enclosed accessory structure may be constructed to replace a pre-existing lawful accessory building or enclosed accessory structure, if the replacement building or structure is in the same location and has the same or smaller footprint as the previous structure. However, any such replacement structure may not exceed the average height as the previous building or structure; otherwise an AUP is required.
- b. Such replacement buildings and structures are permitted as of right only if an application for a building permit for their construction is submitted at the same time as an application for a building permit for the demolition of the pre-existing building or structure.
- c. The demolition of any accessory building proposed for replacement under this section is subject to Municipal Code Chapter 3.24 (Landmark Preservation Commission).

D. **Non-Residential Districts.** The following requirements apply to accessory buildings and enclosed accessory structures in Non-Residential Districts.

### 1. Permits Required.

- a. Accessory buildings and enclosed accessory structures in a Non-Residential District require the same permits as a main building in the district, except as provided in paragraphs (b) and (c) below.
- b. Accessory buildings and structures with urban agriculture are allowed with a Zoning Certificate.
- c. In a Commercial District, an accessory building or enclosed accessory structure associated with a residential-only project requires the same permits

as in all Residential Districts except ES-R as shown in Table 23.304-7: Accessory Building and Enclosed Accessory Structure Standards in Residential Districts.

**2. Development Standards.**

- a. Accessory buildings and enclosed accessory structures must comply with the same development standards that apply to main buildings in the district.
- b. A detached accessory building or enclosed accessory structure may not be erected or expanded within 5 feet of an alley.

**23.304.070 – Unenclosed Accessory Structures in Residential Districts**

- A. **Applicability.** This section applies to unenclosed accessory structures as defined in 23.502 Glossary in a Residential District, excluding fences which are addressed in 23.304.080– Fences.
- B. **Placement on Lot.** Unenclosed accessory structures require an AUP if placed on the ground within a required setback.
- C. **Height.**
  1. For unenclosed accessory structure within a required setback, allowed height shall be specified in the AUP.
  2. No height limitations apply to unenclosed accessory structures outside of required setbacks.
  3. The height of an unenclosed accessory structure is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.
- D. **Hot Tubs, Jacuzzis, and Spas.**
  1. An unenclosed outdoor hot tub, jacuzzi, or spa located anywhere on a lot requires:
    - a. An AUP in all Residential Districts except for the ES-R district; and
    - b. A Use Permit in the ES-R district.
  2. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot.

**23.304.080 – Fences**

- A. **Permits Required.** Table 23.304-8 shows permits required for fences in all districts.

**TABLE 23.304-8: PERMITS REQUIRED FOR FENCES**

| District Location and Fences Height/Location                                                     | Permit Required |
|--------------------------------------------------------------------------------------------------|-----------------|
| All Districts Except ES-R                                                                        |                 |
| 6 ft. in height or less                                                                          | None required   |
| More than 6 ft in height and on lot line or within required lot line setbacks for main building  | AUP             |
| ES-R District                                                                                    |                 |
| 4 ft. in height or less                                                                          | None required   |
| More than 4 ft. in height and on lot line or within required lot line setbacks for main building | AUP [1]         |
| Notes:<br>[1] Requires Fire Department review and comment.                                       |                 |

**B. Height Measurement.** The height of a fence is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.

**C. Prohibited Materials in Residential Districts.**

1. A fence in a Residential District may not contain strands of barbed or razor wire, sharp or jagged glass, sharp or jagged metal components (e.g., razor-spikes), or similar materials.
2. Prohibited fence materials on an existing fence may not be expanded or repaired. Table 23.304-9 shows the date by which existing non-conforming prohibited fence materials must be removed.

**TABLE 23.304-9: REMOVAL OF PROHIBITED FENCE MATERIALS**

| ADJUSTED MARKET VALUE OF PROHIBITED FENCE MATERIAL | REQUIRED REMOVAL DATE                                                                                           |
|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| \$1,500 or less                                    | October 16, 2004 or within one year from the date such feature became non-conforming, whichever date is earlier |
| More than \$1,500                                  | October 16, 2005 or within one year from the date such feature became non-conforming, whichever date is earlier |

3. For purposes of this section, the adjusted market value of the existing non-conforming prohibited fence feature is calculated as follows:
  - a. The "original cost" of the fence feature is the likely cost of substantially similar fence features at the time the fence feature was initially installed plus the likely costs of installation at that time.
  - b. The "original cost" is reduced by 10 percent for each year since the fence feature was installed, until the year that this section became effective. This reduced is considered the "adjusted market value."
4. If a property owner shows that the period of time in Table 23.304-9 is unreasonable as applied to a particular fence feature, the City may extend the period within which removal of such feature is required, after weighing the harm to the public interest from continued maintenance of the fence and other relevant factors. Any such determination will be made in the course of the proceedings to abate pursuant to Municipal Code Chapter 1.24 (Abatement of Nuisances).

**D. Barbed or Razor Wire in Non-Residential Districts.**

1. A fence adjacent to a street, sidewalk, path, or other public right-of-way in a Non-Residential District may have strands of barbed or razor wire if:
  - a. The lowest strand is more than 5 feet above the ground; and
  - b. The strands are at least 6 inches inside the property line of a privately-owned lot.
2. A fence on a lot line that abuts a Residential District must comply with 23.304.080.D– Fences (Prohibited Materials in Residential Districts).

**E. MU-R District.**

**1. Abutting Residential Uses.**

- a. If the side or rear of a lot in the MU-R district with a residential use abuts another lot with a residential use, a fence over six feet in height must be setback at least either:
  - i.* Eight feet from any main residential building on the abutting lot; or
  - ii.* Four feet from the property line if the main residential building on the abutting lot is less than 4 feet from the abutting lot line.
- b. This requirement does not apply when two lots sharing the lot line are under the same ownership.

**2. Manufacturing/Residential Buffers.**

- a. If a development project in the MU-R district results in a lot with a manufacturing use abutting the side or rear of a lot with a residential use, an

8-foot minimum fence with sound absorbent material is required between the manufacturing and residential uses.

- b. The Zoning Officer may approve an AUP to allow for an alternative method to provide a buffer between the manufacturing and residential uses.

### **23.304.090 – Usable Open Space**

- A. **Applicability.** The standards in this section apply to areas used to satisfy minimum usable open space requirements as shown in Chapters 23.202–23.202.110 (Zoning Districts).
- B. **Standards.**
  - 1. **Accessibility and Use.** Usable open space shall be accessible to the occupants of the building for active or passive recreation use.
  - 2. **Assignment to Unit.** An area which is accessible and/or usable only by the occupants of a particular dwelling unit may satisfy the usable open space area requirements only for that particular dwelling unit.
  - 3. **Minimum Dimensions.** Except for balconies, a usable open space area must have a minimum width and length of 10 feet.
  - 4. **Balconies.**
    - a. A maximum of 50 percent of the total required usable open space area may be satisfied by balconies.
    - b. A balcony must have a minimum width and length of 6 feet.
    - c. At least one exterior side must be open and unobstructed except for required railings.
  - 5. **Uncovered.** Except for balconies, usable open space shall be at least 75 percent open to the sky.
  - 6. **Slope.** Usable open space must have a slope of 8 percent grade or less.
  - 7. **Landscaping.**
    - a. At least 40 percent of the total required usable open space area, exclusive of balconies above the ground floor, shall be landscaped.
    - b. A landscaped area may not include off-street parking spaces, driveways, paved walkways and paths, patios and other surfaces covered by concrete or asphalt.
    - c. For multiple dwelling uses, required landscaped areas shall incorporate automatic irrigation and drainage facilities adequate to assure healthy growing conditions for plants.



8. **Amenities.** Usable open space which is not planted shall be developed to encourage outdoor active or passive recreational use and shall include such elements as decks, sports courts, outdoor seating, decorative paved areas and walkways which do not serve as entrance walkways.
  9. **Access Features Not Included.** Usable open space may not contain area designated for off-street parking and loading, service areas, driveways, required walkways or other features used for access to dwelling units.
- C. **Other Open Space Areas.** Areas of the lot which do not qualify as usable open space and which are not designated as driveways, off-street parking spaces or required walkways, shall be retained as landscaped areas.

### 23.304.100 – Site Features in Residential Districts

- A. **Applicability.** The standards in this section apply in all Residential Districts.
- B. **Garbage Cans.** All garbage cans shall be effectively screened from view from the public right-of-way and surrounding properties.
- C. **Utility Meters.** For buildings with two or more units, all utility meters shall be effectively screened from view from the public right-of-way and surrounding properties.
- D. **Pedestrian Walkway for Multiple Dwellings.**
  1. All multi-family dwellings shall have an unobstructed walkway for pedestrian access from the public right-of-way to the building.
  2. The required walkway shall be separated and physically protected from a driveway or off-street parking spaces with a minimum 2-foot wide landscaped strip.
- E. **Exterior Lighting.**
  1. All exterior lighting shall be shielded and directed downward and away from lot lines to prevent excessive glare beyond the property on which the light is located.
  2. Lights on motion sensors may not be triggered by movement or activity located off the property on which the light is located.

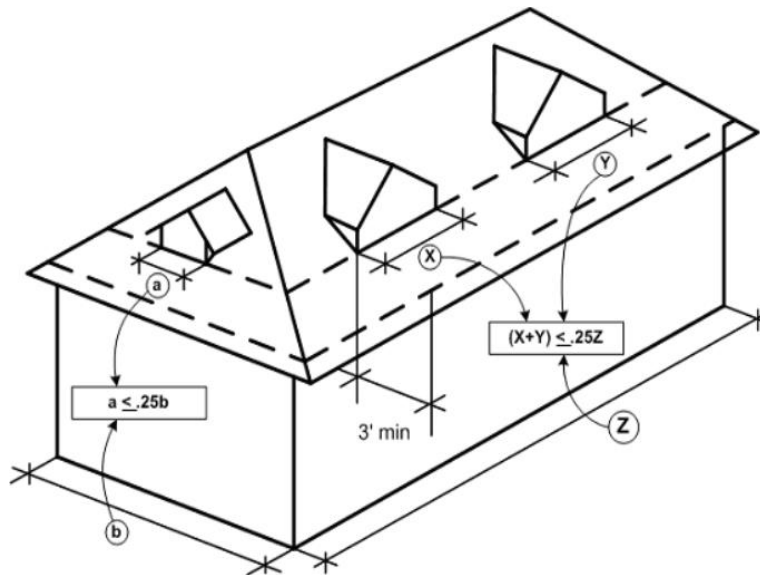
### 23.304.110 – Dormers

- A. **Wall Setback.** All features of a dormer shall be set back at least 3 feet from the exterior of the wall below, with the exception of the dormer's eaves, which may project horizontally not more than two feet from the exterior face of the dormer.
- B. **Placement Below Roof.** A dormer must be below the ridge of the portion of the building's roof where the dormer is located.

**C. Horizontal Dimension.** The total horizontal dimension of the dormer(s) facing the side of a building, as measured parallel to that side, may not exceed 25 percent of the length of the exterior wall, as shown in Figure 23.304-1: Dormers.

**D. Excluded from Average Height Calculation.** Dormers complying with this section are not included in the average building height calculation.

**FIGURE 23.304-1: DORMERS**



### 23.304.120 – Lot Coverage

- A. **Maximum Requirement.** A lot may not exceed the maximum lot coverage required in a district except as specifically permitted by the Zoning Ordinance.
- B. **Exception.** Solar energy equipment and wheelchair ramps and lifts in compliance with the Zoning Ordinance may exceed the maximum allowed lot coverage.

### 23.304.130 – Non-Residential Districts Abutting a Residential District

- A. **Applicability.** The standards in this section apply to lots in a Non-Residential District that abut or confront a lot in a Residential District.
- B. **Conflicting Provisions.** If the standards in this section conflict with a standard in Chapters 23.202–23.210 (Zoning Districts), the Chapters 23.202–23.210 standard governs.
- C. **Standards.**

1. **Display Window Orientation.** Display windows and customer entrances, other than required exits, shall not face abutting lots in a Residential District.
  2. **Exterior Lighting.** Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a Residential District.
  3. **Lot Line Screening.** To provide screening, a solid wall or fence, measuring 6 feet in height from existing grade, shall be erected at the lot line of an abutting lot in a Residential District.
  4. **Exhaust Air Ducts.**
    - a. Exhaust air ducts shall be located or oriented to direct vented air flows away from a Residential District.
    - b. Exhaust air ducts shall include equipment to mitigate odors.
- D. **Modifications.** The ZAB may approve a Use Permit to reduce or waive the requirements of this section upon finding that requirement is unnecessary to minimize the effects of commercial uses on a lot in the Residential District.

#### 23.304.140 – Area Plans

- E. **Downtown Area Plan.** Projects in the Downtown Area Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.
- F. **Southside Plan.**
1. **Mitigation Measures.** Projects in the Southside Plan boundaries are subject to the applicable mitigation measures in the adopted Mitigation Monitoring Program of the Southside Plan Final EIR.
  2. **Permit Findings.** To approve an AUP or Use Permit for a project in the Southside Plan boundaries, the review authority must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).
- G. **West Berkeley Plan.** Projects in the West Berkeley Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the West Berkeley Plan Final EIR.
- H. **Adeline Corridor Plan.** Projects in the Adeline Corridor Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Adeline Corridor Plan Final EIR.

## **23.306 ACCESSORY DWELLING UNITS**

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### **Sections:**

- 23.306.010– Purposes
- 23.306.020– Applicability
- 23.306.030– Permit Procedures

### **23.306.010 – Purposes**

The purposes of this chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.

### **23.306.020 – Applicability**

- A. The provisions of this chapter apply to all lots with at least one existing or proposed dwelling unit.

### **23.306.030 – Permit Procedures**

Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22.

## 23.308 EMERGENCY SHELTERS

### Sections:

23.308.010– Chapter Purpose

23.308.020– Applicability and Nonconformities

### 0 C. Required Permits

23.308.030– Standards for Emergency Shelters

### 23.308.010 – Chapter Purpose

This chapter establishes standards for emergency shelters that ensure compatibility of shelter activities with surrounding uses and provide a safe place for individuals and families to obtain temporary shelter

### 23.308.020 – Applicability and Nonconformities

A. **Applicability.** This chapter applies to all emergency shelters established after January 1, 2014.

#### B. Nonconformities.

1. Emergency shelters established before January 1, 2014 may continue to operate consistent with:
  - a. The conditions in those approvals and permits;
  - b. All other applicable provisions of the Zoning Ordinance; and
  - c. Any limitations and requirements imposed as a condition of funding.
2. Except in the MU-LI district, such existing emergency shelters shall be treated as a lawful nonconforming use under Chapter 23.324(Nonconforming Uses, Structures, and Buildings). Existing shelters in the MU-LI district are not considered a nonconforming use and may add floor area with a Use Permit.

C. **Required Permits.** Table 23.308-1 shows permits required for emergency shelters.

**TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS**

| DISTRICTS                       | PERMIT REQUIRED [1] |
|---------------------------------|---------------------|
| <b>Residential Districts</b>    |                     |
| R-1, R-1A, ES-R, R-2, R-2A, R-3 | Not Permitted       |
| R-4, R-5, R-S, and R-SMU        |                     |
| 15 beds or fewer [1]            | ZC                  |
| More than 15 beds               | UP(PH)              |
| <b>Commercial Districts</b>     |                     |

|                                                                                             |               |
|---------------------------------------------------------------------------------------------|---------------|
| C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC                                        |               |
| 25 beds or fewer                                                                            | ZC            |
| More than 25 beds                                                                           | UP(PH)        |
| C-DMU                                                                                       |               |
| 60 beds or fewer                                                                            | ZC            |
| More than 60 beds                                                                           | UP(PH)        |
| <b>Manufacturing Districts</b>                                                              |               |
| M, MM, MU-LI, MU-R                                                                          | Not Permitted |
| Notes:<br>[1] See also permit requirements based on floor area of use in Table 23.308.040-1 |               |

### 23.308.030 – Standards for Emergency Shelters

A. **All Districts.** The following standards apply to emergency shelters in all districts.

1. No individual or household may be denied emergency shelter because of an inability to pay.
2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.
3. When abutting a Residential District, all areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, shall be located indoors.
4. The following emergency shelter facilities are required:
  - a. An area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
  - b. Showers and restroom facilities.
5. The following emergency shelter facilities are optional:
  - a. Secure personal storage.
  - b. Daytime services.
  - c. Meal services.
  - d. Communal kitchen.
  - e. Laundry equipment for clients.
  - f. Child care.
  - g. Vehicle and/or bicycle parking.

6. Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.
7. On-site management shall be provided at all times the facility is in operation and at least one hour before and after facility operation hours.
8. The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:
  - a. Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.
  - b. Eligibility criteria, enforcement rules, and procedures for disruptive clients.
  - c. Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
  - d. Bed bug prevention.
  - e. Refuse collection.
  - f. Security procedures.
  - g. Separation of sleeping areas and restrooms by gender and for families.
  - h. Consistency with the Alameda County-Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.
9. The shelter provider shall conduct a community meeting after giving notice to all owners and occupants on record with the Alameda County Assessor within a 100-foot radius of the proposed shelter location. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.

**B. Seasonal Emergency Shelters.**

1. **Seasonal Emergency Shelter Defined.** A seasonal emergency shelter is an emergency shelter that may operate only during the wet weather season from November 15 through April 15, unless the City Manager determines in any given year that the wet season has begun earlier or extended later than these dates.
2. **Standards in Residential Districts.** In addition to the standards in Subsection A (Standards for All Emergency Shelters) above, the following standards apply to seasonal emergency shelters in a residential district.
  - a. A seasonal emergency shelter must be incidental to a community and institutional use.

- b. Table 23.308-2 shows permits required based on the percentage of the community and institutional use occupied by the seasonal emergency shelter.

**TABLE 23.308-2: FLOOR AREA PERMIT REQUIREMENTS IN RESIDENTIAL DISTRICTS**

| PERCENT OF COMMUNITY AND INSTITUTIONAL USE FLOOR AREA OCCUPIED BY EMERGENCY SHELTER | PERMIT REQUIRED |
|-------------------------------------------------------------------------------------|-----------------|
| 25% or less                                                                         | ZC              |
| More than 25% to less than 50%                                                      | UP(PH)          |
| 50% or more                                                                         | Not allowed     |

C. **Findings.** To approve a Use Permit for an emergency shelter under Section 23.304.030(Required Permits) or 23.308.030(Standards in Residential Districts), the Zoning Adjustments Board (ZAB) must find that:

1. A larger shelter facility will help meet the City’s goals pertaining to emergency housing of the homeless;
2. The circumstances of the subject property make the larger facility appropriate; and
3. Design features will minimize impacts on the surrounding area.



## 23.310 ALCOHOLIC BEVERAGE SALES AND SERVICE

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### Sections:

23.310.010– Chapter Purpose

23.310.020– General Requirements Excluding Incidental Beer and Wine Service

23.310.030– Alcoholic Beverage Service When Incidental to Food Service

### 23.310.010 – Chapter Purpose

This chapter establishes general requirements for alcoholic beverage sales or service and permit requirements and standards for alcoholic beverage service when incidental to a food service establishment.

### 23.310.020 – General Requirements Excluding Incidental Beer and Wine Service

#### A. Applicability.

1. This section applies to any application to begin or increase alcoholic beverage sales or service, excluding beer and wine service incidental to a food service establishment in a Commercial District (see 23.310 (Alcoholic Beverage Service When Incidental to a Food Service)).
2. As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:
  - a. Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;
  - b. Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and
  - c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.
3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.

B. **Permit Required.** A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.

C. **Application – List of Nearby Establishments.** As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.

D. **Findings of Public Convenience or Necessity.** If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental

service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application only if it makes all of the following findings:

1. The proposed establishment will promote the City’s economic health, contribute to General Plan or area plan policies, or further the district purpose.
2. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.
3. If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.
4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.
5. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.

**23.310.030 – Alcoholic Beverage Service When Incidental to Food Service**

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment.

**TABLE 23.310-1: PERMITS REQUIRED FOR ALCOHOLIC BEVERAGE SERVICE**

| District                              | Permit Required Based on Type of Beverages Served When Incidental to Food Service |                   |
|---------------------------------------|-----------------------------------------------------------------------------------|-------------------|
|                                       | Beer and Wine                                                                     | Distilled Spirits |
| R-SMU                                 | UP(PH)                                                                            | UP(PH)            |
| All Commercial Districts, except C-AC | ZC                                                                                | UP(PH)            |
| C_AC                                  | ZC                                                                                | AUP               |
| MU-LI, MU-R                           | UP(PH)                                                                            | UP(PH)            |

**B. Use Limitations.**

1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry out food stores and quick-service restaurants.

2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.
3. **C-NS District.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.
4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.
5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.

C. **Incidental Beer and Wine Service Standards.** The following standards apply to beer and wine service incidental to a food service establishment in a Commercial District.

1. **Licensing.**

- a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
- b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.

2. **Service.**

- a. Beer and wine beverage service shall be incidental to the primary food service use.
- b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcohol Beverage Control.
- c. The sale of beer and wine for off-site consumption is not permitted.
- d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
- e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.

- f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.
- g. Hours of operation are subject to review and amendment by the ZAB as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

**3. Operation.**

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During operating hours, 100 percent of the service area shall be designed and used for meal service and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- d. At no time shall the operator rent the restaurant space to a third-party.
- e. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
  - i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and
  - ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.
- f. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
- g. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

**4. Advertising.**

- a. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement.

- b. Alcohol-dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.

**5. Training.**

- a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.
- b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

## **23.312 LIVE/WORK**

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### **Sections:**

- 23.312.010– Chapter Purpose
- 23.312.020– Applicability
- 23.312.030– Required Permits
- 23.312.040– Standards for Live/Work
- 23.312.050– Findings

### **23.312.010 – Chapter Purpose**

This chapter establishes live/work standards that:

- A. Provide for the appropriate development of units which incorporate both living and working space;
- B. Provide flexibility as needed for the development of live/work units, particularly within existing buildings;
- C. Provide locations where appropriate new businesses can start up;
- D. Provide opportunities for people to live in mixed-use industrial and commercial areas where compatible with existing uses;
- E. Protect existing and potential industrial uses from conflicts with nearby residential uses;
- F. Protect existing and potential residential uses from conflicts with nearby industrial uses;
- G. Permit live/work units that function predominantly as workspaces and secondarily as residences;
- H. Ensure that the division of space between living and working space within these units reflects the priority of workspace; and
- I. Ensure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial, and residential buildings in their area, while remaining consistent with the predominantly workspace character of live/work buildings.

### **23.312.020 – Applicability**

This chapter applies to all live/work units in any district in Berkeley.

**23.312.030 – Required Permits**

- A. **General Requirement.** A permit is required for a live/work unit and/or for a business that makes up the work portion of the unit.
- B. **Residential Districts.** Live/work units are not permitted in all residential districts.
- C. **Commercial Districts.**
  - 1. **All Commercial Districts Except C-SA and C-W.** In all commercial districts except the C-SA and C-W districts, live/work units are allowed with a Zoning Certificate. Special circumstances that require a Use Permit are identified in Section 23.312.040 (Standards for Live/Work).
  - 2. **C-SA District.** A Use Permit is required for all live/work units in the C-SA district.
  - 3. **C-W District.**
    - a. An AUP is required for live/work units in the C-W district when:
      - i.* Nine or fewer live/work units are created; and
      - ii.* A dwelling unit is not changed into a live/work unit.
    - b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.
- D. **Manufacturing Districts.**
  - 1. **M and MM Districts.** Live/work units are not permitted in the M and MM districts.
  - 2. **MU-LI District.**
    - a. An AUP is required for live/work units in the MU-LI district when:
      - i.* No new floor area is created; and
      - ii.* A dwelling unit is not changed into a live/work unit.
    - b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.
  - 3. **MU-R District.**
    - a. An AUP is required for live/work units in the MU-R district when:
      - i.* The applicable requirements 23.206.090.D (Development Standards) and 23.322 (Parking and Loading) are satisfied;
      - ii.* Less than 5,000 square feet of gross floor area is added or changed;
      - iii.* Four or fewer live/work units are created; and
      - iv.* A dwelling unit is not changed into a live/work unit.

- b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.

### **23.312.040 – Standards for Live/Work**

A. **All Districts.** The following standards apply to live/work units in all districts.

#### **1. General Standards.**

- a. A cooking space and sanitary facility in conformance with applicable building standards adopted by the City is required.
- b. Adequate and clearly defined working space constituting no less than 50 percent of the gross floor area of the live/work unit is required.
  - i.* The working space must be reserved for and regularly used by one or more live/work unit residents and be consistent with City administrative guidelines for live/work design.
  - ii.* If the workspace is less than 60 percent (or less than 50 percent in units created by change of use from a dwelling unit), the unit is considered a dwelling unit and is subject to all requirements applicable to dwelling units.
- c. At least 40 square feet of usable open space shall be provided for each live/work unit.
- d. For live/work units established through change of use of an existing building, the Zoning Adjustments Board (ZAB) may approve a Use Permit to substitute interior space accessible to all residents for the required open space in the project, if it finds that it is not practical or desirable to provide exterior open space.

2. **Business License.** At least one resident in each live/work unit shall maintain at all times a valid City Business License and Zoning Certificate or Use Permit for a business on the premises.

#### **3. Employment, Client, and Customer Visits.**

- a. Except in the C-AC district, persons who do not live in the live/work unit may be employed in a live/work unit if an additional Use Permit is obtained and the required on-site parking space is provided.
- b. Client and customer visits to live/work units are permitted if an additional Use Permit is obtained and the required on-site parking is provided.
- c. In the C-AC district, clients, customers and employees are permitted at the site without a Use Permit.



4. **Unit Rental and Sale.** No portion of a live/work unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises.
5. **Change of Use.**
  - a. To change a dwelling unit to a live/work unit, the findings required by Section 23.326.040 (Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use) must be made.
  - b. Establishing or changing the work use of a live/work unit to medical offices or group instruction requires ZAB approval of a Use Permit to subject to Section 23.312.050 (Findings) below.
  - c. In districts other than the MU-LI district, live/work units may be changed to exclusively residential use or the residential floor area increased above 40 percent, only if all requirements for establishing a residential use are met.
  - d. In districts other than the MU-R district, live/work units may be changed to an exclusively commercial use, provided that in the C-W district only ground floor space may be so changed. All such changes are subject to Section 23.326.040 (Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use).
6. **Low Income Inclusionary Units.** The following low income inclusionary standards apply to any project that creates five or more live/work units.
  - a. One inclusionary live/work unit shall be provided for each five live/work units in the project, notwithstanding a fraction of a unit.
  - b. Inclusionary live/work units shall be sold or rented at a price or rent affordable to a household with an income of 80 percent of the median income for the Oakland Primary Metropolitan Statistical Area.
  - c. Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.
  - d. Inclusionary live/work units shall maintain affordable rents or resale prices in accordance with the standards in Chapter 23.328 (Inclusionary Housing).
  - e. At the applicant's sole discretion, inclusionary live/work units may:
    - i.* Have a lower grade of finishes than other units in the project.
    - ii.* Be located anywhere within the project.
    - iii.* Be smaller than other live/work units in the project as long as they meet the minimum size requirement for live/work units in the district.

- B. **C-W District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the C-W district.
  - 1. Only ground floor space may be changed to live/work units.
  - 2. The total floor area of the live/work unit must be at least 800 square feet.
- C. **MU-LI District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the MU-LI district.
  - 1. At least one resident in the live/work unit must be engaged in an art craft studio activity or in an activity which requires space not typically available in a conventional residential setting.
  - 2. The specific activity a live/work resident will engage in must be stated.
  - 3. The total floor area of the live/work unit must be at least 1,000 square feet.
- D. **MU-R District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the MU-R district.
  - 1. The total floor area of the live/work unit must be at least 1,000 square feet.
  - 2. The live/work unit must meet the location limitations in 23.206.090.B.8 (MU-R Mixed Use-Residential District - Residential Uses).

**23.312.050 – Findings**

- A. **All Districts.**
  - 1. To approve any Use Permit or AUP for a live/work unit in any district, the review authority must find that the proposed project is consistent with the purpose of this chapter.
  - 2. To approve a Use Permit to establish or change the work use of a live/work unit to medical office or group instruction, the ZAB must find that adequate parking for the use has been provided.
- B. **C-W District.** In addition to the findings in Subsection A (All Districts) above, the ZAB may approve a Use Permit to change a residential unit to a live/work unit and retain less than 75 percent of the pre-existing residential area as living area within the live/work unit only if it makes all of the following findings:
  - 1. There are special circumstances particular to the application which make it appropriate to retain less than 75 percent of the pre-existing residential area as living space within the live/work unit; and
  - 2. The exterior appearance of the live/work unit has been designed to be compatible with adjacent and nearby residential uses.

- C. **MU-LI District.** In addition to the findings in Subsection A (All Districts) above, the review authority may approve a Use Permit or AUP for a live/work unit in the MU-LI district only if it makes all of the following findings:
1. The applicant has made adequate provisions to ensure that within the live/work units, occupants of the live/work units will only engage in the occupations listed in the definition of art/craft studios.
  2. Development of such live/work units is not incompatible with adjacent and nearby industrial uses.
  3. The applicant has recorded with the County Recorder a statement acknowledging that the live/work unit is being established in a district where manufacturers and other industries operate lawfully and that the applicant will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.
- D. **MU-R District.** In addition to the findings listed in Subsection A (All Districts) above, the review authority may approve a Use Permit or AUP to establish or modify a live/work unit in the MU-R district only if it makes all of the following findings:
1. Establishment of a live/work unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the district and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan.
  2. The applicant has recorded with the County Recorder a statement acknowledging that the live/work unit is being established in a district where manufacturers and other industries operate lawfully and that he/she will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.
  3. If the applicant proposes to change one or more dwelling unit to a live/work unit, the elimination of dwelling unit and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the city.
  4. If the applicant proposes to change a residential unit to a live/work unit and retain less than 75 percent of the pre-existing residential area as living area within the live/work unit:
    - a. There are special circumstances particular to the application which make it appropriate to retain less than 75 percent of the pre-existing residential area as living space within the live/work unit; and

- b. The exterior appearance of the live/work unit has been designed to be compatible with adjacent and nearby residential uses.

## 23.314 SHORT-TERM RENTALS

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### Sections:

- 23.314.010– Chapter Purpose
- 23.314.020– Definitions
- 23.314.030– Applicability
- 23.314.040– General Regulations
- 23.314.050– Operating Standards and Requirements
- 23.314.060– Violations and Remedies

### 23.314.010 – Chapter Purpose

This chapter establishes short-term rental standards that:

- A. Prevent long-term rental units from being replaced with short-term rentals and protect affordable housing units from conversion;
- B. Preserve and protect neighborhood character and livability from nuisances that are often associated with short-term rentals;
- C. Generate City revenue to share infrastructure cost and other public expenditures by operation of short-term rentals under established standards; and
- D. Provide alternative forms of lodging.

### 23.314.020 – Definitions

- A. **Terms Defined.** Terms used in this chapter are defined as follows:
  1. **Adjacent Properties.** The dwelling units abutting and confronting, as well as above and below, a dwelling unit within which a short-term rental is located.
  2. **Host.** Any owner or tenant host. An owner host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers their host residence, or a portion thereof, as a short-term rental. A tenant host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their host residence, or portion thereof, as a short-term rental.
  3. **Host Present or Host Presence.** The host is living in the host residence during the short-term rental period. In the case of a parcel comprised of a single primary unit and one or more authorized accessory dwelling units and/or accessory buildings, the host is considered present if he or she is present in any unit on such parcel.
  4. **Hosting Platform.** A business or person that provides a means through which a host may offer a dwelling unit, or portion thereof, for short-term rentals. A hosting

platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a property owner or tenant to advertise the dwelling unit through a website provided by the hosting platform and provides a means for potential short-term rental transients to arrange short-term rentals, whether the short-term rental transient pays rent directly to the host or to the hosting platform.

5. **Host Residence.** A host's principal place of residence, as defined by whether the host carries on basic living activities at the dwelling place and, whether such dwelling place is the host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency.
  6. **Local Contact.** A person designated by the host who shall be available during the term of any short-term rental for the purpose of
    - a. Responding within sixty minutes to complaints regarding the condition or operation of the dwelling unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and
    - b. Taking appropriate remedial action on behalf of the Host, up to and including termination of the short-term rental, if allowed by and pursuant to the short-term rental agreement, to resolve such complaints.
  7. **No Fault Eviction.** An eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Municipal Code.
  8. **Short-Term Rental.** The use of any dwelling unit, authorized accessory dwelling unit or accessory building, or portions thereof for dwelling, sleeping or lodging purposes by short-term rental transients. Excludes tourist hotels and residential hotels.
  9. **Short-Term Rental Transient or STR Transient.** Any person who rents a dwelling unit, authorized accessory dwelling unit or accessory building, or portion thereof, for less than 14 consecutive days.
- B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### 23.314.030 – Applicability

This chapter applies to the rental of a dwelling unit, accessory dwelling unit or accessory building for a period of less than 14 consecutive days.

### 23.314.040 – General Regulations

- A. **Host Residence.** Short-term rentals are permitted only in the host residence.

- B. **BMR Units.** Short-term rentals are not permitted in below market rate (BMR) units. BMR units for short-term rental purposes refer to dwelling units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income qualified.
- C. **No-Fault Evictions.** A property containing a unit with a no-fault eviction may not operate a short-term rental for five years from the date of the eviction unless it is a single-family home that has been vacated for purposes of owner occupancy in compliance with the Rent Stabilization Ordinance in Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Ordinance).
- D. **Accessory Buildings.**
  - 1. Short-term rentals are allowed in:
    - a. Accessory buildings; and
    - b. Accessory dwelling units permitted before April 3, 2017 unless the accessory dwelling unit is used for long-term rentals, as defined in Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Ordinance) or has been used for long-term rentals at any time before April 3, 2017.
  - 2. A short-term rental is not allowed in an accessory dwelling unit permitted after April 3, 2017.

### 23.314.050 – Operating Standards and Requirements

A short-term rental must conform to all of the operating standards and requirements in this section.

#### A. Proof of Host Residency.

- 1. **Owner-Host.** An owner-host of a short-term rental must provide the Planning and Development Department documentation of owner-host and host residence status and, if applicable, host presence.
- 2. **Tenant-Host.** A tenant-host must provide the Planning and Development Department documentation of lessee status, host residence and host presence, if applicable. In addition, a tenant-host must present written authorization allowing for a short-term rental in the host residence from the building owner or authorized agent of the owner.

#### B. Allowed Duration and Required Residency Timeframes.

- 1. When the host is present, a short-term rental is allowed for an unlimited number of days during the calendar year.
- 2. When the host is not present, a unit may be used as a short-term rental for no more than 90 days per calendar year.

C. **Number of Occupants.** The maximum number of short-term rental transients allowed for a short-term rental unit is as provided in Municipal Code Chapter 19.40 (Uniform Housing Code).

D. **Notification.**

1. After the City approves a Zoning Certificate and Business License for a short-term rental, a host shall notify residents of all adjacent properties that a short-term rental has been established. Notification shall include host and local contact information.
2. A host shall notify residents of all adjacent properties of updated host, local contact, or other information within one week of changes to such information.

E. **Enforcement Fees.**

1. For the initial enforcement period, while enforcement costs are being determined, the host shall pay an additional enforcement fee in an amount equal to 2 percent of the rents charged by that host, not to exceed the cost of the regulatory program established by this chapter over time.
2. Enforcement fees may be paid by the hosting platform on behalf of the host. After the initial enforcement period, the City Council may revise the enforcement fee by resolution.

F. **Liability Insurance.** Liability insurance is required of the host, or hosting platform on behalf of the host, in the amount of at least \$1 million.

G. **Documents Provided to Short-Term Rental Transients.** The host or hosting platform must provide to short-term rental transients upon booking and arrival electronic or paper copies of:

1. The Community Noise Ordinance in Municipal Code Chapter 13.40 (Community Noise); and
2. The Smoke-Free Multi-Unit Housing Ordinance in Municipal Code Chapter 12.70 (Smoking Pollution Control).

H. **Transient Occupancy Tax.** Either the host or hosting platform must pay the transient occupancy tax.

I. **Housing Code Compliance.** Any building or portion of a building used for short-term rentals shall comply with Municipal Code Section 19.40 (Uniform Housing Code).

J. **Payment of Taxes.** The host shall pay all City taxes and fees owed in a timely manner.

K. **Host Responsibilities.**



1. The host shall list on any rental advertisement the Zoning Certificate number.
2. Upon request, the host must provide both the Business License number, if required by Municipal Code Chapter 9.04 (Business Licenses), and Zoning Certificate for the short-term rental to the City and/or a vendor hired by the City to administer this chapter.

### **23.314.060 – Violations and Remedies**

- A. **Compliance with Second-Response Ordinance.** The host shall comply with the Second Response Ordinance in Municipal Code Section 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events). The host is prohibited from operating short-term rentals for one year after issuance of a third violation affidavit.
- B. **Violations and Remedies of this Chapter.**
  1. Violation of this chapter is punishable as set forth in Municipal Code Sections 1.20 (General Penalty) and 1.28 (Administrative Citations).
  2. Violation of this chapter is a public nuisance subject to abatement under Municipal Code Sections 1.24 (Abatement of Nuisances), 1.26 (Violations Declared Public Nuisance), and 23.414 (Nuisance Abatement).
  3. In any enforcement action, the prevailing party is entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees are only available in an action or proceeding in which the City has elected, at the beginning of such action or proceeding, to seek recovery of its own attorneys' fees. An award of attorneys' fees to a prevailing party may not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
  4. Any Berkeley resident may bring a private action for injunctive relief to prevent or remedy a public nuisance. No action may be brought under this subsection unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute.
  5. The following constitute a public nuisance:
    - a. Any occurrence at a short-term rental unit that creates a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions.

- b. Any short-term rental transient of a short-term rental unit where an event is taking place refusing access to, or interfering with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.
6. Notwithstanding any provision of Municipal Code Chapter 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events) to the contrary, a public nuisance as defined in this section is subject to remedies in this subsection.

## 23.316 PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS

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### Sections:

- 23.316.010– Chapter Purpose
- 23.316.020– Applicability
- 23.316.030– Definitions
- 23.316.040– General Requirements
- 23.316.050– Required Permits
- 23.316.060– In-Lieu Fees
- 23.316.070– Administrative Regulations (Guidelines)

### 23.316.010 – Chapter Purpose

The purpose of this chapter is to establish a public art requirement for private developments to provide the following benefits to the community:

- A. Maintain Berkeley's art and culture for generations.
- B. Recognize the vital importance of the arts to the city as a whole.
- C. Enhance the economic sustainability of artists and arts organizations as a key to the vitality of the city.
- D. Make a lasting contribution to the intellectual, emotional and creative life of the community at large, and to create a more desirable community to live, work, and recreate.

### 23.316.020 – Applicability

- A. **Districts.** This chapter applies in all districts in Berkeley.
- B. **Uses.** This chapter applies to:
  1. New multifamily residential projects of five or more dwelling units;
  2. New commercial structures; and
  3. New industrial structures
- C. **Project Size.** This chapter applies to all construction of building additions exceeding 10,000 square feet.
- D. **Exceptions.** This chapter does not apply to the following project types:
  1. Multifamily housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60 percent of the units.
  2. Buildings with religious assembly uses as defined in Chapter 23.502 (Glossary) and buildings with arts and cultural uses. For purposes of this section, "arts and

cultural use" means buildings that have as their primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public.

3. Transitional housing.

### 23.316.030 – Definitions

A. **Terms Defined.** Terms used in this chapter are defined as follows:

1. **Artist.** An individual independent professional practitioner of the visual, performing, or literary arts, as judged by educational qualifications, a history of creating a body of public or publicly-displayed artwork, critical recognition in publications or online, a record of exhibitions and/or artwork sales. Members of the design team are not artists for on-site publicly accessible art projects. Individuals who have a conflict of interest, including a familial or financial relationship to the developer or design team, are not artists for on-site publicly accessible art projects.
2. **Construction Cost.** The amount determined by the Chief Building Official for purposes of setting the building permit fee in accordance with the most recent building valuation date specified in the building permit fees section of the resolution establishing fees and charges as adopted by the City Council.
3. **Developer.** A person or entity that is financially and legally responsible for the planning, development and construction, or maintenance and operation of any project subject to this chapter.
4. **On-Site Publicly Accessible Art.** An original work by an artist, including, but not limited to, functional art integrated into the building, landscape, or element of infrastructure, including sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, textile, art glass, digital media art, video, earthworks and multi-media installation, that is in a location that is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.
5. **Guidelines.** The guidelines adopted by the City Council pursuant to Section 23.316.070 (Administrative Regulations (Guidelines)).

B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### 23.316.040 – General Requirements

Developers subject to this chapter shall do one of the following:

- A. Include on-site publicly accessible art valued at 1.75 percent of the construction cost. If the value of on-site publicly accessible art as installed is less than 1.75 percent of the construction cost, an amount equal to 80 percent of the difference in value shall be paid to the City as an in-lieu fee.
- B. Pay an in-lieu fee top the City of 0.80 percent of the construction cost.

**23.316.050 – Required Permits**

- A. **Subject to Laws and Regulations.** On-site publicly accessible art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies.
- B. **Permits Must Be Obtained.**
  - 1. Before construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.
  - 2. The process for identifying and securing required permits shall be set forth in the Guidelines.

**23.316.060 – In-Lieu Fees**

- A. **Alternative to On-Site Art.** As an alternative to providing on-site publicly accessible art, the developer may elect to pay an in-lieu fee to the City as set forth in this section.
- B. **Use of Fees.** Any in-lieu fees paid to the City pursuant to this chapter shall be used for art and cultural services as set forth in the Guidelines.
- C. **Amount of Fee.** The in-lieu fee shall be 0.80 percent of the construction cost.
- D. **Time of Payment.** The in-lieu fee shall be paid at the same time as other building permit fees.

**23.316.070 – Administrative Regulations (Guidelines)**

- A. **Adoption of Guidelines.** The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.
- B. **Determining Compliance with Guidelines.** The Civic Arts Commission shall be responsible for determining if On-Site Publicly Accessible Art complies with the Guidelines.

## 23.318 URBAN AGRICULTURE

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### Sections:

- 23.318.010– Chapter Purpose
- 23.318.020– Applicability
- 23.318.030– Urban Agriculture Uses and Levels of Discretion
- 23.318.040– Thresholds
- 23.318.050– Operation Standards
- 23.318.060– Complaints

### 23.318.010 – Chapter Purpose

This chapter establishes urban agriculture standards to provide the following community benefits:

- A. Support the local economy and increase access to fresh local produce.
- B. Strengthen the health and social fabric of communities by encouraging and supporting community gardens.
- C. Accomplish the Berkeley Climate Action Plan goal of supporting efforts to build more complete and sustainable local food production and distribution systems.

### 23.318.020 – Applicability

These regulations supersede definitions of incidental or ancillary uses.

### 23.318.030 – Urban Agriculture Uses and Levels of Discretion

- A. **Zoning Certificate.** When all of the thresholds in Section 23.318.040 (Thresholds) are met, the use is considered Low-Impact Urban Agriculture (LIUA) and is allowed by right with a Zoning Certificate.
- B. **Administrative Use Permit.** When one or more of the thresholds in Section 23.318.040 (Thresholds) are not met, the use is considered High-Impact Urban Agriculture (HIUA) requires an AUP.

### 23.318.040 – Thresholds

The levels of discretion for urban agriculture are based on the following thresholds:

- A. Maximum parcel size of 7,500 square feet.
- B. Maximum lot coverage of 20 percent for accessory structures and buildings.
- C. Maximum group classes and workshops of 20 participants per class conducted no more than three times per week.

- D. Hours of operation from 8:00 a.m. to 8:00 p.m., including but not limited to activities related to gardening and planting of horticultural crops, group classes, and sales.
- E. Use of organic pesticides.

### **23.318.050 – Operation Standards**

- A. **Performance Standards.** The growing, production, or sale of urban agricultural products may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond the lot line of the subject lot.
- B. **Sales and Donations.**
  - 1. Sales and/or donations of urban agricultural products grown and produced on-site are permitted.
  - 2. If selling or donating urban agricultural products to the public, the urban agriculture use shall comply with all applicable food safety laws, including the California Health and Safety Code.
- C. **Garbage and Compost.**
  - 1. Garbage and compost receptacles must be screened from the street and adjacent properties by utilizing landscaping, fencing, or storage structures and all garbage shall be removed from the site weekly.
  - 2. Compost piles and containers must be set back at least 10 feet from residential buildings when an urban agriculture use abuts a residential use.
- D. **Farm Equipment.** Use of mechanized farm equipment is not permitted in Residential Districts and when the urban agriculture use abuts a residential use, with the following exceptions:
  - 1. Heavy equipment may be used initially to prepare the land for agriculture use.
  - 2. Landscaping equipment designed for household use is permitted.
  - 3. Equipment when not in use must be enclosed or otherwise screened from sight.

### **23.318.060 – Complaints**

Uses, activities, or events associated with urban agriculture are subject to Municipal Code Chapters 23.414(Nuisance Abatement) and 12.92 (Anti-Blight) if found to be non-compliant with this chapter.

## 23.320 CANNABIS USES

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### Sections:

- 23.320.010– Chapter Purpose
- 23.320.020– Cannabis Retail
- 23.320.030– Commercial Cannabis Cultivation
- 23.320.040– Cannabis Manufacturers, Testing Labs, and Distributors
- 23.320.050– Microbusinesses

### 23.320.010 – Chapter Purpose

This chapter establishes standards for cannabis uses that supplement the regulations in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations) and Chapter 12.22 (Cannabis Business Operating Standards).

### 23.320.020 – Cannabis Retail

- A. **Definitions.** The terms cannabis retailer, storefront retailer, delivery-only retailer, A-Retailer, and M-Retailer are defined in Municipal Code Section 12.21.020 (Definitions).
- B. **Non-Conforming M-Retailers.**
  - 1. A medical cannabis dispensary (M-Retailer) existing and authorized as of January 1, 2010 that does not comply with this section may continue at its current medical cannabis dispensing location as a legal nonconforming use.
  - 2. Notwithstanding Chapter 23.324 (Nonconforming Uses and Structures) or the regulations in this section, the Zoning Officer may approve an AUP to allow the expansion of a lawful nonconforming medical cannabis dispensary onto an adjacent parcel.
- C. **Location Changes.**
  - 1. A cannabis retailer in good standing with state and City regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location.
  - 2. An application for a change of location shall be evaluated based on the requirements to operate a cannabis business effective at the time of the proposed change.
- D. **Storefront Retailers.**
  - 1. A storefront retailer is permitted in Commercial Districts with a Zoning Certificate, and must maintain compliance with Municipal Code Chapters 12.21 (Cannabis Business: General Regulations) and 12.22 (Cannabis Business Operating Standards) and security regulations promulgated by the Chief of Police.



2. A storefront retailer shall be approved through the selection process described in Municipal Code Section 12.22.020 (Selection Process).
3. Up to seven storefront retail permits may be issued, one of which is reserved for an equity candidate as defined in Municipal Code Section 12.21.020 (Selection Process). This limit to the number of storefront retailers shall not be reconsidered for a period of three years from March 15, 2020.
4. Expansion of an approved storefront retailer must comply with the development standards for the zoning district in which it is located.
5. Storefront retailers may operate as a retail storefront microbusiness as defined in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations) subject to obtaining all required state and local licenses.
6. **Buffers.**
  - a. A storefront retailer may not be located:
    - i. Within 600 feet of another storefront retailer, a public or private elementary school, or a City-operated community center or skate park; or
    - ii. Within 1,000 feet of a public or private middle school or high school.
  - b. Notwithstanding Paragraph (a) above, a seventh storefront retailer, to be operated by an equity business, may not be located within 600 feet of another storefront retailer or school.

**E. Delivery-Only Retailers.**

1. Seven delivery-only retailers are permitted citywide, four of which shall be operated by an equity business, and three of which shall be a non-equity business.
2. A delivery-only retailer shall be approved through the selection process described in Municipal Code Section 12.22.020 (Selection Process).
3. Delivery-only retailers are permitted with a Zoning Certificate in all Commercial Districts other than the C-N district.
4. Delivery-only retailers are permitted in the Manufacturing (M) district, shall be evaluated and regulated for zoning purposes in the same way as a warehouse-based non-store retailer, and shall be subject to the numeric and buffer requirements in this section for delivery-only retailers.
5. A delivery-only retailer may not be located within 300 feet of any school or City-operated community center or skate park.
6. A delivery-only retailer may not be located in a street-fronting tenant space in a Commercial District.

**F. Lounges.**

1. A Lounge, as defined in Municipal Code Section 12.21.020 (Definitions), may be permitted at an approved retailer with a Use Permit.
2. A Lounge must comply with the operational standards established by the City of Berkeley Department of Health, Housing and Community Services.

**23.320.030 – Commercial Cannabis Cultivation**

**A. Definition.** The term “commercial cannabis cultivation” as used in this chapter is defined in Municipal Code Chapter 12.21 (Cannabis Businesses: General Regulations).

**B. General Requirements.**

1. Commercial cannabis cultivation shall comply with Municipal Code Chapter 12.22 (Cannabis Business Operating Standards), security measured required by the Chief of Police, and the requirements of this chapter.
2. Commercial cannabis cultivation may include testing, processing, manufacturing, and food preparation only to the extent expressly permitted by MAUCRSA.

**C. Where Allowed.** Commercial cannabis cultivation is permitted with a Zoning Certificate in the Manufacturing (M) district, subject to the following limitations:

1. Commercial cannabis cultivation shall only occur at licensed cannabis businesses.
2. Cannabis may not be dispensed and client, patient or member services and retail sales are not permitted at cannabis cultivation facilities.

**D. Maximum Canopy Area.**

1. The total citywide canopy area of cannabis cultivation facilities may not exceed 180,000 square feet.
2. The total citywide canopy area of all minor cannabis cultivation facilities may not exceed 48,000 square feet plus any area not used by a major cannabis cultivation facility.

**E. Different Licenses.** Separate spaces used by different licensees may be aggregated at the same location.

**F. Outdoor Cultivation Prohibited.** Commercial cannabis cultivation is not permitted outside of a building.

**G. Cannabis Nurseries.** A cannabis nursery as defined in Municipal Code Section 21.21.020 (Definitions) is subject to the same regulations as a commercial cannabis cultivation cannabis cultivation facility.

H. **Buffer.** A commercial cannabis cultivation facility may not be located within 300 feet of a school or City-operated community center or skate park.

I. **Major Cannabis Cultivation Facilities.**

1. No more than six major cannabis cultivation facilities are permitted.
2. A major cannabis cultivation facility may not be approved until the City Council adopts licensing process and standards for such uses.
3. Adopted standards shall require indoor cultivation uses to offset the net increased energy used as compared to a regular industrial facility.
4. Adopted standards also may include whether:
  - a. Cannabis cultivation uses will provide a percentage of all usable product cultivated at no cost to very low-income patients;
  - b. Cannabis cultivation uses will use organic methods in cultivation and processing to the maximum extent reasonable; and
  - c. The form of organization, ownership, and practices of cannabis cultivation uses ensure equity and accountability, low prices, and an adequate supply of high-quality cannabis to customers.

**23.320.040 – Cannabis Manufacturers, Testing Labs, and Distributors**

A. **Equivalent Uses.** Cannabis manufacturers, testing labs, and distributors shall be evaluated and regulated in the same way as the equivalent non-cannabis uses shown in Table 23.320-1.

**TABLE 23.320-1: EQUIVALENT NON-CANNABIS USES**

| CANNABIS USE                                | EQUIVALENT NON-CANNABIS USE |
|---------------------------------------------|-----------------------------|
| Manufacturing, processing, food preparation | Light Manufacturing         |
| Testing labs                                | Testing labs                |
| Distribution                                | Wholesale Trade             |

B. **Buffer.** Cannabis manufacturers, testing labs and distributors may not be located within 300 feet of a school.

**23.320.050 – Microbusinesses**

- A. **Definition.** The term “microbusiness” as used in this chapter is defined in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations).
- B. **General.** A microbusiness is subject to the development standards in this chapter for each use on the premises, with the following exceptions:
1. In cases where the development standards and permit thresholds for two or more uses are different, the more restrictive standards apply.
  2. Retail nursery microbusinesses are subject to 23.320.050.C (Retail Nursery Microbusinesses).
- C. **Retail Nursery Microbusinesses.**
1. A used in this section, “existing nursery” means a legally established plant nursery in Berkeley established as of March 15, 2020.
  2. Up to two existing nurseries may convert to a retail nursery microbusiness. Retail nursery microbusinesses are not subject to the numeric or canopy limitations of other retailers or cannabis cultivators.
  3. In a Commercial or Manufacturing District, an existing nursery may convert to a retail nursery microbusiness by right with a Zoning Certificate if each use conducted on the premises complies with the applicable development standards in the Zoning Ordinance.
  4. In a Residential District, an existing nursery may convert to a retail nursery microbusiness with a Use Permit for a substantial expansion or change in character to a non-conforming use as provided in Chapter 23.324 (Nonconforming Uses, Structures, and Buildings).
  5. The City shall issue the Zoning Certificates and/or Use Permits to existing nurseries on a first-come, first-served basis.
  6. The City shall determine the right to retain the allocated Zoning Certificates and/or Use Permits as follows:
    - a. For a Zoning Certificate, the date of issuance of a concurrent business license and establishing and continuously operating the business.
    - b. For a Use Permit is required, the date the Use Permit application is deemed complete so long as the Use Permit is implemented with a business license within 30 days of approval and establishing and continuously operating the business.
  7. The 600-foot buffer required between cannabis retailers in 23.320.020 (Cannabis Retail) does not apply between a storefront cannabis retailers and a retail nursery microbusiness.

## 23.322 PARKING AND LOADING

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### Sections:

- 23.322.010– Chapter Purpose
- 23.322.020– Applicability
- 23.322.030– Required Parking Spaces
- 23.322.040– General Requirements
- 23.322.050– Parking Reductions
- 23.322.060– C-DMU Parking and Transportation Demand Management
- 23.322.070– Off-Street Parking Maximums for Residential Development
- 23.322.080– Parking Layout and Design
- 23.322.090– Bicycle Parking
- 23.322.100– On-site Loading Spaces
- 23.322.110– Parking Lots in Residential Districts
- 23.322.120– Transportation Services Fee

### 23.322.010 – Chapter Purpose

This chapter establishes parking and loading standards to:

- A. To efficiently allocate parking spaces in the City;
- B. Regulate the provision of off-street parking spaces within the City; and
- C. Reduce the amount of on-street parking of vehicles, thus increasing the safety and capacity of Berkeley's street system.

### 23.322.020 – Applicability

- A. **New Uses and Buildings.** In all districts, off-street parking and loading as required by this chapter shall be provided when:
  - 1. A new building is constructed or moved onto a lot; and
  - 2. A new use is established where no use previously existed.
- B. **Enlargement and Intensification.**
  - 1. Where an existing use or structure is enlarged or intensified, but where there is no change in use, additional off-street parking and loading is required to serve only the enlarged or intensified area. Additional parking is not required to remedy parking deficiencies existing before the expansion or enlargement.
  - 2. As used in this section, enlarging or intensifying a use or structure includes, but is not limited to adding or creating floor area, dwelling units, guest rooms, seats, or employees.
- C. **Changes of Use.**

1. **Commercial Districts.** In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. **Manufacturing and R-SMU Districts.**
  - a. In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
    - i. The structure is expanded to include new floor area; and/or
    - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
  - b. If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050.A.2 (Change of Use).
  - c. As used in this section, the “district minimum” parking requirement is:
    - i. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
    - ii. 1 space per 1,000 square feet of floor area in the R-SMU district.
3. **All Other Residential Districts.** In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

**23.322.030 – Required Parking Spaces**

**A. Residential Districts.**

1. **Spaces Required.** Table 23.322-1 shows minimum required off-street parking spaces in the Residential Districts.

**TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS**

| Land Use                                         | Number of Required Off-street Parking Spaces                                                                                                                                                                                                                                                         |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Uses</b>                          |                                                                                                                                                                                                                                                                                                      |
| Accessory Dwelling Unit                          | See Chapter 23.306                                                                                                                                                                                                                                                                                   |
| Dwellings, including Group Living Accommodations | R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.<br>R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area |

| Land Use                                                                                          | Number of Required Off-street Parking Spaces                                                                                                                   |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                   | All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit<br>All Other Locations: None required              |
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.<br>All Other Locations: None required. |
| Rental of Rooms                                                                                   | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers<br>All Other Locations: None required                       |
| <b>Non-Residential Uses</b>                                                                       |                                                                                                                                                                |
| All non-residential uses except uses listed below                                                 | <u>R-SMU District</u> : 1 per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : See 23.322.030.A.2                                                     |
| Community Care Facility                                                                           | One per two non-resident employees                                                                                                                             |
| Food Service Establishment                                                                        | 1 per 300 sq. ft.                                                                                                                                              |
| Hospital                                                                                          | <u>R-SMU District</u> : 1 per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per each 4 beds plus 1 per each 3 employees                          |
| Library                                                                                           | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                            |
| Nursing Home                                                                                      | 1 per 3 employees                                                                                                                                              |
| Medical Practitioners                                                                             | 1 per 300 sq. ft.                                                                                                                                              |
| Non-Medical Offices                                                                               | <u>R-SMU District</u> : 1 per 1,000 sq. ft.<br><u>All Other Residential Districts</u> : 1 per 400 sq. ft.                                                      |
| Hotels, Tourist                                                                                   | 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees                                                                                                  |

**Notes:**

[1] Excludes community care facilities which under state law must be treated in the same manner as a single-family residence.

2. **Other Uses.** If a use requires an AUP or Use Permit and is not listed in Table 23.322-1, the review authority shall determine the required number of off-street

parking spaces based on the amount of traffic generated by the use and the number of spaces required for other similar uses.

**3. Offices.**

- a. In Residential Districts where offices are allowed, the Zoning Adjustments Board (ZAB) may reduce the parking requirement for non-medical offices to one parking space per 800 square feet of gross floor area.
- b. To approve the reduction, the ZAB must find that the reduction is justified because the amount of direct contact with clients, visitors, or the general public will be less than ordinarily is the case.

**4. ES-R Parking Requirement.**

- a. For purposes of calculating required parking in the ES-R district, “bedroom” means any habitable space in a dwelling unit or residential accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping and that is at least 70 square feet in area.
- b. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition is considered a bedroom.
- c. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.
- d. The division of existing habitable space does not require additional parking if there is no net increase in the gross floor area of the building and no more than one additional bedroom is created.

**B. Commercial Districts.**

- 1. **Spaces Required.** Table 23.322-2 shows minimum required off-street parking spaces in the Commercial Districts, excluding the C-T district.

**TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

| Land Use                                         | Required Parking Spaces                                                                                                      |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Uses</b>                          |                                                                                                                              |
| Accessory Dwelling Unit                          | See Chapter 23.306                                                                                                           |
| Dwellings, including Group Living Accommodations | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit<br>All Other Locations: None required |
| Hotel, Residential                               | None required                                                                                                                |
| Mixed-Use Residential                            | None required                                                                                                                |



| Land Use                                          | Required Parking Spaces                                                                                                                                                                                 |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (residential use only)                            |                                                                                                                                                                                                         |
| Senior Congregate Housing                         | None required                                                                                                                                                                                           |
| <b>Non-Residential Uses</b>                       |                                                                                                                                                                                                         |
| All non-residential uses except uses listed below | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                                                            |
| Hospital                                          | 1 per each 4 beds plus 1 per each 3 employees                                                                                                                                                           |
| Library                                           | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area                                                                            |
| Nursing Home                                      | 1 per 3 employees                                                                                                                                                                                       |
| Medical Practitioners                             | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 300 sq. ft.                                                                                                              |
| Hotels, Tourist                                   | C-DMU District: 1 per 3 guest/sleeping rooms or suites<br>C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees<br>All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Motels, Tourist                                   | C-DMU District: 1 per 3 guest/sleeping rooms or suites<br>C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1]<br>All Other Commercial Districts: 2 per 1,000 sq. ft.     |
| Large Vehicle Sales and Rental                    | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-SA District: 1 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                      |
| Small Vehicle Sales and Service                   | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-SA District: 1 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                      |
| Manufacturing                                     | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-W District: 1 per 1,000 sq. ft [1]<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                    |
| Wholesale Trade                                   | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-W District: 1 per 1,000 sq. ft<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                        |
| Live/Work                                         | If workers/clients are permitted in work area, 1 per first                                                                                                                                              |

| Land Use                                                                  | Required Parking Spaces                                                       |
|---------------------------------------------------------------------------|-------------------------------------------------------------------------------|
|                                                                           | 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <b>Notes:</b><br>[1] Spaces must be on the same lot as building it serves |                                                                               |

2. **Exemptions.** Table 23.322-3 shows projects and land uses in the Commercial Districts that are exempt from parking requirements. No Use Permit or other discretionary approval is required for these exemptions.

**TABLE 23.322-3: PARKING EXEMPTIONS IN COMMERCIAL DISTRICTS**

| District | Projects/Uses Exempt from Parking Requirement                                                                      |
|----------|--------------------------------------------------------------------------------------------------------------------|
| C-SA     | First 1,000 square feet of new gross floor area in a development project                                           |
| C-E      | Commercial uses with less than 6,000 square feet of gross floor area                                               |
| C-DMU    | Additions up to 1,000 square feet of gross floor area or up to 25% of existing gross floor area, whichever is less |

3. **C-T District.**

- a. Off-street parking is not required in the C-T district.
- b. New off-street parking is not permitted on lots abutting Telegraph Avenue exclusively. New off-street parking is only permitted on lots abutting a street other than Telegraph Avenue where access to the parking is from curb cuts existing on July 6, 1989. A Use Permit is required to establish the new parking. To approve the Use Permit, the ZAB must find that traffic from the new parking will not significantly impede pedestrian circulation.

4. **C-W District.**

- a. **Required Parking Determined by Zoning Officer or ZAB.** For the following categories of uses as shown in Table 23.204-1 (Allowed Uses in Commercial Districts), the Zoning Officer or ZAB shall determine the number of required off-street parking spaces in the C-W district based on the amount of traffic generated by the use and the number of spaces required for other similar uses:
  - i. Public and quasi-public uses.
  - ii. Automobile and other vehicle oriented uses.

- iii. Outdoor uses.
  - iv. Residential and related uses.
  - v. Other miscellaneous uses.
  - vi. Other industrial uses.
- b. **Maximum Parking.** The number of parking spaces provided for new commercial floor area in the C-W district shall not exceed:
- i. 5 spaces per 1,000 square feet of gross floor area of food service uses; and
  - ii. 4 spaces per 1,000 square feet of gross floor area for all other commercial uses.

### C. Manufacturing Districts.

1. **Spaces Required.**
2. Table 23.322-4 shows minimum required off-street parking spaces in the Manufacturing Districts.

**TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

| Land Use                                          | Required Parking Spaces        |
|---------------------------------------------------|--------------------------------|
| <b>Residential Uses</b>                           |                                |
| Accessory Dwelling Unit                           | See Chapter 23.306             |
| Dwellings                                         | None required                  |
| Group Living Accommodation                        | None required                  |
| <b>Non-Residential Uses</b>                       |                                |
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft.            |
| Art/Craft Studio                                  | 1 per 1,000 sq. ft.            |
| Community Care Facility                           | 1 per 2 non-resident employees |
| Food Service Establishment                        | 1 per 300 sq. ft.              |

| Land Use                                                                                                                                                                                                                                                                                                       | Required Parking Spaces                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Library                                                                                                                                                                                                                                                                                                        | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                                                                                                             |
| Laboratories                                                                                                                                                                                                                                                                                                   | 1 per 650 sq. ft.                                                                                                                                                                                                                               |
| Nursing Home                                                                                                                                                                                                                                                                                                   | 1 per 5 residents, plus 1 per 3 employees                                                                                                                                                                                                       |
| Medical Practitioners                                                                                                                                                                                                                                                                                          | One per 300 sq. ft.                                                                                                                                                                                                                             |
| Large Vehicle Sales and Rental                                                                                                                                                                                                                                                                                 | MU-LI District: 1.5 per 1,000 sq. ft.<br>All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay                                                                           |
| Manufacturing                                                                                                                                                                                                                                                                                                  | MU-R District: 1.5 per 1,000 sq. ft.<br>All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                     |
| Storage, warehousing, and wholesale trade                                                                                                                                                                                                                                                                      | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                                                                               |
| Live/Work                                                                                                                                                                                                                                                                                                      | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted<br>MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <p><u>Notes:</u></p> <p>[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.</p> |                                                                                                                                                                                                                                                 |

### 3. Required Parking Determined by Zoning Officer or ZAB.

- a. For the following categories of uses as shown in Table 23-206.020-1, the Zoning Officer or ZAB shall determine the number of required off-street parking spaces in the Manufacturing Districts based on the amount of traffic generated by the use and the number of spaces required for other similar uses:
  - i. Public and Quasi-Public Uses.
  - ii. Vehicle Sales and Service Uses.
  - iii. Other Miscellaneous Uses.
  - iv. Industrial and Heavy Commercial Uses, excluding manufacturing and wholesale trade.

### D. Calculating Required Spaces.

1. **Fractional Spaces.** When calculating the number of required off-street parking spaces results in a fractional space, any fraction below one-half is disregarded, and fractions one-half and above are counted as requiring one parking space.
  2. **Employees.** Where a parking requirement is based on the number of employees, the number of employees is based upon the shift or employment period when the greatest number of employees are present.
  3. **Floor Area.**
    - a. Where a parking requirement is based on floor area, the definition of gross floor area as set forth in 23.502 (Glossary) shall apply.
    - b. In Non-Residential Districts, the floor area calculation for the purpose of determining required parking shall also include outdoor dining areas, garden/building supply yards, customer-serving outdoor areas for retail sales, and other unenclosed areas of the lot.
- E. **Additional Required Parking.** If the expected demand for off-street parking spaces is found to exceed the number of spaces required by Table 23.322-1, Table 23.322-2, or
- F. Table 23.322-4, additional off-street parking may be required as a condition of approval.
- G. **Buildings with Multiple Uses.**
1. When a building contains two or more uses, the total required number of off-street parking spaces is the sum of the requirements for each use computed separately.
  2. A required off-street parking spaces for one use may not provide required off-street parking spaces for any other use except as allowed by Section 23.322.040.D (Joint Use of Parking).
- H. **Including Existing Uses.** Existing off-street parking spaces shall be counted towards meeting the overall parking requirements where new floor area is added to an existing site or project.
- I. **Spaces Serving Existing Uses.**
1. Unless otherwise allowed by this chapter, parking spaces serving an existing use may not be reduced below the number of spaces required by this section. If an existing use has fewer parking spaces than required by this section, the number of spaces serving the use may not be further reduced.
  2. In Non-Residential Districts, off-street parking spaces provided in conjunction with a use or structure existing on October 1, 1959, on the same property or on property under the same ownership, may not be reduced below, or if already less

than, may not be further reduced below, the requirements of this chapter for a similar use or structure.

3. Existing parking spaces in a non-residential district may be removed to meet ADA compliance or traffic engineering standards.

#### J. In-Lieu Parking Fee.

##### 1. General.

- a. In Non-Residential Districts with a public parking fund to create public parking, an applicant may pay a fee in lieu of providing required off-street parking spaces.
  - b. The in-lieu parking fee shall be established by City Council resolution.
  - c. In-lieu payments shall be used for the purposes stated in each ordinance establishing the public parking funds.
  - d. In-lieu fees may, at the applicant's option, be paid in a lump sum or in annual installments as specified in each ordinance establishing the parking fund and may be adjusted annually for inflation.
  - e. If paid annually, the first annual payment of an in-lieu fee is due as a condition of occupancy and subsequent payments are due on January 31 of succeeding years.
2. **C-DMU District.** Paying an in-lieu fee to reduce or waive required off-street parking in the C-DMU district requires a Use Permit. To approve the Use Permit, the ZAB must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.

### 23.322.040 – General Requirements

#### A. Compliance Required.

1. The City may issue a Zoning Certificate or approve an AUP or Use Permit only for a use or structure that complies with this chapter.

#### B. Modified Requirements.

1. **Number of Spaces.** See Section 23.322.050 (Parking Reductions) for allowed reductions to the number of required off-street parking spaces.
2. **Other Requirements.**
  - a. The Zoning Officer or ZAB may reduce any parking requirement in this chapter that is unrelated to the number of required spaces for:
    - i. New floor area created through building expansions in the Commercial, Manufacturing, and R-SMU Districts; and



- b. The times demanded for joint-use parking spaces will not conflict substantially between the land uses sharing the spaces; and
  - c. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for another land use at similar times.
2. **Offices in R-4 and R-5 Districts.** The ZAB may approve a Use Permit to allow offices in the R-4 or R-5 district to share parking spaces with a multi-family use. To approve the Use Permit, the ZAB must find that:
- a. No more than 20 percent of the off-street parking spaces required for the multiple dwelling use will serve as required off-street parking for offices; and
  - b. The shared off-street parking spaces are located on the same lot as the offices that they serve or are on property under the same ownership within 300 feet from the offices.
3. **Deed Restriction.** A property with joint-use parking spaces shall record a deed restriction as provided in Section 23.322.040.F (Deed Restrictions).

**E. Off-Site Parking Spaces.**

1. **Non-Residential Districts.** In Non-Residential Districts, the following requirements apply to required parking spaces not on the property where the use is located.
- a. Off-site parking spaces may not be used to satisfy the off-street parking requirement for another use.
  - b. Off-site parking must be available during the normal hours of operation of the use that it serves.
  - c. A deed restriction must be recorded as provided in Section 23.322.040.F (Deed Restrictions). Table 23.322-5 shows the maximum distance that off-site parking spaces may be located from the use or structure it serves and the permit required to exceed this distance.

**TABLE 23.322-5: OFF-SITE PARKING SPACE DISTANCE REQUIREMENTS**

| District                       | Maximum Distance from Use or Structure [1] | Permit Required to Exceed Maximum Distance |
|--------------------------------|--------------------------------------------|--------------------------------------------|
| Manufacturing Districts        | 500 ft.                                    | AUP                                        |
| C-W                            | 500 ft.                                    | AUP                                        |
| All Other Commercial Districts | 300 ft.                                    | UP(PH)                                     |
| <u>Note:</u>                   |                                            |                                            |



| District                                                                                                        | Maximum Distance from Use or Structure [1] | Permit Required to Exceed Maximum Distance |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------|
| [1] Measurement shall be from the closest two points of the respective parcels, as measured in a straight line. |                                            |                                            |

2. **CW District.** If the use or structure served by off-site parking is within a designated node in the C-W district, the off-site parking spaces must also be located within the same designated node.

**F. Deed Restrictions.**

1. If a required off-street parking space is located off-site or in a joint use agreement, a statement shall be recorded in the Office of the County Recorder that restricts the use of the property and designates the off-street parking that is to serve the other property.
2. The deed restrictions shall state that the property cannot be used so as to prevent the use of the parking requirements of the City, unless the restriction is removed by the City.
3. Upon submission of satisfactory evidence either that other parking space meeting the parking requirements has been provided or that the building or use has been removed or altered in use so as to no longer require the parking space, the City of Berkeley shall remove the restriction from the property.

**G. Removal of Spaces.**

1. **Permit Required.** A Use Permit is required to remove parking spaces as follows:
  - a. R-S, R-SMU, C-T districts: Removing existing off-street parking spaces for main buildings.
  - b. C-SO, C-NS districts: Removing existing off-street parking spaces in excess of the number required spaces.
2. **Findings.** To approve the Use Permit in the R-S, R-SMU, and C-T districts, the ZAB must find that the parking reduction is consistent with the purposes of the district and meets the findings in Section 23.322.050.B (Findings). No additional findings are required in the C-SO and C-NS districts.

**H. Required Parking Spaces for Persons with Disabilities.** If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.

**I. Nonconforming Parking – ES-R District.**

1. A lawfully established use that does not provide the required number of off-street parking spaces may be continued and maintained if there is no increase in the area, space, or volume occupied by or devoted to the use, except as allowed by Paragraph (2) below.
  2. A single-family detached structure that does not provide the required number of off-street parking spaces may be increased by a cumulative total of up to 200 square feet over the floor area that existed on June 6, 2010 if:
    - a. The addition or alteration complies with all other applicable standards;
    - b. The addition or alteration is not used as a bedroom; and
    - c. No portion of the building or any other structure on the same lot is used for rental rooms.
- J. **Access to Spaces.** A building, structure, alteration, fence, landscaping, or other site feature may not be constructed, erected, planted, or allowed to be established that impedes vehicle access to a required off-street parking space.
- K. **Parking Permits.** Residents in the following projects are not eligible to receive parking permits under the Residential Permit Parking Program (RPP) as provided in Municipal Code Chapter 14.72 (Preferential Parking Program):
1. Residential projects in the R-S, R-SMU, and C-T districts that are constructed without parking.
  2. Projects in the C-DMU district with residential units or group living accommodation units, including units converted from a non-residential use.

### 23.322.050 – Parking Reductions

- A. **Allowed Reductions.** The Zoning Officer or ZAB may reduce or waive the number of off-street parking spaces required by Section 23.322.030 (Required Parking Spaces) for the following projects.
1. **Building Expansions.**
    - a. **Where Allowed:** All Commercial and Manufacturing Districts, R-SMU district.
    - b. **Eligible Uses:** Expansions to existing buildings (all uses).
    - c. **Required Permit:** AUP.
    - d. **Findings:** The Zoning Officer must make the findings in Subsection C (Findings) below.
  2. **Change of Use.**
    - a. **Where Allowed:** All Manufacturing Districts, R-SMU district.

- b. **Eligible Uses:** Change of use to a new use with a higher numerical parking standard. In a Manufacturing District, the reduction is allowed only if the change of use is 2,500 square feet or less.
  - c. **Required Permit:** Use Permit for projects that require ZAB approval. AUP for all other projects.
  - d. **Findings:** The review authority must make the findings in Subsection C (Findings) below.
3. **Non-Residential Uses in Main Residential Building.**
- a. **Where Allowed:** R-SMU district.
  - b. **Eligible Uses:** Non-residential uses in main buildings that contain dwelling units or group living accommodations.
  - c. **Required Permit:** AUP.
  - d. **Findings:** To approve the AUP, the Zoning Officer must find that the parking reduction is consistent with the purposes of the R-SMU district as stated in 23.202.140.A (District Purpose).
4. **Residential Uses in Mixed-Use Buildings.**
- a. **Where Allowed:** All districts.
  - b. **Eligible Uses:** The residential use portion of a mixed-use building (residential and commercial).
  - c. **Required Permit:** AUP
  - d. **Findings:** To approve the Use Permit, the ZAB must make findings in each district chapter:
    - i.* C-C district: 23.204.050.D.3.b
    - ii.* C-U district: 23.204.060.D.3.b
    - iii.* C-N district: 23.204.070.D.3.b
    - iv.* C-SA district: 23.204.100.D.2
    - v.* C-SO district: 23.204.120.D.2
5. **Exclusive Residential Uses.**
- a. **Where Allowed:** All districts.
  - b. **Eligible Uses:** Buildings occupied exclusively by residential uses.
  - c. **Required Permit:** AUP

- d. **Findings:** To approve the AUP, the Zoning Officer must make findings in each district chapter:
  - i. C-C district: 23.204.050.D3.b
  - ii. CU district: 23.204.060.D.3.b
  - iii. C-N district: 23.204.070.D.3.b
  - iv. C-SA district: 23.204.100.D.2
  - v. C-SO district: 23.204.120.D.2

**6. Commercial Uses in Mixed-Use Building.**

- a. **Where Allowed:** C-C, CU, C-SA districts.
- b. **Location Limitations:** In the C-C, C-U districts, the reduction is allowed only on blocks adjacent to University Avenue and lots north of University Avenue, south of Delaware Street, east of Bonita Avenue and west of Oxford Street.
- c. **Eligible Uses:** Any commercial use portion of a mixed-use building which combines retail products stores and/or personal household services and multi-family residential uses within the same building or located on the same lot (or contiguous lots as part of the same project).
- d. **Required Permit:** Use Permit.
- e. **Findings:** The ZAB must make the findings in Subsection C (Findings) below.

**7. All Uses in Mixed-Use Building.**

- a. **Where Allowed:** C-W district.
- b. **Eligible Uses:** All uses in a mixed-use building (residential and commercial).
- c. **Permit Required:** Use Permit for projects that require ZAB approval. AUP for all other projects.
- d. **Finding:** To approve the permit, the review authority must find that:
  - i. The reduction promotes any of the C-W district purpose statements in 23.204.140.A (District Purpose); and
  - ii. The reduction in the parking requirement is not expected to cause a serious shortage of parking in the area.

**8. Bicycle/Motorcycle Spaces.**

- a. **Where Allowed:** C-W and all Manufacturing Districts.
- b. **Eligible Uses:** All uses.

- c. **Allowed Reduction:** Up to 10 percent of required off-street automobile spaces may be designated as bicycle and/or motorcycle parking. Bicycle parking must be in addition to bicycle parking required by 23.322.090 (Bicycle Parking).
- d. **Permit Required:** Use Permit for projects that require ZAB approval. AUP for all other projects.
- e. **Finding:** To approve the permit, the review authority must find that:
  - i. The substitution will not lead to an undue shortage of automobile parking spaces; and
  - ii. It can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

**9. Proximity to Public Parking Facility.**

- a. **Where Allowed:** C-W district.
- b. **Eligible Uses:** All uses within 1,000 feet of a public parking facility available to all members of the public.
- c. **Permit Required:** Use Permit.
- d. **Finding:** No additional findings.

**10. Downtown Reduction/Waiver.**

- a. **Where Allowed:** C-DMU district.
- b. **Eligible Uses:** All uses.
- c. **Permit Required:** Use Permit or modified with an AUP.
- d. **Finding:** The Zoning Officer must make the findings in Subsection C (Findings) below.

**11. Adding Residential Units.**

- a. **Where Allowed:** MU-R district.
- b. **When Allowed:** Adding a residential unit to a property with one or more existing residential units.
- c. **Permit Required:** AUP
- d. **Findings.** To approve the AUP Permit, the ZAB must find that:
  - i. Existing evening parking supply is adequate; and/or
  - ii. Other mitigating circumstances exist on the property.

**12. Limited Duration Reduction.**

- a. **Where Allowed:** M and MM District.
- b. **Eligible Uses:** All uses.
- c. **Permit Required:** Use Permit valid for a specified duration not to exceed five years.
- d. **Findings.** To approve the Use Permit, the ZAB must find that under the circumstances of the particular use and building, the demand for parking can be expected to be below the otherwise required level for a sustained period of time.

B. **Findings.** Required findings below are in addition to permit findings required in Section 23.406 (Specific Permit Requirements).

- 1. **Commercial, R-S, and R-SMU Districts.** When required by Subsection A (Allowed Reductions) above or elsewhere in the Zoning Ordinance, the review authority must make the following findings to approve a reduction in required off-street parking spaces in a Commercial District, the R-S district, or the R-SMU district:
  - a. The reduction will not substantially reduce the availability of on-street parking in the vicinity of the use.
  - b. One of the following is true:
    - i.* The use is located one-third of a mile or less from a Bay Area Rapid Transit (BART) station, intercity rail station or rapid bus transit stops.
    - ii.* The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available therein to mitigate the reduction in parking for the use.
    - iii.* A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential district streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use.
  - c. One of the following is true:
    - i.* The parking requirement modification will meet the purposes of the district related to improvement and support for alternative transportation, pedestrian improvements, and activity, or similar policies.
    - ii.* There are other factors, such as alternative transportation demand management strategies or policies in place, that will reduce the parking demand generated by the use.

2. **Manufacturing Districts.** When required by Subsection A (Allowed Reductions) above or elsewhere in the Zoning Ordinance, the review authority must make the following findings to approve a reduction in required off-street parking spaces in a Manufacturing District:
- a. The reduction will not substantially reduce the availability of on-street parking in the vicinity of the use.
  - b. One of the following is true:
    - i.* The use is located one-third of a mile or less from a rapid bus transit stop, an intercity rail station, or a bus stop serving at least four lines.
    - ii.* The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available in these facilities to mitigate the reduction in parking.
    - iii.* A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential district streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use.
  - c. One of the following is true:
    - i.* The parking requirement modification will implement the West Berkeley Plan goals and policies related to improvement and support for alternative transportation, pedestrian improvements and activity, and similar policies.
    - ii.* There are other project-specific transportation demand management strategies or policies in place, including but not limited to employer sponsored transit subsidies, car sharing programs, bicycle storage, and flexible work schedules.

### **23.322.060 – C-DMU Parking and Transportation Demand Management**

The parking and transportation demand management requirements in this section apply in the C-DMU district.

#### **A. Dynamic Signage.**

1. New construction that results in an off-street total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications.
2. Required signage includes, but is not limited to:

- a. Real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System; or
- b. Equivalent signs as determined by the Zoning Officer in consultation with the Transportation Division Manager.

**B. Unbundled Parking.**

- 1. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit.
- 2. The ZAB may approve a Use Permit to waive the requirement in Paragraph (1) above for projects that include financing for affordable housing. To approve the Use Permit, the ZAB must find that the applicant has shown that the combined parking is necessary to obtain financing or meeting other obligations.

**C. Employee/Resident Benefits.**

- 1. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident:
  - a. A pass for unlimited local bus transit service; or
  - b. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
- 2. A notice describing these transportation benefits shall be posted in a location visible to employees and residents.

**D. Vehicle Sharing Spaces.**

- 1. **Spaces Required.** For residential structures constructed or converted from a non-residential use that provide off-street parking, vehicle sharing spaces shall be provided in the amounts shown in Table 23.322-6. Vehicle sharing spaces are not required for projects that do not provide off-street vehicle parking.

**TABLE 23.322-6: REQUIRED VEHICLE SHARING SPACES**

| Number of Parking Spaces Provided | Minimum Number of Vehicle Sharing Spaces |
|-----------------------------------|------------------------------------------|
| 0-10                              | 0                                        |
| 11-30                             | 1                                        |
| 31-60                             | 2                                        |



| Number of Parking Spaces Provided | Minimum Number of Vehicle Sharing Spaces   |
|-----------------------------------|--------------------------------------------|
| 61 or more                        | 3, plus one for every additional 60 spaces |

## 2. Requirements.

- a. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
- b. The vehicle sharing spaces shall remain available to a vehicle sharing service provider as long as providers request the spaces.
- c. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles.
- d. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.

## E. Parking and Transportation Demand Management Compliance Report.

1. Before issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City of Berkeley.
2. The property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

## 23.322.070 – Off-Street Parking Maximums for Residential Development

### A. Applicability.

1. This section applies to new residential projects with two or more dwelling units on a parcel, including the residential portion of mixed-use projects, where any portion of the project is located either:
  - a. Within 0.25 miles of a major transit stop, as defined by Section 21064.3 of the California Public Resources Code; or
  - b. Along a transit corridor with service at 15-minute headways during the morning and afternoon peak periods.
2. **Exemptions.** The following types of projects are exempt from the requirements of this section:
  - a. Projects for which a building permit was issued before March 19, 2021.
  - b. Residential projects, including the residential portions of mixed-use projects, with the majority of the units subject to recorded affordability restrictions;

- c. Projects located on a roadway with less than 26 feet pavement width in the Hillside Overlay.
  - d. Projects located in the Environment Safety-Residential (ES-R) district.
- B. Off-Street Parking Maximum.** Any project subject to this chapter shall not include off-street residential parking at a rate higher than 0.5 parking spaces per Dwelling Unit.
- C. Adding Units to Existing Buildings or Properties.**
- 1. The parking maximum required by this section applies to new dwelling units added to an existing property or building where the addition results in two or more units on the parcel.
  - 2. Adding a unit to an existing property or building does not require the removal of any existing off-street parking spaces.
- D. Excess Off-Street Parking.**
- 1. Off-street residential parking in excess of the maximum number in Section 23.322.070.B (Off-Street Parking Maximum) may be approved with an AUP.
  - 2. To approve an AUP for excess off-street parking, the review authority must make one or both of the following findings:
    - a. Trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this section, by transit service which exists or is likely to be provided in the foreseeable future, or by more efficient use of existing on-street and off-street parking available in the area;
    - b. The anticipated residents of the proposed project have special needs or require reasonable accommodation that relate to disability, health or safety that require the provision of additional off-street residential parking.

### **23.322.080 – Parking Layout and Design**

#### **A. Traffic Engineering Requirements.**

- 1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley's Traffic Engineering requirements.
- 2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

B. **Dimensional Standards.** Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

C. **Access Orientation in Non-Residential Districts.** Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

D. **Placement – Residential Districts.**

1. **Side Setback Areas.**

- a. One new off-street parking space in a required side setback area, where none exists, is allowed by right.
- b. The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
- c. The space must be screened as required by 23.322.080.G (Screening).
- d. The location of the space shall minimize impact on usable open space.

2. **Other Setback Areas.** No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:

- a. The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
- b. The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

3. **Multifamily Buildings.**

- a. An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
- b. For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
- c. The Zoning Officer may approve an AUP to grant an exception to this requirement.

E. **Placement – Non-Residential Districts.**

1. **Where Prohibited.** Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot’s street frontage unless the parking is entirely within a building with walls.
2. **Corner Lots.** For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
3. **C-W District.**
  - a. Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
  - b. Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
  - c. To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
    - i. Parking in the rear or on the side of the property is impractical because of the lot’s depth and/or width.
    - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
    - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
    - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

F. **Grade Change.** This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

**TABLE 23.322-7: REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES**

| Difference in Elevation                 | Minimum Setback |
|-----------------------------------------|-----------------|
| Parking space lower than finished grade |                 |
| 3 to 5 ft                               | 4 ft.           |

| Difference in Elevation                  | Minimum Setback |
|------------------------------------------|-----------------|
| Less than 3 ft                           | No min. setback |
| Parking space higher than finished grade | 6 ft.           |

**G. Screening.**

- 1.
2. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

**TABLE 23.322-8: REQUIRED PARKING SPACE SCREENING**

| Districts                                  | When Required                                                                                         | Required Screening Feature                                                                                                        | Screening Feature Height                                                                                                                                    |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All Residential Districts                  | 2 or more parking spaces, or any parking space partly or entirely within a required rear setback area | Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways | 4 ft. min and 6 ft. max.                                                                                                                                    |
| All Commercial and Manufacturing Districts | 2 or more parking spaces                                                                              | Wall, fence, or evergreen shrubbery hedge in a landscape strip                                                                    | Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max.<br>Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max. |

3. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

**H. Landscape Buffers.**

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9: REQUIRED LANDSCAPE BUFFERS

| District/Number of Spaces                     | Minimum Width of Landscape Strip         |                                                         |
|-----------------------------------------------|------------------------------------------|---------------------------------------------------------|
|                                               | Areas adjacent to side or rear lot lines | Areas adjacent to public right-of-way or front lot line |
| <b>Residential Districts</b>                  |                                          |                                                         |
| 1-3 spaces                                    | 2 ft.                                    | 2 ft.                                                   |
| 4 spaces or more                              | 4 ft. [1]                                | 4 ft. [1]                                               |
| <b>Commercial and Manufacturing Districts</b> |                                          |                                                         |
| 1 space                                       | None required                            | None required                                           |
| 2-3 spaces                                    | 2 ft.                                    | 3 ft.                                                   |
| 4 spaces or more                              | 4 ft. [1]                                | 4 ft. [1]                                               |

Note:

[1] Calculated as average width along the full length of landscape strip.

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
  3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.
- I. **Paved Setback Areas.** In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.
- J. **Driveway Width.**
1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
  2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.
- K. **Driveway Separation.** On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.
- L. **Tandem Parking.** Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

- M. **Residential Parking Lots in Non-Residential Districts.** Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.
- N. **Carports.** A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

**23.322.090 – Bicycle Parking**

A. Parking Spaces Required.

- 1. **Non-Residential Bicycle Parking.** Table 23.322-10 shows districts where bicycle parking is required, land uses requiring bicycle parking, and the number of required spaces. Bicycle parking is required for new construction and for expansions to existing buildings that add new floor area.

**TABLE 23.322-10: REQUIRED NON-RESIDENTIAL BICYCLE PARKING**

| District                                           | When Required                                                                                            | Required Spaces     |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------|---------------------|
| R-S, R-SMU                                         | New commercial space                                                                                     | 1 per 2,000 sq. ft. |
| All Commercial Districts except for C-E and C-T    | New floor area or for expansions of existing industrial, commercial, and other non-residential buildings | 1 per 2,000 sq. ft. |
| All Manufacturing Districts except for C-E and C-T | New floor area or for expansions of existing industrial, commercial, and other non-residential buildings | 1 per 2,000 sq. ft. |
| C-E, C-T                                           | None required                                                                                            | N/A                 |

- a. In the C-DMU district, the Zoning Officer, in consultation with the City Traffic Engineer, may approve an AUP to modify the bicycle parking requirement in Table 23.322-10 for Tourist Hotels.

- 2. **Residential Parking.** Table 23.322-11 shows the types of residential projects, including the residential portion of mixed-use projects, for which bicycle parking is required.

**TABLE 23.322-11: REQUIRED RESIDENTIAL BICYCLE PARKING**

| Use                              | Long-Term Parking Requirement [1] | Short-Term Parking Requirement [1]          |
|----------------------------------|-----------------------------------|---------------------------------------------|
| Dwelling Units (1 to 4 units)    | None required                     | None required                               |
| Dwelling Units (5 units or more) | 1 space per 3 bedrooms            | 2, or 1 space per 40 bedrooms, whichever is |

| Use                                                                                                                                                                                                       | Long-Term Parking Requirement [1]                    | Short-Term Parking Requirement [1]                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|-----------------------------------------------------|
|                                                                                                                                                                                                           |                                                      | greater                                             |
| Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing                                                                               | 2, or 1 space per 2.5 bedrooms, whichever is greater | 2, or 1 space per 20 bedrooms, whichever is greater |
| [1] Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 <i>Berkeley Bicycle Plan</i> , or as subsequently amended by the Transportation Division. |                                                      |                                                     |

**B. Bicycle Parking Standards.** The following standards apply to required bicycle parking spaces in a non-residential district:

1. Bicycle parking spaces shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer.
2. Bicycle parking shall be located in accordance to the Design Review Guidelines and other design specifications promulgated by the Transportation Division.

### 23.322.100 – On-site Loading Spaces

**A. When Required.** Table 23.322-12 shows land uses that require on-site loading spaces consistent with this section. In Residential Districts, on-site loading spaces are required for any modifications to existing uses and for new construction. In Commercial and Manufacturing Districts, on-site loading spaces are required for new or additional construction of 10,000 square feet or more.

**TABLE 23.322-12: LAND USES REQUIRING OFF-STREET LOADING SPACES**

| District       | Land Use [1]                                                                                 |
|----------------|----------------------------------------------------------------------------------------------|
| R-1, R-1A, R-2 | Schools 10,000 sq. ft. or more                                                               |
| R-2A           | Senior congregate housing, nursing homes and schools 10,000 sq. ft. or more                  |
| R-3            | Senior congregate housing, hospitals, nursing homes, schools 10,000 sq. ft. or more          |
| R-4, R-5       | Senior congregate housing, hospitals, nursing homes, offices, schools 10,000 sq. ft. or more |
| R-S, R-SMU     | All non-residential uses 10,000 sq. ft. or more                                              |



| District                                                     | Land Use [1]                                                 |
|--------------------------------------------------------------|--------------------------------------------------------------|
| All C Districts except C-T                                   | All commercial uses 10,000 sq. ft. or more                   |
| C-T                                                          | No loading spaces required for all land uses                 |
| M Districts                                                  | All commercial and manufacturing uses 10,000 sq. ft. or more |
| <u>Note:</u><br>[1] Land use size is total gross floor area. |                                                              |

B. **Number of Loading Spaces.** For land uses that require an on-site loading space, Table 23.322-13 shows the minimum number of required spaces.

**TABLE 23.322-13: NUMBER OF REQUIRED OFF-STREET LOADING SPACES**

| District                                                     | Spaces Required [1]                                                                            |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Residential and Commercial Districts                         | 1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 40,000 sq. ft |
| Manufacturing Districts                                      | 1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 25,000 sq. ft |
| <u>Note:</u><br>[1] Land use size is total gross floor area. |                                                                                                |

C. **Loading Space Requirements.**

1. **General.** The following requirements apply to required on-site loading spaces in all districts except for the R-1, R-1A, R-2, R-2A districts.
  - a. **Dimensions.** A required loading space must be at least 12 feet wide and 25 feet long with a minimum vertical clearance of 14 feet.
  - b. **Location.** A required loading spaces must be located on the same lot as the structure or use the space is designed to serve.
  - c. **Parking Spaces.** A required parking space may not be used to satisfy the requirements for an off-street loading space.
  - d. **Access and Paving.** A required loading space must have adequate means of access from a street or alley. Both the space and access driveway must be paved with a durable, dustless material that is usable under all weather conditions.
2. **Residential Buffer.** An on-site loading space in a Non-Residential District may not be located within 35 feet of a lot in a Residential District unless the loading space is either:

- a. Located wholly within an enclosed building; or
  - b. Screened from such residential lot by a wall, hedge, or fence not less than 6 feet in height.
3. **C-W District.** A building or site in the C-W district may not be altered to deprive a leasable space used or designated for use by any manufacturing or wholesale trade of an on-site loading space consistent with Paragraph 1 (All Districts) above.
  4. **M and MM Districts.** All uses in the M and MM districts which have one or more on-site loading spaces shall retain at least one such space.
  5. **Modified Requirements.** In all Manufacturing and Commercial Districts other than the C-T district, the Zoning Officer in consultation with the City Traffic Engineer may approve an AUP to modify the on-site loading spaces standards in this section.

#### **23.322.110 – Parking Lots in Residential Districts**

- A. **Applicability.** This section applies to the exclusive or primary use of a lot for off-street parking spaces in a Residential District.
- B. **Use Limitations.** Commercial repair work or service of any kind is prohibited on the lot.
- C. **Standards.**
  1. Signs may only designate the parking lot name, entrances, exits, and conditions of use. No other types of signed may be erected or maintained.
  2. Lighting fixtures must be oriented to direct the light away from adjacent lots.
  3. Suitable wheel bumpers must be provided to protect screening and adjacent property.
  4. A durable and dustless surface must be provided and maintained.
  5. The lot must comply with 23.322.070.G (Screening) and 23.322.070.H (Landscape Buffers).
  6. The lot must be graded to dispose of all surface water.
- D. **Exceptions.** The ZAB may waive any of the requirements in this section with a Use Permit for a temporary parking lot.

#### **23.322.120 – Transportation Services Fee**

- A. **When Required.**

1. A Transportation Services Fee (TSF) may be required for all new construction of gross floor area pursuant to resolution of the City Council.
2. If so resolved, the following districts are required to pay a TSF: R-S, R-SMU, C-C, C-U, C-N, C-NS, C-T, C-SO, M, and MM.

**B. Paying and Collecting Fees.**

1. All TSF payments shall be made to the Finance Department and deposited into the City or Berkeley's traffic/transportation mitigation fund.
2. TSF payments shall be collected in the form of annual payments based on the fee rate applicable to each district multiplied by the square feet of gross floor area of new construction and may be adjusted annually for inflation.
3. TSF payments shall be made for 30 years from the issuance of a certificate of occupancy for any new floor area.
4. The first annual payment of the TSF shall be due as a condition of occupancy and subsequent payments shall be due on January 1 of each succeeding year for 29 years.

- C. Use of Funds.** TSF funds shall be used to purchase transit or paratransit passes, coupons, and tickets to be made available at a discount to employees and customers and to promote and support incentives for employee ride sharing.

## 23.324 NONCONFORMING USES, STRUCTURES, AND BUILDINGS

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### Sections:

- 23.324.010– Chapter Purpose
- 23.324.020– General
- 23.324.030– Nonconforming Lots
- 23.324.040– Nonconforming Uses
- 23.324.050– Nonconforming Structures and Buildings
- 23.324.060– Exemptions

### 23.324.010 – Chapter Purpose

This chapter establishes regulations for nonconforming lots, uses, structures, and buildings. These regulations are intended allow for:

- A. The development and use of lawful nonconforming lots;
- B. Changes to nonconforming uses and the termination of abandoned uses;
- C. Maintenance, repair, and expansion of nonconforming structures and buildings; and
- D. Alterations to nonconforming structures and buildings when needed for public safety.

### 23.324.020 – General

- A. **Cause of Nonconformity.** A nonconformity may result from any inconsistency with the Zoning Ordinance, whether substantive or procedural, including, but not limited to:
  - 1. The inconsistency of the use, building, or structure or aspects thereof, with any requirement of the Zoning Ordinance; and
  - 2. The lack of a Zoning Certificate, AUP, or Use Permit.
- B. **Change to a Conforming Use or Structure.** A use, building, or structure which is nonconforming solely by reason of the lack of a Zoning Certificate, AUP, or Use Permit may be recognized as a conforming use, building, or structure by issuance of the required Zoning Certificate, AUP, or Use Permit.
- C. **Permit and Approvals Required.** A use, building, or structure conforms to the Zoning Ordinance only if it was established or constructed with the prior approval of, or legalized after the fact by, the issuance of the required Zoning Certificate, AUP, or Use Permit.
- D. **Nonconformities in Continuous Existence.** A lawful nonconforming use, structure, building, or lot shall be deemed to comply with the Zoning Ordinance if it has remained in continuous existence.

**23.324.030 – Nonconforming Lots**

A. **Lawful Nonconforming Lots.** A lot with an area less than the minimum lot size required by the Zoning Ordinance is considered a lawful nonconforming lot if the lot is:

1. Described in the official records on file in the office of the County Recorder of Alameda County or Contra Costa County as a lot of record under one ownership before November 30, 1950;
2. Shown as a lot on any recorded subdivision map, filed before November 30, 1950; or
3. In the Environmental Safety Residential (ES-R) district and described in the official records on file in the office of the County Recorder of Alameda County as either:
  - a. A lot of record under one ownership; or
  - b. A lot on any recorded subdivision map filed before February 13, 1975.

B. **Requirements.**

1. A lawful nonconforming lot may be used as building site subject to all other requirements of the Zoning Ordinance, except as provided in Paragraph (2) below.
2. If the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under the Zoning Ordinance, such lawful nonconforming lots may be used as only one building site.

**23.324.040 – Nonconforming Uses**

A. **Changes to Nonconforming Uses.**

1. Table 23.324-1 shows permits required to change a lawful nonconforming use.

**TABLE 23.324-1: PERMIT REQUIREMENTS FOR CHANGES TO NONCONFORMING USES**

| <b>Change to Nonconforming Use</b>                                                                                                                                                                                | <b>Permit Required</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Changes to a use that is allowed by right, complies with floor area requirements, conforms to all applicable requirements of the Zoning Ordinance excluding parking requirements, and is in a conforming building | ZC                     |
| Any change to a nonconforming use that does not require a Zoning Certificate or Use Permit by this table                                                                                                          | AUP                    |
| Any project that substantially expands or changes a nonconforming use                                                                                                                                             | UP(PH) [1]             |
| <b>Notes:</b><br>[1] In the ES-R district the increase in the area, space, or volume occupied by or devoted to a lawful nonconforming use is not allowed.                                                         |                        |

2. Substantial expansions and changes to a nonconforming use, as used in Table 23.324-1, means:
  - a. All changes to a use listed in 23.404.070.B (Permit Modification Required); and
  - b. Extending the nonconforming use into an existing or expanded portion of a building which has not been previously occupied by that nonconforming use.

## **B. Abandoned Uses.**

### **1. Termination.**

- a. Subject to the exceptions in Paragraph 2 (Exceptions) below, the ZAB may declare a lawful nonconforming use to be terminated upon finding that:
  - i.* The use has not occurred for at least one year; and
  - ii.* The most recent prior user has not shown a good-faith intent to resume it.
- b. The ZAB may require any person claiming that the use should not be declared terminated to produce documentation to substantiate good faith intent to resume the use.

### **2. Exceptions.**

- a. **Residential Uses.** No lawful residential use can lapse, regardless of the length of time of the non-use.
- b. **Uses with Major Investments.** Lawful nonconforming full or quick service restaurants with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and

other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

- i.* Such fixed structures, equipment, or facilities are removed; or
  - ii.* Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.
- c. **Alcoholic Beverage Retail Sales.** If a lawful nonconforming alcoholic beverage retail sale use is closed is more than 90 days, the Zoning Adjustments Board (ZAB) may not declare the use terminated if the use was closed due to:
- i.* Repair that does not change the nature of the license premises or increase the square footage of the business used for alcoholic beverages sales; or
  - ii.* Restoration of premises made totally or partially unusable by an act of nature, fire, accident, or other involuntary cause where the restoration does not increase the square footage of the business used for alcoholic beverage sales.

### **23.324.050 – Nonconforming Structures and Buildings**

- A. **Maintenance and Repair.** A lawful nonconforming structure or building may be maintained and repaired, as long as such maintenance or repair does not result in a change to the use of the structure or building.
- B. **Replacement.** Replacing portions of a nonconforming structure or building is allowed if the removed portions were lawfully constructed and are replaced to the same size, height, extent, and configuration as previously existed.
- C. **Removal.**
  - 1. A nonconforming portion of a nonconforming structure or building may be removed by right if such removal does not constitute demolition.
  - 2. For a structure or building subject to the Landmarks Preservation Ordinance, the regulations under Municipal Code Section 3.24 (Landmarks Preservation Commission) apply.
- D. **Expansion and Alteration.**
  - 1. **General.** An addition to or enlargements of a lawful nonconforming structure or building is allowed if:
    - a. The addition or enlargement complies with all applicable laws;

- b. The existing use of the structure or building is conforming, except as provided below in Paragraph 4 (Property with Nonconforming Use); and
- c. The addition or enlargement obtains all permits required by this subsection.

**2. Nonconforming Setbacks and Height.**

- a. An AUP is required for an addition or enlargement that:
  - i.* Vertically or horizontally extends a building wall projecting into a minimum required setback;
  - ii.* Horizontally extends the portion of a building exceeding the height limit;
  - iii.* Alters the portion of a building (including windows and other openings) projecting into a minimum required setback; or
  - iv.* Alters the portion of a building exceeding the height limit.
- b. The Zoning Officer may approve the AUP only if:
  - i.* The addition or enlargement does not increase or exacerbate any nonconforming setbacks; and
  - ii.* The addition or enlargement does not exceed maximum or calculated height limits.

**3. Nonconforming Coverage, FAR, and Density.**

- a. A Use Permit is required for an addition to and/or enlargement of a structure or building that exceeds the maximum allowed lot coverage, floor area ratio, or residential density.
- b. The ZAB may approve the Use Permit only if the project does not:
  - i.* Increase or exacerbate the nonconformity; or
  - ii.* Exceed the height limit.

**4. Property with Nonconforming Use.**

- a. A Use Permit is required for an addition to and/or enlargement of a lawful nonconforming structure or building on a property with a lawful nonconforming use.
- b. The Use Permit is required whether or not the nonconforming use occupies the subject structure or building.

**E. Tenant Space Reconfigurations.**

- 1. The reconfiguration of non-residential tenant space in a nonconforming structure or building requires permits as follows:



- a. AUP for structures or buildings nonconforming to setback, height, or lot coverage standards.
- b. Use Permit for structures or buildings nonconforming to FAR standards.
2. The reconfiguration is allowed only if the existing use of the property is conforming.

**F. Damage and Reconstruction.**

1. **Calculation of Appraisal Value.** As used in this subsection, the “appraised value” of a structure or building is the higher of:
  - a. The records of the Assessor of the County of Alameda for the fiscal year during which such destruction occurred; or
  - b. An appraisal performed by a certified appraiser.
2. **Damage Less than 50 Percent.** If 50 percent or less of its appraised value of a lawful nonconforming structure or building is damaged or destroyed for any reason, the replacement of the damaged portions of the structure or building is allowed by right if the replaced portions are the same size, extent, and configuration as previously existed.
3. **Damage More than 50 Percent.**
  - a. Except as provided in Paragraph 4 (Residential Buildings with Four Units or Less) below, if more than 50 percent of the appraised value of a lawful nonconforming structure or building is damaged or destroyed for any reason, the structure or building shall either:
    - i.* Be brought into full compliance with the requirements of the Zoning Ordinance; or
    - ii.* Receive ZAB approval of a Use Permit for the structure or building to be rebuilt to the same size, extent, and configuration as previously existed. To approve the Use Permit, the ZAB must find that the previous use will be continued in a manner that meets the requirements of this chapter.
4. **Residential Structures or Buildings with Four Units or Less.**
  - a. A residential-only structure or building with four residential units or less, including any accessory structures or buildings, that is involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate.
  - b. The Zoning Certificate may be approved only if all of the following conditions exist:
    - i.* The structure or building, or any portion thereof, has been destroyed by any involuntary cause including fire, earthquake, or flood.

- ii.* The replacement structure or building or portion thereof is substantially similar in use, dimensions, floor area, square footage, envelope, lot coverage, footprint, and number of units to the destroyed structure or building or portion thereof that it is designed to replace.
  - iii.* The replacement or repair complies with all currently applicable building codes and any other regulations including any ordinance or emergency regulation adopted by the City Council or the Director of Emergency Services to protect against serious safety problems at the site such as engineering conditions and soil stability.
- c. Where a structure or building to be replaced or rebuilt does not conform to Paragraph (b)(ii) above and is to be expanded or changed, the structure or building is subject to all otherwise applicable regulations governing such expansion or change.
  - d. The Planning Director shall establish a process that allows an owner of a qualifying residential structure or building to apply for an advance determination that the proposed repair or replacement of a structure or building is substantially similar as required by Paragraph (b)(ii) above including the information required to document existing conditions.
  - e. The Planning Director shall develop a description or building information for owners of qualifying residential structures or buildings required by the City to document existing characteristics of the building in case of future damage or destruction.

### **23.324.060 – Exemptions**

#### **A. Public Safety Structural Alterations.**

- 1. **General.** The following public safety structural alterations or extensions to conforming and nonconforming buildings are permitted by right to the extent necessary, as determined by the Zoning Officer:
  - a. Vertical and/or horizontal extensions of a nonconforming setback.
  - b. Horizontal extensions of a nonconforming height.
  - c. Vertical extensions of a nonconforming height in residential districts.
  - d. Alterations of a portion of a building that encroaches into a nonconforming setback.
  - e. Extensions of nonconforming lot coverage.
  - f. Structural alterations to nonconforming residential density.



## 23.326 DEMOLITION AND DWELLING UNIT CONTROL

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### Sections:

- 23.326.010– Chapter Purpose
- 23.326.020– General Requirements
- 23.326.030– Eliminating Dwelling Units through Demolition
- 23.326.040– Eliminating Dwelling Units through Conversion and Change of Use
- 23.326.050– Private Right of Action
- 23.326.060– Elimination of Residential Hotel Rooms
- 23.326.070– Demolitions of Non-Residential Buildings
- 23.326.080– Building Relocations
- 23.326.090– Limitations

### 23.326.010 – Chapter Purpose

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City.

### 23.326.020 – General Requirements

- A. **Applicability.** No dwelling unit or units may be eliminated or demolished except as authorized by this chapter.
- B. **Findings.** In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.

### 23.326.030 – Eliminating Dwelling Units through Demolition

#### A. Buildings with Two or More Units Constructed Before June 1980.

- 1. **Applicability.** This subsection only applies to building with two or more units constructed before June 1980.
- 2. **Findings.** The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:
  - a. The building containing the units is hazardous or unusable and is infeasible to repair.
  - b. The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
  - c. The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.

- d. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

**3. Fee Required.**

- a. The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.
- b. The amount of the fee shall be set by resolution of the City Council.

**c. In Lieu of a Fee.**

- i.* In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.
- ii.* The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.
- iii.* The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

**4. Occupied Units.**

**a. Applicability.**

- i.* The requirements in this subsection apply if units to be demolished are occupied.
- ii.* These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

- b. **Notice.** The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section 13.76 (Rent Stabilization and Eviction for Good Cause Program).

**c. General Requirements.**

- i.* The applicant shall provide assistance with moving expenses equivalent to in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).
- ii.* The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

*iii. Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 et seq.).

**d. Sitting Tenants Rights.**

*i.* Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.

*ii.* Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

*iii.* Income restrictions do not apply to displaced tenants.

**iv. Exception.**

1. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.4.a, b, and c, but must comply with the following requirement.

2. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

**B. Buildings with a Single Dwelling Unit.**

1. **Applicability.** This subsection only applies to buildings with a single dwelling unit.

2. **Limitations.**

a. Demolition is not allowed if:

*i.* The building was removed from the rental market under the Ellis Act during the preceding five years; or

*ii.* There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

b. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall

determine whether harassment or threatened or actual illegal eviction occurred.

- C. **Accessory Buildings.** Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.

### **23.326.040 – Eliminating Dwelling Units through Conversion and Change of Use**

- A. **General.** The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:
1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
  2. One of the following is true:
    - a. One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
    - b. All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.
- B. **Limitations.**
1. Demolition is not allowed if:
    - a. The building was removed from the rental market under the Ellis Act during the preceding five years; or
    - b. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.
  2. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.
- C. **Effect of Noncompliance with the Two-Year Requirement.**

1. In a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.
4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

**D. Effect of Eliminating a Dwelling Unit.**

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:
  - a. The building is demolished; or
  - b. Sufficient units are added or restored such that the building contains at least five units.
2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

**E. Exceptions.**

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.
2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.



3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:
  - a. The re-conversion restores the original single-family use of the main building or lot; and
  - b. No tenant is evicted.

### **23.326.050 – Private Right of Action**

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Elimination of Dwelling Units through Demolition) and 23.326.040 (Elimination of Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees.

### **23.326.060 – Elimination of Residential Hotel Rooms**

- A. **General Requirements.** Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:
  1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant
  2. One of the following three requirements shall be met:
    - a. The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
    - b. Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
    - c. Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).
- B. **Criteria for Replacement Rooms.** For purposes of this section, replacement rooms must be:
  1. Substantially comparable in size, location, quality, and amenities;

2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
  3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
    - a. Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
    - b. Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
    - c. Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
      - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
      - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.
- C. **Exception for Non-Profit Ownership.** In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

### **23.326.070 – Demolitions of Non-Residential Buildings**

- A. **Main Non-Residential Buildings.** A main building used for non-residential purposes may be demolished with a Use Permit.
- B. **Accessory Buildings.**
  1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
  2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.
- C. **Landmarks Preservation Commission Review.**

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
3. The ZAB shall consider the recommendations of the LPC in when acting on the application.

D. **Findings.** A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
  - a. Is required to allow a proposed new building or other proposed new use;
  - b. Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
  - c. Will remove a structure which represents an inhabitable attractive nuisance to the public; or
  - d. Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

### **23.326.080 – Building Relocations**

A. **Treatment of Building Relocation.**

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

- B. **Findings.** The ZAB may approve a Use Permit to relocate a building upon finding that:
1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
  2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

**23.326.090 – Limitations**

A. **Unsafe, Hazard, or Danger.**

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.
2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

- B. **Ellis Act.** This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

## 23.328 INCLUSIONARY HOUSING

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### Sections:

- 23.328.010– Chapter Purpose and Applicability
- 23.328.020– General Requirements
- 23.328.030– Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units
- 23.328.040– Requirements Applicable to All Inclusionary Units
- 23.328.050– Inclusionary Unit Requirements for Rental Housing Projects
- 23.328.060– Inclusionary Unit Requirements for Ownership Projects
- 23.328.070– Special Requirements for Avenues Plan Area
- 23.328.080– Administrative Regulations
- 23.328.090– Fees

### 23.328.010 – Chapter Purpose and Applicability

A. **Purpose.** The purpose of this chapter is to:

1. Promote Housing Element goals to develop affordable housing for households with incomes below the median, as defined in this chapter, or, in the case of limited equity cooperatives, households with incomes below 120 percent of the median.
2. Require the inclusion of affordable dwelling units in specified proposed developments (“projects”).

B. **Applicability.**

1. The following types of projects must comply with the inclusionary housing requirements of this chapter:
  - a. Residential housing projects constructing five or more dwelling units.
  - b. Residential housing projects constructing one to four new dwelling units when:
    - i.* Such units are added to an existing one to four-unit property developed after August 14, 1986; and
    - ii.* The resulting number of units totals five or more.
  - c. Residential housing projects proposed on lots with a size and zoning designation that allows construction of five or more dwelling units.
2. This chapter does not apply to dormitories, fraternity and sorority houses, boarding houses, residential hotels, or live/work units.
3. Live/work units are subject to low income inclusionary provisions in Section 23.312 (Live/Work).

4. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any conflicting requirements set forth elsewhere.

### **23.328.020 – General Requirements**

#### **A. Minimum Percent of Units.**

1. Any project subject to this chapter is required to include at least 20 percent of the total number of dwelling units within the project as inclusionary units, except that limited equity cooperatives are required to include at least 51 percent of their units as inclusionary units.
2. In applying the percentages above, any decimal fraction above a whole number of dwelling units shall be paid as an in-lieu fee as stated in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

- B. Median Income Levels.** For the purpose of determining the median income levels for households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census.

### **23.328.030 – Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units**

#### **A. Applicability.**

1. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.
2. This section applies to projects for which all required permits have already been issued, as long as no units within such a project have been sold.

- B. Deposit.** The fee shall be deposited in the City's Housing Trust Fund.

#### **C. Fee Amount.**

1. The in-lieu fee shall be 62.5 percent of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
2. The fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.

3. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5 percent.
4. This fee shall only apply to units in a project that are counted in determining the required number of inclusionary units in a project and shall not apply to any units provided as a density bonus.
5. If the City Manager determines that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit.
6. If the developer and the City Manager cannot agree on a fair market value, the City Manager shall select an appraiser to prepare an appraisal of the unit and the appraised value shall be used as the market value.

**D. Calculation of Inclusionary Sales Price.**

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee amount shall be three times 80 percent of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.
2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23.328.080 (Administrative Regulations).

**E. Time of Payment of Fee.** The developer shall pay the in-lieu fee no later than the closing date of the sale of a unit as a condition of the closing.

**23.328.040 – Requirements Applicable to All Inclusionary Units**

**A. Recipient Requirement.**

1. All inclusionary units other than those in limited equity cooperatives shall be sold or rented to:
  - a. The City or its designee; or
  - b. Low income, lower income, or very low-income households.
2. Units in limited equity cooperatives shall be sold or rented to households whose gross incomes do not exceed 120 percent of the Oakland PMSA median.

- B. **Agreement.** The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units and other information as required to determine compliance with this chapter.
- C. **Timing.** All inclusionary units in a project and phases of a project shall be constructed concurrently with, or before, the construction of non-inclusionary units.
- D. **Criteria.** All inclusionary units shall be:
1. Reasonably dispersed throughout the project;
  2. Of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project; and
  3. Comparable with the design or use of non-inclusionary units in terms of appearance, materials, and finish quality.
- E. **In-Lieu Fee Requirement.** In projects where calculating the inclusionary requirement results in a fraction of a unit, the fraction shall be paid in the form of an in-lieu fee to the City.
1. Where Government Code Section 65915 does not apply, the in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects.
  2. Where Government Code Section 65915 does apply, the in-lieu fee shall be the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects to require a density bonus or equivalent incentive.
- F. **Use of In-Lieu Fees.**
1. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation) to provide, construct, or promote the creation or retention of low-income housing in Berkeley.
  2. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.
- G. **Exceptions.** Where the applicant shows, and the City agrees, that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentive is provided), exceeds the sales prices allowed for inclusionary units by this chapter, the Zoning Adjustments Board (ZAB) may approve one or more of the following measures to reduce costs or increase profitability:



1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.
2. Increase the number of bedrooms in the inclusionary units.
3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.
4. Waive the in-lieu fees for fractions of units.

### **23.328.050 – Inclusionary Unit Requirements for Rental Housing Projects**

#### **A. General Rental Requirements.**

1. All inclusionary units shall be occupied by low, lower, or very low -income households.
2. The maximum rental price for inclusionary units shall be affordable to an appropriate-sized household whose income is 81 percent of the Oakland PMSA median.
3. In projects requiring more than one inclusionary unit, at least 50 percent of those units shall be rented at a price that is affordable to low or lower-income households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program.
4. When there is an uneven number of inclusionary units, the majority of units shall be priced to be affordable to a household at 50 percent of median income if subsidies are available.
5. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81 percent income of the Oakland PMSA median.
6. If an applicant agrees to provide 10 percent lower income inclusionary units, the rental price for such units shall be affordable to a household with income that is 60 percent of the Oakland PMSA median.
7. Dwelling units designated as inclusionary units shall remain in conformance with the regulations of this section for the life of the building.
8. The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit.
9. For purposes of occupancy, the appropriate household size standards used by the housing authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used.
10. The applicant or owner shall retain final discretion in the selection of the eligible households referred by the City.

11. The owner shall provide the City with data on vacancies and other information required to ensure the long-term affordability of the inclusionary units by eligible households.

**B. Affordability Defined.** A unit shall be considered affordable if the rent (including utilities) does not exceed 30 percent of a household's gross income.

1. Gross household income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program.
2. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.

### **23.328.060 – Inclusionary Unit Requirements for Ownership Projects**

**A. General Sale Requirements.** Inclusionary units in ownership projects shall be sold as set forth below:

1. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price.
2. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.
3. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City, which are in effect at the time the units are offered for sale by the developer.

**B. Right of First Refusal and Purchaser Preference.**

1. The applicant for a project other than a limited equity housing cooperative is required to give right of first refusal to purchase any or all new inclusionary units to the City or a City designee for a period of not less than 60 days as evidenced by issuance of a certificate of occupancy.
2. Should the City choose not to exercise its right of first refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days.
  - a. If the list is not provided, the applicant may select a low-income purchaser of the applicant's choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter.

- b. The City shall maintain a list of eligible low-income households and review the assets and incomes of prospective purchasers of the inclusionary units on a project-by-project basis and refer potential purchasers to the applicant or owner.
  3. All purchasers of inclusionary units shall be first-time home buyers from low, lower, or very low-income households.
  4. Purchasers are also required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a low, lower, or very low-income household at a rent affordable by such households.
  5. Preference of inclusionary units are as follows:
    - a. First preference will be given to eligible Berkeley residents.
    - b. Second preference will be given to eligible persons employed in Berkeley.
    - c. Other preferences may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.
  6. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units and shall provide purchasers with a Declaration of Restrictions applicable to ownership of inclusionary units.
  7. Purchasers of inclusionary units in limited equity cooperatives at time of first occupancy shall be first time home buyers with gross incomes no greater than 120 percent of the Oakland PMSA median.
  8. Subsequent purchasers of inclusionary units in limited equity cooperatives shall be first time home buyers whose yearly gross income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income is no more than 110 percent of the Oakland PMSA median.
- C. **Resale Restrictions.** All inclusionary units developed under this chapter except for those in limited equity cooperatives are subject to the resale restrictions set forth below.
1. Home ownership inclusionary units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell.
  2. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for:

- a. The lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA; or
  - b. The increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA.
3. The resale formula shall supersede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006.
    - a. The City, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section.
    - b. All other terms and conditions of these deed restrictions shall remain in effect.
  4. If the City does not act on its right of first refusal, the same procedure for new inclusionary units shall be used for selection of a purchaser.
  5. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.
  6. The City or its designee may monitor resale of inclusionary units in limited equity cooperatives.
  7. The City or its designee shall monitor the resale of ownership of inclusionary units.
  8. The owners of any inclusionary units shall attach, lawfully reference in the grant deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms may be prosecuted by the City.

**23.328.070 – Special Requirements for Avenues Plan Area**

- A. **City Council Findings.** The City Council finds and determines that:
  1. The Avenues Plan process identified several regional and Berkeley-specific barriers to housing development.
  2. Among the Berkeley-specific barriers were:
    - a. High land prices;
    - b. Lengthy, difficult, and uncertain permit processes; and
    - c. Insufficient financing, especially for affordable housing projects.

3. The Avenues Plan area represents a core area of Berkeley where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services, and retail stores.
4. The policy to encourage housing in this area is reflected in several documents, including, but not limited to, the City's Housing Element of the General Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan, and the University Avenue statement of planning of goals.
5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area.
6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate.
7. These changes will also assist the buyer of below market rate inclusionary units, by allowing buyers to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of inclusionary units.
8. The changes will also encourage the construction of larger family-sized units, rather than the smaller units which have generally been built in multi-family developments.
9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes.
10. The success of these changes will be reviewed annually until the five-year time period of the Avenues Plan experiment expires July 1, 2000.

**B. Applicability.**

1. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.
2. This section applies on the streets and the addresses listed in Table 23.328-1. The area of applicability consists of the entire C-DMU District and portions of the C-C, C-U, C-SA, C-W, C-N, R-2A, R-3, and R-4 districts as indicated in the table. Within this area, this section supersedes any inconsistent provisions in this chapter.

TABLE 23.328-1: AVENUE AREAS PLAN AREA: STREET AND ADDRESS RANGE

| Street          | Address                                                      |
|-----------------|--------------------------------------------------------------|
| Acton           | 1940-2100                                                    |
| Addison         | 841-1145 odd, 1846 up                                        |
| Adeline         | All                                                          |
| Alcatraz Avenue | 1700-1937                                                    |
| Allston Way     | 1901-1999 odd, 2000 up                                       |
| Ashby Avenue    | 1830-2117, 2118-2198 even                                    |
| Bancroft Way    | 2000-2300                                                    |
| Berkeley Square | All                                                          |
| Berkeley Way    | 1200-1800 even only, 1800-1920, 1920-2000 even only, 2000 up |
| Blake           | 1800-2100                                                    |
| Bonar           | 2000-2099                                                    |
| Bonita          | 1900-1950 even, 1950-1999                                    |
| Browning        | portion of West Campus only                                  |
| California      | 1950-2009                                                    |
| Carleton        | 2000-2117                                                    |
| Center          | All                                                          |
| Channing Way    | 1800-1850 even, 2000-2200, 2200-2300 odd                     |
| Cowper          | All                                                          |
| Chestnut        | 1910-1950 even, 1950 up                                      |
| Curtis          | 1900-2100, portion BUSD                                      |
| Delaware        | 1041-1112, 2000-2200 even                                    |
| Derby           | 2000-2113                                                    |
| Dover           | All                                                          |
| Durant Avenue   | 2000-2300                                                    |
| Dwight Way      | 1800-1850 even, 1850-2200                                    |
| Ellis           | 3124-3320 odd                                                |
| Emerson         | 2000-2111                                                    |
| Essex           | 1901-2106                                                    |
| Fairview        | 1750 up                                                      |

| Street                     | Address                                                                |
|----------------------------|------------------------------------------------------------------------|
| Fulton                     | 2200-2400, 2400-2606 even                                              |
| Grant                      | 1800-1900 odd, 1900-2050, 2501-2599 odd                                |
| Harold Way                 | All                                                                    |
| Harmon                     | 1750 up                                                                |
| Harper                     | 2901-3123 odd                                                          |
| Haste                      | 1900-1998 even, 2000-2200                                              |
| Hearst                     | 1032-1200, 1800-2000 even, 2000-2200                                   |
| Henry                      | 1900 up                                                                |
| Jefferson Avenue           | 2000-2050                                                              |
| King                       | 3221 up, odd                                                           |
| Kittredge                  | All                                                                    |
| Martin Luther King Jr. Way | 1900-2050, 2051-2199 odd, 2400-2450 even, 2450-2600, 2900 up           |
| McGee Avenue               | 1900-2050                                                              |
| McKinley Avenue            | 2400-2500 odd                                                          |
| Milvia                     | 1800-1950 odd, 1950-2199, 2200-2450 odd, 2450-2550, 2550-2900 odd only |
| Newbury                    | All                                                                    |
| Oregon                     | 2000-2122                                                              |
| Otis                       | All                                                                    |
| Oxford                     | 1800-2200                                                              |
| Parker                     | 1800-1998 even, 2000-2200                                              |
| Prince                     | 1830-2105                                                              |
| Russell                    | 1820-2000 even, 2000-2117                                              |
| Sacramento                 | 1900-2000, 2050-2100 even                                              |
| San Pablo Avenue           | 1800-2199                                                              |
| Shattuck Avenue            | 1800 up                                                                |
| Shattuck Square            | All                                                                    |
| Stuart                     | 2100-2107                                                              |
| Tremont                    | All                                                                    |
| University Avenue          | 840 up                                                                 |

| Street  | Address   |
|---------|-----------|
| Walnut  | 1800 up   |
| West    | 1950-1999 |
| Whitney | All       |
| Woolsey | 1750-2110 |
| 6th     | 1916-2099 |
| 7th     | 1912-2099 |
| 8th     | 1910-2099 |
| 9th     | 1910-2099 |
| 10th    | 1908-2099 |
| 62nd    | 1700 up   |
| 63rd    | 1700 up   |

**C. Definitions.** For purposes of this section, the following definitions apply:

1. "Project" means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned, or controlled lots, regardless of whether those units are all built simultaneously.
2. "Affordable family-sized unit" means a unit which:
  - a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;
  - b. Contains at least two lawful bedrooms;
  - c. Contains at least as many bathrooms as the corresponding two-bedroom market rate units; and
  - d. Is sold at a price that is affordable to an appropriate sized household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

**D. Number of Inclusionary Units Required.**

1. The number of inclusionary units required are shown in the Table 23.328-2.

**TABLE 23.328-2: NUMBER OF INCLUSIONARY UNITS REQUIRED**

| Total Number of Units Built | Number of Required Inclusionary Units |
|-----------------------------|---------------------------------------|
| 10-14                       | 1                                     |
| 15-19                       | 2                                     |



| Total Number of Units Built         | Number of Required Inclusionary Units |
|-------------------------------------|---------------------------------------|
| Each additional multiple of 5 units | 1 additional                          |

2. For every five units which the applicant can show with bona fide sales documents have been sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median, the applicant is released of the obligation to provide one inclusionary unit.
3. For every 10 affordable family-sized units, the applicant is released of the obligation to provide one inclusionary unit sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median.
4. Within the area of applicability for that portion of a project wherein both the inclusionary and the non-inclusionary units contain at least as many bathrooms as the corresponding two-bedroom market rate units, only 10 percent of units must be inclusionary.

#### E. Pricing Requirements.

1. The first inclusionary unit in projects with units for sale shall be sold at a price that is affordable to an appropriately sized household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD.
2. Except as otherwise provided in Section 23.328.070.C.2.d above, the second inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 100 percent of the PMSA median and subsequent inclusionary units shall be sold alternately at these price levels.
3. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a household of appropriate size with an income at the targeted level shall not exceed 33 percent of income.
4. This cost shall be calculated assuming that the buyer makes a 10 percent down payment, which shall not be considered a portion of the cost.
5. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the California Department of Real Estate and shall not be changed after that time for that project, regardless of future changes in cost.
6. The resale price of inclusionary units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for all urban consumers (CPI-U) applicable to the metropolitan area.

**23.328.080 – Administrative Regulations**

The City Manager or the City Manager’s designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to ensure that the required low income and very low income dwelling units are provided and occupied by low income households.

**23.328.090 – Fees**

The City Council, by resolution, may establish fees for the administration of this chapter.

## 23.330 DENSITY BONUS

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### Sections:

- 23.330.010– Chapter Purpose
- 23.330.020– Definitions
- 23.330.030– Application Requirements
- 23.330.040– Density Bonus Calculations and Procedures
- 23.330.050– Incentives and Concessions
- 23.330.060– Waivers and Reductions
- 23.330.070– Qualifying Units
- 23.330.080– Regulatory Agreements

### 23.330.010 – Chapter Purpose

The purpose of this chapter is to:

- A. Establish procedures and local standards to implement California Government Code Sections 65915–65918 consistent with local zoning regulations and development standards; and
- B. Provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this chapter are to the California Government Code.

### 23.330.020 – Definitions

- A. **Terms Defined.** Terms used in this chapter are defined as follows:
  1. **Administrative Regulations.** Guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
  2. **Base Project.** The maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.
  3. **Density Bonus.** Those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Government Code Section 65915 and this chapter.
  4. **Eligible Housing Development.** As defined in Government Code Section 65917.2.
  5. **Housing Development.** As defined in Government Code Section 65915(i).
  6. **Incentive and Concession.** An incentive or a concession as the terms are used in Government Code Section 65915 and in particular as defined in Section

65915(k) thereof. The City may request reasonable documentation from the applicant to support the request.

7. **Qualifying Unit.** A unit that is provided at a below market-rate rent or sales price as set forth in Government Code Section 65915 to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
8. **Waiver and Reduction.** A waiver or a reduction as the terms are used in Government Code Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e). The City may request reasonable documentation from the applicant to support the request.

B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### **23.330.030 – Application Requirements**

- A. **Required Information.** In addition to any other information required by the Zoning Ordinance, an application for a density bonus must include the following information:
  1. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.
  2. For those districts without density standards, a density bonus schematic as set forth in the City of Berkeley Administrative Regulations.
  3. The requested density bonus pursuant to Municipal Code Section 23.330.040 (Density Bonus Calculations and Procedures).
  4. Any waivers and reductions that are sought under Section 65915.e that would be required to accommodate the housing development including the density bonus units.
  5. Any incentives and concessions that are sought under Section 65915.d accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
  6. Any requested additional bonus units under Section 65915.n.
  7. Any requested parking reductions under Section 65915.p.
  8. Whether the applicant elects to receive a density bonus that is less than that mandated by Section 65915, including a density bonus of zero. In such cases, the applicant retains their entitlement to incentives and concessions.

9. Documentation of how a project complies with regulations regarding replacement units as described in Section 65915.c.3.

B. **Documentation Supporting Requests.** The City may request reasonable documentation from the applicant to support requested waivers/reductions and incentives/concessions.

### **23.330.040 – Density Bonus Calculations and Procedures**

A. **Calculation.** Density bonuses must be calculated as set forth in Section 65915, 65917.2, and pursuant to the Administrative Regulations.

B. **Procedures.** Density bonus requests must accompany housing development permit applications and will be decided upon concurrent with the underlying permit for the project.

### **23.330.050 – Incentives and Concessions**

A. **Calculation.** For purposes of this chapter, the number of incentives and concessions are counted as follows:

1. Any incentive and concession that would otherwise require discretionary approval by the Zoning Officer, the ZAB, or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
2. A proposed incentive and concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one permit (e.g., extra height may require permits for height, floor area ratio, and/or number of stories but would count as one incentive and concession for height).
3. Where it is ambiguous as to whether a proposed incentive and concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation applies, as determined by the review authority.

B. **Procedural Requirements.**

1. The City shall grant incentives and concession unless findings are made as set forth in Section 65915d.1.
2. The City is not required to deny a proposed incentive and concession solely because it can make a finding under Section 65915.d.1.
3. The City bears the burden of proof for the denial of a requested incentive and concession.

4. Unless denied under Section 65915, incentives and concessions are exempt from discretionary review of permits under the Zoning Ordinance, other than Design Review, and by law do not modify the CEQA review status of a project.

#### **23.330.060 – Waivers and Reductions**

- A. **Proposal.** An applicant may submit to the City a proposal for waivers and reductions of development standards that physically prevent construction of a housing development and density bonus units meeting the criteria of Section 65915.b.
- B. **Negotiated Process.** The City may negotiate changes to the requested waivers and reductions as part of the Use Permit and Design Review process, in coordination with the applicant, to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance, and Design Guidelines.
- C. **Denial.** The City may deny waivers and reductions for the reasons set forth in Section 65915.e.1.

#### **23.330.070 – Qualifying Units**

Qualifying units must meet the standards set forth in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

#### **23.330.080 – Regulatory Agreements**

Before issuance of a certificate of occupancy for a housing development that has received a density bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections 65915–65918 and this chapter.

## 23.332 WIRELESS COMMUNICATION FACILITIES

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### Sections:

- 23.332.010– Chapter Purpose and Applicability
- 23.332.020– Definitions
- 23.332.030– General Requirements
- 23.332.040– Minimum Application Requirements
- 23.332.050– Location Requirements
- 23.332.060– Height Requirements
- 23.332.070– Design Requirements
- 23.332.080– Operation and Maintenance Standards
- 23.332.090– Public Information Requirements
- 23.332.100– Certification Requirements
- 23.332.110– Permits and Findings Required for Approval
- 23.332.120– Cessation of Operations

### 23.332.010 – Chapter Purpose and Applicability

#### A. Purpose. The purpose of this chapter is to:

1. Provide a uniform and comprehensive set of standards for the development, siting, installation, and operation of wireless telecommunications antennas and related facilities (“wireless telecommunications facilities”) for personal wireless services;
2. Foster an aesthetically pleasing urban environment, prevent visual blight, protect and preserve public safety and general welfare, and maintain the character of residential areas, including those adjacent to commercial areas and neighborhood commercial areas, consistent with the General Plan and adopted area plans and in compliance with applicable state and federal legislation; and
3. Prevent the location of wireless telecommunications facilities in Residential Districts unless:
  - a. The City is required to permit them in such locations to avoid violating the Telecommunications Act of 1996.
  - b. The wireless telecommunications facilities are designed to interfere as little as possible with the character of the neighborhood.
4. Establish and maintain telecommunications facilities that are components of a wireless telecommunications infrastructure designed to enhance the City’s emergency response network and not interfere with such emergency systems in violation of applicable federal or state regulations.
5. Establish a process for obtaining necessary permits for wireless telecommunication facilities that provides greater certainty to both applicants and

interested members of the public while ensuring compliance with all applicable zoning requirements.

6. Provide opportunities for further reduction in potential aesthetic or land use impacts of wireless telecommunications facilities as changes in technology occur.
7. Support the use of personal wireless services to enhance personal and public health and safety as well as the public welfare of Berkeley.

B. **Applicability.** The regulations in this chapter apply to all wireless telecommunications facilities for personal wireless services on property other than the public right-of-way in Berkeley.

### 23.332.020 – Definitions

A. **Terms Defined.** Terms used in this chapter are defined as follows:

1. **Antenna.** Any system of wires, poles, rods, panels, whips, cylinders, reflecting discs, or similar devices used for transmitting or receiving electromagnetic waves when such system is either external to or attached to the exterior of a structure, or is portable or movable. "Antenna" includes devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.
2. **Antenna - Facade Mounted (also known as Building Mounted).** Any antenna, directly attached or affixed to the elevation of a building, tank, tower, or other structure.
3. **Antenna - Ground Mounted.** Any antenna with its base, whether consisting of single or multiple posts, placed directly on the ground or a single mast less than 15 feet tall and 6 inches in diameter.
4. **Antenna - Parabolic (also known as Satellite Dish Antenna).** Any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit or receive electromagnetic or radio frequency communication/signals in a specific directional pattern.
5. **Approved Engineer.** Radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies approved by City of Berkeley staff to conduct analysis required pursuant to this chapter.
6. **Co-Location.** Location of any telecommunication facility owned or operated by a different telecommunication service provider on the same tower, building, or property.



7. **Personal Wireless Services.** Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996.
8. **Readily Visible.** A wireless telecommunications facility is readily visible if it can be seen from street level or from the main living area of a legal residence in a residential district or from a public park by a person with normal vision, and distinguished as an antenna or other component of a wireless telecommunication facility, due to the fact that it stands out as a prominent feature of the landscape, protrudes above or out from the building or structure ridgeline, or is otherwise not sufficiently camouflaged or designed to be compatible with the appurtenant architecture or building materials. For purposes of this definition, "main living area" means the living and dining and similar areas of a dwelling, but not bedrooms, bathrooms or similar areas.
9. **Stealth Facility.** Any wireless telecommunications facility that is not readily visible because it has been designed to blend into the surrounding environment and is visually unobtrusive. Examples may include architecturally screened roof-mounted antennas, building-mounted antennas that are painted and treated as architectural element to blend with the existing building, monopoles that are disguised as flag poles or public art, or camouflaged using existing vegetation. A pole or tower with antennas that are flush with or do not protrude above or out from the pole or antenna is not considered to be a stealth facility unless the pole or tower is an existing pole or tower, existing utility pole or tower, or existing light standard or street light, or replacement thereof.
10. **Structure Ridgeline.** The line along the top of an existing roof or top of a structure, including existing parapets, penthouses, or mechanical equipment screens.
11. **Telecommunications.** The transmission, between or among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received as defined in the Telecommunications Act of 1996.
12. **Telecommunications Equipment.** Equipment, other than customer premises equipment, used by a Telecommunications Carrier to provide Telecommunications Services, and includes software integral to such equipment (including upgrades) that is not located, in whole or in part, in, above, or below Streets, Public Rights- of-Way or other Public Property.
13. **Telecommunications Service.** The offering of telecommunications for a fee directly or indirectly to any Person as defined in the Telecommunications Act of 1996.
14. **Telecommunications Tower.** Any mast, pole, monopole, lattice tower, or other structure designed and primarily used to support antennas. A ground or building

mounted mast greater than 15 feet tall and 6 inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a telecommunications tower.

**15. Wireless Telecommunications Facilities.** Personal wireless service facilities as defined in the Telecommunications Act of 1996, including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio towers, television towers, and government-operated public safety networks.

**B. Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### **23.332.030 – General Requirements**

- A. In addition to any other requirements imposed by this chapter, all wireless telecommunications facilities on property other than the public right-of-way in Berkeley shall be consistent with the following:
- B. The General Plan, adopted area plans, and all other applicable provisions of the Zoning Ordinance.
- C. Applicable regulations and standards of any other governmental agency with jurisdiction over the installation or operation of wireless telecommunications facilities including, but not limited to, the Federal Communications Commission, the Federal Aviation Administration, and the California Public Utilities Commission.
- D. Any applicable discretionary permit affecting the subject property, except to the extent the Zoning Officer or Zoning Adjustments Board (ZAB) may modify such requirements.

### **23.332.040 – Minimum Application Requirements**

- A. **Section Purpose.** This section establishes limited additional application submittal requirements for wireless telecommunications facilities. The purpose of these requirements is to ensure that the purposes of this chapter are implemented to the extent permitted by the Telecommunications Act of 1996.

B. **Application Requirements.** In addition to meeting the standard application submittal requirements for permits shown in Chapter 23.404 (Common Permit Requirements), wireless telecommunication facility applications required this chapter shall include the following information:

1. **Coverage Map and General Information.**

- a. A narrative description and map showing the coverage area of the provider's existing facilities that serve customers in Berkeley and the specific site that is the subject of the application.
- b. A statement of the telecommunications objectives sought for the proposed location, whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area, whether it is the least intrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service.
- c. An AUP application need not include information as to whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area.

2. **Technical Information.**

- a. Copies of or a sworn statement by an authorized representative that the applicant holds all applicable licenses or other approvals to construct the proposed facility required by the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any other agency of the Federal or State government with authority to regulate telecommunications facilities.
- b. Documentation of or a sworn statement by an authorized representative that the applicant is in compliance with all conditions imposed in conjunction with such licenses or approvals, a description of the number, type, power rating, frequency range, and dimensions of antennas, equipment cabinets, and related wireless telecommunications facilities proposed to be installed, and engineering calculations demonstrating that the proposed facility will comply with all applicable FCC requirements and standards.

3. **Visibility.**

- a. A site plan, plans, and elevations drawn to scale.
  - i. Plans shall include microcell, facade- or roof-mounted antennas, and all related equipment.
  - ii. Elevations shall include all structures on which facilities are proposed to be located.

- b. A description of the proposed approach for screening or camouflaging all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials, and colors, and an explanation of the measures by which the proposed facility will be camouflaged or made not readily visible.
- c. Where any part of the proposed facility would be readily visible, the application shall include an explanation as to why it cannot be screened from view.
- d. A visual impact analysis including scaled elevation diagrams within the context of the building, before and after photo simulations, and a map depicting where the photos were taken.
- e. The Zoning Officer may require the submission of photo overlays, scaled models, renderings, or mockups to document the effectiveness of techniques proposed to minimize visibility.
- f. If a ground-mounted or freestanding tower is proposed, the application must include an explanation as to why other facility types are not feasible.

**4. Peer Review.**

- a. The application shall include sufficient information for an approved radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies (“approved engineer”) retained by the City to peer review the information provided in response to Sections 23.322.040.B.2 and 3.
  - b. The application shall include an agreement to pay the reasonable actual cost and a reasonable administrative fee for hiring an approved engineer to provide peer review.
  - c. Any proprietary information disclosed to the City or its engineer in confidence shall not be a public record and shall remain confidential and not be disclosed to any third party without the express consent of the applicant.
  - d. The City and/or its engineer shall return all proprietary information to the applicant and shall not retain any copies of such information once its decision is final.
- 5. Monitoring.** An agreement to pay a reasonable one-time or annual fee for independent monitoring as required by this chapter.
- 6. Statement of Financial Assurances.** A statement that before obtaining a building permit to erect or install the proposed facility, the applicant shall either secure a bond or provide financial assurances, in a form acceptable to the City Manager, for the removal of the facility if that its use is abandoned or the approval is otherwise terminated.

7. **Noise.** The Zoning Officer may require information concerning noise that might be generated by equipment associated with a wireless telecommunication facility, such as air conditioning equipment, if the physical circumstances of the proposed facility suggest that such noise may be detrimental.

### **23.332.050 – Location Requirements**

- A. **Visibility.** A wireless communications facility may not be sited on or above a ridgeline or at any other location readily visible from a public park, unless ZAB makes the applicable findings required in Section 23.332.110.E (Findings).
- B. **Distance Between Freestanding Facilities.** A new freestanding facility, including towers, lattice towers, and monopoles, may not be located within 1,000 feet of another freestanding facility, unless appropriate stealth techniques have been used to minimize the visual impact of the facility to the extent feasible, and mounting on a building or co-location on an existing pole or tower is not feasible.

### **23.332.060 – Height Requirements**

#### **A. Measurement.**

1. The height of a telecommunications tower is measured from existing grade below the center of the base of the tower to either:
  - a. The top of the tower; or
  - b. The tip of the highest antenna or piece of attached equipment if taller than the tower
2. The height of building-mounted antennas includes the height of that portion of the building on which the antenna is mounted.
3. In the case of “crank-up” or similar towers whose height is adjustable, the height of the tower is the maximum height to which it is capable of being raised.

#### **B. Conformance with District Requirements.**

1. No antenna telecommunications tower or facade-mounted antenna shall exceed or project above the height limits specified for the district in which the antenna is located.
2. Roof-mounted antennas affixed to an existing or proposed tower or pole shall not extend or project more than 15 feet above the height limit of the district.

### **23.332.070 – Design Requirements**

In addition to all other requirements set forth in this chapter, all wireless telecommunication facilities shall meet the design requirements in this section.

A. **Order of Preference of Facility Type.** Based on potential aesthetic impact, the order of preference for facility type is as follows (ordered from most preferred to least preferred): microcell, facade-mounted, roof-mounted, ground-mounted, and freestanding tower.

B. **Visibility.**

1. All facilities shall be designed and located to minimize their visibility to the greatest extent feasible, considering technological requirements, by placement, screening, and camouflage.
2. The applicant shall use the smallest and least visible antennas feasible to accomplish the owner/operator's coverage or capacity objectives.
3. A wireless telecommunications facility that would be readily visible from the public right-of-way or from the habitable living areas of residential units within 100 feet of the facility shall incorporate appropriate techniques to camouflage or disguise the facility, and/or blend it into the surrounding environment, to the greatest extent feasible.
4. Facilities shall be compatible in scale and integrated architecturally with the design of surrounding buildings or the natural setting.

C. **Location.**

1. **View Corridor Impacts.** No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor except as provided for in Subsection (3) below.
2. **Facilities in Setbacks and Between Buildings and Rights-of-Way.** If telecommunications antenna or ancillary support equipment is located within any required setback or between the face of a building and a public right-of-way, permits are required as follows:
  - a. An AUP is required for microcell facilities and facilities that are completely subterranean.
  - b. A Use Permit is required for all other facilities.
3. **Roof- and Ground-Mounted Antennas.**
  - a. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized.
  - b. Roof-mounted and ground-mounted antennas shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas unless the Zoning Officer or ZAB finds that the facility incorporates appropriate, creative stealth techniques to camouflage, disguise, and/or blend into the surrounding environment to the extent feasible.

- c. Roof mounted antennas shall be designed and sited to minimize their visibility and shall be no taller than necessary to meet the operator's service requirements.
- d. Where roof-mounted antennas are readily visible, confirmation of necessary height for service requirements, at the Zoning Officer's discretion, shall be based on independent analysis by an approved engineer retained by the City.

**4. Satellite Dish or Parabolic Antennas.**

- a. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- b. When screened from pedestrian-level view from the public right-of-way and not readily visible from any property that contains a legally established residential use, satellite dish or parabolic antennas may be located in any required setback area subject to the approval of a Use Permit.
- c. No satellite dish or parabolic antenna may exceed 39 inches in diameter unless the Zoning Officer or ZAB finds that a smaller antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible. The Zoning Officer may require that this determination be based on independent technical analysis by an approved engineer.

**5. Monopoles and Lattice Towers.** All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation unless a higher monopole or lattice tower will facilitate co-location or other objectives of this chapter.

**D. Colors and Materials.**

- 1. Colors and materials for facilities shall be chosen to minimize visibility.
- 2. All visible exterior surfaces shall be constructed of non-reflective materials.
- 3. Facilities shall be painted or textured using colors to match or blend with the primary background.

**E. Lighting.**

- 1. Facility lighting shall be designed to meet but not exceed minimum requirements for security, safety, or FAA regulations, and in all instances shall be designed to avoid glare and minimize illumination on adjacent properties.
- 2. Lightning arresters and beacon lights shall not be included in the design of facilities unless required by the FAA.
- 3. Lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers, and monopoles.

F. **Advertising.** No advertising shall be placed on telecommunications antennas or other equipment.

G. **Facility Design.**

1. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight, or attractive nuisances.
2. The Zoning Officer or ZAB may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, antenna facilities have the potential to become an attractive nuisance.
3. The design of the fencing and other access control devices is subject to Design Review.

H. **Landscaping.**

1. Where appropriate and directly related to the applicant's placement, construction, or modification of wireless telecommunications facilities, the applicant shall maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, when used for screening unless appropriate replacement landscaping is approved through the Design Review process.
2. Additional landscaping shall be planted as needed to minimize the visual impact of the facility and, when feasible, to block the line of sight between facilities and adjacent residential uses and properties in a residential district.
3. The appropriate minimum size of new trees and shrubs shall be approved through the Design Review process.

I. **Projection of Equipment.** Facade-mounted equipment, not including any required screening, shall not project more than 18 inches from the face of the building or other support structure unless specifically authorized by the Zoning Officer or ZAB.

J. **Ancillary Support Equipment.**

1. In order of preference, ancillary support equipment for facilities shall be located either within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the public right-of-way, unless the Zoning Officer or ZAB finds that another location is preferable under the circumstances of the application.
2. Above ground and partially buried ancillary equipment, including support pads, cabinets, shelters, and buildings, shall be located where they will be the least visible from surrounding properties and the public right-of-way. Such equipment shall be designed to be architecturally compatible with surrounding structures and/or screened using appropriate techniques to camouflage, disguise, and/or



blend into the environment including landscaping, color, and other techniques to minimize their visual impact.

3. If the Zoning Officer determines that an equipment cabinet is not or cannot be adequately screened from surrounding properties or from public view or architecturally treated to blend in with the environment, the equipment cabinet shall be placed underground or inside the existing building where the antenna is located unless the Zoning Officer or ZAB finds that such placement is not feasible or consistent with the objectives of this chapter and other applicable requirements.

**K. Co-Located Antennas.**

1. When antennas are co-located, the City may limit the number of antennas with related equipment and providers located on a site and adjacent sites to prevent negative visual impacts associated with multiple facilities.
2. Architectural and other camouflaging treatment shall be coordinated between all users on a site.

**L. Parking.** Proposed facilities shall not reduce the number of available parking spaces below the amount required by the Zoning Ordinance.

**M. Effect of Modification.** At the time of modification or upgrade of facilities, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual and noise impacts as feasible.

**23.332.080 – Operation and Maintenance Standards**

All wireless telecommunication facilities shall at all times comply with the following operation and maintenance standards. Failure to comply shall be considered a violation of conditions of approval subject to the enforcement provisions in this chapter.

**A. Emergency Sign Required.**

1. Each owner or operator of a wireless telecommunications facility shall provide signage identifying the name and phone number of a party to contact in event of an emergency.
2. The design, materials, colors, and location of signs is subject to Design Review.
3. Contact information must be kept current.

**B. Maintenance and Repair.**

1. Wireless telecommunications facilities and related equipment shall be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism.
2. Damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight.

3. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than 48 hours from the time of notification by the City.
4. Vehicle and personnel access to sites for maintenance and repairs shall not be from residential streets or adjacent residential properties to the maximum extent feasible.

**C. Landscaping.**

1. The owner or operator of a wireless telecommunications facility shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan.
2. Amendments or modifications to the landscape plan must be submitted to the Zoning Officer for approval.

**D. Operation Standards.**

1. Each wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas.
2. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays.
3. All air conditioning units and any other equipment that may emit noise audible from beyond the property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under Chapter 13.40 (Community Noise).
4. Backup generators shall only be operated during periods of power outages or for testing.
5. At no time shall equipment noise from any source exceed the standards shown in Chapter 13.40 (Community Noise).

**E. Facilities Providing Service to the Government or General Public.** All wireless telecommunications facilities providing service to the government or the general public shall be designed to meet the following requirements:

1. The exterior walls and roof covering of all above ground equipment shelters and cabinets shall be constructed of materials rated as nonflammable.
2. Openings in all above ground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the greatest extent feasible.
3. Material used as supports for antennas shall be fire resistant, termite proof, and comply with all applicable regulations.

4. Telecommunications antenna towers shall be designed to withstand forces expected during earthquakes to the extent feasible.
  - a. Building-mounted facilities shall be anchored so that an earthquake does not dislodge them or tip them over.
  - b. All equipment mounting racks and attached equipment shall be anchored so that an earthquake would not tip them over, throw equipment off their shelves, or otherwise damage equipment.
  - c. All connections between various components of the wireless telecommunications facility and necessary power and telephone lines shall, to the greatest extent feasible, be protected against damage by fire, flooding, and earthquake.
5. Reasonable measures shall be taken to keep wireless telecommunication facilities in operation in the event of a natural disaster.

#### **23.332.090 – Public Information Requirements**

- A. **Map and Inventory.** The Planning and Development Department shall maintain a map and inventory of all existing and proposed wireless telecommunication sites, which shall be available to members of the public and other interested parties for inspection.
- B. **Inventory Information.** The inventory shall, at a minimum, include the following information:
  1. Address of site.
  2. Number, type, power rating, and frequency range of all antennas at the site.
  3. Name of telecommunications carrier owning, operating, or leasing each antenna at the site.
  4. Date of most recent certification.

#### **23.332.100 – Certification Requirements**

- A. **General.**
  1. No wireless telecommunications facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters.
  2. To ensure continuing compliance with all applicable emission standards, all wireless telecommunications facilities shall submit reports as required by this section.

3. The City may require, at the operator's expense, independent verification of the results of any analysis.
4. If an operator of a telecommunications facility fails to supply the required reports or fails to correct a violation of the FCC standard following notification, the Use Permit or AUP is subject to modification or revocation by the ZAB following a public hearing.

**B. All Facilities.**

1. Within 45 days of initial operation or modification of a telecommunications facility, the operator of each telecommunications antenna shall submit to the Zoning Officer written certification by a licensed professional engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions.
  - a. The engineer shall measure the radio frequency radiation of the approved facility, including the cumulative impact from other nearby facilities, and determine if it meets the FCC requirements.
  - b. A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Zoning Officer.
  - c. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility complies with, or has been modified to comply with, this standard.
  - d. Proof of compliance shall be a certification provided by the engineer who prepared the original report.
  - e. The City may require, at the applicant's expense, independent verification of the results of the analysis.
2. Before January 31 of every year, an authorized representative for each wireless carrier providing service in the City shall provide written certification to the City that each facility is being operated in accordance with the approved local and federal permits and shall provide the current contact information.
3. Once every two years, at the operator's expense, the City may conduct or retain an approved engineer to conduct an unannounced spot check of the facility's compliance with applicable FCC radio frequency standards.
4. If there is a change in the FCC's MPE limits for electric and magnetic field strength and power density for transmitters, the operator of each wireless telecommunications facility shall submit to the Zoning Officer written certification by a licensed professional engineer of compliance with applicable FCC radio frequency standards within 90 days of any change in applicable FCC radio

frequency standards or of any modification of the facility requiring a new submission to the FCC to determine compliance with emission standards.

5. If calculated levels exceed 50 percent of the FCC's MPE limits, the operator of the facility shall hire an approved engineer to measure the actual exposure levels.
6. If calculated levels are not in compliance with the FCC's MPE limit, the operator shall cease operation of the facility until the facility is brought into compliance with the FCC's standards and all other applicable requirements.
7. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with the current MPE limits shall be submitted to the Zoning Officer.
8. If the Zoning Officer at any time finds that there is good cause to believe that a telecommunications antenna does not comply with applicable FCC radio frequency standards, the Zoning Officer may require the operator to submit written certification that the facility is in compliance with such FCC standards.

**C. Facilities Approved Before 2002.**

1. The owner or operator of a wireless telecommunications facility that was approved by the City before January 17, 2002, shall submit to the Zoning Officer, within six months from the date of notification, written certification by an engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions.
2. The engineer shall measure the radio frequency radiation of the approved facility, including cumulative impact from other nearby facilities, and determine if it meets the FCC requirements.
3. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility is brought into compliance.
4. To ensure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

**D. Nonconformities.**

1. Any facility that was approved by the City before January 17, 2002, and which does not comply with this chapter on the date of its adoption shall be considered a lawful nonconforming use; provided, that the owner or operator submits the information required in 23.332.100.C (Facilities Approved Before 2002).
2. Roof-mounted or facade-mounted antennas proposed on an existing building, tower, or pole that is legal nonconforming in terms of height shall not extend or project more than 15 feet above the existing height of the building or structure.

3. A lawful nonconforming personal wireless service facility is subject to the requirements of 23.324 (Nonconforming Uses, Structures, and Buildings) except to the extent that they are modified as allowed by this chapter.

**E. Violations.**

1. Failure to submit the information required in this section is considered a violation of the Zoning Ordinance.
2. Any facility found in violation may be ordered to terminate operations by the ZAB following a duly noticed public hearing.

**23.332.110 – Permits and Findings Required for Approval**

**A. Permit Required.**

1. All wireless telecommunications facilities in any district that require a Use Permit or an AUP are subject to the permit findings in this section and Chapter 23.406 (Specific Permit Requirements).
2. Required findings in Chapter 23.406—Specific Permit Requirements shall not be based on aesthetic impacts if the proposed facility would not be readily visible, or on any other matter that the City is prohibited from considering by the Telecommunications Act of 1996.

**B. Modifications.** The Zoning Officer may approve minor modifications and aesthetic upgrades that do not increase the size or visibility of any legally established wireless telecommunication facilities without notice or hearing, subject to compliance with all existing conditions of approval.

**C. Administrative Use Permit.** The following wireless telecommunications facilities require an AUP:

1. Microcell facilities in any district.
2. Modifications to existing sites in Non-Residential Districts.
3. Additions to existing sites in Non-Residential Districts when the site is not adjacent to a Residential District.
4. All new or modified wireless communication facilities in Manufacturing Districts.

**D. Use Permit.** All new or modified wireless telecommunications facilities not listed in Subsection C (Administrative Use Permit) above require a Use Permit except when otherwise required by Section Chapter 23.404.070– Permit Modifications or this chapter.

**E. Findings.** The ZAB or Zoning Officer may approve a Use Permit or AUP under this chapter only if it makes all of the following findings:

1. The proposed project is consistent with the general requirements of this chapter and any specific requirements applicable to the proposed facility.
  2. The proposed antenna or related facility, operating alone and in conjunction with other telecommunications facilities, will comply with all applicable state and federal standards and requirements.
  3. One of the following is true:
    - a. The proposed facility is not readily visible.
    - b. It is infeasible to incorporate additional measures that would make the facility not readily visible.
  4. Except for microcell facilities, the facility is necessary to prevent or fill a significant gap in coverage or capacity shortfall in the applicant's service area and is the least intrusive means of doing so.
  5. The wireless carrier complies with Paragraphs (1) and (2) of Subsection 23.332.090.B (All Facilities). If a wireless carrier has not complied with those sections, the wireless carrier may become compliant by providing current contact information and certification statements for any sites which are not current.
- F. **Basis for Findings.** All findings must be based on substantial information in the record such as, where required, technical analysis by an approved radio frequency engineer, calculations by a state-licensed structural engineer, or other evidence.

### **23.332.120 – Cessation of Operations**

- A. **General.** Within 30 days of cessation of operations of any wireless telecommunications facility approved pursuant to this chapter, the operator shall notify the Zoning Officer in writing.
- B. **Lapse of Permit.** The wireless telecommunications facility permit shall be deemed lapsed and of no further effect six months thereafter unless one of the following is true.
  1. The Zoning Officer has determined that the same operator resumed operation within six months of the notice.
  2. The City has received an application to transfer the permit to another operator.
- C. **Effect of Lapse.**
  1. No later than 30 days after a permit has lapsed, the operator shall remove all wireless telecommunication facilities from the site.
  2. If the operator fails to do so, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of Section 23.332.050– Location Requirements to do so.

3. If such facilities are not removed, the site shall be deemed to be a nuisance pursuant to Chapter 23.414—Nuisance Abatement and the City may call the bond to pay for removal.

D. **Failure to Inform.** Failure to inform the Zoning Officer of cessation of operations of any existing facility constitutes a violation of the Zoning Ordinance and shall be grounds for any or all of the following:

1. Prosecution.
2. Revocation or modification of the permit.
3. Calling of any bond or other assurance secured by the operator pursuant to the requirements of Section 23.332.050— Location Requirements.
4. Removal of the facilities.

E. **Transfer of Ownership.**

1. Any FCC-licensed telecommunications carrier that is buying, leasing, or considering a transfer of ownership of an already approved facility, shall provide written notification to the Zoning Officer and request transfer of the existing Use Permit.
2. The Zoning Officer may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing Use Permit and all of its conditions including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a state-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the FCC and the California PUC.
3. If the Zoning Officer determines that the proposed operation is not consistent with the existing Use Permit, they shall notify the applicant who may revise the application or apply for modification to the Use Permit pursuant to the requirements of Chapter 23.404—Common Permit Requirements.



## 23.334 TRANSPORTATION DEMAND MANAGEMENT

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### Sections:

23.334.010– Chapter Purpose

23.334.020– Applicability

23.334.030– Transportation Demand Management Program Requirements

23.334.040– Monitoring, Reporting and Compliance

### 23.334.010 – Chapter Purpose

- A. **Purpose.** The purpose of this chapter is to establish a Transportation Demand Management (TDM) Program that supports:
1. Transportation Element goals to reduce vehicle trips, encourage public transit use and promote bicycle and pedestrian safety, and
  2. Climate Action Plan goals to reduce private vehicle travel and promote mode shift to more sustainable transportation options.

### 23.334.020 – Applicability

#### A. Applicability.

1. The requirements of this chapter apply to residential projects with ten or more units, including residential portions of mixed-use projects.
2. For projects that add ten or more units to an existing building or property, the requirements of this chapter apply to all of the units (existing and new) on the property.
3. The following types of projects are exempt from the requirements of this chapter:
  - a. Projects for which a building permit was issued before March 19, 2021.
  - b. Residential projects, including the residential portion of mixed-use projects or projects that add units to an existing building or property, in the C-DMU district;
  - c. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions. If added to an existing building or property, the entire building or property is exempt.
4. Projects in the Southside Plan area are exempt from the transit benefit requirements in Section 23.334.030.B– Transportation Demand Management Program Requirements (Transit Benefit).

### 23.334.030 – Transportation Demand Management Program Requirements

- A. **Unbundled Parking.** Parking spaces provided for residents shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units.
- B. **Transit Benefit.**
  - 1. At least one of the following transit benefits shall be offered, at no cost, to project residents for a period of ten years after the issuance of a Certificate of Occupancy.
    - a. A monthly pass for unlimited local bus transit service; or
    - b. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
  - 2. For projects that include 99 dwelling units or fewer, the project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one transit benefit for every bedroom in each dwelling unit.
  - 3. A notice describing these transportation benefits shall be posted in a location or locations visible to residents.
- C. **Real-Time Transportation Information.** Any project subject to this chapter shall provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

### 23.334.040 – Monitoring, Reporting and Compliance

- A. **Site Inspection Before Certificate of Occupancy.** For projects subject to this chapter, before issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030.C– Transportation Demand Management Program Requirements (Real-Time Transportation Information) and 23.322.090– Bicycle Parking have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030.A (Unbundled Parking) and 23.334.030.B (Transit Benefit) will be implemented.
- B. **Regular TDM Compliance Reporting.** The property owner shall submit to the Planning Department TDM Compliance Reports in accordance with Administrative

Regulations promulgated by the Zoning Officer that may be modified from time to time to effectively implement this chapter.

- C. **Administrative Fees.** Property owners may be required to pay administrative fees associated with compliance with this chapter as set forth in the City's Land Use Planning Fees schedule.

## **DIVISION 4: PERMITS AND ADMINISTRATION**

### **23.402: Administrative Responsibility**

- 23.402.010– Purpose
- 23.402.020– Review and Decision-Making Authority
- 23.402.030– Planning and Development Department
- 23.402.040– Zoning Officer
- 23.402.050– Landmarks Preservation Commission
- 23.402.060– Design Review Committee
- 23.402.070– Zoning Adjustments Board
- 23.402.080– Planning Commission
- 23.402.090– City Council

### **23.404: Common Permit Requirements**

- 23.404.010– Purpose and Applicability
- 23.404.020– Application Submittal
- 23.404.030– Application Review
- 23.404.040– Public Notice
- 23.404.050– Public Hearings and Decisions
- 23.404.060– Post-Decision Provisions
- 23.404.070– Permit Modifications
- 23.404.080– Permit Revocation

### **23.406: Specific Permit Requirements**

- 23.406.010– Purpose
- 23.406.020– Zoning Certificates
- 23.406.030– Administrative Use Permits
- 23.406.040– Use Permits
- 23.406.050– Variances
- 23.406.060– Master Use Permits
- 23.406.070– Design Review
- 23.406.080– Modification of Development Standards in West Berkeley Plan Area
- 23.406.090– Reasonable Accommodations

### **23.408: Green Pathway**

- 23.408.010– Purpose
- 23.408.020– Applicability
- 23.408.030– Eligibility Determination
- 23.408.040– Green Pathway Application

- 23.408.050– General Requirements
- 23.408.060– Requirements for Large Buildings and Hotels
- 23.408.070– Development Standards
- 23.408.080– Streamlined Permitting Process
- 23.408.090– Tolling
- 23.408.100– Compliance
- 23.408.110– City Manager Authority to Issue Regulations

### **23.410: Appeals and Certification**

- 23.410.010– Chapter Purpose
- 23.410.020– Appeal Subjects and Jurisdiction
- 23.410.030– Filing and Processing of Appeals
- 23.410.040– Hearing and Decision
- 23.410.050– City Council Certifications

### **23.412: Zoning Ordinance Amendments**

- 23.412.010– Purpose
- 23.412.020– Initiation
- 23.412.030– Application
- 23.412.040– Planning Commission Hearing and Action
- 23.412.050– City Council Hearing and Action
- 23.412.060– Findings for Approval
- 23.412.070– Limitations on Resubmittals after Denial
- 23.412.080– Zoning Map Amendment Notations

### **23.414: Nuisance Abatement**

- 23.414.010– Purpose
- 23.414.020– Enforcement Responsibility
- 23.414.030– Violations a Misdemeanor
- 23.414.040– Nuisances Prohibited
- 23.414.050– City Attorney Action
- 23.414.060– Abatement Procedures
- 23.414.070– Statements of Violations
- 23.414.080– Remedies
- 23.414.090– Recovery of Costs
- 23.414.100– Private Right of Action

## 23.402 ADMINISTRATIVE RESPONSIBILITY

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### Sections:

- 23.402.010– Purpose
- 23.402.020– Review and Decision-Making Authority
- 23.402.030– Planning and Development Department
- 23.402.040– Zoning Officer
- 23.402.050– Landmarks Preservation Commission
- 23.402.060– Design Review Committee
- 23.402.070– Zoning Adjustments Board
- 23.402.080– Planning Commission
- 23.402.090– City Council

### 23.402.010 – Purpose

This chapter describes City roles and responsibilities when administrating the Zoning Ordinance.

### 23.402.020 – Review and Decision-Making Authority

- A. **Summary Table.** Table 23.402-1 summarizes the review and decision-making authority when processing permit applications and other requested approvals.
- B. **Meaning of Notations.** Authority roles as noted in Table 23.402-1 mean the following:
  1. “Evaluate” means the Department presents to the review authority an evaluation of the application as provided in Section 23.404.030.D (Project Evaluation and Staff Report).
  2. “Recommend” means the authority reviews and makes a recommendation to a higher decision-making body.
  3. “Decision” means the authority has the power to approve, conditionally approve, or deny an application.
  4. “Appeal” means the authority has the power to hear an appeal of a decision by a lower review authority.
  5. “–” means the authority role has no role in the application.

TABLE 23.402-1: REVIEW AND DECISION-MAKING AUTHORITY

| Type of Action                | Zoning Ordinance Location | Planning and Development Department | Role of Authority |                         |                                   |                          |                     |              |
|-------------------------------|---------------------------|-------------------------------------|-------------------|-------------------------|-----------------------------------|--------------------------|---------------------|--------------|
|                               |                           |                                     | Zoning Officer    | Design Review Committee | Landmarks Preservation Commission | Zoning Adjustments Board | Planning Commission | City Council |
| <b>Legislative Actions</b>    |                           |                                     |                   |                         |                                   |                          |                     |              |
| Zoning Ordinance Amendments   | 23.412                    | Evaluate                            | –                 | –                       | -                                 | –                        | Recommend           | Decision     |
| <b>Permits</b>                |                           |                                     |                   |                         |                                   |                          |                     |              |
| Administrative Use Permits    | 23.406.030                | –                                   | Decision          | –                       | -                                 | Appeal                   | –                   | Appeal       |
| Use Permits                   | 23.406.040                | Evaluate                            | –                 | –                       | -                                 | Decision                 | –                   | Appeal       |
| Master Use Permits            | 23.406.060                | Evaluate                            | –                 | –                       | -                                 | Decision                 | –                   | Appeal       |
| Permit Modification           | 23.404.070                | Evaluate                            | Decision [3]      | -                       | -                                 | Decision [3]             | -                   | Decision [3] |
| Permit Revocation             | 23.404.080                | Evaluate                            | -                 | -                       | -                                 | Recommend [4]            | -                   | Decision     |
| <b>Design Review</b>          |                           |                                     |                   |                         |                                   |                          |                     |              |
| Design Review                 | 23.406.070                | Evaluate                            | –                 | See Note [1]            |                                   | Appeal                   | –                   | Appeal       |
| Staff-Level Design Review     | 23.406.070                | –                                   | Decision          | Appeal                  | -                                 | Appeal                   | –                   | Appeal       |
| <b>Flexibility and Relief</b> |                           |                                     |                   |                         |                                   |                          |                     |              |
| Variances                     | 23.406.050                | Evaluate                            | -                 | –                       | -                                 | Decision                 | –                   | Appeal       |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |            |          |          |   |              |               |   |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------|----------|---|--------------|---------------|---|----------|
| Modifications to Development Standards in West Berkeley Plan Area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 23.406.080 | Evaluate | -        | - | -            | Decision      | - | Appeal   |
| Reasonable Accommodations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 23.406.090 | -        | -        | - | See Note [2] |               | - | Appeal   |
| <b>Public Nuisances</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |            |          |          |   |              |               |   |          |
| Nuisance Abatement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 23.414.060 | Evaluate | -        | - | -            | Recommend [4] | - | Decision |
| <b>Ministerial Actions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |            |          |          |   |              |               |   |          |
| Zoning Certificates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 23.406.020 | -        | Decision | - | -            | -             | - | -        |
| <p>Note:</p> <p>[1] Landmarks Preservation Commission conducts Design Review for projects that involve landmarks, structures of merit or buildings within a historic district. Design Review Committee conducts design review for all other projects that are subject to design review.</p> <p>[2] Either the Zoning Officer or Zoning Adjustments Board takes action on reasonable accommodation applications as described in Section 23.406.090.C.</p> <p>[3] A permit shall be modified by the review authority which originally approved the permit.</p> <p>[4] A ZAB recommendation to deny or modify a permit, or to abate a nuisance, shall be deemed a final decision if the permit holder, or property owner in the case of a public nuisance, consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.</p> |            |          |          |   |              |               |   |          |



- C. **Multiple Permit Applications.** For projects that include multiple permits, see 23.404.020.F– Application Submittal (Multiple Permit Applications).

### **23.402.030 – Planning and Development Department**

The Planning and Development Department:

- A. Makes recommendations on requested permits and approvals as shown in Table 23.402-1: Review and Decision-Making Authority.
- B. Processes permit applications as provided in 23.404—Common Permit Requirements;
- C. Assumes responsibilities delegated by the Planning and Development Director and Zoning Officer; and
- D. Performs other duties as necessary to administer the Zoning Ordinance.

### **23.402.040 – Zoning Officer**

- A. **Established.** The City Manager shall designate a Planning and Development Department employee to act as the Zoning Officer.
- B. **Responsibilities and Duties.**
  - 1. **The Zoning Officer:**
    - a. Acts as the Secretary to the Zoning Adjustments Board (ZAB) and the Design Review Committee (DRC);
    - b. Determines if land uses, structures, and activities conform with the Zoning Ordinance;
    - c. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
    - d. Has the authority to interpret the meaning and applicability of the Zoning Ordinance;
    - e. Enforces the Zoning Ordinance in accordance with Chapter 23.414—Nuisance Abatement;
    - f. Issues administrative regulations and procedures for the administration of the Zoning Ordinance;
    - g. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.050.K– Public Hearings and Decisions (Use of Conflict Resolution and Mediation Service);
    - h. Requests legal opinions from the City Attorney on legal questions regarding pending applications; and

- i. Performs other duties to administer the Zoning Ordinance as assigned by the City Council.
  2. The Zoning Officer may designate one or more Planning and Development Department staff to perform the duties described in Paragraph (1) above.
- C. **Duties as Secretary to ZAB and DRC.** As Secretary to the ZAB and DRC, the Zoning Officer or the Zoning Officer's designee shall:
1. Present to the ZAB and DRC applications for permits and other requested approvals;
  2. Prepare staff reports on applications;
  3. Advise the ZAB and DRC on the meaning and applicability of the Zoning Ordinance; and
  4. Transmit to the City Attorney requests for legal opinions on pending applications.

### **23.402.050 – Landmarks Preservation Commission**

#### **A. Responsibilities and Powers.**

As provided in Municipal Code Chapter 3.24 (Landmarks Preservation Commission), the LPC shall serve as the review authority for Structural Alteration Permits for designated landmarks, structures of merit, and buildings within a historic district.

1. Municipal Code Chapter 3.24 identifies the responsibilities and powers of the Landmarks Preservation Commission
2. **Design Review.** The Landmarks Preservation Commission (LPC) shall consider Design Review applications for projects that involve landmarks, structures of merit, or buildings within a historic district. The LPC shall either approve, modify, or deny such applications in accordance with Section 23.406.070– Design Review.

### **23.402.060 – Design Review Committee**

A. **Established.** The City shall establish and maintain a Design Review Committee (DRC) to review and approve the design of development projects in accordance with Section 23.406.070– Design Review.

#### **B. Composition.**

1. The DRC shall consist of seven members, as follows:
  - a. Two members of the Zoning Adjustments Board (ZAB).
  - b. One member of the Landmarks Preservation Commission (LPC).

- c. One member of the Civic Arts Commission (CAC).
  - d. Three members of the public who are Berkeley residents.
2. DRC members from boards and commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the ZAB.
  3. DRC membership shall include at least two-licensed architects, one licensed landscape architect, and two laypersons (persons who are neither a planning or design professional nor an expert in the fields of land use planning, architecture, or landscape architecture).
  4. The DRC shall elect a chairperson and vice chairperson

**C. Responsibilities and Powers.**

1. The DRC shall consider applications for Design Review and either approve, modify, or deny such applications in accordance with Section 23.406.070 (Design Review).
2. The DRC may make a recommendation on other matters upon request by the ZAB, Planning Commission, City Council, or other City boards or commissions. DRC recommendations shall be limited to the subject areas of its expertise.

**D. Procedures.** The DRC shall adopt rules of procedure and shall keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.

**23.402.070 – Zoning Adjustments Board**

**A. Established.** The City shall establish and maintain a Zoning Adjustments Board (ZAB) to administer the Zoning Ordinance as described in this section.

**B. Composition.**

1. The ZAB shall consist of nine members appointed by the City Council in accordance with Municipal Code Chapter 2.04 (City Council).
2. The ZAB shall elect a chairperson and vice chairperson.

**C. Responsibilities and Powers.**

1. The ZAB:
  - a. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
  - b. Hears appeals on decisions in accordance with Chapter 23.410—Appeals and Certifications;
  - c. Modifies previously approved Use Permits and Variances in accordance with Section 23.404.070– Permit Modifications;

- d. Revokes Use Permits and Variances in accordance with Section 23.404.080–Permit Revocation;
  - e. Recommends actions to enforce the zoning ordinance, including to abate a public nuisance in accordance with Chapter 23.414—Nuisance Abatement;
  - f. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.050.K (Use of Conflict Resolution and Mediation Service);
  - g. Makes recommendations on other matters as requested by the City Council, Planning Commission, or any other City Board or Commission; and
  - h. Adopts administrative regulations and procedures for the administration of the Zoning Ordinance.
2. The City Council may assign additional responsibilities to the ZAB as needed in the administration of the Zoning Ordinance.
- D. **Procedures.** The ZAB shall adopt rules of procedure and keep a record of its proceedings. A majority of the appointed members constitutes a quorum.

### **23.402.080 – Planning Commission**

The Planning Commission:

- A. Recommends to the City Council amendments to the Zoning Ordinance in accordance with Chapter 23.412 (Zoning Ordinance Amendments);
- B. Approves revisions to Design Review guidelines and standards as provided in Section 23.406.070 (Design Review); and
- C. Performs other duties as provided in Municipal Code Chapter 3.28 (Planning Commission).

### **23.402.090 – City Council**

The City Council:

- A. Takes action on proposed Zoning Ordinance amendments in accordance with Chapter 23.412 (Zoning Ordinance Amendments);
- B. Hears appeals on and certifies decisions in accordance with Chapter 23.410 (Appeals and Certification); and
- C. Assumes other responsibilities and take actions on other matters related to the Zoning Ordinance in accordance with the Municipal Code and state and federal laws.

## 23.404 COMMON PERMIT REQUIREMENTS

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### Sections:

- 23.404.010– Purpose and Applicability
- 23.404.020– Application Submittal
- 23.404.030– Application Review
- 23.404.040– Public Notice
- 23.404.050– Public Hearings and Decisions
- 23.404.060– Post-Decision Provisions
- 23.404.070– Permit Modifications
- 23.404.080– Permit Revocation

### 23.404.010 – Purpose and Applicability

This chapter establishes requirements that apply to all discretionary permits required by the Zoning Ordinance.

### 23.404.020 – Application Submittal

- A. **Application Submittal.** Applications for discretionary permits required by the Zoning Ordinance shall be submitted to the Planning and Development Department (“Department”).
- B. **Application Form and Contents.**
  1. Applications shall be made in writing on a form provided by the Department.
  2. Applications shall identify one person as the applicant.
  3. Applications shall be filed with all information and materials required by the Department. Depending on the type of project and required permit, required information and materials may include plans, renderings, models, photographs, material samples, reports, studies, and other items necessary to describe existing conditions and the proposed project.
  4. All submitted application materials become City property available to the public.
  5. The applicant is responsible for the accuracy and completeness of all information submitted to the City.
- C. **Eligibility for Filing.** An application may be filed by:
  1. The owner of the subject property;
  2. An agent with written authorization to represent the owner;
  3. A person under contract or with an exclusive option to purchase the property, with written consent of the current owner;
  4. A tenant with written consent of the owner or the owner’s authorized designee; or
  5. An agency lawfully instituting eminent domain proceedings.

**D. Pre-Application Notice Posted by Applicant.**

1. Before submitting an application for a discretionary permit, an applicant shall post a conspicuous notice of the proposed project readily visible from the street adjacent to the property's primary frontage.
2. The form and contents of the notice shall be as specified by the Department.

**E. Application Fees.**

**1. When Required.**

- a. An application shall be accompanied by all required fees listed in the current Fee Schedule approved by the City Council.
- b. The Department will process an application only if all required fees are paid, unless the City approves a fee waiver in accordance with Paragraph 2 (Fee Waivers) below. The Department will not deem an application complete if a required fee remains unpaid.
- c. Application fees are not required when the City is the applicant, or when a fee is waived under any other provision of the Municipal Code.

**2. Fee Waivers.** In addition to seeking a fee waiver or deferral under other provisions of the Municipal Code, an applicant may request a fee waiver or deferral as follows:

- a. An applicant shall submit to the Department a written request for a fee waiver or deferral before submitting the application. The request shall identify the amount of all Current Planning fees required for the project and describe the reasons why the fee waiver or deferral is necessary.
- b. The Director shall forward the request to the City Manager. The City Manager may approve the request upon finding that:
  - i.* The project will provide a significant public service or benefit, and
  - ii.* The waiver or deferral is necessary to make the project economically feasible to construct or establish.
- c. The City Manager shall notify the City Council of a decision to approve a requested fee waiver or deferral. At its discretion, the City Council may reverse the City Manager's decision and deny the request.
- d. If the request is approved, the applicant shall include with the application a letter from the City Manager authorizing the fee waiver or deferral. The Department will accept the application only if submitted with the City Manager's letter.

**3. Refunds and Withdrawals.**

- a. If an application is withdrawn before a decision, the applicant may be eligible for a refund of a portion of the fee.
- b. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees may not be made for denied applications.

#### F. Multiple Permit Applications.

1. **Zoning Ordinance Discretionary Permits.** The following procedures apply to proposed projects that require multiple discretionary permits under the Zoning Ordinance (e.g., Use Permit and Variance).
  - a. An applicant shall request City approval of all required permits as part of a single application unless the Zoning Officer waives this requirement.
  - b. The Department shall process multiple permit applications for the same project concurrently.
  - c. City action on projects requiring multiple permits shall occur as follows:
    - i.* Concurrently for permits reviewed by the same review authority (e.g., the Zoning Adjustments Board (ZAB) concurrently reviews and acts on a Variance and Use Permits required for a project); and
    - ii.* Sequentially for permits reviewed by different review authorities, as necessary (e.g., the City Council approves a Zoning Map amendment before ZAB action on a Use Permit).
2. **Design Review.** See Section 23.406.070 (Design Review) for the Design Review application process.
3. **Other Permits.**
  - a. Separate applications are required for permits required by portions of the Municipal Code outside of the Zoning Ordinance. The City will review and act on these applications in a separate but coordinated process from applications required under the Zoning Ordinance.
  - b. For example, if a project requires both a Use Permit approved by the ZAB and a Structural Alteration Permit (SAP) approved by the Landmarks Preservation Commission (LPC), then a separate SAP application is required. A SAP application is processed separately from the Use Permit applications and is scheduled for consideration at a hearing before the LPC.

### 23.404.030 – Application Review

#### A. Review for Completeness.

1. **Determination of Completeness.** Department staff shall determine whether an application is complete based on the Department application submittal checklist.
  2. **Request for Additional Information.** If it is not complete, the Department shall inform the applicant in writing as to the information and materials needed to complete the application.
  3. **Review Timeline.** The Department shall review and determine whether an application is complete within the timelines required by Government Code Section 65920 et seq. (Permit Streamlining Act).
- B. Record of Date of Complete Application.** The Department shall record the date the application is deemed complete.
- C. Referrals to Landmarks Preservation Commission.** At every regular Landmarks Preservation Commission (LPC) meeting, the Department shall provide the LPC a list of all pending permit applications.
- D. Project Evaluation and Staff Reports.**
1. **Staff Evaluation.** The Department shall review all applications to determine if they comply with the Zoning Ordinance, the General Plan, and other applicable City policies and regulations and state laws.
  2. **Staff Report.** For all applications requiring review by the ZAB and City Council, the Department shall prepare a staff report describing the proposed project and including, where appropriate, a recommendation to approve, approve with conditions, or deny the application.
  3. **Report Distribution.** The staff report shall be given to the applicant after it is provided to the review authority and before action on the application.
- E. Environmental Review.**
1. **CEQA Review.**
    - a. After acceptance of a complete application, the Department shall review the project in compliance with the California Environmental Quality Act (CEQA) and any adopted City CEQA guidelines.
    - b. The City shall determine the required level of environmental review (e.g., exemption, Negative Declaration) within the timeframe required by CEQA.
  2. **Special Studies Required.** Special studies, paid for in advance by the applicant, may be required to supplement the City's CEQA compliance review.
- F. Summary Denial of Applications.**
1. **Section Purpose.** This section describes the process by which the Zoning Officer may deny an application without notice or hearing ("summary denial") for



property subject to City action to abate a public nuisance or correct a Zoning Ordinance violation.

**2. Applications Subject to Summary Denial.**

- a. The Zoning Officer may summarily deny an application that would legalize a structure or use subject to a final City order under 23.414 (Nuisance Abatement).
- b. The Zoning Officer shall not summarily deny applications for permits that are necessary comply with any such order.

**3. Factors to Consider.** When deciding whether to deny such an application, the Zoning Officer shall consider:

- a. Whether the project will be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of the proposed use;
- b. Whether the project will be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City;
- c. Whether the applicant had an adequate opportunity to submit the application before the adoption of a final order under Chapter 23.414 (Nuisance Abatement); and
- d. The level of permit applied for (i.e., AUP, Use Permit, or Variance). Applications for Variances as a means of legalizing a violation are particularly disfavored.

**4. Hearing Not Required.** A public hearing is not required for the Zoning Officer to summarily deny an application.

**5. Decision is Final.** A decision by the Zoning Officer to summarily deny an application is final and may not be appealed.

**23.404.040 – Public Notice**

**A. Notice of Administrative Decisions.**

1. **When Required.** A Notice of Administrative Decision shall be given after the Zoning Officer's decision on an Administrative Use Permit (AUP).
2. **Content of Notice.** A Notice of Administrative Decision shall contain the following information:
  - a. A description of the proposed project in the AUP application.
  - b. The Zoning Officer's decision on the AUP application.

- c. The location and times in which the application may be reviewed by the public.
  - d. The procedure and time period in which the decision may be appealed to the Zoning Adjustments Board (ZAB).
  - e. The address where appeals may be filed.
3. **Timing of Notice.** A Notice of Administrative Decision shall be posted and mailed after the Zoning Officer's decision on the AUP.
4. **Notice Posting.** A Notice of Administrative Decision shall be posted at:
- a. Three visible locations in the vicinity of the subject property; and
  - b. The lobby of the Permit Service Center.
5. **Notice Mailing.**
- a. **Minimum Requirement.** A Notice of Administrative Decision shall be mailed to the following:
    - i.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed project. See Section 23.404.040.E (Public Notice).
    - ii.* For projects in or adjacent to a Residential District, the owners and residents of the abutting properties.
    - iii.* For major residential additions in the R-1 district within the Hillside overlay zone, the owners and residents of properties within a 300-foot radius of the subject property.
    - iv.* The City of Berkeley Central Library.
  - b. **Additional Notice.** The Zoning Officer may include a larger area to receive a mailed notice when the proposed project may impact a larger area.
6. **Temporary Uses and Structures.** An AUP for a temporary use or structure is subject to the same notice requirements as other AUPs, except that notice shall be provided at least 14 days before the establishment of the temporary use or structure.
7. **Failure to Receive Notice.** The validity of the decision shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive a mailed notice.

**B. Public Hearing Notice.**

- 1. **When Required.** Public notice shall be given as required by this section for:

- a. Zoning Adjustment Board (ZAB) hearings on Use Permits, Variances, and other decisions requiring a public hearing as specified in the Zoning Ordinance; and
  - b. City Council hearings on appeals of ZAB decisions.
2. **Content of Notice.** Notice of a public hearing shall contain the following information:
- a. The date, location, and time of the hearing.
  - b. A written description of the proposed project, including the number of dwelling units and floor area if applicable.
  - c. Maps, plans, and other information needed to describe and illustrate the proposed project, as determined necessary by the Department.
  - d. The environmental review status under the California Environmental Quality Act (CEQA).
  - e. Directions on how to obtain further information about the proposed project or hearing.
  - f. The location and times the application may be reviewed by the public.
  - g. Instructions to submit written comments on the proposed project.
3. **Timing of Notice.** Notices shall be posted and mailed at least 14 days before the hearing unless a longer notice period is required by state law. The Zoning Officer or ZAB may extend the notice period to a maximum of 30 days for applications of major significance.
4. **Notice Posting.** A notice of public hearing shall be posted:
- a. At three visible locations in the vicinity of the subject property:
  - b. At the Civic Center (Old City Hall); and
  - c. In the lobby of the Permit Service Center.
5. **Notice Mailing.**
- a. **Minimum Requirement.** A notice of public hearing shall be mailed to the following:
    - i. The owners and residents of the abutting and confronting properties.
    - ii. For the construction or demolition of one or more dwelling units, all property owners and residents within 300 feet on the same street or streets as the proposed project, including the abutting properties to the rear and within a 300-foot radius of the subject property.

- iii.* For a relocated building, all property owners and residents within a 300-foot radius of both the existing and proposed new location of the building.
  - iv.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed project. See Section 23.404.040.E (Public Notice).
  - v.* The City of Berkeley Central Library.
  - vi.* Any person who has filed a written request for notice.
- b. **Additional Notice.** The Zoning Officer, ZAB, or City Council may include a larger area to receive a mailed notice when deemed appropriate.
  - c. **Failure to Receive Notice.** The validity of the hearing shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive a mailed notice.
6. **Master Use Permit.** For a Master Use Permit application, all businesses, residents, and property owners within 500 feet of the subject property shall receive a notice in addition to the notice recipients listed in Paragraph F.1 (Minimum Requirement) above.

**C. Public Notice for Zoning Ordinance Amendments.**

- 1. **When Required.** Public notice shall be given as required by this section for Planning Commission and City Council hearings on proposed Zoning Ordinance Amendments.
- 2. **Content of Notice.** Notice of a public hearing shall contain the following information:
  - a. The date, location, and time of the hearing.
  - b. A written description of the proposed amendment.
  - c. A map showing the location of a proposed Zoning Map amendment, if applicable.
  - d. The environmental review status under the California Environmental Quality Act (CEQA).
  - e. Directions on how to obtain further information about the proposed amendment or hearing.
  - f. Instructions to submit written comments on the proposed amendment.
- 3. **Timing of Notice.** Notice shall be provided at least 14 days before the hearing unless a longer notice period is required by state law. The Planning Commission or City Council may require an extended notice period for applications of major significance.

4. **All Zoning Ordinance Amendments.** The following notice requirements apply to all Zoning Ordinance Amendments.
  - a. Notice shall be posted at the Civic Center (Old City Hall) and in the lobby of the Permit Service Center.
  - b. Notice shall be mailed to:
    - i.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed amendment. See Section 23.404.040.E (Public Notice).
    - ii.* The City of Berkeley Central Library; and
    - iii.* Any person who has filed a written request for notice.
5. **Zoning Ordinance Text Amendments.** In addition to requirements in Paragraph 4 (All Zoning Ordinance Amendments) above, notice of a Zoning Ordinance Text Amendment shall be published in a newspaper of general circulation in the city:
  - a. At least 14 days before the hearing; and then again
  - b. At least 7 days before the hearing.
6. **Zoning Ordinance Map Amendments.** The following notice requirements apply to Zoning Ordinance Map Amendments in addition to requirements in Paragraph 4 (All Zoning Ordinance Amendments) above.
  - a. **Less than 5 Acres.** For Zoning Map Amendments affecting an area less than 5 acres, public notice shall be:
    - i.* Posted at three visible locations in the vicinity of the subject property; and
    - ii.* Mailed to subject property owners, residents and tenants of the subject property, and all property owners, residents, and tenants within 300 feet of any part of the subject property.
  - b. **5 Acres or More.** For Zoning Map Amendments affecting an area 5 acres or more, public notice shall be:
    - i.* Posted on each street frontage adjacent to the subject property.
    - ii.* Mailed to all property owners, residents, and tenants within the subject property.
    - iii.* Published twice in a newspaper of general circulation in the city at least 14 days before the hearing, and then again at least 7 days before the hearing.
7. **Additional Notice.** The Zoning Officer, Planning Commission, and City Council may require additional public notice as determined necessary or desirable.

8. **Failure to Receive Notice.** The validity of the hearing shall not be affected by the failure of any property owner, resident, tenant, or neighborhood or community organization to receive a mailed notice.

**D. Public Notice for Design Review.**

**1. Staff-Level Design Review.**

- a. **When Required.** Notice of Design Review shall be posted on or adjacent to the subject property at least 14 days before staff decision on Design Review application.
- b. **Notice Contents.** A Notice of Design Review shall contain the following information:
  - i.* A description of the proposed project.
  - ii.* Staff's anticipated decision on the Design Review application.
  - iii.* The location and times at which the application may be reviewed by the public.
  - iv.* The procedure and time period in which appeals to the Design Review Committee may be made.
  - v.* The address where such appeals may be filed.

**2. Design Review Committee Meetings.**

- a. **Meeting Agenda.** Agendas for Design Review Committee (DRC) meetings shall be posted at the Civic Center (Old City Hall) at least 72 hours before the meeting. The agenda must list all projects and discussion items to be considered at that DRC meeting.
- b. **Posting and Mailing Notice Not Required.** There is no requirement to mail notices or post a notice on a subject property in advance of the DRC meeting.

**E. Registry of Organizations to Receive Notice.**

1. The Department shall maintain a registry of neighborhood and community organizations to receive notices of public hearings and administrative decisions.
2. An organization shall be included in the registry shall submit a written request to the Department with the following information:
  - a. The name and address of the organization.
  - b. The names, addresses and phone numbers of the contact persons.
  - c. The geographic area of interest, shown on a map, for which notices will be sent to the organization.

3. It is the responsibility of the organization to inform the Department of any changes to the organization information identified in Paragraph (2) above.

### **23.404.050 – Public Hearings and Decisions**

- A. **General.** Hearings shall be conducted in a manner consistent with the requirements of State and local law and the procedures approved by the review authority.
- B. **Time and Place of Hearing.** A hearing shall be held at the date, time and place for which notice was given, unless the required quorum of review authority members is not present.
- C. **Public Comment.** All hearings shall be open to the public, which have the opportunity to present their views and be heard in accordance with established procedures.
- D. **Quorum Required for Action.** A majority of the members of review authority must be present to take action on an application.
- E. **Continued Hearings.**
  1. Any public hearing may be continued from time to time without further notice, provided that the chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
  2. Hearings may not be continued beyond the time limits for reviewing applications established by the Permit Streamlining Act, CEQA, and other state and federal laws unless the applicant expressly waives their rights relating to time limits for City action on a pending application.
- F. **Action.**
  1. After the close of public hearing, the review authority shall either approve, modify, or deny the application; continue the hearing to a future date; or refer the application to a mediation or conflict resolution service.
  2. If an application is referred to mediation, it must return to the review authority for action.
- G. **CEQA.** For projects not subject to a CEQA exemption, the review authority that approves the application takes final action on the project's CEQA determination. Final action on the CEQA determination, when required, shall occur before or concurrent with action on required permits. The City is not required to take final action on CEQA documents for denied applications.
- H. **Conditions of Approval.**

1. The review authority may attach conditions to any permit as it deems reasonable or necessary to achieve consistency with the General Plan and Zoning Ordinance, and to promote the public health, safety, and welfare.
2. As a condition of approval, the City may require an applicant to provide adequate financial security to guarantee the proper completion of an approved project.
3. Any approval may be subject to time limits.

**I. Exceptions to Protect Constitutional Rights.**

1. The ZAB or City Council may waive or limit the application of any Zoning Ordinance requirement to a development project if it finds that such requirement would result in a deprivation of the applicant's constitutional rights.
2. The burden of establishing that this exemption applies is on the applicant.

**J. Use of Conflict Resolution or Mediation Service**

1. **General.** The ZAB or Zoning Officer may refer an applicant and neighbors to a conflict resolution or mediation service to resolve conflicts over a proposed project.
2. **Eligible Services.** The ZAB or Zoning Officer may refer participating parties only to a conflict resolution or mediation service on a pre-approved list maintained by the City.
3. **Non-Binding Results.** The results of the conflict resolution or mediation service shall be non-binding on the final decision of the ZAB or Zoning Officer.
4. **Timing of Referral.** A referral may be made at any time after an application is deemed complete and before a final decision on the application.
5. **Additional Meetings Allowed.** Nothing in this section prevents the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences.
6. **Early Discussions Encouraged.** The City encourages applicants and neighbors to discuss proposed projects early in the project-planning process so that differences may be resolved before the submission of an application.
7. **Payment for Service.** The applicant shall pay for the cost of conflict resolution or mediation service.
8. **Rules and Expectations.** Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, before beginning the process.



- a. The goal of mediation is to seek a mutually agreeable result for the pending application.
- b. Participation for the applicant and others parties is strictly voluntary.
- c. All participants shall be made aware that there is no City requirement to come to an agreement.
- d. The ZAB or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process. The mediator may ask the ZAB or the Zoning Officer for a clarification of these issues from time to time.
- e. Department staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Zoning Ordinance.
- f. The mediation service will provide the ZAB or the Zoning Officer with a report as to the result of the mediation within 45 days of the referral.
- g. If no agreement between the parties is reached within 45 days, or at any time that the mediator indicates that further meetings between parties is futile, the ZAB or Zoning Officer shall proceed with making a decision on the application. If the parties to the mediation/conflict resolution agree to continue the mediation process, the process may be extended for an additional time period not to exceed 45 days. Unless the applicant expressly waives their rights relating to time limits for City action on a pending application, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by state or federal law.
- h. Participants in mediation are advised that the ZAB or Zoning Officer cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Zoning Ordinance requires that a project must meet all minimum requirements and any other applicable City ordinances and regulations.
- i. Results of the mediation will in no way be binding upon the City, and the ZAB or Zoning Officer may approve, deny, or modify any aspect of any mediated agreement.
- j. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by their decision, and may change their mind after the mediation.
- k. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the ZAB or Zoning Officer decision.
- l. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of approval, shall be enforceable by the City.

#### K. Resubmittal of Same Application.

1. **Resubmittals Prohibited.** For twelve months following the denial of a discretionary permit application, the Department may not accept an application that is the same or substantially similar to the previously denied application, unless:
  - a. The application was denied without prejudice; and/or
  - b. Evidence or substantially changed conditions warrant resubmittal as determined by the Zoning Officer.
2. **Determination.** The Zoning Officer shall determine whether an application is the same or substantially similar to the previously denied application.
3. **Appeal.** The determination of the Zoning Office may be appealed to the ZAB, in compliance with Chapter 23.410 (Appeals and Certification).

#### L. Notice of ZAB Decisions.

1. A Notice of Decision shall be issued after the ZAB:
  - a. Approves, modifies, or denies a Use Permit or Variance application; or
  - b. Takes action on an appealed decision.
2. The Notice of Decision shall be issued before the ZAB's next regular meeting and shall describe the ZAB's action, findings, and applicable conditions.
3. The Notice of Decision shall be posted in the lobby of the Permit Service Center and shall be mailed to:
  - a. The applicant;
  - b. The appellant, if applicable;
  - c. Any person who has filed a written request for notice; and
  - d. The City of Berkeley Central Library.
4. The Notice of Decision shall be filed with the City Clerk and provided to the ZAB. The City Clerk shall make the notice available to interested members of the City Council and the public.

### 23.404.060 – Post-Decision Provisions

#### A. Effective Dates.

1. **Council Decisions.**
  - a. A City Council decision on a Zoning Ordinance Amendment and other legislative matters is final and becomes effective 30 days after the decision is made.

b. A City Council decision on permits, appeals, and other non-legislative matters is final and effective on the date the decision is made.

2. **Other Decisions.** The following applies to decisions of the Zoning Officer, Design Review Committee, and ZAB.

a. A non-appealable decision is final and effective on the date the decision is made.

b. An appealable decision is final and effective upon the completion of the appeal period for the decision if the decision is not appealed or certified by the City Council as provided in Chapter 23.410 (Appeals and Certifications).

**B. Effect of Approval.**

1. **Approval Limited to Proposed Project.** An approval authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.

2. **Replacement of Existing Uses.** When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

3. **Periodic Review and Reporting.**

a. The City may require periodic review of an approved project to verify compliance with permit requirements and conditions of approval.

b. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement.

4. **Conformance to Approved Plans.**

a. **Compliance.** All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

b. **Changes.** Changes to an approved project shall be submitted and processed in compliance with Section 23.404.070 (Permit Modifications).

**C. Time Limits.** This subsection applies to approved permits that have not been exercised.

1. **Exercised Defined.**

a. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.

- b. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.

**2. Expiration of Permit.**

- a. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except as provided in Paragraph (b) below.
- b. A permit authorizing construction may not be declared lapsed if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction.
- c. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant.
- d. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).

**3. Effect of Lapsed Permit.** A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**D. Permits Remain Effective for Vacant Property.** Once a permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit.

**23.404.070 – Permit Modifications**

**A. Purpose and Applicability.** This section establishes requirements and procedures for an applicant to request modification to an approved discretionary permit.

**B. Permit Modification Required.** City approval of a permit modification is required to:

- 1. Expand the floor or land area devoted to an approved use;
- 2. Expand a customer service area and/or increase the number of customer seats;
- 3. Change a building’s occupant load rating under the City’s Building Code so that it is classified in a different category with a higher occupancy rating;
- 4. Increase the number of employees, beds, rooms or entrances;
- 5. Establish a new product line, service, function or activity so as to substantially change the character of the use;
- 6. Increase the volume of production, storage or capacity of any business manufacturing process or activity;

7. Change the type of alcohol sales and/or service; and
  8. Change, expand, or intensify a use or structure in any other manner or substantially alters the use or structure.
- C. **Review Authority.** A permit shall be modified by the review authority which originally approved the permit.
- D. **Public Notice and Hearing.**
1. **Exercised Permits.** Public notice and hearing in compliance with this chapter is required to modify a permit that has been exercised. See Section 23.404.060.C.1 (Exercised Defined).
  2. **Permits Not Yet Exercised.** For modifications to permits not yet exercised, the Zoning Officer or ZAB may act on the permit modification without a public hearing, or may set the matter for public hearing at its discretion. A noticed public hearing for a permit modification shall occur in compliance with this chapter.
- E. **New Building Permits Required.** A building permit may not be modified after construction is complete. New construction in accordance with a modified permit requires issuance of a new building permit.

### **23.404.080 – Permit Revocation**

**A. Purpose and Applicability.**

1. This section establishes procedures for the City to revoke or modify a discretionary permit for completed projects due to:
  - a. Violations of permit requirements;
  - b. Changes to the approved project; and/or
  - c. Vacancy for one year or more.
2. Notwithstanding anything to the contrary, no lawful residential use can lapse, regardless of the length of time of the vacancy.
3. Expiration of permits not yet exercised are addressed in Section 23.404.060.C (Time Limits).

**B. Initiation.**

1. Proceedings to revoke or modify a permit may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
2. Such referral shall identify the permit being considered, the property to which the permit applies, and the reason for the potential revocation or modification.
3. The Zoning Officer shall determine the public hearing date for all referrals.

### C. ZAB Recommendation.

#### 1. Public Hearing.

- a. The ZAB shall hold a public hearing on a permit revocation or modification in compliance with Section 23.404.050 (Public Hearings and Decisions). Notice shall be given in conformance with Section 23.404.040.B (Public Hearing Notice).
- b. The Department shall notify the current permit holder of the date, time, and location of the hearing.

#### 2. ZAB Recommendation.

- a. The ZAB may recommend that the City Council revoke or modify the permit based upon the findings shown in Subsection E (Findings) below.
- b. The ZAB recommendation shall be:
  - i.* Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
  - ii.* Supported by written findings; and
  - iii.* Issued within 35 days after the conclusion of the hearing.

3. **Final Decision.** A ZAB recommendation to deny or modify a permit shall be deemed a final decision if the permit holder consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.

4. **Report to City Clerk.** The Department shall file the ZAB's recommendation with the City Clerk within 14 days following the recommendation.

### D. City Council Action.

1. **Report to Council.** The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

#### 2. Public Hearing.

- a. If the ZAB recommends that the City Council revoke or modify the permit, the City Council shall hold a public hearing on the matter within 60 days after the ZAB issued its recommendation.
- b. If the ZAB does not recommend that the City Council revoke or modify the permit, the City Council may hold a public hearing on the matter at its discretion.

3. **Council Decision.** The City Council may modify or revoke the permit based upon the findings shown in Subsection E (Findings) below.

E. **Findings.** The City Council may revoke or modify a permit if any of the following findings can be made:

1. The permit holder has failed to comply with one or more of the conditions of approval.
2. The use or structure has been substantially expanded or changed in character beyond the approved project.
3. The property has been vacant for one year and the permit holder has not made a good faith effort to re-occupy the property with the use allowed by the approved permit.

G. **Notice of Decision.**

1. If the City Council revokes or modifies a permit, the City Clerk shall issue a Notice of Decision describing the City Council's action, with its findings.
2. The City Clerk shall mail the notice to the permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.
3. The City Clerk shall file a copy of the Notice of Decision with the Department.

H. **Remedies.**

1. If the City revokes or modifies a permit, the City may impose any of the following remedies:
  - a. Enjoin the use in whole or in part.
  - b. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.
  - c. Require continued compliance with newly imposed any conditions.
  - d. Require the permit holder to guarantee compliance with newly imposed conditions.
2. If the permit holder fails to comply with newly imposed conditions, the City may impose additional conditions or enjoin the use in whole or in part.

I. **Recovery of Costs.**

1. **Permit Revocation and Modification.**

- a. The City may recover the costs to administer permit revocation and modification proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Paragraph (b) below.

- b. The hearing provided by Section 1.24.180 (Service of Notice of Hearing) shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a decision is mailed. The Council shall hold a hearing on appeals as shown in Section 1.24.180.

**2. Remedies.**

- a. The City Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this section. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the City Council takes any action authorized by Subsection G (Remedies) above. In this case, payment of costs charged under this paragraph shall be made a condition of continued operation of the building, structure, or use.
- b. Payments submitted under this Paragraph 2 (Remedies) shall be deducted from any payments submitted under previous Paragraph 1 (Permit Revocation and Modification).



## 23.406 SPECIFIC PERMIT REQUIREMENTS

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### Sections:

- 23.406.010– Purpose
- 23.406.020– Zoning Certificates
- 23.406.030– Administrative Use Permits
- 23.406.040– Use Permits
- 23.406.050– Variances
- 23.406.060– Master Use Permits
- 23.406.070– Design Review
- 23.406.080– Modification of Development Standards in West Berkeley Plan Area
- 23.406.090– Reasonable Accommodations

### 23.406.010 – Purpose

This chapter identifies procedures for specific types of permits required by the Zoning Ordinance. See Chapter 23.404 (Common Permit Requirements) for procedures that apply generally to all types of permits.

### 23.406.020 – Zoning Certificates

A. **Purpose.** A Zoning Certificate is a ministerial approval to:

1. Confirm that a structure or land use complies with the Zoning Ordinance; and
2. Establish a record of the initial establishment of a structure or land use.

B. **When Required.**

1. Unless specifically stated otherwise in the Zoning Ordinance, a Zoning Certificate is required to:
  - a. Construct, modify, repair, or move a structure; and/or
  - b. Establish, change, or expand a land use.
2. A Zoning Certificate is not required to:
  - a. Continue a previously-approved use or structure; or
  - b. Establish a temporary use or structure allowed by right as shown in 23.302.030.A (Permitted By Right).

C. **Applications.**

1. Zoning Certificate applications shall be made in writing on a form provided by the Department accompanied by all fees, information, and materials as required by the Department.
2. An application fee is not required where the legal use of property or building is unchanged and no building alterations occur.

D. **Referrals.** The Zoning Officer may review applications referred from other City departments, including building permits and business licenses applications, and require that applicants submit Zoning Certificate applications and additional information as needed.

E. **Review and Action.**

1. The Zoning Officer shall review a Zoning Certificate application to verify compliance with the Zoning Ordinance. If the project complies with all applicable requirements, the Zoning Officer shall approve the application.
2. The Zoning Officer may attach to the Zoning Certificate project plans and other information as needed to document project compliance with the Zoning Ordinance.

F. **When Exercised.** A Zoning Certificate is considered exercised when either:

1. The approved use is established at the subject premises; or
2. In the case of construction, when a valid building permit, if required, is issued for the approved structure and construction has begun.

G. **Scope of Approval.** A Zoning Certificate applies only to the structures and uses shown in the application specifically approved through the application. A Zoning Certificate does not in any way validate or constitute approval of any building, structure, use, subdivision, or lot line adjustment not shown in the application.

H. **Appeals.** A decision on a Zoning Certificate may not be appealed.

I. **Non-Compliance.** A Zoning Certificate is considered null and void if a structure or land use is established:

1. Contrary to the project description attached to a Zoning Certificate approval; and
2. In a manner that violates the Zoning Ordinance or requires additional City approvals.

### **23.406.030 – Administrative Use Permits**

A. **Purpose.** An Administrative Use Permit (AUP) is a discretionary permit approved by the Zoning Officer to ensure that a proposed project will not adversely impact neighboring properties or the general public.

B. **Review Authority.**

1. The Zoning Officer takes action on AUP applications.
2. For a project with special neighborhood or community significance, the Zoning Officer may refer an AUP application to the Zoning Adjustments Board (ZAB) for

review and final decision. In such an instance, the ZAB shall review and act on the application following the requirements that apply to Use Permit applications.

**C. When Required.** An AUP is required for:

1. Land uses and development projects in each district as identified in Chapters 23.202 – 23.210 (Zoning Districts);
2. Temporary land uses and structures in accordance with Section 23.302.030.B (AUP Required); and
3. Other types of development projects when specifically required by the Zoning Ordinance.

**E. Public and City Franchise Uses.** The Zoning Officer may issue an AUP for any accessory building for public use or any use on City-owned property that is subject to franchise by the City. Such an AUP is subject to the same appeal and certification procedures as all other AUPs.

**F. Public Notice and Hearing.** See Section 23.404.040.A (Notice of Administrative Decisions).

**H. Findings for Approval.**

1. To approve an AUP, the Zoning Officer shall find that the proposed project or use:
  - a. Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood, of the proposed use; and
  - b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
2. To approve the AUP, the Zoning Officer must also make any other AUP findings specifically required by the Zoning Ordinance for the proposed project.
3. When taking action on an AUP, the Zoning Officer shall consider the following when making findings:
  - a. The proposed land use; and
  - b. The structure or addition that accommodates the use.
4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.
5. The Zoning Officer shall deny an AUP application if unable to make any of the required findings.

**I. ZAB Notification.** The Zoning Officer shall inform the ZAB of all AUP decisions.

**23.406.040 – Use Permits**

- A. **Purpose.** A Use Permit is a discretionary permit approved by the Zoning Adjustments Board (ZAB) to ensure that a proposed project will be designed, located, and operated to be compatible with neighboring properties and minimize impacts to the general public.
- B. **Review Authority.** The ZAB takes action on all Use Permit applications.
- C. **When Required.** A Use Permit is required for:
1. Land uses and development projects in each district as identified in Chapters 23.202 – 23.210 (Zoning Districts).
  2. Other types of development projects when specifically required by the Zoning Ordinance.
- D. **Public Notice and Hearing.** The ZAB shall review and take action on a Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).
- E. **Findings for Approval.**
1. To approve a Use Permit, the ZAB shall find that the proposed project or use:
    - a. Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
    - b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.
  2. To approve the Use Permit, the ZAB must also make any other Use Permit findings specifically required by the Zoning Ordinance for the proposed project.
  3. When taking action on a Use Permit, the ZAB shall consider in its findings:
    - a. The proposed land use; and
    - b. The structure or addition that accommodates the use.
  4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.
  5. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

**23.406.050 – Variances**

- A. **Purpose.** A Variance is a discretionary approval that allows for deviations from development standards and land use regulations in the Zoning Ordinance. The City

may grant a Variance only when the strict application of development standards creates a unique hardship due to unusual circumstances associated with the property.

**B. When Allowed.**

1. **Deviations Allowed with a Variance.** The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.
2. **Deviations Allowed with a Use Permit.** The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:
  - a. The property is 30 feet or less from an open creek; and
  - b. Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).

**C. Variances Not Allowed.** A Variance may not be granted to allow deviation from a requirement of the General Plan.

**D. Review Authority.** The ZAB takes action on all Variance applications.

**E. Public Notice and Hearing.** The ZAB shall review and act on a Variance application at a noticed public hearing in compliance with Chapter 23.404(Common Permit Requirements).

**F. Findings for Approval.**

1. To approve a Variance, the ZAB shall make all of the following findings:
  - a. There are exceptional circumstances applying to the property which do not apply generally in the same district.
  - b. The Variance is necessary to preserve a substantial property right.
  - c. The Variance will not adversely affect the health or safety of persons residing or working near the property.
  - d. The Variance will not be materially detrimental to the public welfare or injurious to nearby property or improvements.
  - e. The Variance will promote the municipal health, welfare, and safety and benefit the city as a whole.
  - f. Any other Variance findings required by Zoning Ordinance can be made.
2. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

**23.406.060 – Master Use Permits**

- A. **Purpose.** A Master Use Permit is a discretionary approval that allows flexibility in the amount of space occupied by individual tenants in a multi-user site. The purpose of a Master Use Permit is to:
1. Facilitate the implementation of the General Plan and area plans, including the West Berkeley Plan;
  2. Expedite the reuse of large and multi-user sites that might otherwise prove difficult to reuse;
  3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole.;
  4. Allow the review and analysis of impacts of multi-tenant projects in a coordinated, consolidated manner; and
  5. Improve Berkeley's competitiveness in attracting and retaining businesses by allowing businesses to quickly move into a site once overall development requirements have been established.
- B. **Review Authority.** The ZAB takes action on all Master Use Permit applications.
- C. **Voluntary Option.** A Master Use Permit is a voluntary option for property owners. If a property owner does not request and receive a Master Use Permit, individual tenants are subject to the Use Permit requirements that ordinarily apply as required by the Zoning Ordinance.
- D. **Where Allowed.** A property that meets the following criteria may apply for a Master Use Permit:
1. The property is located entirely or partially in one of the following districts:
    - a. Any Commercial District.
    - b. Mixed Use-Light Industrial (MU-LI).
    - c. Mixed Manufacturing (MM).
    - d. Manufacturing (M).
  2. The property will be occupied by three or more independently operating businesses.
- E. **Use Allocation.**
1. A Master Use Permit may allow by right more than one individual business and/or use on a site, provided that all other applicable requirements of the Zoning Ordinance are met.

2. A Master Use Permit shall state the square feet of buildings and land allocated for the following uses:
  - a. Industrial (manufacturing, wholesaling, and warehousing).
  - b. Office (excludes offices ancillary to other uses).
  - c. Commercial (retail, personal service, restaurants).
  - d. Live/work units.
  - e. Residential.

**F. Allowed Variations.**

1. The area of a building or site occupied by a use may exceed the Master Use Permit allocation with the permits shown in Table 23.406-1.

**TABLE 23.406-1: ALLOWED VARIATION IN USE ALLOCATIONS**

| Variation in Use Allocation from Master Use Permit | Permit Required    |
|----------------------------------------------------|--------------------|
| 10% or less                                        | No Permit Required |
| More than 10% to 25%                               | AUP                |
| More than 25%                                      | UP(PH)             |

2. If the allocation of floor area for various uses as shown in Paragraph D (Where Allowed) above remains within the limits set forth in Table 23.406-1, lease spaces may be divided or aggregated in any manner as-of-right.

**G. Public Notice and Hearing.** The ZAB shall review and take action on a Master Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

**H. Findings for Approval.** To approve a Master Use Permit, the ZAB must find that approval will expedite occupancy and use of the site consistent with the purpose of the district, the General Plan, and any applicable area plan.

**23.406.070 – Design Review**

**A. Purpose.** Design Review is a discretionary process to ensure that exterior changes to non-residential buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines. The purpose of Design Review is to:

1. Encourage excellence in building and site design;
2. Ensure that development is compatible with its urban context; and

3. Provide a pleasing urban environment for persons living, working, or visiting the city.

**B. When Required.**

1. Design Review is required for:
  - a. Projects in all Non-Residential Districts.
  - b. Mixed use and community and institutional projects in the R-3 district within the Southside Plan area. See Figure 23.202-1: R-3 Areas Subject to Design Review; and
  - c. Commercial, mixed-use, and community and institutional projects in the R-4, R-SMU, and R-S districts.
2. As used in Paragraph (1) above, “project” means an activity requiring a building or sign permit that involves any of the following:
  - a. Modifying the exterior of an existing structure.
  - b. Additions to an existing structure.
  - c. Demolishing all or a portion of an existing structure.
  - d. Removing all or part of a building facade fronting the public right-of-way.
  - e. Constructing a new structure.
  - f. Installing or replacing a sign.

**C. Design Review Process.**

1. **Use Permit Projects.**
  - a. If a project requires a Use Permit, Preliminary Design Review is required before ZAB action on the Use Permit.
  - b. Review authority for Preliminary Design Review is described in Section 23.406.070.D (Review Authority).
  - c. The ZAB shall consider Preliminary Design Review recommendations when acting on the Use Permit. Before acting on the Use Permit, the ZAB may require further review by the Design Review Committee or Department staff as part of the Preliminary Design Review process.
  - d. As a condition of Use Permit approval, the ZAB may require Final Design Review to verify that the project conforms to design-related Use Permit conditions of approval or to review finalized project design details. The Design Review Committee conducts Final Design Review unless the ZAB directs staff to conduct Final Design Review as a condition of approval.



- e. If the ZAB requires Final Design Review, the City may issue a building permit only after Final Design Review is complete.

**2. Projects Not Requiring a Use Permit.**

- a. For a project that does not require a Use Permit, Department staff conducts Design Review before the Zoning Officer takes action on the required permit or approval.
- b. The Zoning Officer will consider the Design Review recommendations when acting on the required permit or approval. The Zoning Officer may require modifications to the project design as a condition of approval.
- c. The Department will verify conformance with Design Review recommendations and design-related conditions of approval when issuing a building permit, sign permit, or Zoning Certificate for the project. Final Design Review is not required.

**D. Review Authority.**

- 1. **Department Staff.** Department staff, under the supervision and authority of the Zoning Officer, conducts Design Review for projects that do not require a Use Permit, except when the Landmarks Preservation Commission (LPC) conducts Design Review as provided in Paragraph (3) below. Design review conducted by Department staff is referred to as “Staff-Level Design Review.”
- 2. **Design Review Committee.**
  - a. For projects requiring a Use Permit, Design Review is conducted by the Design Review Committee except as provided by Paragraph (b) below or when the Landmarks Preservation Commission (LPC) conducts Design Review as provided in Paragraph (3) below.
  - b. The Zoning Officer may determine that, due to unique circumstances, Department staff will conduct Design Review for a project requiring a Use Permit. The Zoning Officer, or Department staff on their behalf, shall confer with the Design Review Committee Chair before making such a determination and shall consider project size, visibility, and degree of sensitivity to the neighboring properties or the general public.
- 3. **Landmarks Preservation Commission.** The Landmarks Preservation Commission (LPC) conducts Design Review of projects which involve landmarks, structures of merit, or buildings within a historic district in accordance with Chapter 3.24 (Landmarks Preservation Commission). The LPC conducts Design Review for landmarked properties through the Structural Alteration Permit process.

**E. Zoning Officer and LPC Referrals.**

1. The Zoning Officer may refer any project subject to ZAB review to the Design Review Committee, staff, or the LPC for non-binding input on design-related issues. However, Design Review approval is required only for projects in Subsection B (When Required) above.
2. The LPC may refer any project subject to LPC review to the Design Review Committee for non-binding input on design-related issues.

**F. Referrals to Landmarks Preservation Commission.**

1. **Mandatory Referrals.** The following Design Review applications shall be referred to the LPC for review and comment before action on the application:
  - a. Projects that involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24.
  - b. Projects that involve a building or a structure over 40 years old which may have special architectural or historical significance, as determined by the secretary to the LPC.
2. **Optional Referrals.** Department staff or the Design Review Committee may choose to refer the following projects to the LPC for review and comment before action of the application:
  - a. Projects that involve a building that is 40 years old or less that may have special architectural and/or historical significance, as determined by the secretary to the LPC.
  - b. Signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC's current List of Structures and Sites.

**G. Design Guidelines.**

1. The City of Berkeley Design Guidelines provide direction to the City when reviewing proposed projects and assists applicants in planning and design of their projects. The Design Guidelines are intentionally generalized to encourage individual creativity. It is not expected that every project will respond to every guideline.
2. When conducting design review the Design Review Committee, the LPC, and staff shall use the Design Guidelines adopted by the Planning Commission as its official policy.
3. The Design Review Guidelines may be amended by the Planning Commission. The ZAB may comment to the Planning Commission on such amendments.

**H. Scope of Design Review.** Design Review considers only issues of building and site design and does not address land use issues. Site design included the

placement of buildings on a lot, vehicle access and circulation, pedestrian circulation, parking placement and design, landscaping, and other similar issues.

**I. Design Review Timeline.**

1. Design Review projects requiring an AUP or a Zoning Certificate shall be completed within 60 days of the date the application is deemed complete. If an applicant modifies the application, or if the applicant submits a written time extension, Department staff may extend the review period beyond 60 days.
2. Design Review for projects that require ZAB approval shall be completed within 60 days of submittal of complete final Design Review plans or within the time limit required by the Permit Streamlining Act, whichever is less.

**J. Public Notice.** Public notice of pending Design Review decisions shall be given in accordance with Section 23.404.040.D (Public Notice for Design Review).

**K. Public Hearing.** None required.

**L. Design Review Committee Proceedings.**

1. The Design Review Committee shall meet with the applicant and shall operate as a working group. Its meetings shall be open to the public.
2. Review of a project by the Design Review Committee may be continued as necessary subject to the timeline set forth in this chapter.
3. The Design Review Committee shall adopt its own rules and procedures.

**M. Basis for Approval.** The review authority shall consider a proposed project in relation to its surrounding context when acting on a Design Review application.

1. The review authority may approve a Design Review application only upon finding that the proposed project conforms with the City of Berkeley Design Guidelines and any City-adopted design standards and guidelines applicable to the project.
2. The review authority may consider public input during the Design Review process and may require modifications to the proposed project as a condition of Design Review approval.

**N. Changes to Approved Projects.**

1. **Design Review Modification (Minor Changes).** Before issuance of a building permit, Department staff may approve minor changes to a project with final Design Review approval if the change complies with all of the following criteria:
  - a. The change does not involve a feature of the project that was:
    - i.* A specific consideration by the review authority in granting the approval;
    - ii.* A condition of approval; or

- iii. A basis for a finding in the project CEQA determination.
  - b. The change is consistent with the spirit and intent of the original approval.
- 2. **Other Changes.** A project change that does not meet the definition of a minor change in previous Paragraph (1) shall be approved following the same procedures as the original Design Review approval.
- O. **Appeals.** Design Review decisions may be appealed in accordance with Chapter 23.410 (Appeals and Certification).
- P. **Review of Building Plans.** Department staff shall review all building permit applications subject to Design Review for compliance with the approved Design Review plans and conditions.

### **23.406.080 – Modification of Development Standards in West Berkeley Plan Area**

- A. **Purpose.** A Modification of Development Standards is a discretionary approval to modify land use and development standards for development projects in the West Berkeley Plan area. The purpose of these modifications is to:
  - 1. Facilitate the implementation of the West Berkeley Plan;
  - 2. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse;
  - 3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole; and
  - 4. Allow modifications of standards when:
    - a. The modifications serve the overall purposes of their districts and the West Berkeley Plan on large, complex sites; and
    - b. The design of the project is compatible with the design and character of the surrounding area.
- B. **Eligibility.** A project must satisfy the following criteria to be eligible for a Modification of Development Standards.
  - 1. More than 50 percent of the site area must be within a C-W, MU-LI, MM or M district.
  - 2. The site must be either:
    - a. At least five contiguous acres within the City boundary under a single ownership and not primarily being used by a use conforming to the West Berkeley Plan; or

- b. Less than five acres and forms a full city block bounded on all sides by public streets (exclusive of alleys), mainline railroad tracks, and/or the borders of the City.

C. **Allowed Modifications.** The ZAB may allow modifications to the following land use and development standards:

- 1. Permitted location of land uses within a building, site, or district.
- 2. Development standards including but not limited to, height, yards, open space, and parking.

D. **Project Phases.** The ZAB may approve a Modification of Development Standards application to allow a project to be built in phases.

E. **Limitation.** A Modification of Development Standards may not allow any modification that would violate Section 23.206.050 (Protected Uses).

F. **Review Authority.** The ZAB takes action on all Modification of Development Standards applications.

G. **Public Notice and Hearing.** The ZAB shall review and act on a Modification of Development Standards application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

H. **Findings for Approval.**

- 1. To approve a Modification of Development Standards, the ZAB shall make all of the following findings:
  - a. The site is eligible for a Modification of Development Standards under Subsections B (Eligibility) and E (Limitation);
  - b. The project is likely to advance the purposes of the West Berkeley Plan and this section;
  - c. The project supports the attraction and/or retention of the types of businesses reflected in the purpose statement of the applicable district.
  - d. The modification is necessary and appropriate for the development of the proposed project.
- 2. To approve a Modification of Development Standards, the ZAB shall also make all required Use Permit findings in Section 23.406.040 (Use Permits) and any additional Use Permit findings required by the Zoning Ordinance for the use or development in the applicable district.

### **23.406.090 – Reasonable Accommodations**

A. **Purpose.** This section establishes a process for the City to approve modifications to development regulations to support equal access to housing for persons with

disabilities. This process is established in accordance with the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act.

## B. When Allowed.

### 1. Eligible Applicants.

- a. Any person with a disability, or their representative, may request reasonable accommodation as allowed by this section.
- b. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.

2. **Eligible Request.** An eligible applicant may request a modification or exception to any provision in the Zoning Ordinance or Subdivision Ordinance (Title 21) that acts as a barrier to fair housing opportunities for persons with disabilities.

## C. Review Authority.

1. **Zoning Officer.** The Zoning Officer takes action on reasonable accommodation applications unless the application is filed for concurrent review with a requested permit reviewed by the Zoning Adjustments Board (ZAB).
2. **Zoning Adjustments Board.** If a reasonable accommodation application is submitted concurrently with a permit application reviewed by the ZAB, the reasonable accommodation application shall be acted on by the ZAB.
3. **Referral to Zoning Adjustments Board.** The Zoning Officer may refer any reasonable accommodation application to the ZAB for review and final decision.

## D. Application Requirements.

1. **Application.** A request for reasonable accommodation shall be submitted on an official City application form. No application fee is required. The application shall include:
  - a. The name, address, and telephone number of the applicant;
  - b. The address of the property for which the accommodation is requested;
  - c. The current use of the property.
  - d. The ordinance provision for which modification is requested;
  - e. Reason that the requested accommodation may be necessary to enable the person with the disability to use the dwelling; and
  - f. Other information requested by the Zoning Officer.

2. **Concurrent Applications.** If the project for which the reasonable accommodation is requested requires another planning permit (e.g., Use Permit), the reasonable accommodation application shall be filed concurrently with the related permit application.

#### E. Review Procedure.

##### 1. Independent Application.

- a. For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application.
- b. If necessary to reach a determination on the request for reasonable accommodation, the Zoning Officer may request further information from the applicant consistent with fair housing laws. If a request for additional information is made, the 45-day period to issue a decision is stayed until the applicant submits the requested information.

2. **Concurrent Application.** For a reasonable accommodation request submitted concurrently with another planning permit application, the reasonable accommodation request shall be reviewed and acted upon concurrently with the other application.

#### F. Action on Application.

1. **Decision.** The review authority shall make a written decision supported by findings and conclusions to approve, approve with conditions, or deny the application.
2. **Criteria.** The review authority shall consider the following factors when acting on the application:
  - a. Need for the requested modification.
  - b. Alternatives that may provide an equivalent level of benefit.
  - c. Physical attributes of and proposed changes to the property.
  - d. Whether the requested modification would impose an undue financial or administrative burden on the City.
  - e. Whether the requested modification would constitute a fundamental alteration of the City's zoning or subdivision regulations.
  - f. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood.
  - g. Any other factor that may have a bearing on the request.

3. **Conditions of Approval.** The review authority may impose conditions of approval, including a condition to provide for the automatic expiration of the approval under appropriate circumstances (e.g., person with disability vacates home).
- G. **Appeals.** Reasonable accommodation decisions may be appealed in accordance with Chapter 23.410 (Appeals and Certification).



## 23.408 GREEN PATHWAY

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### Sections:

- 23.408.010– Purpose
- 23.408.020– Applicability
- 23.408.030– Eligibility Determination
- 23.408.040– Green Pathway Application
- 23.408.050– General Requirements
- 23.408.060– Requirements for Large Buildings and Hotels
- 23.408.070– Development Standards
- 23.408.080– Streamlined Permitting Process
- 23.408.090– Tolling
- 23.408.100– Compliance
- 23.408.110– City Manager Authority to Issue Regulations

### 23.408.010 – Purpose

- A. The purpose of this chapter is to implement the “Green Pathway” provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that:
  1. Exceed the Green Building requirements applicable in the C-DMU district; and
  2. Provide extraordinary public benefits that could not otherwise be obtained, as specified in this chapter.
- B. This chapter establishes standards and requirements to clarify the City’s expectations for projects eligible for approval under this chapter and to ensure they will be designed and developed consistent with the Downtown Area Plan.

### 23.408.020 – Applicability

This chapter applies only to development projects in the Downtown Mixed Use (C-DMU) district that:

- A. Do not propose alteration or demolition of a historical resource as defined by the California Code of Regulations Title 14, Section 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by the California Code of Regulations Title 14, Section 15064.5.

### 23.408.030 – Eligibility Determination

- A. **RFD Purpose.** To determine if a project is eligible for processing under this chapter, an applicant shall submit to the City a Request for Determination (RFD). The RFD process applies to development projects that may be eligible for Green

Pathway processing notwithstanding anything to the contrary in Chapter 3.24 (Landmarks Preservation Commission).

**B. RFD Submittal.** A property owner or the owner's authorized agent shall request the Landmarks Preservation Commission (LPC) to determine whether the subject property, as well as each adjacent property, is an historical resource under the California Code of Regulations Title 14, Section 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990).
2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent).
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

**C. Processing an RFD.**

1. The City shall not accept an RFD unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City's consultant at the applicant's expense. If a property that is the subject of the RFD is not identified on any of the lists in Subsection B (RFD Submittal) above, the applicant's assessment may consist of a statement of why the applicant believes the property does not include an historical resource.
3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review that determines that the applicant's submitted historic resource assessment is complete and accurate.
4. The LPC shall begin its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Municipal Code Section 3.24.140 (Designation proposal-- Public hearing notice requirements).

- D. **Timeline Extensions; Failure to Act.** Any of the timelines specified in this section may be extended at the written request of the applicant. Failure to act within any of the timelines set forth in this section, as they may be extended, shall constitute a decision to take no action to designate.
- E. **When Chapter 3.24 Applies.** If a property that is the subject of a RFD is not designated within the time limitations set forth in this section, Municipal Code Chapter 3.24 (Landmarks Preservation Commission) shall not apply to that property unless and until the earliest of the following occurs:
1. The expiration of two years from the date of any final action not to designate the property; or
  2. If an application under this chapter is submitted within that period, then either:
    - a. The application is withdrawn or denied; or
    - b. Any entitlement approved for the property expires, is cancelled or revoked, or for any other reason ceases to have effect.
- F. **Appeal and Certification.** Decisions by the LPC under this section shall be subject to appeal as set forth in Section 3.24.300 (Appeals--Procedures required--City Council authority), and certification as set forth in Section 3.24.190 (Council certification authorized when—Effect).
- G. **Effect of Determination** If a subject property is determined to be an historical resource as defined by California Code of Regulations, Title 14, Section 15064.5, it shall not be processed as a Green Pathway Project under this chapter.

### 23.408.040 – Green Pathway Application

- A. **Voluntary Option.** The Green Pathway authorized by this chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain processing benefits.
- B. **Application Contents.** An application for processing using the Green Pathway shall include the information otherwise required by the Zoning Ordinance for the entitlement sought, as well as:
1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements if the application is approved; and
  2. Proof that the LPC has not taken any action under Section 23.408.030 (Eligibility Determination) to designate the subject property as a structure of merit or landmark under Chapter 3.24 (Landmarks Preservation Commission).
- C. **Additive Requirements.** Except as expressly specified in this chapter, the requirements of this chapter are in addition to, and do not change or replace any

other requirements or standards of the Zoning Ordinance and Chapter 3.24 (Landmarks Preservation Commission).

### **23.408.050 – General Requirements**

All Green Pathway projects are subject to the following requirements.

#### **A. Affordable Units.**

1. In addition to any other applicable affordable housing mitigation fee or requirement, at least 20 percent of the total units in a proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development.
2. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053 of the California Health and Safety Code for the life of the project.
3. As an alternative, an applicant may pay an in-lieu fee to the Housing Trust Fund as established by the City Council.

**B. Density Bonus.** The applicant shall waive, in writing, any rights under State Density Bonus Law, Section 65915 of California Government Code.

#### **C. Local Hire Requirement.**

1. The applicant shall sign an agreement that no less than 30 percent of a project's construction workers will be Berkeley residents.
2. If insufficient Berkeley residents are available to fulfill the 30 percent local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).
3. If insufficient residents are available from the Green Corridor to fulfill the 30 percent local hire requirement, then residents of Alameda County will be used to fulfill the local hire requirements.
4. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30 percent local hire requirement by providing the same documentation the City requires to show compliance with paragraphs 1 and 2 of this subsection.

**D. Use Regulations.** Uses shall comply with the requirements and limitations of Section 23.204.130 (C-DMU Downtown Mixed-Use District).

**23.408.060 – Requirements for Large Buildings and Hotels**

In addition to the requirements of Section 23.408.050 (General Requirements), a Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, are subject to the following requirements.

**A. Prevailing Wage.**

1. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.
2. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.

**B. State Certified Apprenticeship Program.** To the extent that enough qualified apprentices are reasonably available, no less than 16 percent of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

**C. Requirements Binding to Future Owners.** As a condition of approval for any Green Pathway project subject to the requirements of this section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

**23.408.070 – Development Standards**

Green Pathway projects shall comply with the applicable development standards in Section 23.204.130 (C-DMU Downtown Mixed-Use District) and the following additional requirements.

**A. Building Setbacks Within View Corridors.** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one foot for every one foot by which the height exceeds 45 feet.

**B. Street Wall Facade.** Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less.

1. Smaller modulations may be incorporated within larger volumes.
2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one or more of the following features:

- a. Window openings, oriel windows, or balconies.
- b. Awnings, canopies, or entrances.
- c. Arcades, columns, or pilasters.
- d. Materials and color.
- e. Other architectural features.

C. **Shadow Analysis.** A shadow analysis is required for buildings with heights between 60 and 75 feet. Applications shall include diagrams showing:

- 1. The extent of shading on public sidewalks and open spaces by a building 60 feet in height that complies with all applicable setback requirements on an area within a radius of 75 feet of the closest building wall that would be cast on March 21, June 21, December 21, and September 21 at the following times of day:
  - a. Two hours after sunrise;
  - b. 12 p.m. noon; and
  - c. Two hours before sunset.
- 2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in previous Paragraph (1).

D. **Height Restrictions.** Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:

- 1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height.
- 2. Two buildings, up to 120 feet in height in the Core or Outer Core.

E. **Mitigation Measures.** To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this chapter are subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

### 23.408.080 – Streamlined Permitting Process

A. **Projects Involving Only Buildings at or Below 75 Feet in Height.**

- 1. **Projects Allowed By Right.** Notwithstanding anything to the contrary in the Zoning Ordinance, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the

applicable zoning requirements, standards, and requirements in this chapter and the Downtown Design Guidelines. Such projects are subject to Design Review under Section 23.406.070 (Design Review).

2. **Historic Resource.** If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23.408.030 (Eligibility Determination), the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.
  - a. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subsections A and B of Section 23.408.030 (Eligibility Determination) to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee (DRC).
  - b. The DRC shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the DRC determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway project.
3. **Downtown Design Guidelines.**
  - a. Notwithstanding Section 23.406.070 (Design Review), the DRC shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for Design Review, is complete.
  - b. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the DRC shall treat applicable guidelines as standards.
  - c. The decision of the DRC regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within 14 days of the date of the DRC action. Design Review appeals shall be limited to design issues.

**B. Projects Involving Buildings Over 75 Feet in Height.**

1. Notwithstanding anything to the contrary in the Zoning Ordinance, the Zoning Adjustments Board (ZAB) shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under previous Subsection (A) no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act (CEQA).
2. Such projects shall receive priority status to meet the review timeframes set forth in this section.

**23.408.090 – Tolling**

Timelines under this chapter shall be extended by the time taken for any proceedings pursuant to Chapter 3.24 (Landmarks Preservation Commission) relating to a Green Pathway project.

**23.408.100 – Compliance**

The applicable public benefit requirements of this chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects.

**23.408.110 – City Manager Authority to Issue Regulations**

The City Manager or his/her designee may promulgate rules and regulations pertaining to this chapter, including, but not limited to

- A. Setting and administering gross rents and sale prices for below-market-rate units; and
- B. Specifying and requiring guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this chapter are secured.



## **23.410 APPEALS AND CERTIFICATIONS**

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### **Sections:**

- 23.410.010– Chapter Purpose
- 23.410.020– Appeal Subjects and Jurisdiction
- 23.410.030– Filing and Processing of Appeals
- 23.410.040– Hearing and Decision
- 23.410.050– City Council Certifications

### **23.410.010 – Chapter Purpose**

This chapter establishes procedures for the appeal and certification of City actions made when administering the Zoning Ordinance.

### **23.410.020 – Appeal Subjects and Jurisdiction**

- A. **General.** City actions made when administering the Zoning Ordinance may be appealed as shown in Table 23.410-1: Appeal Subjects and Review Authority.
- B. **Code Enforcement Appeals.** See Municipal Code Chapter 1.24 (Abatement of Nuisances).
- C. **Landmarks Preservation Commission Appeals.** Decisions by the Landmarks Preservation Commission (LPC) when administering the Zoning Ordinance shall be appealed in accordance with Municipal Code Chapter 3.24 (Landmarks Preservation Commission).

TABLE 23.410-1: APPEAL SUBJECTS AND REVIEW AUTHORITY

| ACTION                                                | ORDINANCE SECTION | MAY BE APPEALED BY | IS APPEALED TO   | MUST BE FILED WITHIN                                     |
|-------------------------------------------------------|-------------------|--------------------|------------------|----------------------------------------------------------|
| <b>Zoning Officer Actions</b>                         |                   |                    |                  |                                                          |
| AUP decisions                                         | 23.406.030        | Any person         | ZAB              | 20 days of posting Notice of Administrative Decision [1] |
| Staff-level Design Review                             | 23.406.070        | Any person         | ZAB              | 14 days of posting the Notice of Design Review           |
| Zoning Officer Reasonable Accommodation decisions [2] | 23.406.090        | Applicant          | ZAB              | 14 days of mailing notice of decision                    |
| Termination of an AUP for sidewalk cafe seating       | 23.302.060        | Permit holder      | City Manager [3] | 14 days of mailing of termination notice                 |
| Determination of lapsed permit                        | 23.404.080        | Permit holder      | ZAB              | 20 days of mailing determination notice                  |
| <b>Design Review Committee Actions</b>                |                   |                    |                  |                                                          |
| Any Design Review action                              | 23.406.070        | Any person         | ZAB [4]          | 14 days of Committee action                              |
| <b>Zoning Adjustments Board Actions</b>               |                   |                    |                  |                                                          |
| Use Permit decisions                                  | 23.406.040        | Any person         | City Council     | 14 days of mailing Notice of Decision                    |
| Variance decisions                                    | 23.406.050        | Any person         | City Council     | 14 days of mailing Notice of Decision                    |
| Decisions on an appeal                                | 23.410            | Any person         | City Council     | 14 days of mailing Notice of Decision                    |
| <u>Notes:</u>                                         |                   |                    |                  |                                                          |

| ACTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | ORDINANCE SECTION | MAY BE APPEALED BY | IS APPEALED TO | MUST BE FILED WITHIN |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------|----------------|----------------------|
| <p>[1] The Zoning Officer may extend the appeal period for a longer time.</p> <p>[2] For reasonable accommodation requests associated with a project requiring a discretionary permit (e.g., Use Permit), the appeal procedures are the same as for the discretionary permit.</p> <p>[3] The City Manager’s decision is final. No further appeal is allowed.</p> <p>[4] Determinations of conformity with Downtown Design Guidelines for Streamlined Entitlement Process (Section 23.408.090.C) is appealed directly to the City Council.</p> |                   |                    |                |                      |

**23.410.030 – Filing and Processing of Appeals**

- A. **General.** Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter.
- B. **Eligibility and Timing of Appeal.** Table 23.410-1 shows who is eligible to file an appeal and the date by which an appeal must be filed.
- C. **Appeal Fees.**
  - 1. Appeal fees shall be paid by the person filing the appeal (the appellant) except as provided in Paragraph (2) below.
  - 2. The City shall not charge a fee for appeals of projects denied due to conflicting decisions of the Zoning Adjustments Board (ZAB) and Landmarks Preservation Commission as described in Sections 3.24.200 through 3.24.240 of Chapter 3.24 (Landmarks Preservation Commission).
- D. **Form of Appeal.**
  - 1. An appeal shall be submitted to the Department or City Clerk in writing together with all required application fees and shall include the name and contact information of the appellant.
  - 2. The appeal application shall state the pertinent facts and the basis for the appeal.
  - 3. The whole decision or part of the decision may be appealed. If an appellant chooses, an individual finding, action, or condition may be appealed.
- E. **Appeal Subject – Design Review.** Appeals of the Design Review Committee and staff-level Design Review decisions are limited to design-related issues.
- F. **Takings Claims.**
  - 1. If a basis of an appeal is that the review authority's action constituted a taking of property under the California or United States Constitutions, that basis and all supporting evidence and argument shall be clearly stated as a basis of the appeal, or it shall be waived.
  - 2. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination.
  - 3. This requirement shall apply to appeals on the basis that the review authority's decision or any condition of approval:
    - a. Denied the applicant any reasonable economic use of the subject property;
    - b. Was not sufficiently related to a legitimate public purpose;
    - c. Was not sufficiently proportional to any impact of the project; or

- d. For any other reason constituted a taking of property for public use without just compensation.
- G. **Copy to Zoning Officer.** If the appeal is submitted to the City Clerk, the City Clerk shall forward a copy to the Zoning Officer.
- H. **Notice to Applicant.** If the appeal is made by someone other than the applicant, the Department shall forward a copy of the written appeal to the applicant.
- I. **Effect of Appeal.** Once an appeal is filed, any action on the associated project is suspended until the appeal is processed and a final decision is made by the review authority.

### **23.410.040 – Hearing and Decision**

#### **A. Scheduling of Hearing.**

1. Upon receiving an appeal, the Department shall schedule a hearing with the appropriate review authority.
2. For appeals of projects denied due to conflicting decisions of the ZAB and Landmarks Preservation Commission, the City Council shall schedule a hearing at the earliest feasible date after the final ZAB or Landmarks Preservation Commission action.
3. Any appeal of a Design Review decision shall be heard by the review body within 45 days of the appeal filing.
4. All appeals on a single project shall be considered together at the same hearing.

#### **B. Public Notice.** Notice of appeal hearings shall be given in accordance with Section 23.404.040 (Public Notice).

#### **C. Staff Report and Materials.** Before the hearing, Department staff shall prepare a staff report describing the appeal with relevant supporting materials.

#### **D. Hearing Procedures.** Public hearings on an appeal shall be conducted in accordance with applicable procedures in Section 23.404.040 (Public Notice).

#### **E. De Novo Review.**

1. The review authority may take action on the subject of the appeal or any aspect of the appealed project (de novo review), except as provided in Paragraph (2) below.
2. For appeals of Design Review decisions, the review authority may take action only on design-related issues.

F. **Public Comment.** The review authority may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.

G. **Action.** At the appeal hearing, the review authority may:

1. Continue the public hearing;
2. Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or
3. For appeals to the City Council, remand the matter to the prior review authority to reconsider the application, and/or any revisions to the application submitted after the review authority's action.

H. **Criteria for Decision.**

1. When acting on an appeal, the appeal review authority shall use the same decision-making criteria and shall make the same findings as the prior review authority.
2. The review authority's action shall be based upon findings of fact about the appeal and shall identify the reasons for action on the appeal. In doing so, the appeal review authority may adopt the prior review authority's decision and findings as its own.

I. **Timeframe for Action – Use Permit and Variance Appeals.** If the City Council does not act on a Use Permit or Variance appeal within 30 days from the date the public hearing was closed by the City Council, then the decision of the ZAB shall be deemed affirmed and the appeal denied.

J. **Board Action on Remand.**

1. A ZAB decision on an appeal remanded by the City Council may be appealed in the normal manner unless otherwise directed by the City Council.
2. If the ZAB does not act within 90 days after an appeal is remanded by the City Council, the original appeal of the ZAB's decision shall be placed back on the City Council agenda in the same manner as a new appeal.

K. **Effective Date of Appeal Decisions.**

1. **City Council Decision.** The City Council's decision on an appeal is final and becomes effective on the date the decision is made.
2. **ZAB Decisions.** Decisions on appeals made by the ZAB becomes effective 14 days after the mailing of the Notice of Decision.

**23.410.050 – City Council Certifications**

- A. **Purpose.** Certification is an action by the City Council to review a decision by the ZAB or LPC.
- B. **Eligible Actions.** The City Council may certify the following actions for review:
  - 1. Decisions of the ZAB on Use Permit and Variance applications.
  - 2. Decisions of the LPC on historic resource designations as provided in Section 3.24.190 (Council certification authorized when—effect).
- C. **Initiation.**
  - 1. Any Council member may initiate the certification process by submitting a written request to the City Clerk within:
    - a. 14 days from the mailing of the Notice of Decision for ZAB decisions; and
    - b. 15 days from the mailing of the Notice of Decision for LPC decisions.
  - 2. Certification shall not require any statement of reasons or justification and shall not represent opposition to or support of an application.
- D. **Effect of Certification.** After initiating certification, any action on the associated project is suspended until City Council review is completed.
- E. **Hearing and Decision.** Certified actions shall be reviewed by the City Council at a noticed public hearing in the same manner as for appeals as described in Section 23.410.040 (Hearing and Decision).

## **23.412 ZONING ORDINANCE AMENDMENTS**

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### **Sections:**

- 23.412.010– Purpose
- 23.412.020– Initiation
- 23.412.030– Application
- 23.412.040– Planning Commission Hearing and Action
- 23.412.050– City Council Hearing and Action
- 23.412.060– Findings for Approval
- 23.412.070– Limitations on Resubmittals after Denial
- 23.412.080– Zoning Map Amendment Notations

### **23.412.010 – Purpose**

This chapter establishes procedures for amending the Zoning Ordinance, including the Zoning Map and Zoning Ordinance text. All amendments to the Zoning Ordinance shall be processed as set forth in Government Code Section 65853 et seq. and as specified in this chapter.

### **23.412.020 – Initiation**

- A. **Zoning Map Amendment.** A Zoning Map amendment may be initiated by:
  1. Resolution of the City Council or Planning Commission; or
  2. Application of one or more owners of the property for which the amendment is sought.
- B. **Zoning Ordinance Text Amendment.** A Zoning Ordinance text amendment may be initiated by resolution of the City Council or Planning Commission.

### **23.412.030 – Application**

An application for a Zoning Map amendment submitted by a property owner shall be filed and reviewed in compliance with Section 23.404.020 (Application Submittal). The application shall include the information and materials required by the Planning and Development Department, together with all required application fees.

### **23.412.040 – Planning Commission Hearing and Action**

- A. **Public Hearing.** The Planning Commission shall hold a public hearing on a proposed Zoning Ordinance Amendment in compliance with Section 23.404.040 (Public Notice).
- B. **Planning Commission Recommendation.**
  1. The Planning Commission may recommend that the City Council approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).



2. A recommendation for approval shall be made by a majority vote of the total membership of the Planning Commission.
3. If the Planning Commission recommends denial of a Zoning Map amendment, the City Council is not required to take further action on the proposed amendment unless the City receives a written request from an interested party for a City Council hearing within ten days after the Planning Commission action.

**C. Recommendation Expiration.**

1. A Planning Commission recommendation shall expire and have no further effect if the City Council takes no action on a proposed Zoning Ordinance Amendment within six months after the date the Planning Commission approved the recommendation.
2. The City Council may extend the effective period of a Planning Commission recommendation for up to an additional 18 months.

**23.412.050 – City Council Hearing and Action**

A. **Public Hearing.** After receiving the Planning Commission's recommendation, the City Council shall hold a public hearing on the proposed Zoning Ordinance Amendment in compliance with Section 23.404.050 (Public Hearings and Decisions).

**B. Council Action.**

**1. General.**

- a. The City Council may approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).
- b. The action by the City Council shall be made by a majority vote of the total membership of the City Council.

**2. Referral to Planning Commission.**

- a. If the City Council proposes to adopt a substantial modification to the Zoning Ordinance Amendment not previously considered by the Planning Commission, the proposed modification shall be first referred to the Planning Commission for its recommendation.
- b. The failure of the Planning Commission to report back to the City Council within 40 days after the reference, or within the time set by the City Council, shall be deemed a recommendation of approval.

C. **Effective Date.** Zoning Ordinance Amendments become effective 30 days after the adoption of the ordinance by the City Council, or at a later date as determined by the City Council.

**23.412.060 – Findings for Approval**

The City Council may approve a Zoning Ordinance Amendment only if all of the following findings are made:

**A. Findings for all Zoning Ordinance Amendments.**

1. The proposed amendment is consistent with the General Plan and any applicable specific plan or area plan.
2. The proposed amendment is consistent with state law.
3. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.

**B. Additional Finding for Zoning Ordinance Text Amendments.** The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.

**C. Additional Finding for Zoning Map Amendments.** The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the Zoning Ordinance and General Plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.

**23.412.070 – Limitations on Resubmittals after Denial**

**A. One-Year Prohibition.** If the City denies a Zoning Map Amendment, the City may not accept a resubmitted application for the same or substantially similar Zoning Map Amendment within one year from the date of denial, unless:

1. The original application is denied without prejudice; or
2. The City Council allows resubmittal within six-months of denial as allowed by Subsection B (Six-Month Exception) below.

**B. Six-Month Exception.**

1. The City Council may allow a resubmitted application within six months from the date of denial if the Council finds that:
  - a. Changed circumstances in relation to the property warrant early resubmittal, and
  - b. Any property owner objections to the original application have been withdrawn.
2. The burden rests with the applicant to submit evidence and show that the findings in Paragraph B.1 above can be made.

**23.412.080 – Zoning Map Amendment Notations**

All adopted amendments to the Zoning Map shall be noted on the map with the date and number of the amending ordinance.

## 23.414 NUISANCE ABATEMENT

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### Sections:

- 23.414.010– Purpose
- 23.414.020– Enforcement Responsibility
- 23.414.030– Violations a Misdemeanor
- 23.414.040– Nuisances Prohibited
- 23.414.050– City Attorney Action
- 23.414.060– Abatement Procedures
- 23.414.070– Statements of Violations
- 23.414.080– Remedies
- 23.414.090– Recovery of Costs
- 23.414.100– Private Right of Action

### 23.414.010 – Purpose

This chapter establish procedures to abate public nuisances associated with land uses, structures, and events as regulated by the Zoning Ordinance. These procedures supplement generally applicable code enforcement provisions in Municipal Code Title 1 (General Provisions).

### 23.414.020 – Enforcement Responsibility

The City Manager, or their designee, shall enforce the requirements of this chapter.

### 23.414.030 – Violations a Misdemeanor

Any violation of the Zoning Ordinance is a misdemeanor but may be cited or charged, at the City's discretion, as an infraction. In all other respects, the provisions of Municipal Code Chapter 1.20 (General Penalty) apply.

### 23.414.040 – Nuisances Prohibited

- A. **Public Nuisance Prohibited.** A land use, structure, or event shall not cause a public nuisance as defined in Subsection (B) below.
- B. **Public Nuisance Defined.** A use, structure, or event that meets any of the following criteria is a public nuisance.
  1. Any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations or arrests, or any other activity declared by the City to be a public nuisance.
  2. A violation of any City, state, or federal ordinance, law, or regulation.

3. A use or activity, other than one that takes place at a dwelling and is sponsored by a resident of that dwelling, that is conducted in a manner that results in a disturbance of any kind that requires six Berkeley Police Department patrol officers after 11:00 p.m. and before 2:00 a.m., or three Berkeley Police Department patrol officers at any other time, to quell such disturbance.

### **23.414.050 – City Attorney Action**

- A. **Immediate Action.** The City Attorney may take immediate action to abate, remove, and enjoin a public nuisance in the manner provided by law.
- B. **Judicial Relief.** To abate a public nuisance, the City Attorney may apply for relief from the courts to:
  1. Remove a use or structure;
  2. Prevent the establishment of a use or structure;
  3. Prevent the continued operation of a use or structure; or
  4. Prevent the removal or demolition of a structure.

### **23.414.060 – Abatement Procedures**

- A. **Initiation.**
  1. Proceedings to abate a nuisance may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
  2. A nuisance abatement referral shall identify the subject property, the nature of the violation, and the reason for the proposed abatement.
  3. After receiving a nuisance abatement referral, the Zoning Officer shall schedule the matter for a public hearing.
- B. **ZAB Recommendation.**
  1. **Public Hearing.**
    - a. The ZAB shall hold a public hearing on the proposed abatement in compliance with Section 23.404.050 (Public Hearing and Decision).
    - b. The Department shall provide notice of the hearing to the property owner, property occupants, the person who requested proceedings under this chapter (if any), and any person who has filed written request of notice.
  2. **Recommendation.**
    - a. The ZAB shall recommend that the City Council determine whether a nuisance exists and, if so, the appropriate remedy.
    - b. The ZAB recommendation shall be:

- i.* Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
  - ii.* Supported by written findings; and
  - iii.* Issued within 35 days after the conclusion of the hearing.
3. **Final Decision.** A ZAB recommendation to abate a nuisance shall be deemed a final decision if the property owner consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.
4. **Report to City Clerk.** The Department shall file the ZAB's recommendation with the City Clerk within 14 days following the recommendation. The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

**C. City Council Action.**

1. **Public Hearing.** The City Council shall hold a public hearing on the proposed abatement in compliance with Section 23.404.050 (Public Hearing and Decision). The hearing shall occur within:
  - a. 60 days of the ZAB recommendation if the ZAB recommends abatement; and
  - b. 30 days of the City Clerk report to the City Council of the ZAB decision.
2. **Decision.** After hearing, the City Council may find that the use, structure, or event constitutes a public nuisance and may impose any remedy provided for in this chapter, or take no action.

**D. Notice of Decision.**

1. If the City Council makes a nuisance determination, the City Clerk shall issue a Notice of Decision describing the City Council's action, with its findings.
2. The City Clerk shall mail the notice to any permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.
3. The City Clerk shall file a copy of the Notice of Decision with the Zoning Officer.

**23.414.070 – Statements of Violations**

**A. Statement Filed with County Recorder.**

1. If a person does not comply with an order of the Zoning Officer to correct a violation of this chapter within the specified time as provided in Chapter 1.24 (Abatement of Nuisances), the City may file a statement in the Office of the County Recorder that:

- a. Describes the property and nature of the violation; and
  - b. Certifies that the property violates this chapter and that the owner has been so notified.
2. The City shall record proof of service with the filed notice and order.
- B. **Statement Filed after Correction.** When a violation is corrected, the Zoning Officer shall file a new statement with the County Recorder certifying that the property is no longer in violation of this chapter.

### 23.414.080 – Remedies

- A. **Potential Remedies.** If the City makes a nuisance determination, the City may impose any of the following remedies:
1. Enjoin the use in whole or in part.
  2. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.
  3. Require continued compliance with newly imposed any conditions.
  4. Require the permit holder to guarantee compliance with newly imposed conditions.
- B. **Administrative Penalty.** In addition to or as an alternative to any other remedy, the City may impose an administrative penalty of up to \$10,000 jointly and severally on persons responsible for the nuisance and/or the property owner. The City may also impose a condition that the property owners pay the costs of all City services (including but not limited to services for public safety and by the Department of Public Works) necessary to address continuing and unabated public nuisances once the City Council has determined that a public nuisance exists.
- C. **Remedies Are Cumulative.** The procedures and remedies in Subsections (A) and (B) above are cumulative and in addition to any other procedures and remedies to which the City may be entitled by law or equity.

### 23.414.090 – Recovery of Costs

- A. **Abatement Proceedings.**
1. The City may recover the costs to administer abatement proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Sub-paragraph (2) below.
  2. The hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a

decision is mailed. The Council shall hold a hearing on appeals as specified in Section 1.24.180.

**B. Remedies.**

1. If the City imposes a remedy authorized in Section 23.414.080 (Remedies), the City may recover costs for time spent administering the remedy.
2. Payment of City costs shall be a condition of continued operation of a use or structure subject to a remedy.
3. Payments submitted under this Subsection B (Remedies) shall be deducted from any payments submitted under Subsection A (Abatement Proceedings) above.

**23.414.100 – Private Right of Action**

- A. **General.** Any resident of the City may bring a private action in a court of law for injunctive and compensatory relief to prevent or remedy a public nuisance as defined in this chapter.
- B. **Prior Notice Required.** No action may be brought under this section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings under this chapter within that period, or after initiation, has failed to diligently prosecute.
- C. **Recovery of Costs.** In any action prosecuted under this section a prevailing plaintiff may recover reasonable attorneys' fees.



## DIVISION 5: GLOSSARY

### **23.502: Glossary**

- 23.502.010– Purpose
- 23.502.020– Defined Terms
- 23.502.030– Acronyms

## 23.502 GLOSSARY

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### Sections:

- 23.502.010– Purpose
- 23.502.020– Defined Terms
- 23.502.030– Acronyms

### 23.502.010 – Purpose

This chapter defines terms and phrases used in the Zoning Ordinance that are technical or specialized, or which may not reflect common usage. If any definitions in this chapter conflict with others in the Municipal Code, these definitions control in the Zoning Ordinance. If a word is not defined in the Zoning Ordinance, the Zoning Officer determines the appropriate definition.

### 23.502.020 – Defined Terms

#### A. “A” Terms.

1. **Abatement.** City proceedings to terminate, modify, or condition an unlawful use or structure.
2. **Abutting Lot.** See Lot, Abutting.
3. **Accessory Building.** See Building, Accessory.
4. **Accessory Dwelling Unit.** A secondary dwelling unit that is located on a lot which is occupied by one legally established single-family dwelling that conforms to the standards of Chapter 23.306. An accessory dwelling unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the single-family dwelling: 1) exterior access to accessory dwelling unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An accessory dwelling Unit also includes the following:
  - a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
5. **Accessory Structure:** See Structure, Accessory.
6. **Accessory Use:** See Use, Accessory.
7. **Addition.** The creation of any new portion of a building which results in a vertical or horizontal extension of the building, or results in any new gross floor area that was not present in the building before construction of the addition. Includes the

creation of a mezzanine or loft, or a conversion of a previously unused attic or underfloor space to usable floor area.

8. **Addition, Residential.** The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:
  - a. Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
  - b. Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
  - c. Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
  - d. Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
9. **Addition, Major Residential.**
  - a. A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
    - i.* Additions that are entirely subsumed within previously existing floor area; and
    - ii.* The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
  - b. Any new floor shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.
10. **Adult-oriented Businesses.** Any business operated at a fixed location by whatever name, which appeals to prurient interests, sexual titillations, appetites, fantasies or curiosities. This use includes businesses which:
  - a. Predominantly exhibit, offer for sale or engage in the sale or distribution of publications, personal services, films, videotapes, devices, products or materials, which appeal to a prurient interest or sexual appetite of the purchases or user;

- b. Engage in the showing of motion pictures or videotapes in which sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or any other form of sexual gratification, is the primary and recurring theme;
- c. Engage in the presentation of live adult entertainment in which the actors or performers simulate or engage in sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or suggestive body movements connoting such acts, with or without another actor, patron or spectator, such showing appealing to a prurient interest or sexual appetite of the spectator;
- d. Engage in massage service, except when made in conjunction with professional services provided by the following persons holding unrevoked licenses or certificates:
  - i.* Chiropractors governed under provisions of California State law;
  - ii.* Medical practitioners practicing under the provisions of the California State Medical Practice Act;
  - iii.* Physical therapists practicing under the provisions of the California Physical Therapy Practice Act;
  - iv.* Nurses practicing under the provisions of the California Nursing Practice Act or the California Vocational Nursing Practice Act;
  - v.* Psychologists practicing under the provisions of the California Psychology Licensing Law;
  - vi.* Osteopaths practicing under the provisions of the California Osteopathic Act;
  - vii.* Persons working under the direct and immediate supervision of any persons certified as set forth in Sections *i-vi* above.
- e. Provide dating or escort services;
- f. Specialize in providing models who pose for photographing, drawing or other representative renditions, which modeling appeals to a prurient interest or sexual appetite;
- g. Engage in encounter, rap or counseling services which appeal to a prurient interest or sexual appetite;
- h. Engage in providing nude, bottomless or topless dance partners;
- i. Use nude, bottomless or topless entertainers, or use nude, bottomless or topless employees to attend to or service tables, bars or patrons or which

- allow nude, bottomless or topless entertainers or employees to be seen by members of the public or patrons of the business;
- j. Engage in providing sauna baths, water baths, showers, steam rooms or steam baths or any other body cleansing or toning arrangement wherein an attendant, clothed or nude, accompanies the customer for the purpose of talking, touching or appealing to the customer's prurient interest or sexual appetite; or
  - k. Engage in the reading of, or providing of tapes or records for listening to, erotic literature which appeals to the prurient interest or sexual fantasies of customers.
11. **Alcoholic Beverage Retail Sales.** The retail sale of beverages containing alcohol for off-site consumption subject to regulation by the State Department of Alcoholic Beverage Control (ABC) as an off-sale establishment. This use includes liquor stores and wine shops and sale of alcoholic beverages for off-site consumption at restaurants.
  12. **Alcoholic Beverage Service.** The retail sale of beverages containing alcohol for on-site consumption subject to regulation by the State Department of Alcoholic Beverage Control ABC as an on-sale establishment.
  13. **Alley.** A public right-of-way which affords only a secondary means of access for vehicles to any abutting property.
  14. **Alteration:** See Structural Alteration.
  15. **Alternative Fuel Station.** Any establishment that dispenses alternative fuel as defined by the Energy Policy Act of 2005.
  16. **Amusement Device.** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug, or token in any slot or receptacle attached or connected to such machine, and which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.
  17. **Amusement Device Arcade.** A type of commercial recreation center which contains six or more amusement devices. An amusement device arcade is a type of commercial recreation center irrespective of whether the amusement devices are the principal commercial activity of the establishment.
  18. **Ancillary Use:** See Use, Ancillary.
  19. **Application.** A written application for issuance of any permit.
  20. **Approval.** Approval of any permit.
  21. **Appraiser, Certified.** A person certified by the State of California Office of Real Estate Appraisers to estimate the value of a particular real property.

22. **Art/Craft Studio.** An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district's requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.
23. **Artist Studio.** A detached accessory building, used by residents of a main dwelling unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.
24. **Attic.** The area located between the ceiling of the top story of a building and the building's roof and not usable as habitable or commercial space.
25. **Automatic Teller Machine (ATM).** An unstaffed machine which processes deposits, withdrawals and transfers of funds of customers of a bank, credit union, savings and loan association or other financial service or network.
26. **Automobile Use.** Any commercial establishment which sells, rents, repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor driven vehicles (excepting motorcycles) on the premises.

## B. "B" Terms.

### 1. Bakery.

- a. An establishment which engages primarily in the sale of breads or other baked goods, whether baked on-site or at another location. A bakery is not be considered a food service establishment if:
- i. No customer seating or other physical accommodations for on-site dining are provided; and
  - ii. The breads and baked goods are not packaged for immediate consumption.
- b. Any establishment whose breads and baked goods are predominantly sold at retail from a different location or locations are deemed a wholesale and/or

manufacturing use, subject to the regulations of the district in which it is located.

2. **Balcony.** A horizontal platform extending from the exterior wall of a building, accessible from the building's interior, and not directly accessible from the ground. A balcony is typically not covered by a roof or building overhang or enclosed on more than two sides by walls. However, railings shall not be considered enclosures.
3. **Banks and Financial Services, Retail.** An office, open to the public, offering teller or counter financial services including either cash, checking and/or savings account transactions or some combination of these services. This use includes banks, savings and loans, and credit unions providing these services on site, and excludes non-chartered financial institutions.
4. **Bar/Cocktail Lounge/Tavern.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
5. **Basement.** The lowest usable space of a building, between the floor and the ceiling, for non-habitable use such as, but not limited to, garage or storage use.
6. **Bay Window.** A portion of a building cantilevered so as to project out from a wall and containing windows which cover at least 50 of the projection's surface.
7. **Bed and Breakfast Establishment (B&B).** A single residential property containing no more than a total of three sleeping rooms or dwelling units that are offered for rent at any given time, which is the primary residence of the owner and in which rooms or units are rented out to persons who occupy them for periods not exceeding 14 days in any month.
8. **Bedroom.** Any habitable space in a dwelling unit or habitable accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.
9. **Block.** An area designated on an official map of the City, which is bounded on all sides by the public right-of-way, a railroad right-of-way, private streets or a boundary line of unsubdivided acreage or any combination thereof.
10. **Boarding House.** A building used for residential purposes, other than a hotel, where lodging and meals for five or more persons, who are not living as a

household, are provided for compensation, whether direct or indirect. In determining the number of persons lodging in a boarding house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent.

11. **Building.** An enclosed structure having a roof and supported by columns or walls. See Figure 23.502-1 and Figure 23.502-2.
  - a. **Accessory Building.** A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.
  - b. **Main Building.** A building which is designed for, or in which is conducted, the primary use of the lot on which it is situated. In any residential district any dwelling, except an accessory dwelling unit, is the main building on the lot.

**FIGURE 23.502-1: COMMERCIAL BUILDING**

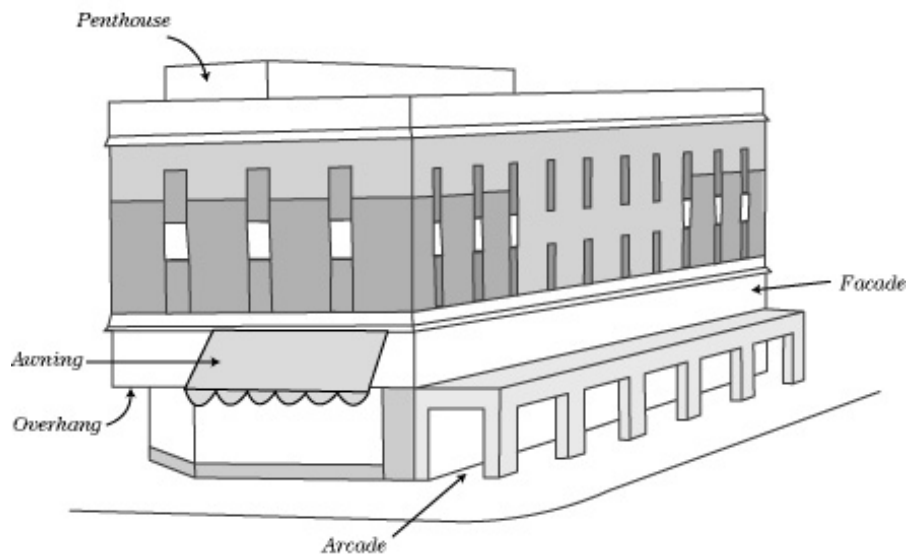
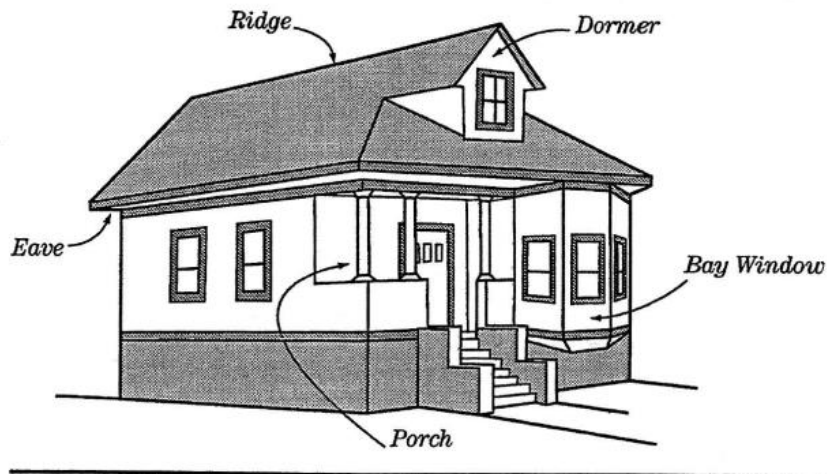




FIGURE 23.502-2: RESIDENTIAL BUILDING



12. **Building Separation.** See 23.106.080 (Building Separation).

13. **Building Site Area.** Same as lot area.

14. **Bus/Cab/Truck/Public Utility Depot.** A facility providing transportation operations for passengers and/or freight. Includes bus terminals and rail stations; facilities for transfer and movement of freight, courier, and postal services by truck or rail; and passenger transportation services, local delivery services, medical transport, and other businesses that rely on fleets of three or more vehicles.

15. **Business Activity.** Any activity subject to Municipal Code Chapter 9.04 and any economic activity which generates receipts but is exempt from Municipal Code Chapter 9.04 by state or federal law.

16. **Business Support Services.** An establishment providing goods and services to other businesses and residents, including maintenance, repair and service, testing, and rental. Permitted services for this use are limited to photocopying, desktop publishing, microfilm recording, slide duplicating, bulk mailing, parcel shipping, parcel labeling, packaging, messenger and delivery/courier, sign painting, lettering, and building maintenance.

#### C. "C" Terms.

1. **Cafeteria, On-Site.** A food service establishment intended primarily for use by employees or residents working or living at the same location, or for use by patients and/or visitors and restricted from use by the general public.
2. **Cannabis Retailer.** See 12.21.020 (Definitions).

3. **Cannabis Uses.** Includes retail sales, cultivation, manufacturing, testing, and distributing. See Municipal Code Chapters 12.21, and 12.22 for cannabis regulations and Chapter 23.320 for land use regulations.
4. **Carport.** A roofed structure for one or more automobiles which is enclosed by not more than two walls.
5. **Cemetery/Crematory/Mausoleum.** An establishment primarily engaged in operating sites or structures reserved for the interment of human or animal remains, including crematories, mausoleums, burial places, and memorial gardens.
6. **Chair Massage.** Massage given in a public, open setting to a person who is fully clothed and sitting upright on a professional bodywork seat, a stool, or office seat, wheelchair, or other chair-like device.
7. **Change of Use.** Any change in the nature or character of the use of a building or structure.
  - a. A residential change of use includes, but is not limited to, the elimination of any dwelling unit, the reduction in the floor area or habitability of a dwelling unit, or the reduction in the floor area or habitability of bedroom or sleeping quarters in a group living accommodation or residential hotel, when a new use is to replace a previous use. A residential change of use does not include the establishment of a home occupation in compliance with this chapter.
  - b. A commercial change of use includes a change to a different category of commercial or manufacturing use, but does not include changes between uses that are classified in the same category of commercial or manufacturing use.
8. **Child Care Center.** A state-licensed facility providing day care for children. This use includes nursery schools, day nurseries, infant day care centers, and cooperative day care centers, and excludes family day care homes.
9. **Circus or Carnival.** A commercial facility or event for public entertainment, typically held outdoors, with performances, rides, games, exhibitions, and other similar activities for paying customers. May be temporary or permanent.
10. **Club/Lodge.** A building occupied by a group of persons organized for a purpose to pursue common goals, activities or interests, usually characterized by certain membership qualifications, payment of fees or dues, regular meetings and a constitution or by-laws.
11. **City.** The City of Berkeley
12. **Columbaria.** A structure of vaults lined with recesses for cinerary urns or storage of cinerary remains.

13. **Commercial Districts.** The districts listed under the Commercial Districts heading in Table 23.108-1: Zoning Districts.
14. **Commercial Excavation.** The commercial excavation of earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas.
15. **Commercial Recreation Center.** Any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment. This use includes bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses. Amusement device arcades are a separately defined types of commercial recreation center with their own permit requirements.
16. **Commercial Use.** The categories of commercial uses of a property include retail products store, personal/household service, food service establishment, entertainment establishment, office, tourist hotel, automobile uses, live/work units, mixed use development, wholesale use, parking lot and any use listed as a sub-category of the above uses; or any other use determined to be a business activity (except home occupations), as these terms are defined in this chapter.
17. **Community Care Facility.** A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), supportive housing (California Government Code Section 65582), and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, and transitional housing.
18. **Community Center.** A noncommercial facility where the public can meet for social, educational, or recreational activities.
19. **Community and Institutional Use.** The categories of community and institutional uses of a property including, but not limited to, religious assembly uses, clubs/lodges, community centers, hospitals, schools, public uses and utility uses, as these terms are defined in this chapter.
20. **Condition.** A requirement attached to a permit or entitlement, the satisfaction of which is necessary for the validity and effectiveness of the permit or entitlement.
21. **Condominium.** An estate in real property consisting of an undivided interest-in-common in a portion of a lot of real property together with a separate interest in space in a residential, industrial or commercial building on such real property

such as an apartment, office or store. A condominium may include, in addition, a separate interest in other portions of such real property.

22. **Controlled Rental Unit.** Any dwelling unit, live/work unit, bedroom or sleeping quarters portion of a group living accommodation or other unit that is subject to the City's Rent Stabilization Ordinance (Municipal Code Chapter 13.76).
23. **Construction.** The placing of construction materials and their fastening in a permanent manner to the ground or a structure or building for the purpose of creating or altering a structure or building, or excavation of a basement.
24. **Contractors Yard.** A storage facility for any person who contracts to undertake and complete a construction project or a discrete part of a construction project, including all persons defined as contractors and subject to Division 3, Chapter 9 of the State of California Business and Professions Code.
25. **Conversion, Residential.** The physical change of the floor area and/or walls of a building that is used for dwelling unit, group living accommodation or residential hotel room purposes, so as to change the number of dwelling units, sleeping rooms or residential hotel rooms, or reduce the floor area and/or habitable space of any residential living quarters.
26. **Craft.** An occupation, avocation or trade requiring special manual dexterity or artistic skill in the creation of a product.

#### D. "D" Terms.

1. **Dance/Exercise/Martial Arts/Music Studio.** An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.
2. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.
3. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.
4. **Density Bonus.** See 23.332.020 (Definitions).
5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.

6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).
8. **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
9. **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
10. **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
11. **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
12. **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
13. **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
14. **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
15. **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

E. **“E” Terms.**

1. **Electric Vehicle Charging Station.** A facility that supplies electric energy for the recharging of plug-in electric vehicles

2. **Emergency Shelter.** Temporary lodging for homeless persons with minimal supportive services that may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e)).
3. **Enhanced Transit Service.** Any facility that will result in the improved operational performance of bus and/or shuttle service, as well as improvements that will encourage the use of transit and make transit service more compatible with downtown's activities and appearance. Improvements for enhanced transit services include but are not limited to: "complete streets" to enhance pedestrian and bicycle routes to transit; transit signal priority; queue jump lanes and left turn signal phasing; bus shelters and raised bus platforms; bus curb extensions and concrete bus pads; transit pre-pay fare vending machines; bus layover facilities; transit plazas and bus stop amenities; bicycle parking and bicycle rental facilities near transit; and street improvements that mitigate the impact of transit operations on pedestrians and bicyclists.
4. **Entertainment Establishment.** A permanent establishment which includes live performances and/or patron dancing. This use includes cabarets, nightclubs, dance halls, and discotheques.

#### F. "F" Terms.

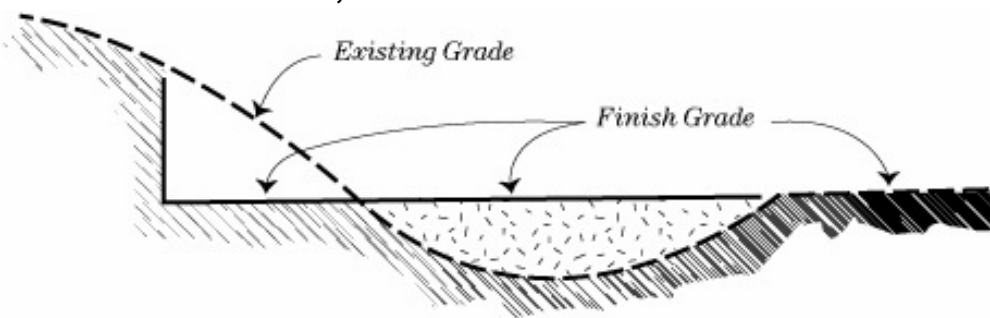
1. **Facade.** Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.
2. **Family.** See Household.
3. **Family Day Care Home.** An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care homes must be incidental to a residential use. The day care operator must live in the primary dwelling on the lot.
  - a. **Small Family Day Care Home.** A family day care homes for eight or fewer children, including children who live at the home.
  - b. **Large Family Day Care Home.** A family day care homes for nine to fourteen children, including children who live at the home.
4. **Fence.** A structure made of wood, metal, masonry or other material forming a physical barrier which supports no load other than its own weight, or a hedge, which is designed to delineate, screen or enclose a lot, yard, open space area or other land area.
5. **Firearm/Munitions Businesses.** Any establishment which sells, transfers, leases or offers for sale, transfer or lease any gun, ammunition, munitions, gun powder, bullets, ordnance, or other firearm or firearm parts or supplies.
6. **Floor Area, Gross.** See 23.106.030– Floor Area, Gross.

7. **Floor Area, Leasable.** See 23.106.040– Floor Area, Leasable.
8. **Floor Area Ratio (FAR).** See 23.106.050– Floor Area Ratio.
9. **Food Product Store.** A retail products store selling foods primarily intended to be taken to another location to be prepared and consumed, and the incidental preparation of food or beverages for immediate consumption off the premises.
10. **Food and Beverage for Immediate Consumption.** The sale of food or non-alcoholic beverages for immediate consumption not on the premises.
11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.
  - a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on- premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.
  - b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on- premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.
  - c. **Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining with table service (waiters).
12. **Fraternity House.** A building used for group living accommodations by an organization recognized by the University of California at Berkeley or other institution of higher learning.
13. **Front Wall.** The wall of the building nearest the front lot line.

## G. "G" Terms.

1. **Garage, Residential.** A detached accessory structure or portion of a primary building, covered or roofed and enclosed on at least three sides with walls, used for off-street parking by members of the households residing on the premises.
2. **Gasoline/Vehicle Fuel Stations.** An establishment that dispenses gasoline, diesel or other similar fuel into vehicles. Excludes alternative fuel stations and electric vehicle charging stations.
3. **General Plan.** The City of Berkeley General Plan adopted pursuant to Government Code Section 65300 et seq.
4. **Gift/Novelty Shop.** A store selling small manufactured articles usually for personal use or household adornment, including, but not limited to, stores selling primarily T-shirts and/or sweatshirts with imprinted wording or images.
5. **Grade.** The location of ground surface. See also Slope.
  - a. **Existing Grade.** The elevation of the ground at any point on a lot as shown on the required survey submitted in conjunction with an application for a building permit or grading permit. See Figure 23.502-3.
  - b. **Finished Grade.** The lowest point of elevation of the finished surface of the ground between the exterior walls of a building and a point 5 feet distant from the wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than 5 feet distant from the wall. In the case of walls which are parallel to and within 5 feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. See Figure 23.502-3.

FIGURE 23.502-3: GRADE, EXISTING AND FINISHED



6. **Group Class Instruction.** An establishment that offer specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.
7. **Group Living Accommodations.** A building or portion of a building designed for or accommodating a residential use by persons not living together as a



household. This use includes dormitories, convents and monasteries, and other types of organizational housing, and excludes hospitals, nursing homes and tourist hotels. Group living accommodations typically provide shared living quarters without separate kitchen or bathroom facilities for each room or unit. Residential hotels and senior congregate housing are separately defined types of group living accommodations each with their own permit requirements

8. **Ground Floor Street Frontage.** The occupied floor space in a structure nearest to the public right-of-way and closest to sidewalk grade.
9. **Gyms and Health Clubs.** An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.

#### H. "H" Terms.

1. **Habitable Space.** A space in a building which is used or designed to be used for living, sleeping, eating or cooking, but not including garages, bathrooms, utility, storage and laundry rooms, halls or closets.
2. **Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.
3. **Height of Building, Average.** See 23.106.090.A (Average Building Height).
4. **Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).
5. **Home Occupation.** A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

1. Class I Home Occupation - Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
2. Class II Home Occupation - Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
3. Class III Home Occupation - Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more

than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

6. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
  7. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
  8. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
  9. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
  10. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
  11. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:
    - a. **Low Income Household.** A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
    - b. **Lower Income Household.** A household whose income is no greater than 80 percent and above 50 percent of the median income.
    - c. **Very Low Income Household.** A household whose gross income is 50 percent or less of the median income.
- I. **“I” Terms.**
1. **Incidental Use.** See Use, Incidental.

2. **Inclusionary Unit.** A dwelling unit which is affordable by Households with income below the Oakland PMSA median income; or in the case of Limited Equity Cooperatives, Households with income below 120 percent of the Oakland PMSA median income.
3. **Industrial and Mining Product Sales.** Retail sale of equipment and productions for manufacturing, mining, and other industrial activities.
4. **Insurance Agents, Title Companies, Real Estate Agents, Travel Agents.** A commercial establishment providing insurance, title, real estate and travel services directly to customers.

J. **“J” Terms.**

K. **“K” Terms.**

1. **Kennels and Pet Boarding.** A facility for keeping, boarding, training, breeding or maintaining four or more dogs, cats, or other household pets not owned by the kennel owner or operator on a 24-hour basis. Excludes municipal animal shelters.
2. **Kitchen.** A habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.

L. **“L” Terms.**

1. **Laboratories.**

- a. **Commercial Physical or Biological.** A facility that provides controlled conditions in which scientific or technological research, experiments, and measurement may be performed.
- b. **Cannabis Testing.** A facility for the testing of the properties of cannabis intended for consumer use.
- c. **Class 1 Organism.** A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.
- d. **Class 2 Organism.** A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.
- e. **Class 3 Organism.** A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.

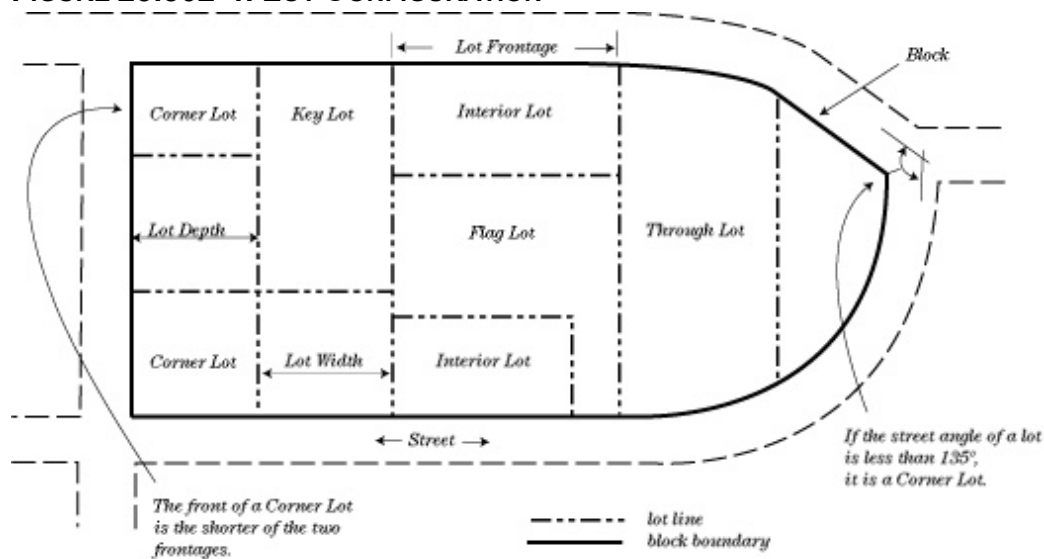
2. **Land Use.** See “Use.”

3. **Landscaped Area.** An area of ground within the boundaries of a lot which consists of living plant material including, but not limited to, trees, shrubs, ground covers, grass, flowers, gardens and vines.

4. **Large Vehicle Sales and Rental.** Establishments primarily engaged in renting or leasing trucks, truck tractors, buses, semitrailers, and utility trailers.
5. **Lattice Tower.** A support structure, erected on the ground that consists of metal crossed strips or bars to support antennas and related equipment.
6. **Laundromat and Cleaner.** A business which offers self-service laundry and/or dry-cleaning machines and dryers, which are coin, token or otherwise fee operated. This use excludes dry cleaning plants.
7. **Library.** A non-commercial facility where sources of information and similar resources (such as books, recordings, or films) are made available for public use.
8. **Limited Equity Cooperative.** The form of ownership defined in Section 11003.4(a) of the Business and Professions Code or other form of ownership, wherein appreciation of equity of dwelling units is no greater than appreciation permitted by California Health and Safety Code Section 33007.5 for a Limited Equity Cooperative.
9. **Live Entertainment.** Any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.
10. **Live/Work.** A built space used or designed to be used both as a workplace and as a residence by one or more persons in conformance with Chapter 23.312 (Live/Work).
11. **Loading Space, Off-street.** A covered or uncovered space for trucks or other delivery vehicles for the loading or unloading of freight, cargo, packages, containers or bundles of goods and/or bulky goods.
12. **Loft.** See mezzanine.
13. **Lot.** A separate legal subdivision of land, as recorded with the County of Alameda Recorder. See Figure 23.502-4: Lot Configuration.
  - a. **Abutting Lot.** A lot having a common property line or separated by a public path or alley, private street or easement to the subject lot.
  - b. **Confronting Lot.** A lot whose front property line is intersected by a line perpendicular to and intersecting the front property line of the subject lot.
  - c. **Corner Lot.** A lot bounded on two or more adjacent sides by street lines, providing that the angle of intersection is less than 135 degrees.
  - d. **Flag Lot.** A lot so shaped that the main portion of the lot area does not have direct street frontage, other than by a connection of a strip of land which is used for access purposes.

- e. **Interior Lot.** A lot bounded on one side by a street line and on all other sides by lot lines between adjacent lots or is bounded by more than one street with an intersection greater than or equal to 135 degrees.
- f. **Key Lot.** Any interior lot which abuts the rear lot line of a corner lot.
- g. **Receiving Lot.** The lot to which a building is relocated from a different lot.
- h. **Source Lot.** The lot from which a building is relocated to a different lot.
- i. **Through Lot.** A lot having frontage on two parallel or approximately parallel streets.

FIGURE 23.502-4: LOT CONFIGURATION



- 14. **Lot Area.** The total horizontal area within a lot's boundary lines.
- 15. **Lot Coverage.** See 23.106.020 (Lot Coverage).
- 16. **Lot Depth.** The average distance from the front lot line to the rear lot line measured in the general direction of the side lines.
- 17. **Lot Frontage.** That dimension of a lot's front lot line abutting on a street.
- 18. **Lot Lines.** The boundaries between a lot and other property or the public right-of-way.
- 19. **Lot Line, Front.** The shorter of the two intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.

20. **Lot Width.** The average distance between the side lot lines measured at right angles to the lot depth.

M. “M” Terms.

1. **Main Building.** See Building, Main.
2. **Maintenance of Building.** Those activities which preserve an existing building including, but not limited to cleaning, painting, refurbishing (but not altering) exterior and interior walls, equipment, facilities and fixtures.
3. **Manufactured Home.** A structure, designed or altered to be used as a dwelling unit, which is transportable in one or more sections and is built on a frame or chassis to which wheels may be attached so as to be transported, including mobile homes meeting the standards of the National Manufactured Housing Construction and Safety Act of 1974. If a manufactured home is mounted on a permanent foundation and connected to all utilities required for a dwelling unit built on the site, it is considered a dwelling unit.
4. **Manufacturing Districts.** The districts listed under the Manufacturing Districts heading in Table 23.108-1: Zoning Districts.
5. **Manufacturing.** A use primarily engaged in the mechanical or the chemical transformation of materials or substances into new products. Manufacturing activities include assembly, baking, brewing, fabrication, milling, processing, refining, smelting and treatment and any other uses determined by the Zoning Officer. Except as otherwise provided in this chapter, manufacturing uses are defined, and distinguished from nonmanufacturing uses, in the North American Industrial Classification Manual (311611 – 339999).
  - a. **Construction Products Manufacturing.** Manufacturing and/or processing asphalt, cement and/or concrete.
  - b. **Light Manufacturing.** Primarily involved in baking, brewing, fabricating, milling, processing and other similar forms of mechanical and chemical treatment. Light manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

| Use                                                      | NAICS Code                                                     |
|----------------------------------------------------------|----------------------------------------------------------------|
| Apparel and Other Textile Mill Products                  | 314 – 33636                                                    |
| Electronic and Electric Equipment, except semiconductors | 334412 – 335311, 334413, 333319, 333618, 333992, 335129, 35999 |
| Fabricated Metal Products                                | 332 – 332999                                                   |
| Food Processing                                          | 311 – 311999                                                   |
| Furniture and Fixtures                                   | 337 – 33792                                                    |
| Industrial Machinery and Equipment                       | 333 – 333999                                                   |
| Instruments and Related Products                         | 334511 – 334518                                                |
| Leather and Leather Products, except leather tanning     | 3162 – 316999                                                  |
| Lumber and Wood Products, except logging                 | 321 – 321999                                                   |
| Miscellaneous Manufacturing                              | 339 – 339999                                                   |

| Use                                                                | NAICS Code                   |
|--------------------------------------------------------------------|------------------------------|
| Paper and Allied Products, except paper, pulp and paperboard mills | 3222 – 322299                |
| Perfumes, Cosmetics and Toilet Preparations                        | 325611 – 32562               |
| Printing and Publishing, except publishing without printing        | 323 – 323122                 |
| Rubber and Miscellaneous Plastic Products                          | 326 – 326299                 |
| Stone, Clay and Glass Products, except cement                      | 327 – 327215, 32733 – 327999 |
| Textile Mill Products                                              | 313 – 31332                  |
| Transportation Equipment                                           | 336 – 336999                 |

- c. **Pesticides, Herbicides and Fertilizers.** Manufacturing and/or processing of substances used for destroying insects or other organisms harmful to cultivated plants or to animals, substances toxic to plants used to destroy unwanted vegetation. and chemicals or natural substance added to soil or land to increase its fertility.
- d. **Petroleum Refining and Products.** The transformation of crude oil into gasoline and other similar petroleum products.
- e. **Pharmaceuticals.** Manufacturing and production of medical drugs.
- f. **Primary Production Manufacturing,** Manufacturing primarily involved in drawing, smelting, refining, rolling and extruding to produce materials such as metals or plastic. Primary production manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

| Use                                                                                                   | NAICS Code                                  |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------|
| Chemicals and allied products, except pharmaceuticals and perfumes, cosmetics and toilet preparations | 325 – 32532, 325413 – 325613, 3259 – 325998 |
| Leather Tanning                                                                                       | 31611                                       |
| Paper, pulp and paperboard mills                                                                      | 32211 – 3221                                |
| Primary Metal Industries                                                                              | 331 – 331528                                |

- g. **Semiconductors.** The manufacturing of a solid substance that has a conductivity between that of an insulator and that of most metals, either due to the addition of an impurity or because of temperature effects.
6. **Material Recovery Enterprise.** A business that diverts discarded materials from several waste streams including the Transfer Station, drop-off, pick-up and curbside collection. Such facilities must clean, sort, repair and/or process these materials and offer them for reuse and/or recycling through wholesale and/or retail sales, including bulk sales. The retail component of these facilities is limited to the sale of items recovered from the waste stream. No new items may be offered for sale at these facilities. This use excludes flea markets, automobile wrecking establishments, manufacturer's outlet stores (factory second stores),

consignment shops, second-hand stores, antique stores, and any store which offers only used furniture, clothing and/or household items.

7. **Media Production.** Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.
8. **Medical Practitioner Office.** Clinics or offices and related laboratories for doctors, dentists, chiropractors, optometrists, mental health practitioners, osteopaths, chiropodists, and similar practitioners of the traditional healing arts, as well as holistic healthcare providers and practitioners of a non-traditional nature. This use includes acupuncturists, herbalists, nutritionists, midwives, reflexologists, iridologists, physical therapists, and bodyworkers, but excludes offices for veterinarians or opticians.
9. **Mezzanine.** An intermediate level of a building interior containing floor area without complete enclosing interior walls or partitions, placed in any story or room and not separated from the floor or level below by a wall.
10. **Microbusiness.** Cannabis use involving more than one State license. See Municipal Code Chapter 12.21 for definition.
  - a. **Retail Nursery Microbusiness.** A microbusiness that is restricted to growing and selling cannabis plants and seeds. See Municipal Code Chapter 12.21 for definition.
  - b. **Retail Storefront Microbusiness.** A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See Municipal Code Chapter 12.21 for definition and limitations.
11. **Mini-storage.** A storage warehouse characterized by individual separate spaces, which are accessible by customers for storing and retrieval of goods.
12. **Mixed Use.** The use of a lot or building with two or more different land uses including, but not limited to, residential, commercial retail, office or manufacturing, in a single structure or a group of physically integrated structures.
13. **Mixed-Use Residential.** A development project with both residential and non-residential uses which are either 1) located together in a single building; or 2) in separate buildings on a single site of one or more contiguous properties.
14. **Microcell.** A set of antenna nodes networked with each other and connected to a wireless service source, such that a one or more high-power antennas that serve a given area are replaced by a group of lower-power antennas to serve the same geographic area.



15. **Monopole.** A single pole support structure greater than 15 feet in height erected on the ground or on a structure to support antennas and related communications equipment.
16. **Motel, Tourist.** An establishment which provides overnight lodging and parking which contains six or more guest rooms used, designed or intended to be used, let or hired out for occupancy by six or more transient individuals for compensation, whether direct or indirect, and in which the rooms are usually accessible from an outdoor parking lot.
17. **Multi-Family Dwelling.** A building, group of buildings, or portion of a building used or designed as three or more dwelling units.
18. **Municipal Animal Shelter.** A City-owned facility providing services for humane animal care with programs and services focused on maximizing opportunities for animal adoption. Supporting facilities may include medical care (including spay/neuter), kennels, exercise areas and adoption centers.

N. **“N” Terms.**

1. **New Construction.** Construction of a new main building
2. **Non-Chartered Financial Institutions.** A use, other than State or Federally chartered bank, credit union, mortgage lender, savings and loan association or industrial loan company, that offers deferred deposit transaction services or check cashing services and loans for payment of a percentage fee. This use includes deferred deposit transaction (payday loan) businesses that makes loans upon assignment of wages received, check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, and motor vehicle title lenders who offer short-term loan secured by the title to motor vehicles. This use excludes non-profit financial institutions or retail sellers engaged primarily in the business of selling consumer goods to retail buyers and that cash checks or issue money orders as a service to its customers that is incidental to its main purpose or business.
3. **Non-conforming Use or Building.** A use or building which is not consistent with a provision or provisions of the Zoning Ordinance, but which was lawfully established or constructed before the effective date of the provision(s) with which it is inconsistent. A use is not considered non-conforming if it is only inconsistent with the Zoning Ordinance with respect to the number of auto or bicycle spaces, their location on site, or screening.
4. **Non-Processed Edibles.** Foods, including fruit, vegetables, nuts, honey, and shell eggs from fowl or poultry, grown or raised in accordance with the Municipal Code, that are whole and intact and have not been processed, but not including cannabis as defined in Chapter 12.26 or meat. Washing, trimming, bundling, and

similar handling of otherwise whole and intact foods shall not be considered processing.

5. **Non-Residential Districts.** Those districts listed under the Commercial Districts, Manufacturing Districts, and Special Districts headings in Table 23.108-1: Zoning Districts.
6. **Non-Residential Use.** Any land use other than a residential use as defined by this chapter.
7. **Nursing Home.** An establishment which provides 24 hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the California State Department of Health Services. This use includes rest homes and convalescent hospitals and excludes community care facilities, senior congregate housing, and hospitals.

O. **“O” Terms.**

1. **Oakland Primary Metropolitan Statistical Area (PMSA).** A geographic area defined by the U.S. Bureau of the Census, composed of the counties of Alameda and Contra Costa.
2. **Office Use.** A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity.
3. **Office, Business and Professional.** A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity. Includes publishing without printing.
4. **One Ownership.** Ownership of property or possession thereof under a contract to purchase by a person or persons, firm, corporation or partnership, individually, jointly, in common or in any other manner whereby such property is under a single or unified control.
5. **Outdoor Cafe Seating.** Tables and/or chairs (including benches) and umbrellas associated with a lawfully operating food service establishment located in an outdoor area on private property.
6. **Owner.** The person or persons, firm, corporation or partnership exercising One Ownership as defined in this chapter.
7. **Owner or Operator (also Provider or Service Provider).** The person, entity or agency primarily responsible for installation and maintenance of the facility, which may or may not be the same person or entity which is the owner of the property on which the facility is located.

## P. "P" Terms.

1. **Parapet.** A low wall or railing not exceeding 42 inches above the roof and along its perimeter, usually for fire containment and/or architectural purposes.
2. **Parcel.** A term used by the Alameda County Tax Collector to describe a lot, portion of a lot or a group of lots for property tax purposes.
3. **Park/Playground.** Non-commercial facilities that provide open space and/or recreational opportunities to the public.
4. **Parking Area, Accessory.** An area of a lot reserved for use as off-street parking intended to serve a building or use which is the primary or main use of the lot.
5. **Parking Lot/Structure.**
  - a. **Parking Lots.** The exclusive or primary use of a lot for off-street parking spaces in an open paved area.
  - b. **Parking Structures.** The exclusive or primary use of a lot for off-street parking spaces in a structure built specifically for parking purposes.
6. **Parking Space, Off-Street.** An area, covered or uncovered, designed for the storage of an automobile which is paved, accessible by an automobile, and usable for such automobile storage use without permanent obstruction.
7. **Path.** A City-owned right-of-way used or designed for pedestrian access.
8. **Pawn Shops and Auction Houses.** Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans in exchange for personal property.
9. **Penthouse, Mechanical.** A room or enclosed structure, attached to the roof level for the uppermost story, for purposes of sheltering mechanical equipment, water tanks and/or vertical openings for stairwell and elevator shafts. Such a structure is considered a story if it contains usable floor area or habitable space.
10. **Permit, Discretionary.** The following types of permits and approvals: Administrative Use Permit, Use Permit, Master Use Permit, Modification of Development Standards, Reasonable Accommodations, and Variance.
11. **Permit.** A Use Permit, Administrative Use Permit, or Variance, unless the context specifies otherwise.
12. **Personal/Household Service, General.** A business establishment which provides commercial services directly to customers. This use includes barber/beauty shops, clothing, shoes and/or household items repair shops, dry cleaning and laundry agents, framing/mounting shops, optician shops, photocopy stores, photography studios postal/packaging/po box service shops, and other similar establishments. This use excludes massage.

13. **Pet Store.** Retail sales and services for animals kept as household pets. Includes sales and grooming of animals but not boarding.
14. **Plumbing Shop.** A business offering plumbing supplies and service which has on-site supply storage and service vehicles.
15. **Porch.** A covered projecting platform that extends from the main wall of a building where the covering is supported by columns, walls, or other vertical structural elements.
16. **Primary Dwelling Unit.** A legally established single-family dwelling that is on a lot with an accessory dwelling unit.
17. **Privately-Owned Public Open Space.** Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access, and may be outdoors, indoors, or enclosed.
18. **Public Property.** All real property owned, operated or controlled by the City, other than the public right-of-way and any privately- owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.
19. **Public Right-Of-Way.** Any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.
20. **Public Market.** A facility or location where people regularly gather for the sale and purchase of food, beverages, flowers, crafts, and other similar goods. Public markets are open daily, year-round, in a permanent location, with multiple vendors that are owner-operated.
  - a. **Open Air.** A public market conducted outdoors.
  - b. **Enclosed.** A public market conducted indoors.
21. **Public Safety and Emergency Service.** Facilities that provide police and fire protection.
22. **Public Utility Substation/Tanks.** A permanent structure or facility providing a utility service to the general public. Includes generating plants, electric substations, solid waste collection, solid waste treatment and disposal, water or wastewater treatment plants, and similar facilities.

Q. **"Q" Terms.**

1. **Quorum.** A majority of the appointed members.

R. **“R” Terms.**

1. **Rear Main Building.** A main building situated behind another main building existing or proposed on a parcel located in the R-1A district.
2. **Receiving Lot.** See Lot, Receiving.
3. **Recycled Materials Processing.** A facility that receives and processes recyclable materials. Processing means preparation of material for efficient shipment, or to an end-user’s specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing.
4. **Recycling Redemption Center.** A facility, use, or structure for the collection of recyclable goods, including beverage containers and newspapers.
5. **Related Equipment.** All equipment necessary for or related to the provision of personal wireless services. Such equipment may include, but is not limited to, cable, conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.
6. **Religious Assembly.** A building or space primarily used for an assembly of persons to conduct worship or other religious ceremonies, including, but not limited to, churches, synagogues, temples, mosques or shrines.
7. **Repair Service, Non-Vehicle.** An establishment that provides repair and maintenance services for household appliance, home electronics, office equipment, furniture and other similar items. Excludes vehicle repair.
8. **Research and Development.** An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.
9. **Resident.** A person whose primary residence is in Berkeley.
10. **Residential Care Facility.** See Community Care Facility.
11. **Residential Hotel.** See Hotel, Residential.
12. **Residential Addition.** See Addition, Residential.
13. **Residential Districts.** The districts listed under the Residential Districts heading in Table 23.108-1: Zoning Districts.
14. **Residential Hotel Room.** A room which is:
  - a. Used, designed, or intended to be used for sleeping for a period of 14 consecutive days or more;

- b. Not a complete dwelling unit, as defined in this chapter; and
- c. Not a Tourist Hotel Room, as defined in this chapter.

15. **Residential Use.** Any legal use of a property as a place of residence, including but not limited to dwelling units, group living accommodations, and residential hotels.
16. **Retail, General.** A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use excludes video rental stores, service of vehicle parts, nurseries, and firearm/munition sales.
17. **Retaining Wall.** A wall designed to contain and resist the lateral displacement of soil and of which such soil is at a higher elevation on one side of the wall.
18. **Review Authority.** The City official or body responsible for approving or denying a permit application or other form of requested approval under the Zoning Ordinance.
19. **Rooming House.** A building used for residential purposes, other than a hotel, where lodging for 5 or more persons, who are not living as a single household, is provided for compensation, whether direct or indirect. In determining the number of persons lodging in a rooming house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent. See also Boarding House.

#### S. "S" Terms.

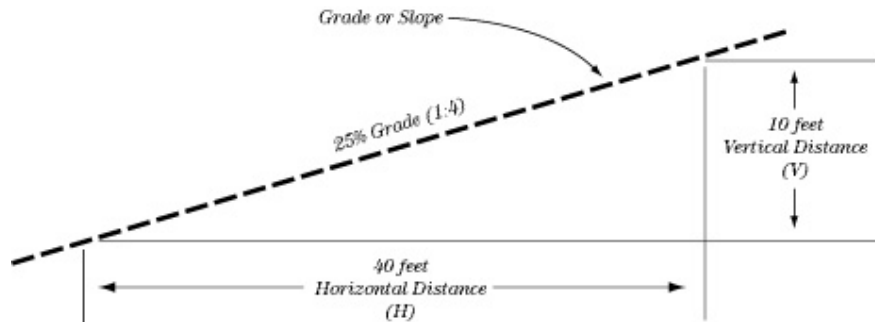
1. **Satellite Dish.** A device which is designed to receive signals or communications from orbiting satellites.
2. **School.** A building or group of buildings for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other private or public education institutions offering a general course of study at primary, secondary or high school levels which is equivalent to the courses of study at such levels offered by the BUSD. Day nurseries, vocational and trade

schools are considered schools only when incidental to the conduct of a school as defined by this chapter.

3. **School, Vocational.** An educational institution which provides secondary or post-secondary training for technical skills required to complete the tasks of a specific job.
4. **Seasonal Product Sales.** Sales of products for a limited duration of time, usually associated with a seasonal holiday, including but not limited to, sales of Christmas trees and pumpkins.
5. **Service Use.** A business in which no more than fifty percent (50%) of its gross receipts are subject to retail sales taxes.
6. **Services to Buildings and Dwellings.** A business that provides services to customers at a location other than the business location. This use includes carpet/upholstery cleaning services, security services, and janitorial services.
7. **Senior Congregate Housing.** A type of group living accommodations occupied by persons 60 years or older who live in sleeping rooms without kitchen facilities, and which contains congregate bath and/or dining facilities or rooms. This use excludes community care facilities/homes and nursing homes.
8. **Setback.** A distance between a lot line and a building or other site improvement. See also 23.106.070 (Setbacks).
9. **Setback Area.** See 23.106.070.B (Setback Areas).
10. **Setback Line.** A line parallel to a specified lot line which defines a required setback area.
11. **Shed, Garden and/or Tool.** An accessory structure designed to store tools, lawn and garden care or maintenance equipment or materials, and which is not designed to contain any habitable space.
12. **Shelter, Homeless or Women's.** See Transitional Housing.
13. **Short-Term Rental.** See Section 23.314.020 (Definitions).
14. **Sidewalk Cafe Seating.** Tables and/or chairs (including benches) as defined in Municipal Code Section 14.48.150 (Sidewalk cafe seating, benches and planters).
15. **Sign.** Any sign as defined in Municipal Code Section 20.08.220 (Sign).
16. **Single-Family Dwelling.** A building designed for and occupied exclusively by one household.
17. **Single Residential Occupancy (SRO) Room.** A room for residential or sleeping purposes in a residential hotel which is designed for occupancy of one person only.

18. **Skateboard Ramp.** A ramp, platform, course or facility used for skateboard riding and made of wood or other solid material.
19. **Slope.** The steepness of a site, measured as the ratio of the vertical distance to the horizontal distance between the highest and lowest points of the site. See Figure 23.502-5: Grade or Slope.

**FIGURE 23.502-5: GRADE OR SLOPE**



20. **Small Vehicle Sales and Service.** An establishment which sells or leases long-term new, used, or pre-owned motorized vehicles other than passenger automobiles and trucks which are characterized by fewer than four wheels or a minimal frame. Types of vehicles sold or leased by this use include motorcycles, scooters, three-wheel motorcycles, electric carts, electric scooters, and such vehicles designed or refurbished for alternative fuels/power sources (alternative to conventional gasoline).
21. **Smoke Shop.** An establishment engaged primarily in the sale of tobacco and/or tobacco-related products.
22. **Solar Energy Device/Equipment.** Any solar collector or other solar energy device or any structural design feature of a building of which the primary purpose is to provide for the collection, storage or distribution of solar energy for space heating or cooling, water heating or the generation of electricity.
23. **Sorority House.** A building used for group living accommodations by an organization recognized by the UC Berkeley, or other institution of higher learning.
24. **Source Lot.** See Lot, Source.
25. **Story.** See Section 23.106.060 (Story)
26. **Street.** A public or private thoroughfare which provides principal means of access to abutting lots, including but not limited to, avenue, place, way, manor, drive, circle, lane, court, boulevard, highway, road and any other thoroughfare except an alley or a path as defined in this chapter.
27. **Street Line.** The boundary between a lot and an adjacent street.



28. **Structural Alteration.** Any physical change to or removal of the supporting members of a building, foundation or bearing walls, columns, beams or girders or creation or enlargement of a window or door, change of a roofline or roof shape, including creating, enlarging or extending a dormer.
29. **Structural Alteration, Public Safety.** Any structural alteration or physical change to a building that provides greater safety to the public or occupants by strengthening the building against seismic activity, which does not result in new floor area except that created by necessary structural improvements or physical changes as required under Municipal Code Chapter 19.38 and 19.39.
30. **Structure.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A building is a structure for the purposes of this chapter.
- a. **Accessory Structure.** A detached structure, other than an accessory building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential accessory structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential accessory structures include, but are not limited to, storage buildings, garages, sheds and other outbuildings.
  - b. **Subterranean Structure.** A roofed structure constructed underground, with no building stories aboveground, of which the roof does not exceed 3 feet above the pre-existing grade. Such structures are either separated from a building or connected to a building only by a passageway or hallway with no openings to finished grade except for a doorway.
  - c. **Temporary Structure.** A tent, tent-house, trailer, mobile office, mobile home or other movable structure or other temporary structure whose construction does not require a building permit.
31. **Studio.** See Art/Craft Studio and Dance, Exercise, Martial Arts or Music Studio.
32. **Supportive Housing.** As defined in Health and Safety Code 50675.14(b): Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in subdivision (d) of Section 53260 of the CA Health and Safety Code with no limit on length of stay, that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

T. **“T” Terms.**

1. **Temporary Use.** See Use, Temporary.

2. **Tenant Space Reconfiguration.** any physical change to an existing building's walls separating leased spaces so as to change the number of lease spaces for commercial businesses or the square footage of leasable floor area of an existing commercial lease space.
3. **Theater.** Any establishment that has a permanent stage or screen for the presentation of live or recorded entertainment and which contains an audience viewing hall or room, with fixed seats. Theaters may be used for live performances of music, dance, plays, orations, and other stage performances and/or the showing of projected motion pictures and videotapes.
4. **Tire Sales and Service.** An establishment that sells, installs, and provides services for vehicle tires.
5. **Tourist Hotel.** See Hotel, Tourist.
6. **Tourist Hotel Room.** A sleeping room used, designed or intended for occupancy by transient guests for a period not to exceed 14 consecutive days, which is not a residential hotel room or a dwelling unit.
7. **Townhouse.** A dwelling unit in which ownership is in the form of a condominium arrangement which is located in a separate building from any other dwelling unit.
8. **Transitional Housing.** From Health and Safety Code Section 50675.2: Any dwelling unit or a Group Living Accommodation configured as a rental housing development, but operated under program requirements that call for the termination of assistance and recirculation of the assisted units to another eligible program recipient at some predetermined future point in time.
9. **Treehouse.** An accessory structure built within, on or above the branches of any living tree.
10. **Two-Family Dwelling.** A building or use of a lot designed for, or occupied exclusively by, two households.

#### U. "U" Terms.

1. **Unenclosed Accessory Structure.** An accessory structure that does not have a roof, and/or does not have walls on more than two sides. Unenclosed accessory structures include, but are not limited to, pergolas, trellises, shade structures, arbors, retaining walls, solar energy equipment, ground or pole-mounted satellite dishes, play structures, skateboard ramps, tree houses and windmills.
2. **Urban Agriculture.** The production of horticultural crops for harvest, sale, and/or donation, including community gardens. This use excludes include cannabis cultivation and does not pertain to raising animals.
  - a. **Low-Impact Urban Agriculture.** Urban agriculture that meets the thresholds in Section 23.318.040 (Thresholds).

- b. **High-Impact Urban Agriculture.** Urban agriculture that does not meet one or more of the thresholds in Section 23.318.040 (Thresholds).
3. **Urban Agricultural Products.** Horticultural crops including fruits, vegetables, nuts, flowers, herbs, and any other cultivar, and value-added products made from raw agricultural products grown at the site such as jams, fruit preserves, herb blends, and floral bouquets. Urban agricultural products do not include cannabis products.
  4. **Usable Open Space.** Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot.
  5. **Usable Space.** Any portion of a building or structure which is designed to be or can be used as habitable space, which has finished walls (sheetrock or plaster) and/or is heated with any fixed furnace or central heating system, including bathrooms, halls, garages and laundry rooms. Storage areas with over 6 feet of vertical space shall also be considered usable space.
  6. **Use.** The purpose for which land or premises or a building thereon is designed, arranged, or intended or for which it is or may be occupied or maintained.
  7. **Use, Accessory.** A use that is of the same nature as or complementary to the principal use of a lot or a building located on the same lot, and that is not independent of the principal use.
  8. **Use, Ancillary.** A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use.
  9. **Use, Incidental.** A use of a lot and/or building that is secondary to the principal permitted use, but that by nature could be independent. An incidental use shall not exceed 25 percent of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of 33 percent of the gross receipts generated by the primary use.
  10. **Use, Primary.** The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.
  11. **Use, Temporary.** A use of a building, property or land area, that is limited in duration of time, does not permanently change the character or physical facilities of the premises or property and is in keeping with the purposes listed in the district where it is located.

12. **Utility.** An entity which provides water, sewage collection, electricity, natural gas, telephone, cable television or other public service or good to the public.

V. **“V” Terms.**

1. **Vehicle Parts Stores.** An establishment that sells automobile, truck or other vehicle parts or equipment. This use excludes service of vehicle parts.
2. **Vehicle Rentals.** An establishment which rents automobiles, trucks, motorcycles, boats, or other motor-driven vehicles that are stored either indoors or outdoors on its premises.
3. **Vehicle Repair and Service.** An establishment that repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor-driven vehicles on its premises. Includes restoration of antique and classic cars.
4. **Vehicle Sales.** An establishment which sells, or leases long-term, new, used or previously owned automobiles or trucks; restored vintage, specialty, or antique automobiles or trucks; or automobiles or trucks refurbished for alternative fuels (alternative to conventional gasoline). Ancillary uses and services that are supporting of an vehicle sales use may include the sale and installation of automobile parts, accessories and equipment; repair, maintenance, bodywork and other service of automobiles; loaning of vehicles to service patrons; storage of vehicles outdoors; and automobile washes. This use excludes establishments where more than 50 percent of vehicles sold are previously owned or used (see vehicles sales, used).
5. **Vehicle Sales, Used.** An establishment which sells automobiles and/or trucks of which more than fifty percent at any time are previously owned and/or used.
6. **Vehicle Sharing** (which includes “Car Sharing”). A membership-based service that:
  - a. Provides a mobility service that helps meet City goals for alternative transportation to enhance mobility options, reduce congestion and promote walking, biking and transit;
  - b. Is primarily designed for shorter time and shorter distance trips that can function as an extension of the public transportation network;
  - c. Offers membership to all qualified drivers in the City;
  - d. Does not require a separate written agreement or human intervention to access vehicles each time a member reserves and uses a vehicle;
  - e. Offers members access to a dispersed network of shared automotive vehicles, available 24 hours per day, 7 days a week, at self-service locations where the vehicles are not attended; and

- f. Provides vehicle usage without restriction at hourly and/or per mile rates that are directly proportional to usage and include fuels (gas), insurance, maintenance, and reserved parking when vehicles are not in use.
7. **Vehicle Sharing Pod.** Any location reserved for shared vehicles that:
    - a. Is located in a location approved for off-street parking or municipal parking lot; or
    - b. Is located on street in a site designated by the City for this use; and
    - c. Does not involve more than five shared vehicles per vehicle sharing service provider; and
    - d. Where the shared vehicles must be parked in assigned spaces in conformance with all applicable laws and ordinances.
  8. **Vehicle Wash.** An establishment where the Washing, waxing, or cleaning of automobiles or similar light vehicles are the primary use. Includes self-serve washing facilities.
  9. **Vehicle Wrecking.** An establishment which engages in the on-site dismantling or wrecking of automobiles, trucks, or trailers for the purpose of obtaining parts, metal, or materials for re-use or resale or the storage and keeping of such dismantled parts.
  10. **Veterinary Clinic.** A facility providing veterinarian and/or medical care or treatment for animals. This use includes pet hospitals but excludes kennels or other animal boarding facilities for non-medical care of animals of over 24 hours.
  11. **Video Tape/Disk Rental Stores.** A commercial establishment where the primary business is the rental of video tapes and DVD for the short-term use of customers.
  12. **View Corridor.** A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

#### W. "W" Terms.

1. **Warehouse.** A facility for the storage of commercial goods. Includes storage of goods for a contiguous and directly accessible retail space. Excludes mini-storage.
2. **Warehouse-Based Non-Store Retailers.** Retail activity that is based on sales without on-site customer visits. This use includes businesses engaged in catalog sales, internet sales, and phone orders. Goods may be both stored and distributed from site. This use includes delivery-only cannabis retailers located in the Manufacturing (M) district.

3. **Wheelchair Ramp.** A sloping ramp, designed in width and steepness to allow a person in a wheelchair to reach an entrance doorway of a building or a landing at the same level as the doorway.
4. **Wholesale Trade.** The sale of goods to other businesses for resale. Any use defined as conducting Wholesale Trade under Municipal Code Section 9.04.150 is considered a wholesale trade establishment.
5. **Windmill.** A device that converts the kinetic energy of the wind to a usable form of electrical or mechanical energy, usually by rotating blades.

X. **“X” Terms.**

Y. **“Y” Terms.**

1. **Yard.** See Setback Area

Z. **“Z” Terms.**

1. **Zoning Ordinance.** Title 23 of the City of Berkeley Municipal Code.

**23.502.030 – Acronyms**

- A. **Error! Reference source not found.** shows terms corresponding to acronyms used in the Zoning Ordinance. For zoning district names that correspond to district symbols (e.g., R-1 for Single-Family Residential), see Table 23.108-1: Zoning Districts.

**TABLE 23.502-1: ACRONYMS USED IN ZONING ORDINANCE**

| ACRONYM | TERM                                             |
|---------|--------------------------------------------------|
| ADA     | Americans with Disabilities Act                  |
| AUP     | Administrative Use Permit                        |
| DU      | Dwelling Unit                                    |
| FAR     | Floor Area Ratio                                 |
| HUD     | U.S. Department of Housing and Urban Development |
| LPC     | Landmarks Preservation Commission                |
| NPO     | Neighborhood Preservation Ordinance              |
| TSF     | Transportation Services Fee                      |
| UBC     | Uniform Building Code                            |
| UP(PH)  | Use Permit, Public Hearing                       |
| ZAB     | Zoning Adjustments Board                         |
| ZC      | Zoning Certificate                               |

**Appendix A**  
**CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)**  
**TABLE RELATING NEW ORDINANCE TO OLD ORDINANCE**

| New Chapters                              | Old Chapters                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Division 1: General Provisions</b>     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 23.102: Introductory Provisions           | 23A.04: Title, Adoption and Purposes<br>23A.12: General Regulations<br>23A.24: Applicability, Emergencies, Interpretation, Severability, Rules of Evidence and Procedure                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 23.104: Interpreting the Zoning Ordinance | 23A.08: Interpretation and Construction of the Zoning Ordinance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 23.106: Rules of Measurement              | 23D.04: Lot and Development Standards<br>23F.04: Definitions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 23.108: Zoning Districts and Map          | 23A.16: Zoning Maps, Districts and Boundaries                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Division 2: Zoning Districts</b>       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 23.202: Residential Districts             | 23D.16: R-1 Single Family Residential District Provisions<br>23D.20: R-1A Limited Two-Family Residential District Provisions<br>23D.24: ES-R Environmental Safety-Residential District Provisions<br>23D.28: R-2 Restricted Two-Family Residential District Provisions<br>23D.32: R-2A Restricted Multiple-Family Residential District Provisions<br>23D.36: R-3 Multiple Family Residential District Provisions<br>23D.40: R-4 Multi-Family Residential District Provisions<br>23D.44: R-5 High Density Residential District Provisions<br>23D.48: R-S Residential Southside District Provisions |

| New Chapters                      | Old Chapters                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | 23D.52: R-SMU Residential Southside Mixed Use District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 23.204: Commercial Districts      | 23E.16: Special Use Standards<br>23E.18: Temporary Outdoor Uses on Private Property<br>23E.24: Sidewalk Café Seating<br>23E.36: C-1 General Commercial District Provisions<br>23E.40: C-N Neighborhood Commercial District Provisions<br>23E.44: C-E Elmwood Commercial District Provisions<br>23E.48: C-NS North Shattuck Commercial District Provisions<br>23E.52: C-SA South Area Commercial District Provisions<br>23E.56: C-T Telegraph Avenue Commercial District Provisions<br>23E.60: C-O Solano Avenue Commercial District Provisions<br>23E.64: C-W West Berkeley Commercial District Provisions<br>23E.68: C-DMU Downtown Mixed Use District Provisions<br>23E.70: C-AC Adeline Corridor Commercial District Provisions |
| 23.206: Manufacturing Districts   | 23E.72: M Manufacturing District Provisions<br>23E.76: MM Mixed Manufacturing District Provisions<br>23E.80: MU-LI Mixed Use-Light Industrial District Provisions<br>23E.84: MU-R Mixed Use-Residential District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 23.208: Special Purpose Districts | 23E.88: SP Specific Plan District Provisions<br>23E.92: U Unclassified District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 23.210: Overlay Zones             | 23E.96: H Hillside Overlay District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



| New Chapters                                          | Old Chapters                                                                                                                                                                                                   |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                       | 23E.98: Civic Center District Overlay                                                                                                                                                                          |
| <b>Division 3: Citywide Provisions</b>                |                                                                                                                                                                                                                |
| 23.302: Supplemental Use Regulations                  | 23C.06: Bed and Breakfast Establishments in Residential Districts<br>23C.16: Home Occupations<br>23C.20: Exemptions<br>23E.18: Temporary Outdoor Uses on Private Property                                      |
| 23.304: General Development Standards                 | 23C.04: Lot and Development Standards<br>23D.08: Accessory Buildings and Structures<br>23E.04: Lot and Development Standards                                                                                   |
| 23.306: Accessory Dwelling Units                      | 23D.10: Accessory Dwelling Units                                                                                                                                                                               |
| 23.308: Emergency Shelters                            | 23C.10: Emergency Shelter Zoning                                                                                                                                                                               |
| 23.310: Alcoholic Beverage Sales and Service          |                                                                                                                                                                                                                |
| 23.312: Live/Work                                     | 23E.20: Live/Work                                                                                                                                                                                              |
| 23.314: Short-Term Rentals                            | 23C.22: Short-Term Rentals                                                                                                                                                                                     |
| 23.316: Percentage for Public Art on Private Projects | 23C.23: One-Percent for Public Art on Private Projects                                                                                                                                                         |
| 23.318: Urban Agriculture                             | 23C.26: Urban Agriculture                                                                                                                                                                                      |
| 23.320: Cannabis Uses                                 | 23C.25: Cannabis Uses                                                                                                                                                                                          |
| 23.322: Parking and Loading                           | 23C.19: Off-Street Parking Maximums for Residential Development<br>23D.12: Off-Street Parking Requirements<br>23E.28: Off-Street Parking and Transportation Services Fee<br>23E.32: Loading Space Requirements |
| 23.324: Nonconforming Uses, Structures, and Buildings | 23C.04: Conforming and Non-Conforming Uses, Buildings and Lots                                                                                                                                                 |
| 23.326: Demolition and Dwelling Unit Control          | 23C.08: Demolition and Dwelling Unit Control                                                                                                                                                                   |
| 23.328: Inclusionary Housing                          | 23C.12: Inclusionary Housing Requirements                                                                                                                                                                      |
| 23.330: Density Bonus                                 | 23C.14: Density Bonus                                                                                                                                                                                          |
| 23.332: Wireless Communication Facilities             | 23C.17: Wireless Telecommunication Facilities                                                                                                                                                                  |
| 23.334: Transportation Demand Management              | 23C.18: Transportation Demand Management                                                                                                                                                                       |

| New Chapters                                  | Old Chapters                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Division 4: Permits and Administration</b> |                                                                                                                                                                                                                                                                                                                                     |
| 23.402: Administrative Responsibility         | 23B.04: Zoning Adjustments Board<br>23B.08: Design Review Committee<br>23B.12: Zoning Officer                                                                                                                                                                                                                                       |
| 23.404: Common Permit Requirements            | 23B.16: Use of Conflict Resolution or Mediation Service<br>23B.24: Applications for Permits<br>23B.56: Conditions Applicable to All Permits<br>23B.60: Compliance and Revocation                                                                                                                                                    |
| 23.406: Specific Permit Requirements          | 23B.20: Zoning Conformance Review<br>23B.28: Administrative Use Permits<br>23B.32: Use Permits<br>23B.36: Master Use Permits<br>23B.40: AUPs for Temporary Uses<br>23B.44: Variances<br>23B.48: Modification of Development Standards<br>23B.52: Reasonable Accommodation<br>23E.08: Design Review<br>23E.12: Design Review Process |
| 23.408: Green Pathway                         | 23B.34: Green Pathway                                                                                                                                                                                                                                                                                                               |
| 23.410: Appeals and Certifications            | 23.326: Demolition and Dwelling Unit Control                                                                                                                                                                                                                                                                                        |
| 23.412: Zoning Ordinance Amendments           | 23A.20: Zoning Ordinance Amendments                                                                                                                                                                                                                                                                                                 |
| 23.414: Nuisance Abatement                    | 23B.64: Abatement of Nuisances<br>23B.68: Private Right of Action                                                                                                                                                                                                                                                                   |
| <b>Division 5: Glossary</b>                   |                                                                                                                                                                                                                                                                                                                                     |
| 23.502: Glossary                              | 23F.04: Definitions                                                                                                                                                                                                                                                                                                                 |

**Appendix B**  
**CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)**  
**TABLE RELATING OLD ORDINANCE TO NEW ORDINANCE**

| Old Chapters                                                                                      | New Chapters                                   |
|---------------------------------------------------------------------------------------------------|------------------------------------------------|
| <b>Sub-Title 23A: Ordinance Applicability</b>                                                     |                                                |
| 23A.04: Title, Adoption and Purposes                                                              | 23.102: Introductory Provisions                |
| 23A.08: Interpretation and Construction of Ordinance                                              | 23.104: Interpretation of the Zoning Ordinance |
| 23A.12: General Regulations                                                                       | 23.102: Introductory Provisions                |
| 23A.16: Zoning Maps, Districts and Boundaries                                                     | 23.108: Zoning Districts and Map               |
| 23A.20: Zoning Ordinance Amendments                                                               | 23.412: Zoning Code Amendments                 |
| 23A.24: Applicability, Emergencies, Interpretation, Severability, Rules of Evidence and Procedure | 23.102: Introductory Provisions                |
| <b>Sub-Title 23B: Ordinance Administration</b>                                                    |                                                |
| 23B.04: Zoning Adjustments Board                                                                  | 23.402: Administrative Responsibility          |
| 23B.08: Design Review Committee                                                                   |                                                |
| 23B.12: Zoning officer                                                                            |                                                |
| 23B.16: Use of Conflict Resolution or Mediation Service                                           | 23.404: Common Permit Requirements             |
| 23B.20: Zoning Conformance Review                                                                 | 23.406: Specific Permit Requirements           |
| 23B.24: Applications for Permits                                                                  | 23.404: Common Permit Requirements             |
| 23B.28: Administrative Use Permits                                                                | 23.406: Specific Permit Requirements           |
| 23B.32: Use Permits                                                                               |                                                |
| 23B.34: Green Pathway                                                                             | 23.408: Green Pathway                          |
| 23B.36: Master Use Permits                                                                        | 23.406: Specific Permit Requirements           |
| 23B.40: AUPs For Temporary Uses                                                                   |                                                |
| 23B.44: Variances                                                                                 |                                                |
| 23B.48: Modification of Development Standards                                                     |                                                |
| 23B.52: Reasonable Accommodation                                                                  |                                                |
| 23B.56: Conditions Applicable to All Permits                                                      | 23.404: Common Permit Requirements             |
| 23B.60: Compliance and Revocation                                                                 |                                                |
| 23B.64: Abatement of Nuisances                                                                    | 23.414: Nuisance Abatement                     |
| 23B.68: Private Right of Action                                                                   |                                                |
| <b>Sub-Title 23C: General Provisions Applicable in All Districts</b>                              |                                                |
| 23C.04: Conforming and Non-Conforming Uses, Buildings and Lots                                    | 23.324: Nonconforming Uses and Structures      |

| Old Chapters                                                             | New Chapters                                          |
|--------------------------------------------------------------------------|-------------------------------------------------------|
| 23C.06: Bed and Breakfast Establishments in Residential Districts        | 23.302: Supplemental Use Regulations                  |
| 23C.08: Demolition and Dwelling Unit Controls                            | 23.326: Demolition and Dwelling Unit Control          |
| 23C.10: Emergency Shelter Zoning                                         | 23.308: Emergency Shelters                            |
| 23C.12: Inclusionary Housing Requirements                                | 23.328: Inclusionary Housing                          |
| 23C.14: Density Bonus                                                    | 23.330: Density Bonus                                 |
| 23C.16: Home Occupations                                                 | 23.302: Use-Specific Regulations                      |
| 23C.17: Wireless Telecommunication Facilities                            | 23.332: Wireless Communication Facilities             |
| 23C.18: Transportation Demand Management                                 | 23.334: Transportation Demand Management              |
| 23C.19: Off-Street Parking Maximums for Residential Development          | 23.322: Parking and Loading                           |
| 23C.20: Exemptions                                                       | 23.302: Supplemental Use Regulations                  |
| 23C.22: Short-Term Rentals                                               | 23.314: Short-Term Rentals                            |
| 23C.23: One-Percent for Public Art on Private Projects                   | 23.316: Percentage for Public Art on Private Projects |
| 23C.24: Accessory Dwelling Units                                         | 23.306: Accessory Dwelling Units                      |
| 23C.25 Cannabis Uses                                                     | 23.320: Cannabis Uses                                 |
| 23C.26: Urban Agriculture                                                | 23.318: Urban Agriculture                             |
| <b>Sub-Title 23D: Provisions Applicable in All Residential Districts</b> |                                                       |
| 23D.04: Lot and Development Standards                                    | Chapter 23.304: General Development Standards         |
| 23D.08: Accessory Buildings and Structures                               |                                                       |
| 23D.10: Accessory Dwelling Units                                         | 23.306: Accessory Dwelling Units                      |
| 23D.12: Off-Street Parking Requirements                                  | 23.322: Parking and Loading                           |
| 23D.16: R-1 Single Family Residential District Provisions                | 23.202: Residential Districts                         |
| 23D.20: R-1A Limited Two-Family Residential District Provisions          |                                                       |
| 23D.24: ES-R Environmental Safety-Residential District Provisions        |                                                       |
| 23D.28: R-2 Restricted Two-Family Residential District Provisions        |                                                       |
| 23D.32: R-2A Restricted Multiple-Family Residential District Provisions  |                                                       |
| 23D.36: R-3 Multiple Family Residential District Provisions              |                                                       |
| 23D.40: R-4 Multi-Family Residential District Provisions                 |                                                       |

| Old Chapters                                                                 | New Chapters                                                          |
|------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 23D.44: R-5 High Density Residential District Provisions                     |                                                                       |
| 23D.48: R-S Residential Southside District Provisions                        |                                                                       |
| 23D.52: R-SMU Residential Southside Mixed Use District Provisions            |                                                                       |
| <b>Sub-Title 23E: Provisions Applicable in All Non-Residential Districts</b> |                                                                       |
| 23E.04: Lot and Development Standards                                        | 23.106: Rules of Measurement<br>23.304: General Development Standards |
| 23E.08: Design Review                                                        |                                                                       |
| 23E.12: Design Review Process                                                | 23.406: Specific Permit Requirements                                  |
| 23E.16: Special Use Standards                                                | 23.204: Commercial Districts                                          |
| 23E.18 Temporary Outdoor Uses on Private Property                            | 23.302: Supplemental Use Regulations                                  |
| 23E.20: Live/Work Provisions                                                 | 23.312: Live/Work                                                     |
| 23E.24: Sidewalk Cafe Seating                                                | 23.204: Commercial Districts                                          |
| 23E.28: Off-Street Parking and Transportation Services Fee                   | 23.332: Parking and Loading                                           |
| 23E.32: Loading Space Requirements                                           |                                                                       |
| 23E.36: C-1 General Commercial District Provisions                           |                                                                       |
| 23E.40: C-N Neighborhood Commercial District Provisions                      |                                                                       |
| 23E.44: C-E Elmwood Commercial District Provisions                           |                                                                       |
| 23E.48: C-NS North Shattuck Commercial District Provisions                   |                                                                       |
| 23E.52: C-SA South Area Commercial District Provisions                       |                                                                       |
| 23E.56: C-T Telegraph Avenue Commercial District Provisions                  | 23.204: Commercial Districts                                          |
| 23E.60: C-O Solano Avenue Commercial District Provisions                     |                                                                       |
| 23E.64: C-W West Berkeley Commercial District Provisions                     |                                                                       |
| 23E.68: C-DMU Downtown Mixed Use District Provisions                         |                                                                       |
| 23E.70: C-AC Adeline Corridor Commercial District Provisions                 |                                                                       |
| 23E.72: M Manufacturing District Provisions                                  |                                                                       |
| 23E.76: MM Mixed Manufacturing District Provisions                           | 23.206: Manufacturing Districts                                       |
| 23E.80: MU-LI Mixed Use-Light Industrial District Provisions                 |                                                                       |

| Old Chapters                                           | New Chapters                                     |
|--------------------------------------------------------|--------------------------------------------------|
| 23E.84: MU-R Mixed Use-Residential District Provisions |                                                  |
| 23E.88: SP Specific Plan District Provisions           | 23.208: Special Purpose Districts                |
| 23E.92: U Unclassified District Provisions             |                                                  |
| 23E.96: H Hillside Overlay District Provisions         | 23.210: Overlay Zones                            |
| 23E.98: Civic Center District Overlay                  |                                                  |
| <b>Sub-Title 23F: Definitions</b>                      |                                                  |
| 23F.04: Definitions                                    | 23.106: Rules of Measurement<br>23.502: Glossary |



# Official Zoning Map

of the  
City of Berkeley, California

Adopted by the Berkeley City Council on  
March 18, 1999 - Ordinance No. 6478-N.S.

## ZONING DISTRICTS

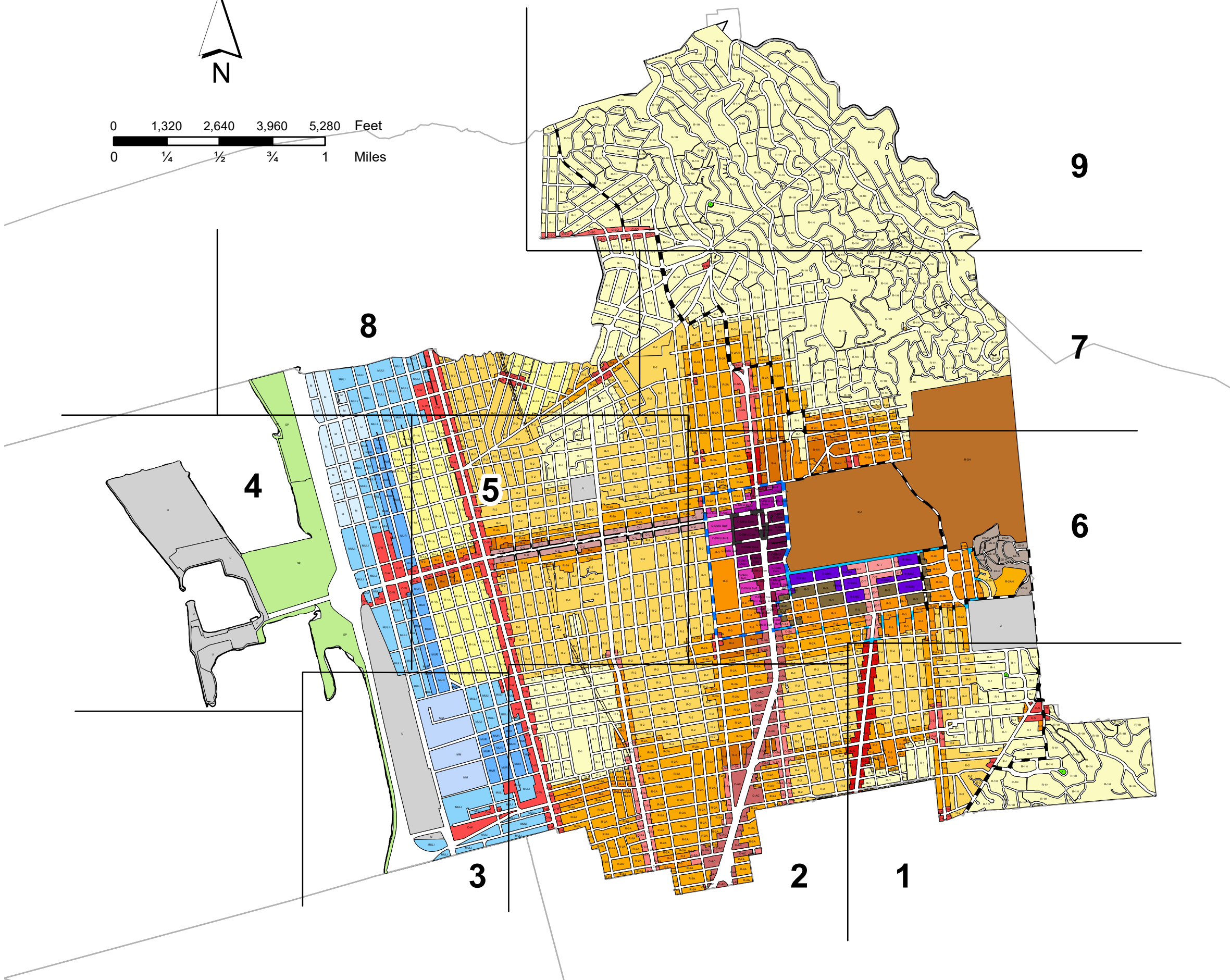
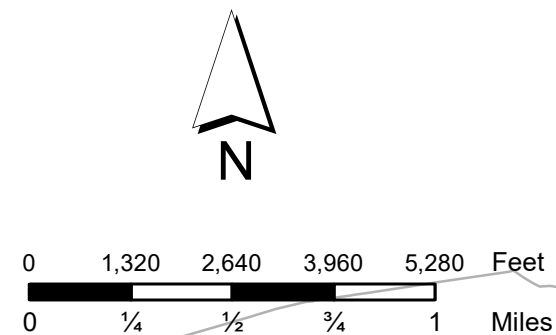
|  |                  |                                        |
|--|------------------|----------------------------------------|
|  | R-1              | Single Family Residential              |
|  | R-1A             | Limited Two-family Residential         |
|  | R-2              | Restricted Two-family Residential      |
|  | R-2A             | Restricted Multiple-family Residential |
|  | R-3              | Multiple-family Residential            |
|  | R-4              | Multi-family Residential               |
|  | R-5              | High Density Residential               |
|  | ES-R             | Environmental Safety-Residential       |
|  | R-S              | Residential High Density Subarea       |
|  | R-SMU            | Residential Mixed Use Subarea          |
|  | C-DMU Core       | C-DMU Core                             |
|  | C-DMU Outer Core | C-DMU Outer Core                       |
|  | C-DMU Corridor   | C-DMU Corridor                         |
|  | C-DMU Buffer     | C-DMU Buffer                           |
|  | C-C              | Corridor Commercial                    |
|  | C-E              | Elmwood Commercial                     |
|  | C-N              | Neighborhood Commercial                |
|  | C-NS             | North Shattuck Commercial              |
|  | C-SA             | South Area Commercial                  |
|  | C-AC             | Adeline Corridor Commercial            |
|  | C-SO             | Solano Avenue Commercial               |
|  | C-T              | Telegraph Avenue Commercial            |
|  | C-U              | University Avenue Commercial           |
|  | C-W              | West Berkeley Commercial               |
|  | M                | Manufacturing                          |
|  | MM               | Mixed Manufacturing                    |
|  | MULI             | Mixed Use-Light Industrial             |
|  | MUR              | Mixed Use-Residential                  |
|  | SP               | Specific Plan                          |
|  | U                | Unclassified                           |

## OTHER MAP SYMBOLS

|  |                           |
|--|---------------------------|
|  | Hillside Overlay Boundary |
|  | Arts District Overlay     |
|  | Southside Plan            |
|  | Downtown Area Plan        |

## University Ave Strategic Plan

|  |                  |
|--|------------------|
|  | Avenue Mixed Use |
|  | UASP Node        |



6

2

# Official Zoning Map

of the  
City of Berkeley, California

| Ordinance Number  | Ordinance Effective Date | Zoning Districts Affected |
|-------------------|--------------------------|---------------------------|
| 7,731-N.S.        | 10/15/2020               | R-2, C-1                  |
| <<add ZORP here>> |                          |                           |
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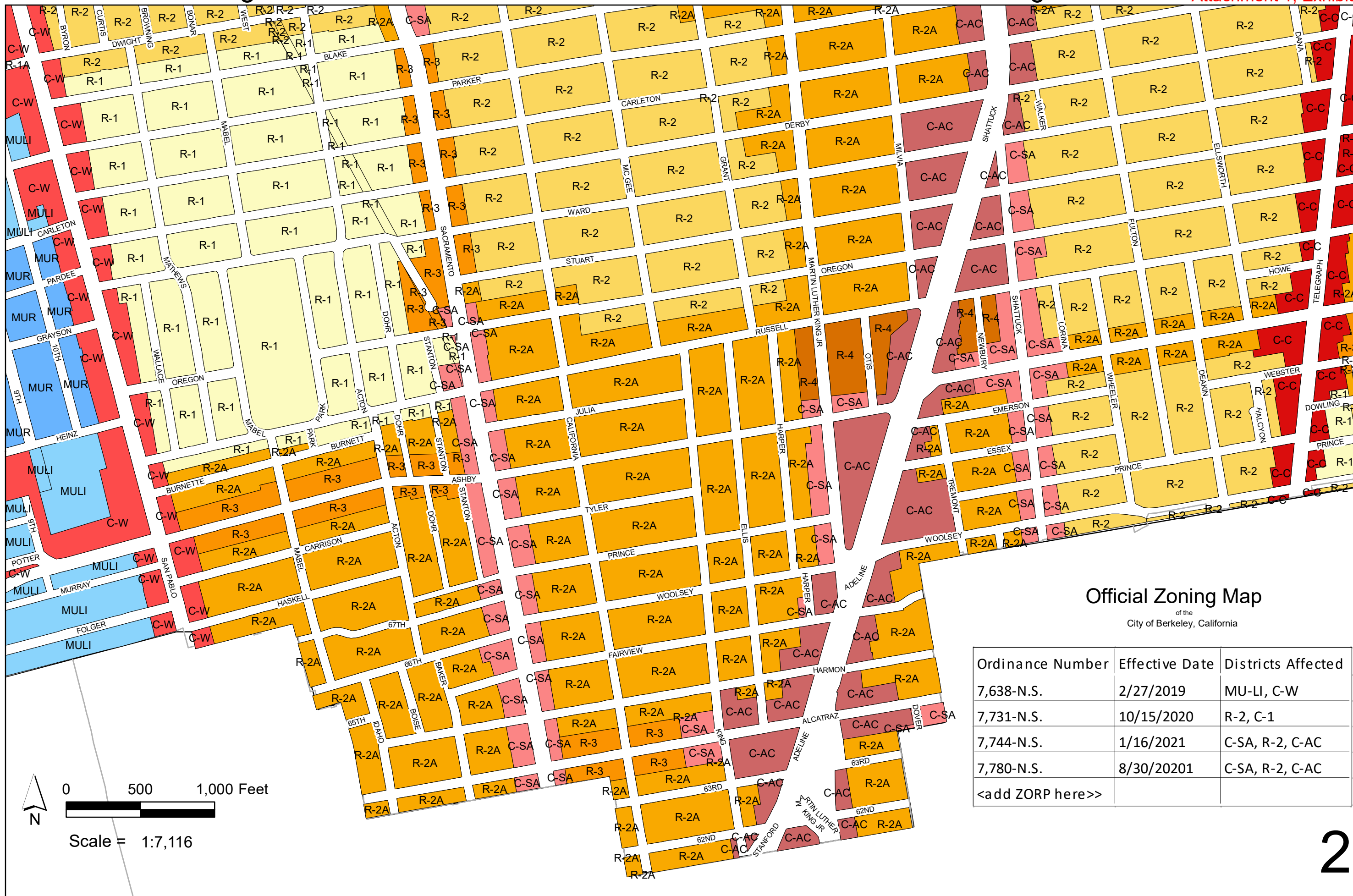


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### Official Zoning Map

of the  
City of Berkeley, California

| Ordinance Number | Effective Date | Districts Affected |
|------------------|----------------|--------------------|
| 7,638-N.S.       | 2/27/2019      | MU-LI, C-W         |
| 7,731-N.S.       | 10/15/2020     | R-2, C-1           |
| 7,744-N.S.       | 1/16/2021      | C-SA, R-2, C-AC    |
| 7,780-N.S.       | 8/30/2021      | C-SA, R-2, C-AC    |
| <add ZORP here>> |                |                    |

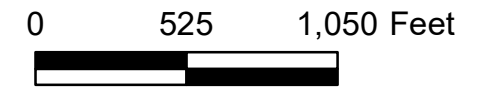
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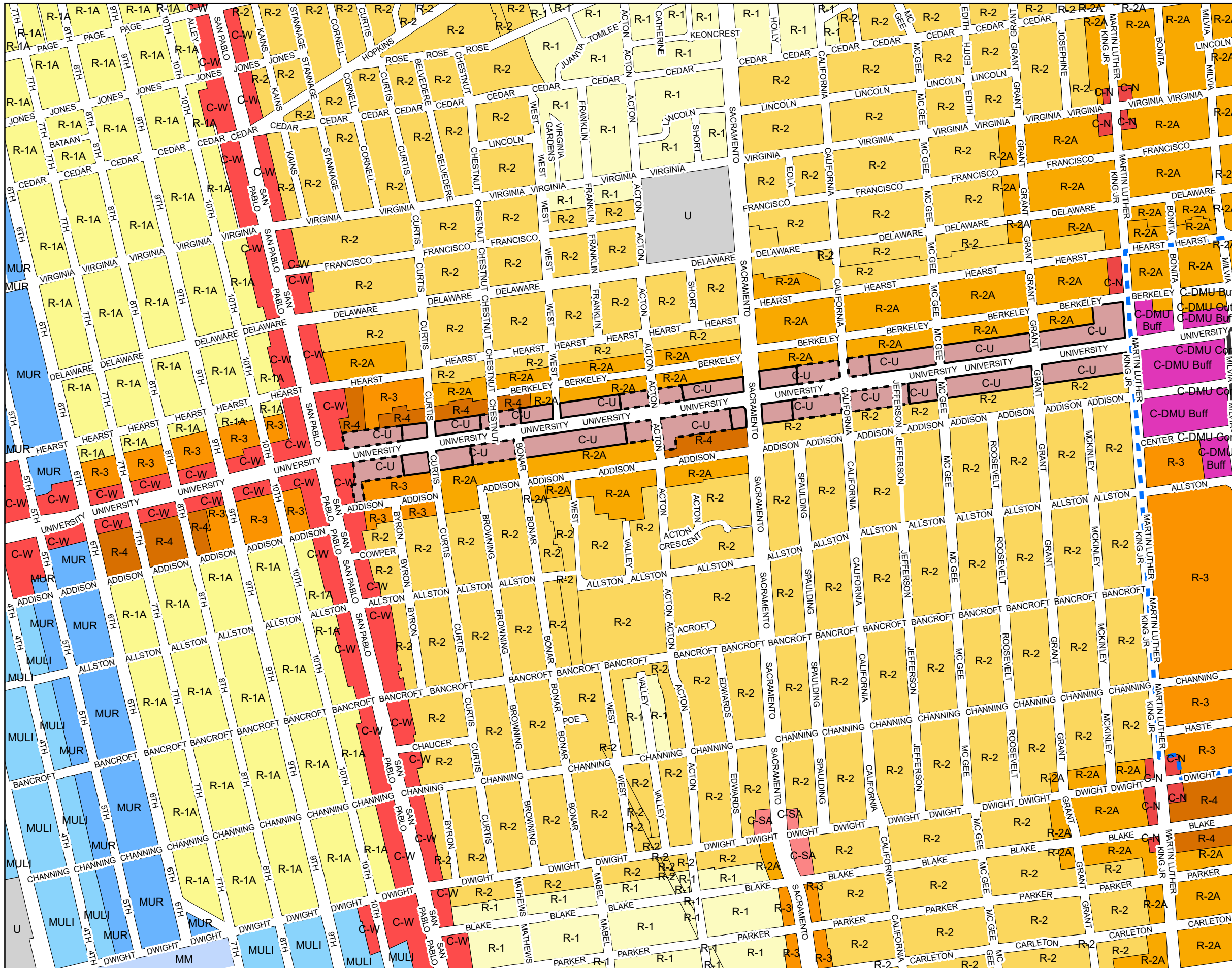
# Official Zoning Map

of the  
City of Berkeley, California

| Ordinance Number                      | Effective Date | Districts Affected |
|---------------------------------------|----------------|--------------------|
| 6,681-N.S.                            | 4/18/2002      | R-3, R-2A          |
| 6,830-N.S.                            | 1/6/2005       | C-1                |
| 7,232-N.S.                            | 5/14/2012      | R-3, C-DMU         |
| <a href="#">&lt;add ZORP here&gt;</a> |                |                    |



Scale = 1:8,000



4

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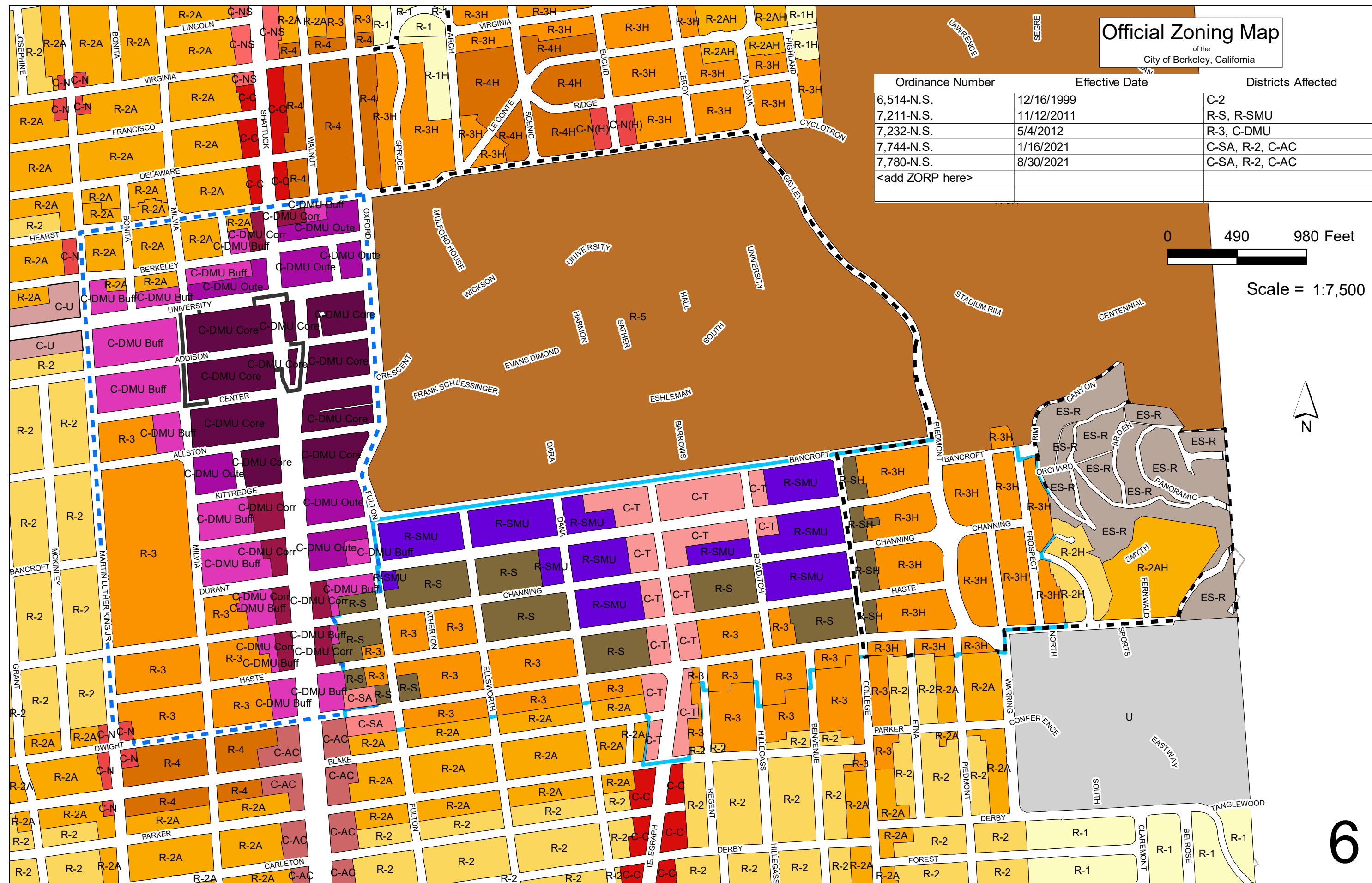
# Official Zoning Map

of the  
City of Berkeley, California

| Ordinance Number | Effective Date | Districts Affected |
|------------------|----------------|--------------------|
| 6,514-N.S.       | 12/16/1999     | C-2                |
| 7,211-N.S.       | 11/12/2011     | R-S, R-SMU         |
| 7,232-N.S.       | 5/4/2012       | R-3, C-DMU         |
| 7,744-N.S.       | 1/16/2021      | C-SA, R-2, C-AC    |
| 7,780-N.S.       | 8/30/2021      | C-SA, R-2, C-AC    |
| <add ZORP here>  |                |                    |

0 490 980 Feet

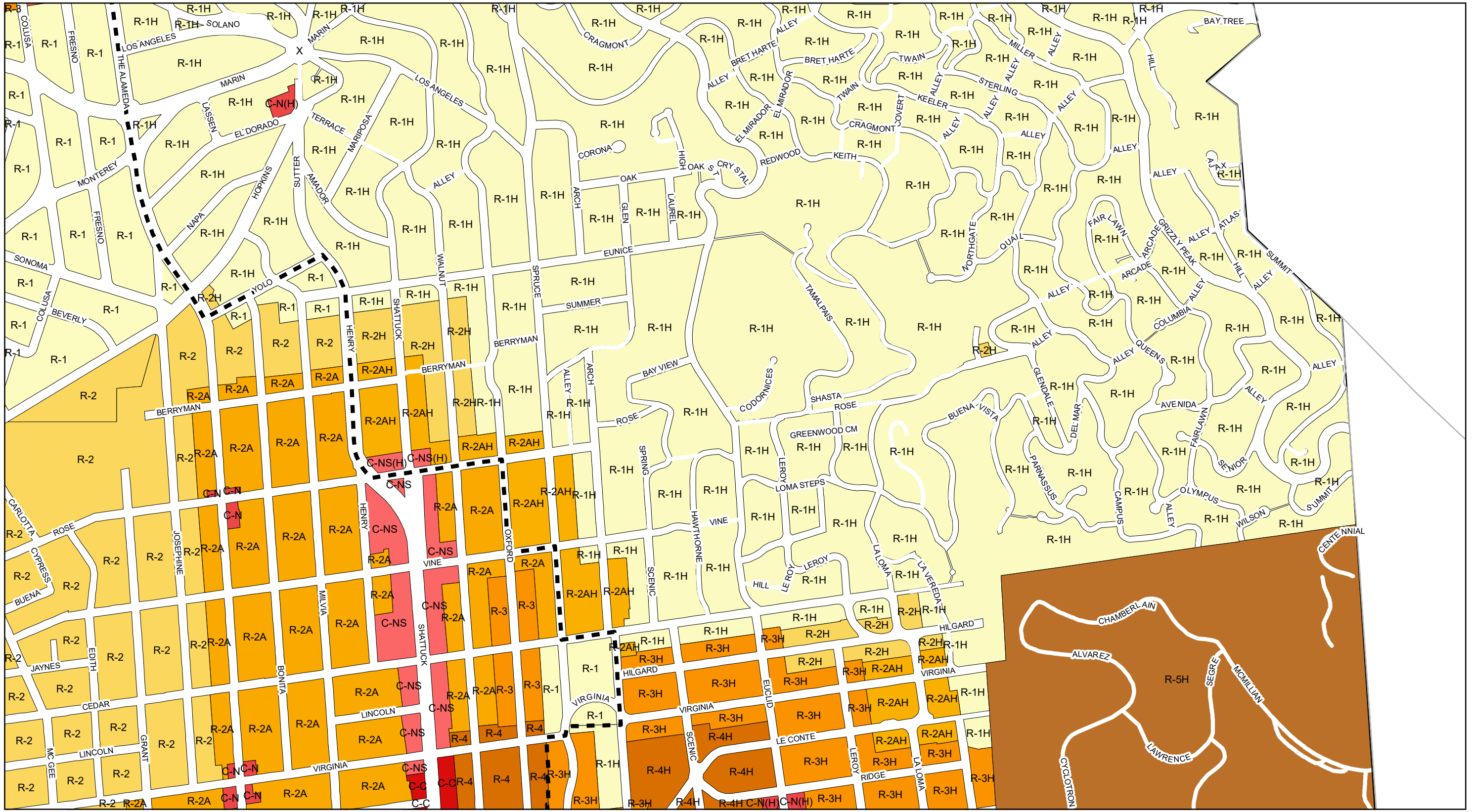
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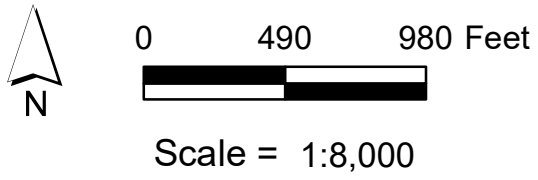
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**Official Zoning Map**  
of the  
City of Berkeley, California

| Ordinance Number | Effective Date | Districts Affected |
|------------------|----------------|--------------------|
| <add ZORP here>  |                |                    |
|                  |                |                    |
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7  
518



Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Rama Murty, Acting Budget Manager  
 Subject: Update Guidelines and Procedures for City Council Office Budget Expenditure Accounts

RECOMMENDATION

Adopt a Resolution:

1. Rescinding Resolution No. 65,540-N.S.; and
2. Updating the guidelines and procedures for City Council Office Budget Expenditure Accounts to allocate for Mayor and Councilmember Office staff salaries and fringe benefits for Legislative Assistant position to be adjusted annually consistent with any increase provided to the SEIU Local 1021 Community Services Unit and Part-Time Recreation Leaders Association (CSU-PTRLA) Unit.

FISCAL IMPACTS OF RECOMMENDATION

Each Council Office is allocated a fixed amount for staff salaries and benefits. For FY 2022, the Council Office personnel budget will be adjusted to fund one FTE Legislative Assistant at the top step of the salary range with benefits.

**FY 2022 Council Office Budget (excluding Mayor's Office)  
Salaries and Fringe Benefits only**

| Council Office | ADOPTED    |           |            | RECOMMENDED |           |              | Increase          |
|----------------|------------|-----------|------------|-------------|-----------|--------------|-------------------|
|                | Salaries   | Fringe    | Total      | Salaries    | Fringe    | Total        |                   |
| District 1     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
| District 2     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
| District 3     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
| District 4     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
| District 5*    | \$ 124,568 | \$ 34,830 | \$ 159,398 | \$ 158,948  | \$ 78,124 | \$ 237,072   | \$ 77,674         |
| District 6     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
| District 7     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
| District 8     | \$ 71,969  | \$ 34,830 | \$ 106,799 | \$ 106,349  | \$ 78,124 | \$ 184,473   | \$ 77,674         |
|                |            |           |            |             |           | <b>Total</b> | <b>\$ 621,389</b> |

\*includes donated salary amount from Councilmember.



*\*\* the data presented above excludes non-personnel budget and Intern stipends budget of \$1,500 per Council Office.*

Funding for the increase in salaries and benefits will come from General Fund (Fund 011), and will be included in the First Amendment to the FY 2022 Annual Appropriations Ordinance in November 2021.

Funding for future year budgets will be included in the baseline budget and the salary and benefit amounts will be adjusted annually consistent with any increase provided to the SEIU Local 1021 Community Services Unit and Part-Time Recreation Leaders Association (CSU-PTRLA) Unit.

### CURRENT SITUATION AND ITS EFFECTS

The Legislative Assistant position was historically recognized as part of the Unrepresented Class of City employees. On June 15, 2021, the Council adopted a resolution approving the terms and conditions related to the Legislative Assistant classification's inclusion into the existing Memorandum of Understanding (MOU) with SEIU Local 1021 CSU-PTRLA Unit<sup>1</sup>. There's a need to update the guidelines and procedures for City Council Office Budget Expenditure Accounts to reflect this change.

### BACKGROUND

The City Council Offices' annual operating budgets are currently administered in accordance with Resolution 65,540–N.S., which was adopted by the City Council on December 6, 2011. The following were some of the significant changes to the guidelines and procedures for the Council Office Budget:

- In March 1997, [Resolution No. 58,890-N.S.](#) approved a one-time carryover of unspent funds from the Mayor and Council accounts, not to exceed \$1,500 per account.
- In March 1998, [Resolution No. 59,375-N.S.](#) added new language to Resolution No. 58,890 permitting unspent funds to be carried over to the next fiscal year, (i.e., both positive and negative carryover) or rolled back to the previous fiscal year, not to exceed \$1,500 per account.
- In September 1999, [Resolution No. 60,225-N.S.](#) superseded previous resolutions by increasing the annual carryover maximum to \$5,000 for non-personnel expenditures only.
- In April 2008, [Resolution No. 64,019-N.S.](#) superseded previous resolutions by increasing positive and negative annual carryover balances to a \$10,000 maximum.

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/06\\_June/Documents/2021-06-15\\_Item\\_27\\_Adopt\\_Tentative\\_Agreement\\_with\\_SEIU\\_Local\\_1021\\_Community\\_Services\\_Unit\\_And\\_Part-Time\\_Recreation\\_Leaders\\_Association\\_related\\_to\\_the\\_Inclusion.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/06_June/Documents/2021-06-15_Item_27_Adopt_Tentative_Agreement_with_SEIU_Local_1021_Community_Services_Unit_And_Part-Time_Recreation_Leaders_Association_related_to_the_Inclusion.aspx)

Resolution No. 64,019 also increased flexibility of use of funds between personnel and non-personnel expenditures.

- In December 2011, the current [Resolution No. 65.540-N.S.](#) superseded previous resolutions by limiting the Mayor and Council's carryover expenditure limit to positive balances only.

#### ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

There are no identifiable environmental and climate impacts or opportunities associated with the subject of this report.

#### CONTACT PERSON

Rama Murty, Acting Budget Manager, City Manager's Office, 981-7000

Attachments:

1: Resolution

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

UPDATE GUIDELINES AND PROCEDURES FOR CITY COUNCIL OFFICE BUDGET EXPENDITURE ACCOUNTS

WHEREAS, each fiscal year the City Council appropriates funds in the Mayor and Councilmember's office budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, on December 6, 2011, the City Council adopted Resolution No. 65,540-N.S. to limit the Mayor and Council's carryover expenditure limit to positive balances only; and

WHEREAS, there is a need to rescind and replace Resolution No. 65,540-N.S. to allocate for Mayor and Councilmember Office staff salaries and fringe benefits for Legislative Assistant position to be adjusted annually consistent with any increase provided to the SEIU Local 1021 Community Services Unit and Part-Time Recreation Leaders Association (CSU-PTRLA) Unit.

WHEREAS, funding for the increase in Council Office salaries and benefits in FY 2022 will come from the General Fund (Fund 011), and will be included in the First Amendment of the FY 2022 Annual Appropriations Ordinance in November 2021 and future year budgets for salaries and benefits will be included as part of the baseline budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley updates the following guidelines and procedures for City Council Office Budget Expenditure Accounts:

Section 1.

The allocation for the Mayor's Office staff salaries and fringe benefits will be budgeted annually based on actual staff costs. Salary increases for positions other than Legislative Assistant will be based on the Unrepresented class of City employees. The Legislative Assistant position salaries and benefits will be adjusted annually consistent with any increase provided to the SEIU Local 1021 Community Services Unit and Part-Time Recreation Leaders Association (CSU-PTRLA) Unit.

Section 2.

The allocation for Councilmember Office staff salaries and fringe benefits shall be based on one Legislative Assistant position budgeted at the tops step of the salary range, which will be adjusted annually to provide an adjustment consistent with what is provided to the SEIU Local 1021 Community Services Unit and Part-Time Recreation Leaders Association (CSU-PTRLA) Unit. The amount allocated for FY 2022 per Council Office for staff salaries is \$106,349 and for fringe benefit is \$78,124.



Section 3.

For the Mayor and Councilmembers, the annual allocation for non-personnel costs is not subject to adjustment.

Section 4.

Funds budgeted for Mayor and Councilmember Office staff salaries may be used for non-personnel expenditures. Funds budgeted for non-personnel expenditures may be used toward staff salary costs.

Section 5.

Unspent funds allocated to the Mayor and Councilmembers for fringe benefits cannot be used for any other personnel or non-personnel expenses nor can these excess funds be carried over into the next fiscal year.

Section 6.

Mayor's Office and Council Offices are not authorized to carry over negative spending balances. Overspent funds will be deducted from subsequent year budgets. Positive balances of up to \$10,000 may be carried over to the following fiscal year.

Section 7.

Grants of surplus funds from the Mayor's Office and Council Office budgets directly to organizations providing benefits to Berkeley residents may only be made by relinquishing such funds to the general fund and obtaining approval of the Council.

BE IT FURTHER RESOLVED that Resolution No. 65,540-N.S. is hereby rescinded.





Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted By: Mark Numainville, City Clerk  
 Subject: City Council Rules of Procedure and Order Revisions

RECOMMENDATION

Adopt a Resolution revising Appendix C of the City Council Rules of Procedure and Order to refine practices for holding public meetings via video conference technologies; clarifying the Council procedures for moving an item from the Action to Consent Calendar; removing Appendix D; and rescinding any preceding amendatory resolutions.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed changes to Appendix C are a response to the direction from City Council at their September 14, 2021 meeting. The amendments were prompted by an item from the Open Government Commission recommending changes for teleconferenced meetings.

Based on the supplemental material provided by the Mayor, the Council requested an amendment to the Rules of Procedure to modify practices for holding public meetings via video conference technologies during the COVID-19 emergency. These changes include the calling of the names of 5 speakers at a time in the public comment queue; clearly outlining the process by which a public speaker can cede time; clarifying that the Presiding Officer has the discretion to reduce speaker time if needed; and to modify the temporary rules around speaker time for Public Comment on Non-Agenda Matters to align with speaker time limits pre-pandemic. The purpose of the new rules is to enhance public participation and allow for the orderly conduct and facilitation of video conference meetings. The revised Appendix C is provided in Attachment 1.

The additional proposed changes remove the requirement that Councilmembers offer words of support, encouragement or appreciation to the public and City staff at the outset of the meeting; and clarify that unanimous consent of the City Council is required to move an item from the Action Calendar to the Consent Calendar.

In addition, Appendix D of the Rules of Procedure expired on July 28, 2021 and is no longer in effect. The Appendix will be removed from the Rules of Procedure with this update.

BACKGROUND

The City Council Rules of Procedure and Order governs the duties of the Council, the conduct of meetings, the agenda, procedural matters and facilities. The rules have been amended as necessary over time to improve the function of the Agenda Committee and the conduct of City Council meetings.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The changes to the legislative processes are a response to the direction of the City Council at the meeting on September 14, 2021.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

- 1: Revised Appendix C
- 2: Resolution

Exhibit A: City Council Rules of Procedure and Order

## APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

### Mayor and Councilmember Speaking Time on Agenda Items

~~At the outset of the meeting, each Councilmember will have one minute to offer words of support, encouragement or appreciation to the public and City staff.~~

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

### Procedure for Pulling Items from Consent or Information Calendar

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

### Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Yielding of time to other speakers is not permitted for regular meetings of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. ~~Each speaker shall have two minutes.~~ The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

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

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order attached hereto as Exhibit A shall govern all proceedings of the City Council therein described, subject to the exception and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure.

BE IT FURTHER RESOLVED that all preceding amendatory resolutions are hereby rescinded.

Exhibit A: City Council Rules of Procedure and Order

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. XX,XXX–N.S.

Effective October 12, 2021



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## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting Conduct of Business

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, as appropriate to the charge or responsibilities of such subcommittee. Ad hoc subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added in the following manner:

- In the original item as submitted by the Primary Author
  - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
  - By verbal request of the Primary Author at the Agenda & Rules Committee
  - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
  - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered
2. Agenda items shall contain all relevant documentation, including the information listed below:
    - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
    - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;



- c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;
  - d) Fiscal impacts of the recommendation;
  - e) A description of the current situation and its effects;
  - f) Background information as needed;
  - g) Rationale for recommendation;
  - h) Alternative actions considered;
  - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);
  - j) Person or persons to contact for further information, with telephone number;
  - k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

**C. Procedure for Bringing Matters Before City Council**

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. four days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

**a) Items Authored by the Mayor, a Councilmember, or the Auditor.**

As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.
  - i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
    1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
    2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
    3. Refer the item to a Policy Committee for review.
    4. Allow the item to proceed as submitted.
  - ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.

**2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

**3. Submission of Agenda Items.**

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

#### **4. Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

**5. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)**

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an agenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the agenda by the City Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the agenda as a Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the author to list the facts which support consideration of the item for addition to the agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

**6. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

**D. Packet Preparation and Posting**

**1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.8.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business



4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

Action items may be reordered at the discretion of the Chair with the consent of Council.

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## **G. Regulations Governing City Council Policy Committees**

### **1. Legislative Item Process**

All agenda items begin with submission to the Agenda & Rules Committee.

#### Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

#### Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

### Time Critical Track

A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

## **2. Council Referrals to Committees**

The full Council may refer any agenda item to a Policy Committee by majority vote.

## **3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also can not be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

#### **4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any revised or supplemental materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the Primary Author's request that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

### **5. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

### **6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar,” or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side



shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

#### **4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

#### **5. Ralph M. Brown Act Pertaining to Public Comments.**

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

#### **B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry

will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Written Communications**

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date,

place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Robert's Rules of Order**

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate****1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

**L. Use of Cellular Phones and Electronic Devices**

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.



## VI. FACILITIES

### A. Meeting Location Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

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**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,



but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

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## **APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY**

### **Mayor and Councilmember Speaking Time on Agenda Items**

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

### **Procedure for Pulling Items from Consent or Information Calendar**

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

### **Public Comment Speaking Time**

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the

meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.





Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 12, 2021

**RECOMMENDATION**

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Total estimated cost of items included in this report is \$750,000.

| <b><u>PROJECT</u></b>                                                                                            | <b><u>Fund</u></b> | <b><u>Source</u></b> | <b><u>Amount</u></b> |
|------------------------------------------------------------------------------------------------------------------|--------------------|----------------------|----------------------|
| The Development of a City Zero Waste Strategic Plan to identify a pathway guide to meet the City Zero Waste Goal | 601                | Zero Waste           | \$500,000            |
| City of Berkeley, Zero Waste Division Set Out and Participation Study                                            | 601                | Zero Waste           | \$250,000            |
| <b>Total:</b>                                                                                                    |                    |                      | <b>\$750,000</b>     |

**CURRENT SITUATION AND ITS EFFECTS**

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and

upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on October 12, 2021

- a) The Development of a City Zero Waste Strategic Plan to identify a pathway guide to meet the City Zero Waste Goal
- b) City of Berkeley, Zero Waste Division Set Out and Participation Study

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: October 12, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                                                                   | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                        | ESTIMATED COST                                                    | BUDGET CODE TO BE CHARGED                                                                                                                                              | DEPT. / DIVISION         | CONTACT NAME & PHONE |
|-------------------|-------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------|
| 22-11476-C        | The Development of a City Zero Waste Strategic Plan to identify a pathway guide to meet the City Zero Waste Goal. | 10/14/2021           | 12/9/2021                | RFP to review and analyze the City's existing Zero Waste Programs and Ordinances. Development with significant public outreach a Zero Waste Strategic Plan (City doesn't have one) to provide a plan and analysis of pathways and potential costs to meet the City's Zero Waste Goal of 90% or 100% diversion of all materials currently landfilled | FY 2022<br>\$250,000<br>FY 2023<br>\$250,000<br>Total - \$500,000 | 601-54-627-731-0000-000-472-612990-<br><br>601-54-627-732-3019-000-472-612990<br><br>601-54-627-733-3019-000-472-612990<br><br>601-54-627-734-3023-000-472-612990<br>- | Public Works/ Zero Waste | Greg Apa<br>981-6359 |

DATE SUBMITTED: October 12, 2021

| SPECIFICATI<br>ON NO. | DESCRIPTION<br>OF GOODS /<br>SERVICES<br>BEING<br>PURCHASED                       | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | ESTIMATED COST    | BUDGET CODE TO BE<br>CHARGED                                                                                                                                               | DEPT. / DIVISION         | CONTACT<br>NAME &<br>PHONE |
|-----------------------|-----------------------------------------------------------------------------------|----------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------|
| 22-11477-C            | City of Berkeley,<br>Zero Waste<br>Division Set Out<br>and Participation<br>Study | 10/14/2021                 | 12/9/2021                         | RFP to analyze for all residential and commercial Zero Waste Division customers' Set Out rate for refuse, recycling and green/food waste materials of carts and/or bins, Participation rate, volume/weight of these materials placed in the cart and/or bin, for each collection day, and a waste characterization study of the refuse materials delivered by third parties to the Transfer Station, This statistical study will provide needed information for the development of the City's Zero Waste Strategic Plan to meet the City's Zero Waste Goal of 90% or 100% diversion of all materials currently landfilled | FY 2022 \$250,000 | 601-54-627-731-0000-000-472-612990-<br><br>601-54-627-732-3019-000-472-612990<br><br>601-54-627-733-3019-000-472-612990<br><br>601-54-627-734-3023-000-472-612990<br><br>- | Public Works/ Zero Waste | Greg Apa<br>981-6359       |
| <b>Dept TOTAL</b>     |                                                                                   |                            |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$750,000         |                                                                                                                                                                            |                          |                            |
| <b>DEPT. TOTAL</b>    |                                                                                   |                            |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>\$750,000</b>  |                                                                                                                                                                            |                          |                            |









Office of the City Manager

CONSENT CALENDAR

October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abe Roman, Interim Fire Chief, Department of Fire and Emergency Services

Subject: Proposed Ordinance Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code") to Require Fire Sprinkler Installation in All New Structures and Retrofit of Existing Structures in Berkeley Fire Zones 2 and 3

RECOMMENDATION

1. Adopt the first reading of an Ordinance (Attachment 1) which modifies the language of Paragraph 'NN.' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and which will expand the existing local code amendment that requires the installation of fire sprinklers in new structures and the retrofit fire sprinklers into existing structures that currently exists in Fire Zone 3 to include structures located in Berkeley Fire Zone 2;
2. Adopt a Resolution (Attachment 2) setting forth findings of local conditions that require more stringent building standards than those provided by the 2019 California Fire Code and that amends Resolution number 69,178–N.S.; and
3. In compliance with state law on adopting such more restrictive building standards, hold a public hearing following the first reading and before the second reading, and schedule the public hearing for October 26, 2021.

SUMMARY

Long term fire trends and wildfire events within the past five years demonstrate that the wildfire problem in California has become progressively worse and constitutes a major threat to the City of Berkeley and it's residents. Since 2007 an existing amendment within the Berkeley Fire Code has required the installation of fire sprinklers in new and retrofit of fire sprinklers within existing single-family and duplex residences in the "Environmental Safety- Residential" land use district when certain conditions are met. This geographic land use district is now also known as Fire Zone 3 in the Berkeley Fire Code. This requirement was instituted in response to the disastrous 1991 Tunnel Fire which affected Berkeley and Oakland.

This ordinance proposes to extend this requirement for the installation and retrofit of fire sprinklers within single-family and two-family dwellings that currently exist within Fire Zone 3 to include properties within Fire Zone 2. Fire sprinkler installation and retrofit would be required whenever new space is created in a structure or when the valuation of permitted work exceeds a specified threshold, with some limited exceptions to the requirement. Fire sprinklers would limit the development of fire within a residence and prevent the spread of fire to surrounding vegetation. This requirement is a reasonable response to the increased threat of wildfires since the majority of wildfires are caused by human activity, and in predominantly residential areas most fires are related to normal activities associated with human habitation and living.

#### FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact to the City of Berkeley will be negligible. The staff required to review additional fire sprinkler permit submittals and inspect the installation of any fire sprinkler systems initiated by the proposed amendment are already budgeted by the City. The overall workload associated with potential fire sprinkler retrofit installations of primarily residential fire sprinkler systems is not expected to exceed staff's capacity to support the added workload. Also, permit fees associated with the installation of fire sprinkler systems are designed to offset staff costs which may be incurred in the review and inspection of those installations.

#### CURRENT SITUATION AND ITS EFFECTS

The wildland fire problem throughout the State of California and the western region of the United States has become progressively worse over the past 30-40 years. The duration of what was once considered a 'wildfire season' has extended to the point that wildfire events occur throughout most of the calendar year. This tends to blur any distinct lines between adjacent fire seasons. As a result, wildfire activity has become more of a cycle and less of a 'season'. Recent wildfire incidents since 2017 have consistently set records for fire size, intensity and rate of spread. Scientific evidence suggests that our current extreme drought conditions that make vegetation more susceptible to ignition and the fire weather conditions which lead to extreme fire behavior and make fire control difficult are due in large part to global climate change.

Berkeley is placed at great risk by the historic trends of deteriorating wildfire conditions and increasing fire severity throughout the state, by decades of accumulated vegetation fuel loading in the hills and by the steadily increasing human population within Berkeley's vulnerable wildfire zones. We believe that the community must act now to decrease the potential for a catastrophic wildfire developing in Berkeley's wildfire zones. We are therefore recommending the expansion of the current Fire Zone 3 fire sprinkler installation and retrofit requirements to include properties and structures within Fire Zone 2.

#### BACKGROUND

During its adoption of the 2007 California Fire Code, the Berkeley Fire Department added a local amendment to Berkeley's code adoption. Paragraph 'NN' of Section 19.48.020 of the Berkeley Municipal Code ("Amendments to the California Fire Code") required the installation of fire sprinkler systems in any new construction having a permit valuation of \$100,000 or more in the Panoramic Hill District. The amendment also required the

retrofitting of existing structures with fire sprinklers in the same Panoramic Hill District whenever new additions to existing structures were made. This area of the City is now also known as Fire Zone 3 in the Berkeley Fire Code. The fire sprinkler installation and retrofit requirements have been in force in Fire Zone 3 since this amendment was first adopted on December 27, 2007, and went into effect as part of Berkeley Ordinance 7,003-N.S.

This ordinance provision was adopted as part of Berkeley's response to the October 20, 1991 Oakland-Berkeley firestorm (known officially as the Tunnel-Oakland Hills fire). At the time it was believed that the risk of fire and the accompanying potential for the loss of life and property represented by fires like the Oakland-Berkeley firestorm justified the additional precaution of an aggressive fire sprinkler ordinance with retrofit requirements. The goal in providing aggressive fire sprinkler requirements for structures in Fire Zone 3 was to interrupt a potential chain of events where a routine structure fire could spread to adjacent vegetation and result in the ignition of a catastrophic wildfire.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Fire protection sprinkler systems (including residential fire sprinkler systems in one- and two-family dwellings) are environmentally friendly and contribute to the sustainability of our society. A 2021 study which continued earlier work to quantify the benefits of fire protection sprinkler systems reinforced earlier findings that on a per-fire basis where fire sprinklers were involved, fire sprinklers reduced greenhouse gas emissions by 97.8%, reduced water usage to extinguish the fire by 50%-91%, and reduced water pollution and the amount of materials committed to landfills when compared to the manual extinguishment of fires. This analysis does not include the additional benefits gained in energy savings and reduced carbon dioxide emissions when a destroyed building or building materials represented by the 98% reduction in fire property losses do not need replacement.

The Factory Mutual Insurance Company (a major leading insurance company in the Highly Protected Risk insurance market) published studies which attempt to quantify the environmental impact of fire sprinklers. The latest study estimated that in the eleven years between the publication of the 2010 and 2021 studies that residential fire sprinklers in the United States (specifically sprinklers in one- and two-family dwellings) could have prevented the emission of over 1.7 billion pounds of carbon dioxide into the atmosphere if residential fire sprinklers were universally installed.

#### RATIONALE FOR RECOMMENDATION

Formal studies confirm that the overall severity of the wildfire problem in the state has steadily increased over the past 30-40 years and recent wildfire incidents in California since 2017 have consistently set records for fire size, intensity and rate of spread. The difficulty of controlling recent wildfires is evidenced by the number of structures being lost in wildfires despite the record expenditure of public funds on fire control efforts and in the anecdotal reports of experienced firefighters.

In 2007, the amendment requiring the installation and retrofit of fire sprinklers in Fire Zone 3 was one of the few mitigations available to help address the fire potential in that area.

Today, the same conditions that originally motivated the 2007 Panoramic Hill District fire sprinkler amendment remain in effect in Fire Zone 3. The Berkeley Fire Department believes that based on deteriorating wildfire conditions throughout the state that the wildland fire problem in Fire Zone 2 is now very similar to the wildland fire problem in Fire Zone 3.

The geographic area designated as Fire Zone 2 shares most of the wildfire characteristics present within Fire Zone 3. Both areas are recognized by the City and the Director of the California Department of Forestry and Fire Protection as Very High Fire Hazard Severity Zones (VHFHSZ) and share similar fire weather. Both areas have narrow, winding and steeply graded roads and streets. Both areas have abundant vegetation intermixed with structures. The topography of both areas is steep which creates the potential for rapidly advancing slope-driven fires. The original parcel subdivisions created narrow but deep lots in both Fire Zones. This tends to crowd adjacent structures and greatly reduces the amount of defensible space available to provide for wildfire safety. The main factor that the two areas do not share is the condition of a single means of evacuation and access by road that exists in Fire Zone 3. The majority of street segments in Fire Zone 2 have access to more than one evacuation and access route. However, given the dramatic increase in the severity of the wildfire problem it is believed that the availability of a second or additional access routes, which is typical in Fire Zone 2, cannot mitigate all of the factors previously listed that may contribute to a catastrophic wildfire.

Human activity has been a major cause of fires throughout human history. A National Fire Protection Association study which examined the causes of wildfires nationally from 2011-2015 found that approximately 54% of wildfires were due to human activity other than intentionally set fires (which accounted for another 19%). Only 4% of fires were attributed to natural causes such as lightning. In residential areas, activities associated with human habitation pose the greatest potential for ignition of a fire. In residential areas where ignitable vegetation is closely intermixed with dwellings (such as in Fire Zones 2 and 3), it is a reasonable precaution to attempt to extinguish fires related to human habitation before those fires can spread to surrounding vegetation.

In addition to preventing the transition of residential fires to surrounding vegetation, the life safety benefits of residential fire sprinklers are well established and documented. These life safety benefits are evidenced by the fact that the California Building Code has mandated fire sprinklers throughout buildings containing new residential fire areas since the 2010 edition of that code. The proposed addition of fire sprinklers to existing and new residential properties will not only reduce the risk of a catastrophic wildfire incident but will have substantial, long-term safety benefits to the occupants of these structures.

This proposed ordinance amendment will greatly expand the use of fire sprinklers in our wildfire vulnerable areas, enhance the safety of building occupants and reduce the potential for fire spread from a structure to vegetation. However, it is not a panacea for the city's wildfire problem. Additional, substantial wildfire problems exist. Major problems include an inadequate road network for evacuation and emergency access, the need for more effective notification of citizens of developing emergencies, the need to coordinate citizen evacuations, the need for more and better vegetation management and defensible

space, and the need to make fire-hardening of structures more universal. These problems have all been identified and can be addressed through other measures.

Given the potential financial impacts to property owners in the community, the subject of financial costs to the regulated community must be examined. For home owners subject to the requirement to install or retrofit fire sprinklers in their homes installation costs can vary substantially. A 2013 cost study for fire sprinkler installation in new residences by the National Fire Protection Association included multiple installations in projects in various areas of California and around the country. At that time the total cost for fire sprinkler installation in new construction (on cost-per square foot of sprinklered space) ranged from \$0.94 in Fresno to \$1.11 per square foot in Elk Grove, \$1.29 per square foot in Bakersfield and \$1.44 per square foot in Irvine, California. Nationwide, the NFPA study found an average installed cost of \$1.35 per sq. ft. and also found that in the two states having statewide installation requirements (California being one of those states) that the costs of installed systems are significantly and consistently lower. It also found that average fire sprinkler installation costs actually decreased between 2008 and 2013.

In the case of a retrofit in existing structures, the costs tend to be considerably higher and are greatly affected by the style of system installation (exposed vs. concealed pipe), the materials used and the source of water supply. A 2016 study by the City of San Francisco estimated fire sprinkler retrofit costs for exposed piping systems as approximately \$515 per installed fire sprinkler head and included costs such as water meter upgrade, backflow prevention device, and material and installation costs. The San Francisco study used a conservative assumed coverage of 80 sq. ft per sprinkler which would equate to a cost-per square foot of coverage of \$6.44. This 80 sq. ft. per sprinkler coverage estimate is considered conservative from a cost estimating standpoint because standard residential fire sprinklers are actually rated for coverage areas of 144 sq. to 440 sq. ft. of coverage. If fire sprinklers were able to consistently cover their full rated area this would drive the report's average installation costs down to \$1.17 to \$3.58 per square foot. As a practical matter the constraints of smaller home spaces such as hallways, entry foyers and smaller bedrooms tend to drive the average coverage area down and the 80 sq. ft. of coverage per installed sprinkler is realistic in many installations. In cases where piping is concealed within walls, the San Francisco report estimated that installation costs would at least double, which would equate to \$12.88 per square foot.

As constructed, the proposed revised ordinance language achieves the following goals:

1. It expands the scope and applicability of the existing fire code adoptive ordinance paragraph 'NN' from a requirement applicable only in Fire Zone 3 to a requirement applicable in both Fire Zones 2 and 3. The existing reference to "Environmental Safety- Residential District" (which is a land use planning designation) is replaced with "Fire Zones 2 and 3". These Fire Zone areas are defined in the Berkeley Fire Code as Very High Fire Hazard Severity Zones. As such, the fire sprinkler requirement would be directly linked to the wildland fire hazard present in those areas and not to a Land Use designation. This may become an important distinction as CalFire updates wildfire hazard maps. It is important that our local

wildfire mitigation provisions evolve with our technical understanding of the State's wildfire problem.

2. The amended language specifies that the provisions of paragraph 'NN' apply to "any parcel zoned for single-family or duplex dwelling use". This specific language was chosen to mirror language used in State statutes which establish the rights of property owners to develop Accessory Dwelling Units (ADUs) on these properties. ADUs are a major source of new development within Berkeley's built-out neighborhoods in Fire Zones 2 and 3. However, the language is broad enough to capture not only ADU development but a significant percentage of substantial building alterations. Given that most properties within the Fire Zone 3 are typically single-family, duplex or in some cases multiple single-family residences such a specification was previously unnecessary in earlier amendment language. The process of expanding paragraph 'NN' provisions to include all of Fire Zone 2 will necessarily capture parcels zoned for other uses. While there is utility in having structures on these other types of properties sprinkler protected in addition to the traditional dwelling units captured in the current paragraph 'NN' language, doing so creates significant obstacles in implementing and administering such a provision for larger campus-style or commercial properties having multiple buildings. In addition, larger residential properties are often captured by other fire code provisions which enhance fire safety such as our local fire alarm retrofit requirement or, in the case of larger congregate residences, an existing retrofit requirement for fire sprinklers. Also, other property types may not have the same fire hazards associated with daily residential living activities such as cooking.
3. The language of the paragraph 'NN' amendment is altered to clarify that it is intended to apply to new construction as well as to building alterations when permit valuations exceed the \$100k threshold. 'Alterations' are formally defined in the building code as construction work other than repair work or additions to existing structures or the construction of entirely new structures. The Berkeley Fire Department's historic interpretation of the current paragraph 'NN' language has always included non-repair work and additions in the application of the permit valuation threshold. The new language clarifies that the addition of new space (not just 'additions') such as the build-out of existing attic or previously unused under-floor space will trigger fire sprinkler installation.
4. The revised paragraph 'NN' language makes it clear that whenever fire sprinklers are triggered in one building by construction of a new structure or alterations to an existing structure that all structures on the property having habitable space and associated with the new work are affected by the retrofit requirement. This feature of the ordinance language is essential because:
  - a. A retrofit requirement which only applies to the specific structure that is undergoing significant alterations will result in an extended delay in sprinkler adoption as many structures may never experience a substantial remodel.



- b. As currently written, State statues addressing the construction of Accessory Dwelling Units prohibit local jurisdictions from requiring fire sprinklers in those structures unless the main structure is also equipped with fire sprinklers.
5. The \$100,000 permit valuation trigger threshold from the original paragraph 'NN' amendment is retained. This allows for reasonable building alterations without triggering fire sprinkler installation while still capturing larger alteration, renovation and construction projects.

The exceptions included in the new paragraph 'NN' language include:

'Exception 1' exempts smaller accessory structures (less than 120 sq. ft. in size) that would not normally require a building permit.

'Exception 2' exempts work classified as repairs to existing structures. There would be no permit valuation threshold associated with repair work. This will allow even extensive needed repairs such as roof, foundation, termite/pest repairs and similar work to be completed without the risk of triggering a fire sprinkler installation. This provision also exempts repair or alteration work specifically intended to bring a structure into compliance with ignition resistance construction standards for Wildland Urban Interface fire areas as recognized in the building code.

'Exception 3' allows the creation or addition of small utility or mechanical spaces to serve the needs of the structure. This is intended to allow for the incorporation of new energy generation or energy saving features into existing buildings such as 'off-grid' or solar battery power installations, newer space or water heating technologies, etc.

'Exception 4' is intended to provide some relief to sprinkler retrofit requirements in situations where multiple, free-standing primary dwellings may exist on a property and where separate households may have no control over the construction activities of others on the property.

#### ALTERNATIVE ACTIONS CONSIDERED

Various adjustments to the proposed ordinance language were considered, as were different permit valuation thresholds for triggering sprinkler installation. Staff's belief is that the original \$100,000 permit valuation threshold used in Fire Zone 3 will strike a balance between allowing some significant updates and upgrades of living spaces and structures while still capturing many substantial remodel projects. As a result the \$100k figure is still considered to be a valid trigger threshold for fire sprinkler installation.

CONTACT PERSON

Steven Riggs, Fire Marshal, Department of Fire and Emergency Services, (510) 981-3473

Attachments:

- 1: Ordinance: "AMENDMENT OF PARAGRAPH 'NN.' OF SECTION 19.48.020 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE FIRE SPRINKLER INSTALLATION IN AND RETROFIT OF STRUCTURES IN BERKELEY FIRE ZONES 2 AND 3"
- 2: Resolution: "ADOPTING FINDINGS AS TO LOCAL CLIMATIC, GEOLOGICAL AND TOPOGRAPHICAL CONDITIONS RENDERING REASONABLY NECESSARY VARIOUS ENUMERATED LOCAL FIRE AND BUILDING STANDARDS THAT ARE MORE STRINGENT THAN THOSE MANDATED BY THE CALIFORNIA FIRE CODE AND AMENDING RESOLUTION NO. 69,178-N.S."

ORDINANCE NO. ~~##,###~~-N.S.

## AMENDMENT OF PARAGRAPH 'NN.' OF SECTION 19.48.020 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE FIRE SPRINKLER INSTALLATION IN AND RETROFIT OF STRUCTURES IN BERKELEY FIRE ZONES 2 AND 3

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Paragraph NN. of Section 19.48.020 of the Berkeley Municipal Code ("Amendments to the California Fire Code") is amended to read as follows:

**NN. ~~Section 903.2.23 Environmental Safety--Residential District~~Fire Zones 2 and 3 [Additional subsection]** On any parcel zoned to allow single-family or duplex dwelling residential use, Any new construction or construction alterations requiring a permit(s) determined to be \$100,000 or more in aggregate construction costs over a 36 month period, or new-additions of new space to existing structures shall be required to install automatic fire sprinklers throughout the existing primary and any accessory structure(s) containing habitable space. For the purpose of this subsection "Environmental Safety--Residential District" Fire Zones 2 and 3 shall mean those areas designated as such on the Official Zoning Map of the City of in the Berkeley Fire Code, as it may be amended from time to time.

Exceptions: 1. Free standing occupancy Group 'U' structures that fall below the building permit threshold size as set forth in the Berkeley Building Code and which are accessory to an existing R3 dwelling.

2. Construction or portions of construction defined as repairs for maintenance purposes or construction alterations implemented in order to comply with ignition resistant construction requirements for wildfire exposure of the structure as set forth in the Berkeley Building Code.

3. Additions of new space that total not more than 250 square feet in area and which are used solely for mechanical or utility service of a building.

4. Where multiple, primary, free-standing dwellings exist on a given property the fire sprinkler installation requirements of this section shall be applicable to an individual primary structure and any qualified accessory structures on the property associated with affected primary dwelling structure. Other free-standing dwelling structures on the property and their accessory structures need not retrofit fire sprinklers at that time.

Section 2. This amendment shall become effective 90 days after adoption of this ordinance.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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

ADOPTING FINDINGS AS TO LOCAL CLIMATIC, GEOLOGICAL AND TOPOGRAPHICAL CONDITIONS RENDERING REASONABLY NECESSARY VARIOUS ENUMERATED LOCAL FIRE AND BUILDING STANDARDS THAT ARE MORE STRINGENT THAN THOSE MANDATED BY THE CALIFORNIA FIRE CODE AND AMENDING RESOLUTION NO. 69,178-N.S.

WHEREAS, Health & Safety Code §17958 allows the City to make modifications or changes to the California Fire Code and other regulations adopted pursuant to Health & Safety Code §17921(a) which result in more stringent local requirements; and

WHEREAS, Health & Safety Code §17925, §17958.5 and §17958.7 require that such changes be supported by findings made by the governing body that such more stringent local requirements are necessary because of “local climatic, geological or topographical conditions or factors”; and

WHEREAS, such findings must be made available as a public record and a copy thereof with each such modification or change shall be filed with the California Building Standards Commission; and

WHEREAS, on November 12, 2019, the City adopted Resolution No. 69,178-N.S. which found that each of the various changes or modifications to the California Fire Code then proposed and enumerated in that document were reasonably necessary because of local climatic, geological or topographical conditions or factors and conditions in the area encompassed by the City of Berkeley; and

WHEREAS, the City is proposing to adopt additional changes and modifications to the California Fire Code, as set forth below:

NOW THEREFORE, BE IT RESOLVED by the City Council that it finds that in addition to the changes and modifications enumerated in City of Berkeley Resolution No. 69,178-N.S. that the proposed additional changes or modifications to the California Fire Code which are enumerated below are reasonably necessary because of local conditions in the area encompassed by the City of Berkeley, as set forth below:

**A. LOCAL CONDITIONS**

1. Climatic Conditions.

a. Discussion.

A significant portion of the City of Berkeley has been designated as a Local Agency Very High Fire Hazard Severity Zone (LAVHFHSZ) by the City in concert with the California Director of Forestry and Fire Protection. The requirement for evaluation and

designation of LAVHFHSZ on a state-wide basis was mandated by AB 337 (the "Bates Bill") in response to the Oakland/Berkeley Hills Fire of 1991. Within the City of Berkeley those areas designated as Fire Zone 2 and Fire Zone 3 in the Berkeley Fire Code are formally classified as LAVHFHSZ. A major element of this designation as a LAVHFHSZ are fire weather conditions which develop within those areas. Fire weather is an integral part of local climatic conditions. Conditions conducive to the ignition and spread of wildfires occur more frequently during certain times of the year but this does not preclude the possibility that a serious fire could occur during other months of the year. The critical climate fire conditions create a situation conducive to rapidly moving, high intensity fires. Fires starting in the wildland areas along the easterly border of the City are likely to move rapidly westward into Berkeley's urban areas. Fires starting in Berkeley structures in the LAVHFHSZ are more likely to spread to surrounding landscape and structures and adjacent wildlands.

As previously stated, the October 20, 1991, Oakland/Berkeley Hills fire motivated State legislation requiring the designation of fire hazard severity zones in areas of local jurisdiction. This fire prompted the evacuation of thousands of residents, destroyed more than 3000 dwelling units (at least 70 of which were in Berkeley) and resulted in a total of 25 confirmed deaths in the Oakland-Berkeley area. Other significant fires have occurred in Berkeley.

In September 1923, critical climatic fire conditions were in effect and Berkeley sustained one of the most devastating fires in California's history up to that point. A fire swept over the range of the hills to the northeast of Berkeley and within two hours was attacking houses within the City limits. This fire burned a total of 130 developed acres. At least 584 Berkeley buildings were destroyed and about 30 others seriously damaged. By far the greater portion were single-family dwellings, but among the number were 63 apartments, 13 fraternity, sorority and students' house clubs and 6 hotels and boarding houses.

Conditions similar to the 1923 fire were in place in 1970 when a fire destroyed 37 homes in Berkeley and Oakland. In December of 1980, a small fire that started at Berkeley's northeast limits totally destroyed five homes within minutes. In each of these instances, critical climatic fire conditions were in place and matched patterns consistent from the 1923 through the 1991 fires creating hazardous conditions for fire ignition and spread.

#### b. Summary.

Local climatic conditions of limited rainfall, low humidity, high temperatures and high winds along with existing building construction create extremely hazardous fire conditions that adversely affect the acceleration, intensity and size of fires in the City. The same climatic conditions may result in the concurrent occurrence of one or more fires, which may spread in the more populated areas of the City without adequate fire department personnel to protect against and control such a situation.

## 2. Geological Conditions.

a. Discussion.

The City of Berkeley is located in a region of high seismic activity and is traversed by the Hayward fault. It has the San Andreas earthquake fault to the west and the Calaveras earthquake fault to the east. All three faults are known to be active as evidenced by the damaging earthquakes they have produced in the last 100 years and can, therefore, be expected to do the same in the future. Of primary concern to Berkeley is the Hayward Fault, which has been estimated to be capable of earthquakes exceeding a magnitude of 7.0 on the Richter scale. It extends through many areas including Berkeley's Fire Zone 2 and 3 (both Local Agency Very High Fire Hazard Severity Zones). Intensified damage during an earthquake may be expected in the hillside areas which include Berkeley's Fire Zones 2 and 3 as they are located within or near the fault zone. Significant seismic events are commonly accompanied by ensuing fires in areas of heavy shaking. Based on the susceptibility of Berkeley's LAVHFHSZ (Fire Zone 2 and 3) to ignition and rapid uncontrollable fire spread, significant seismic activity in the Berkeley area could conceivably lead to an ensuing wildfire disaster.

b. Summary.

Local geological conditions include the potential for high seismic activity and severe shaking in the immediate areas of Fire Zones 2 and 3. The City of Berkeley is a densely populated area and has buildings and structures constructed over and near a vast array of fault systems capable of producing major earthquakes. It is common for significant seismic shaking to result in ensuing fires. The modifications cited herein are necessary to better limit the potential for loss of life and property damage as a result of seismic activity.

3. Topographical Conditions.

a. Discussion.

The City of Berkeley has many homes built throughout the urban portion of the Berkeley Hills that are reached by narrow and often winding paved streets which hamper access for fire apparatus and escape routes for residents. In addition, many of the hillside homes are on the extreme eastern edge of the City and require longer response times for the total required firefighting force. Panoramic Way and other hill neighborhoods with narrow and winding streets face the problem of isolation from the rest of the City.

In addition to the problems of emergency evacuation and access created by Berkeley's topography, the steepest portions of the City also coincide roughly with Berkeley Fire Zones 2 and 3 (both Local Agency Very High Fire Hazard Severity Zones). In addition to other factors such as fuel types and fire weather conditions, a key factor in determining the boundaries of a LAVHFHSZ include the topography of the terrain. Steep terrain is often associated with intense, fast moving wildfires that are terrain driven.

Factors related to steeply sloping terrain aggravate the situation and create conditions such as the crowding of structures with limited defensible space to protect against wildfires. As a result, fires can be expected to involve large groups of buildings in these areas.

b. Summary.

Local topographical conditions include hillside housing with many narrow and winding streets in the abruptly rising Berkeley hills. These conditions create an extremely serious problem for the Fire Department when a fire or other disaster occurs. Many situations will result in the limiting or total blockage of fire department emergency vehicular traffic, overtaxed fire department personnel and a lack of resources for the suppression of fire in buildings, structures or vegetation in the City of Berkeley. These same conditions of sloping topography also contribute significantly to fire intensity and the rate of fire spread within Fire Zones 2 and 3.

**B. REASONABLE NECESSITY**

The proposed additional changes and modifications to the California Fire Code are reasonably necessary due to the local climatic, geological and topographical conditions set forth above. They are further justified for the reasons set forth below.

In adopting the modifications proposed below, the City proposes to make certain substantive additional modifications to building standards whose effect is to impose more stringent requirements locally than are mandated by the California Fire Code. These additional modifications are specifically listed below, but may be generally characterized as relating to the amendment of automatic sprinkler requirements within the Wildland-Urban Interface zone with the goal of improving the management of the Wildland-Urban Interface fire zone. These more stringent local requirements are reasonably necessary to address risks created by local conditions set forth above for the following reasons:

1. Section 903.2.23 affects fire sprinkler system installation requirements specifically within Fire Zones 2 and 3. The requirement to install fire sprinklers in new structures and to retrofit existing structures with fire sprinklers based on the addition of new space to or the valuation of building construction or building alteration permits already exists within Fire Zone 3.

Both Fire Zone 2 and 3 are formally recognized as a Local Agency Very High Fire Hazard Severity Zone by the City and by the Director of the California Department of Forestry and Fire Protection, and represent the "Wildland-Urban Interface" component in Berkeley. The existing Fire Zone 3 fire sprinkler requirements are being amended to include all of Fire Zone 2 due to local geological, topographical, and climatic conditions that exist within that geographic area that necessitate the imposition of requirements more restrictive than those imposed by the California Fire Code.



The affected Fire Zone 2 and Fire Zone 3 geographic areas contain risks inherent to the Wildland-Urban Interface. These risk factors include seismic (geologic) conditions, fire weather (climatic) conditions, and steep terrain (topographical) conditions within the Fire Zone 2 and Fire Zone 3 geographic areas. The factors of fire weather and steep terrain especially contribute to an enhanced likelihood of fire ignitions, enhance the intensity and rate of spread of wildfires and make containment more difficult. In recent years, the severity of fire behavior has increased notably throughout the State and region. These deteriorating factors of fire severity, increased rate of spread and the difficulty of containment are believed to be related to climate change and are a significant threat to the Berkeley community.

The impacts of Berkeley's climate on its fire weather is demonstrated by the fact that the National Weather Service uses one Fire Weather Zone classification for the majority of the city west of the hills (designated CAZ508). The National Weather Service uses a different Fire Weather Zone (known as CAZ511) for eastern portions of the Berkeley hills. A third Fire Weather Zone (CAZ510) affects wildland areas farther east of the City limits but still within an area recognized as part of Berkeley's wildfire exposure. Both the CAZ511 and CAZ510 Fire Weather Zones consistently experience more frequent and more severe Red Flag fire weather events than does Berkeley's primary CAZ508 weather zone.

Based on the specific local findings cited above and the summary of Berkeley's past history of above average death and property loss due to fires in the hillside areas, it is clear that people and structures in Fire Zone 2 and Fire Zone 3 are subject to an increased likelihood of exposure to wildfires. Also, any incidental structure fire in this geographic area poses the risk of direct transmission of fire from a structure to vegetation, which under the right conditions could cause an individual common structure fire to transition into a major, potentially catastrophic Wildland-Urban Interface wildfire event.

The fire record of automatic fire sprinklers has established that fire sprinkler systems significantly reduce the loss of life within a fire involved structure. Based on their ability to control or suppress a fire in its early stages, fire sprinklers will also slow or prevent the spread of fire from a structure into adjacent vegetation and can delay full involvement of a structure when exposed to a wildland fire where fire entry into or development through the structure occurs through sprinkler protected spaces. This amendment will maintain and expand on the standards established after the 1991 Oakland-Berkeley firestorm.





Office of the City Manager

CONSENT CALENDAR

October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abraham Roman, Interim Fire Chief  
Liam Garland, Director, Department of Public Works

Subject: Purchase Order: Braun Northwest for Two (2) 2022 North Star 155-1 Type 1 Ambulance

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in HGACBuy contract bid procedures and authorizing the City Manager to execute a purchase order for two (2) 2022 North Star 155-1 Type 1 Ambulances with Braun Northwest, Inc. in an amount not to exceed \$650,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of two (2) North Star 155-1 Type 1 Ambulances will not exceed \$650,000 and includes delivery, CA tire fees, and sales tax. Funding for this purchase will be provided through the FY2022 budget in Measure FF (Fund 164).

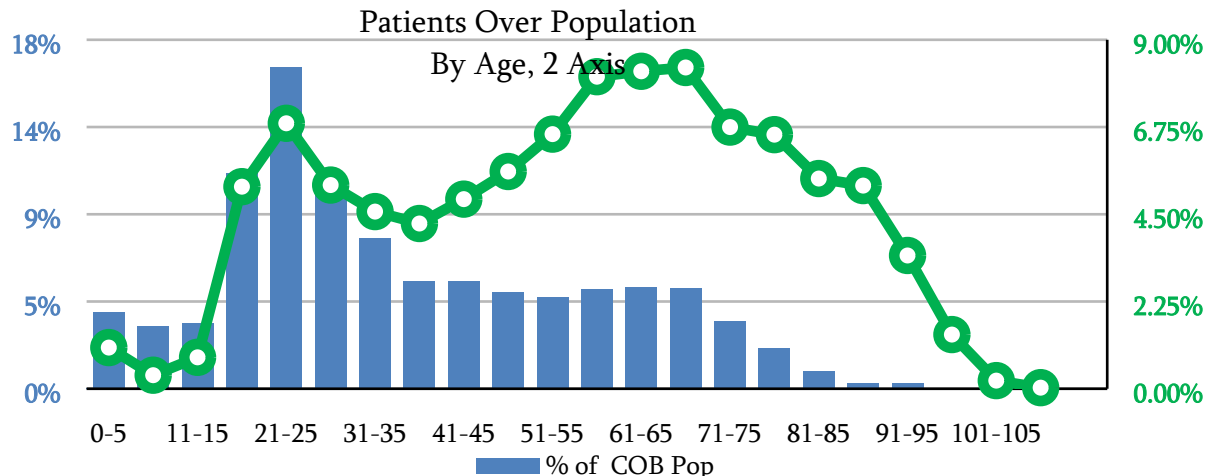
CURRENT SITUATION AND ITS EFFECTS

This purchase will add two additional ambulances to the Department's fleet. The ambulances are critical emergency medical response vehicles utilized throughout the city to respond to medical emergencies. These vehicles are required to allow the planned expansion of the Emergency Medical Services (EMS) Division in response to rising call volume, rising Unit Hour Utilization and to appropriately staff for the changing risk profile of the City's population that has occurred, and will occur, in the coming years.

AGE DISTRIBUTION AND PATIENT POPULATIONS

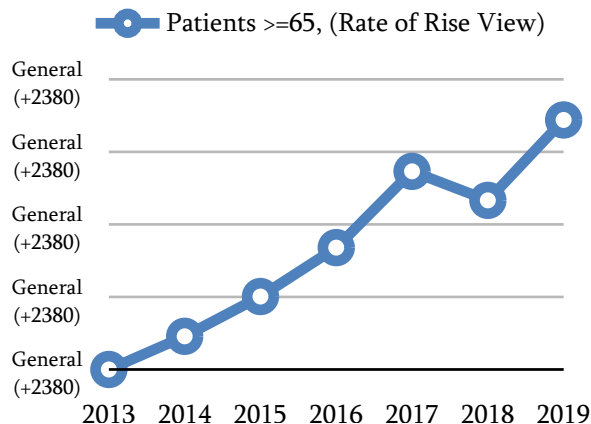
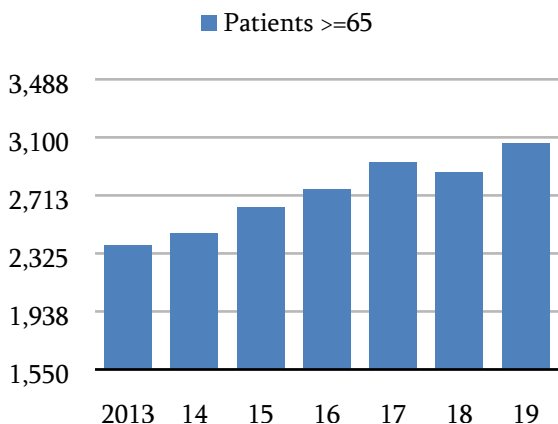
We know that as our population ages, use of emergency services will rise. In the table below, the blue bars represent residents by age and the green line is the percentage of 911 calls each group makes annually. Patients between the ages of 18-23, and those 65 or older, account for roughly half of all the documented patients in Berkeley. While people over the age of 50 are a minority they make up over 60% of all EMS calls. More concerning, given our aging population, people over the age of 65 makeup 14% of the population and account for 40% of EMS calls. We know Berkeley's population is aging,

and that trend will increase the demand for emergency services - specifically ambulance transport - over the next 5-20 years.



Patients between 18-23 years account for about 10% of patients. This group is only matched by similarly binned groups of elderly in this respect. For example, if ages are binned individually by year, in 2018 the 19-year-old group (at 1.8%) is responsible for as many documented patients as the 61-year-old group. They each account for more documented patients than any other single age group from 0-60 years old. The likely reason for the proportion of this group in both patients and population are the students. Given the constancy of this segment of patients historically, it is safe to assume that this is unlikely to change — i.e., these patients are not going away, and will likely be increasing according to the UC Berkeley Long Range Development Plan (LRDP).

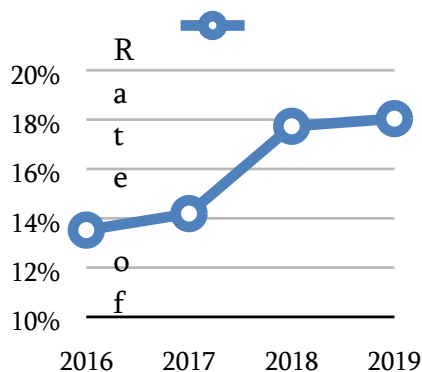
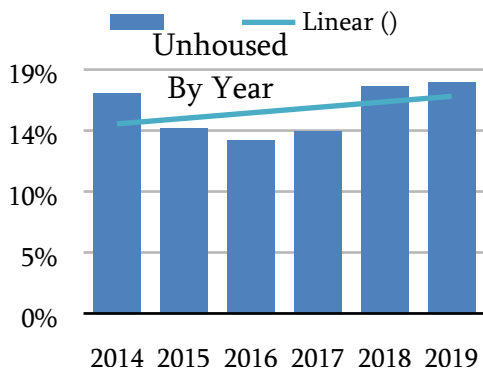
Census data shows a steady increase in the  $\geq 65$  segment of the Berkeley population since 2000 (see Tables, below). The census increase was +1.5% for the decade ending in 2010, and +2% again by 2018. During the past 7 years, the number of documented patients from this patient group increased by about 10%. When adjusting for changes in call volume, the increase has been at least 1% per year, conservatively 7%. Like the 18–23-year-old segment, this patient group is not likely to diminish in coming years. In fact, in the state of California the number of those over 65 will nearly double by 2030 (CA State Department of Finance). When examining the population distribution of Berkeley, there is a significant segment of the population between the ages of 51-65 (about 20%) that will move into the center of the highest demand-for-service group by 2030, give or take.



With no change in the current rate of growth for the >65 population, there could be more than a 7% increase in these patients by 2026, just following the historic norm. With an increase in this population segment by merely an additional percent, the number of documented patients in this group could increase by 3.5%. While this appears to be a small increase, consider a 2% increase in total rate of growth for this segment of the population (from 2% to 4%), could account for more than a 14% increase in patients before the end of the decade. Even if the mortality average is fixed at 85 years of age (the approximate average mortality for men and women in Berkeley is 84.85), the city has more people aging into this group than aging out of it by more than 2%.

THE UNHOUSED

Another consistent patient group the Department provides service to are the unhoused. The number of unhoused patients, if taken in total, equal approximately 14% of all documented patients since 2013. There has been an upswing to almost 18% during the past 16 months. It should be noted that the documentation the Fire Department has may under-play the total numbers each year, because there is not a field in the data collection program that requires a responder document whether someone is unhoused.

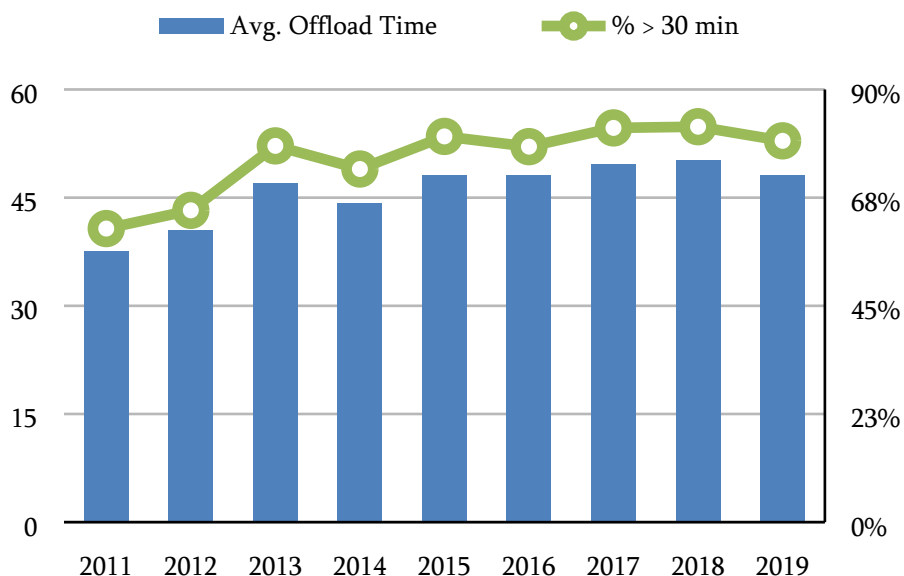


**PATIENT OFFLOAD TIMES AND UNIT HOUR UTILIZATION**

Unit Hour Utilization (UHU) is a calculation that measures the amount of time a transport unit (ambulance) is staffed, on duty, and assigned to incidents (response, on-scene, transport, and at hospital). UHU provides a standardized, shorthand way to measure workload levels in the system and to allow comparison to other systems. UHU is a factor not only of patients, but also of time—and the latter can be taken up by a traffic jam just as well as lack of bed availability at a hospital.

The current staffing (firefighter/paramedic) and deployment configuration (24hr shifts) requires personnel assigned to ambulances to have other responsibilities that include training and development, cleaning and stocking of the station and apparatus; physical fitness; shopping, cooking meals, and rest periods. Together, it is estimated this impact to total available time in a 24-hr period is between .70 and .65, therefore the UHU in the current system configuration and staffing should never rise above .30 to .35, respectively.

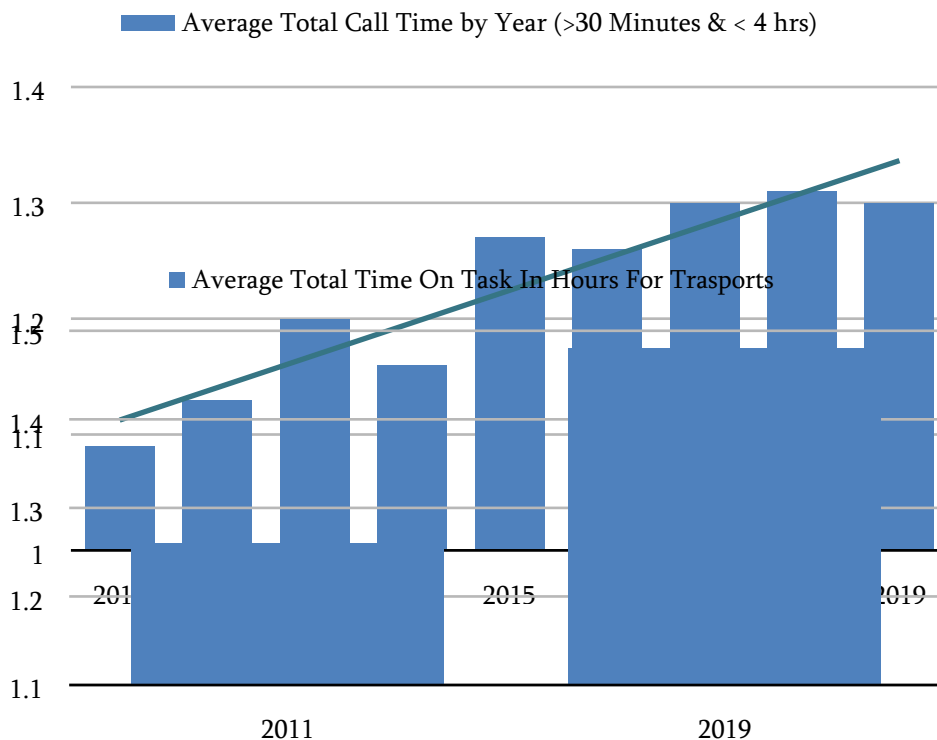
One of the major changes that directly affects ambulance UHU is the increase in patient offload time at hospital. According to the gross Computer Aided Dispatch (CAD) data, the average time an ambulance spent offloading a patient in 2011 was 37 minutes. Offload time reached a peak of just over 50 minutes in 2018, an increase of 13 minutes per call, on average, or about 34% from 2011 averages. During the same period, the number of calls with a greater than 30-minute offload time increased by 21%. Most of this upward trend occurred between 2011 and 2015. Since then, it has been constant. 2015 was the first year during which 80% of patients took more than 30 minutes to offload at the emergency room, compared to 61% in 2011.



Small changes in the time an ambulance spends with a patient from dispatch to leaving a hospital (Time on Task) can greatly affect calculated UHU. For example, if ambulance UHU is calculated with a hypothetical 1-hour total turnaround time (Berkeley turnaround time is longer) for each documented patient in 2018, with four ambulances it produces a UHU of .19. By adding just 15 minutes to each call, the UHU jumps to .24. The higher the UHU, the more occurrences in which a Berkeley ambulance *will not be available* for 911 calls in the system (given the number of calls and ambulances remained constant). In these instances, ambulances must be summoned from adjacent jurisdictions which increases response times and pulls ambulances out of those communities.

To make another comparison, in a model with three ambulances, the UHU would be .25 with the same number of transports, above. If all measures remain the same but the hospital patient offload time is increased by 12.6 minutes, the UHU rises to .24 even with four ambulances — the same UHU with a significant increase in resources (three to four ambulances), *and no change in call volume*.

To determine the average Time on Task for Berkeley ambulances, calls lasting longer than 30 minutes and less than 4 hours were used. On average, in 2018, these calls



lasted 1 hour and 18 minutes (7023 records). There were other calls that will, in aggregate, have some impact on real world UHU (an additional 5016 in 2018 for instance), however, in dealing with averages *and* to specifically capture patients *actually transported*, dispatches lasting under 30 minutes (for instance some lasted 3 seconds or less), will alter the mean calculation enough that it does not provide an accurate picture of those calls. Conservatively, there is still a growth trend when looking at calls lasting more than 30 minutes and less than 4 hours over the past 9 years.

The calls that were not included (<30 minutes and > 4hrs) will have further impact on total time on task, and therefore UHU. These are difficult to accurately review as part of the same group, but for the sake of argument, if those dispatches are also considered, averaging them, but still excluding those over 4 hours, the average time on task increases again. When this difference is applied to UHU, it rises to .47, which is likely too high, but is indicative that these “ignored” calls do have a real impact on UHU.

Returning to removing the service calls lasting fewer than 30 minutes results in a UHU of .26 in 2011 with three ambulances, and the same again in 2019 with four ambulances in service — that result comes with disregarding more than 8000 calls for service, most of them in 2019 (5134 in 2019, and 3113 in 2011).

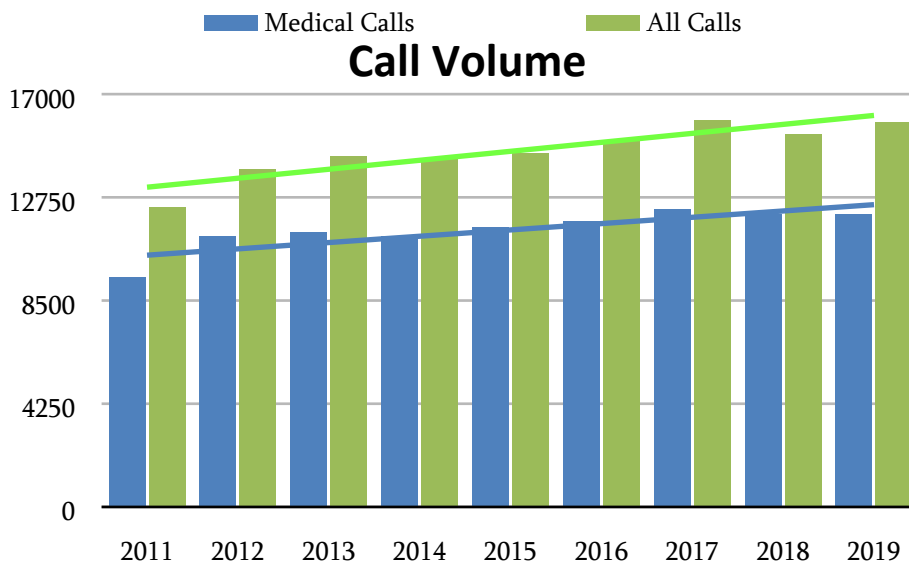
POTENTIAL ALTA BATES CLOSURE



If Alta Bates Hospital were to close its emergency room, the City can expect a significant increase in transport times and thereby increase in UHU for Berkeley ambulances. According to Electronic Health Record (EHR) data, the Department delivered 4353 (62%) of patients to Alta Bates in 2018. When the expected increase in round trip transport time (to Summit or Kaiser Oakland) is applied, UHU for 2018 would have increased 21% with just those calls alone — transporting 2,669 (38%) fewer patients. This additional transport time would bring the overall UHU up to .30, without weighting the average, but still ignoring calls for service lasting less than 30 minutes, which yields an underestimation of UHU. If Alta Bates closes, the city should conservatively expect to experience an increase of at least 14% to UHU without adding a single call for service.

**TOTAL CALL VOLUME TRENDING**

Although there has been some small variation in total call volume year by year, over the past 9 years both medical and other service requests are consistently trending upward — the R2 values lending confidence to the trending slopes, especially in medical call volume (see Call Volume, below). There is no reason to expect this trend to change given the total population growth and ongoing development planned within the city. It can be predicted that call both overall call volume and medical call volume will continue to increase with the population over the next decade.



Based on CAD data, the increase in both medical and total call volume since 2011 was 22% (rounded). Considering total population growth for the same period as a rounded 7% or 8730 (according to census data), predictions for population and call volume growth can be made. By 2028 the city may have a population of 130,393, which may generate a call volume of 19,335 calls for service, at the historical rate of rise. Of those, we can estimate 15,274 will be medical calls, a number almost equal to our total call volume in 2019.

## VEHICLE SUMMARY

The new ambulances will have a compact and efficient design, and are custom-built for quality, durability, and maximum functionality. The aluminum construction is designed to reduce weight and provide superior crash protection. The Fire Department has adopted the pilot "Safety Model" design which provides enhanced employee and patient safety in the event of a vehicle collision, including roll overs. Vehicle design includes five-point safety restraints for caregivers and patients in the rear of the ambulance, rounded corners inside the vehicle, and equipment storage compartments with multiple points of access facilitating caregivers' ability to get needed supplies quickly without having to move around the patient compartment unrestrained. The vehicles also meet the Department's internal commitment to its labor group and employees to create a carcinogen free environment. All surfaces in these vehicles are non-porous and accumulated cancer-causing particulate can be wiped clean.

This purchase supports the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

## BACKGROUND

If a purchase request exceeds \$25,000, the Department of Finance, General Services Division solicits bids or "piggybacks" off competitively bid contracts to ensure the City's departments is receiving the best pricing.

The City of Berkeley has been a no-cost member of Houston-Galveston Area Council (HGACBuy), a Cooperative Purchasing Program that has offered inter-local purchasing since 2008. HGACBuy provides procurement services that make the government procurement process more efficient by establishing competitively priced contracts for good and services made available to local governments nationwide.

Products and services offered through HGACBuy have been subjected to a public competitive bid process. On April 3, 2020 HGACBuy released an Invitation to Submit a Competitive Bid, No. AM10-20 for Ambulances, EMS and Other Special Service Vehicles. The solicitation was nationally advertised for thirty-four days. On May 7, 2020, twenty-four proposals were submitted and reviewed by the Houston-Galveston Area Council who selected Braun Northwest, Inc. as one of the best responsive and responsible proposers to meet the specifications, thusly awarding Contract No. AM10-20.

HGACBuy charges an order processing fee for each sale successfully completed through their contract. For this purchase a flat fee charge of \$1,000 will be paid directly to HGACBuy by Braun Northwest, Inc.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

For every fleet purchase, Public Works staff researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition off fossil fuels. Staff research found that there are no viable electric or hybrid electric

ambulances for consideration. There are several companies in early development stages and the Fire Department is interested in testing them when models become available.

In addition to the lack of readily available and tested electric ambulances, there is no current infrastructure at the Fire Stations to support electric charging of vehicles. The new ambulances will be run on 100% renewable diesel. Usage of renewable diesel also complies with the City's Fossil Free Recommendations. This purchase aligns with the 2020 Municipal Fleet Electrification assessment that recognized the lack of commercially available and viable medium and heavy-duty vehicles. The Municipal Fleet Electrification Assessment proposed to install 51 Charging Stations with 100 chargers and upgrade all 129 vehicles in the light duty fleet to EV by 2030. To Date, PW has installed 31 charging stations and 61 chargers. In the next two years, another five charger installations are planned and contingent on an additional budget allocation of \$850,000, primarily for installation at the Corporation yard. In 2020, the fleet included 46 Hybrids and 15 plug-in hybrid-electric vehicles. Since then, the fleet has added 6 EV Sedans, 3 Hybrid SUVs for the Police Departments (PD), and 4 hybrid pickup trucks. In current FY, the city is processing orders for 11 EV Sedans, 8 PD hybrid SUVs. Public Works is on track to complete conversion of sedans and SUVs to EVs by 2028, two years ahead of the assessment's schedule. In additions, the city fleet has reduced its consumption of traditional gasoline by 33% from a high in 2000, in part due to some of the changes above and because so much of the fleet runs on renewable diesel. Twenty on of the last years vehicle replacements were either hybrid or run-on renewable diesel.

RATIONALE FOR RECOMMENDATION

The new Ambulances are essential vehicles utilized to respond, provide treatment and transport for members of our community that experience medical emergencies. Given the increasing EMS call volume and the potential significant impacts of a closure or reconfiguration of services at Alta Bates, this expansion is necessary.

ALTERNATIVE ACTIONS CONSIDERED

None. Vehicles selected specifically to efficiently and effectively provide requested services.

CONTACT PERSON

Greg Ellington, Superintendent, Department of Public Works (510) 981-6469

ATTACHMENTS

1. Resolution



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

PURCHASE ORDER: BRAUN NORTHWEST, INC. FOR TWO (2) NORTHWEST 155-1, TYPE 1 AMBULANCE

WHEREAS, two (2) North Star 155-1 Type 1 ambulance is needed by the City of Berkeley Fire Department to provided ambulatory services in Berkeley; and

WHEREAS, Charter section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, on April 3, 2020 HGACBuy released an invitation to submit a Competitive Bid, No. AM10-20 for Ambulances, EMS & Other Special Service Vehicles. The solicitation was released for approximately thirty-four days and twenty-four bids were submitted and reviewed. On May 7, 2020 Houston Galveston Area Council selected Braun Northwest, Inc. as the best and most responsive bidder to meet the specifications, thusly awarding Contract No. AM10-20; and

WHEREAS, funds in the amount of \$650,000 are available in the FY2022 budget in the Measure FF Fund (Fund 164).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for two Type 1 Ambulances with Braun Northwest, Inc. in an amount not to exceed \$650,000.



Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abraham Roman, Interim Fire Chief  
Liam Garland, Director, Department of Public Works

Subject: Purchase Order: Nicholas K Corp DBA "The Ford Store" San Leandro for Five Ford F-250 4X4 Pickup Trucks

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Alameda County bid procedures and authorizing the City Manager to execute a purchase order for five (5) Ford F-250 4X4 Pickup Trucks with Nicholas K Corp DBA "The Ford Store" San Leandro in an amount not to exceed \$322,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of five (5) F-250 4X4 Pickup Trucks will not exceed \$322,000 and includes license and fees, delivery to City of Berkeley, and sales tax. Funding is available in the FY 2022 budget in the Measure FF Fund (Fund 164).

CURRENT SITUATION AND ITS EFFECTS

These Ford F-250 4X4 Pickup Trucks are new additions to fleet and will be utilized by the fire department command staff as the Department expands to meet our expanding responsibility to respond to mutual aid requests received from external jurisdictions. They will also serve a primary function in the expanded services which are occurring within the Department inclusive of priority programs and projects (funded by Measure FF) surrounding emergency medical service delivery and wildland preparedness and response.

As participants of the California Office of Emergency Services (CalOES) mutual aid program; these vehicles must be fully equipped to provide support to other jurisdictions whenever there is a need for a large mobilization to cope with an emergency. These assignments often require the capacity to traverse rugged terrain, be self-reliant for 24 hour operational periods and specific communications equipment. The vehicles also meet the Department's internal commitment to its labor group and employees to create a carcinogen free environment. All surfaces in these vehicles are non-porous and accumulated cancer causing particulate can be wiped clean.

This purchase supports the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

### BACKGROUND

Throughout the year, each City Department pays its proportionate share into the Equipment Replacement Fund, and those funds are utilized to replace equipment at the end of its useful life. If a vehicle purchase request exceeds \$25,000, the Department of Finance General Services Division solicits bids or "piggybacks" off competitively bid contracts to ensure City Departments receive the best pricing.

City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive process. On December 15, 2015 Alameda County General Services Agency released Request for Quotation (RFQ) No. 901418 for Vehicle Purchase. The solicitation was released for approximately forty days and four bids were submitted. Upon review, Alameda County selected Nicholas K Corp DBA "The Ford Store" San Leandro as one of the most responsive proposers to meet the specification and awarded Contract No. 901418.

Alameda County RFQ No. 901418 required that the award go to the qualified bidder with lowest mark-up over triple net price. Triple net price is the vehicle price after all discounts, rebates and deductions are taken off. Triple net price is the dealer's actual cost of the purchase of the vehicle. This satisfies the procurement requirements of the City of Berkeley.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Public Works Equipment Maintenance Works to procure zero emission vehicles whenever possible, and when not possible seeks the most fuel-efficient vehicles and equipment that are suitable for the required tasks. The vehicles staff are requesting authority to purchase with this item are not yet available in electric versions. These vehicles will be used as part of the CalOES mutual aid system and will be called to emergencies that require them to be mobile and operating for 24-hour periods of time in areas of the State where there is no vehicle charging infrastructure.

The new trucks will be powered by 100% renewable diesel in place of gasoline, thus reducing greenhouse gas emission by as much as 50-80% compared to gas powered vehicles of the same type. Usage of renewable diesel also complies with the City's Fossil Free recommendations. These vehicles are still not available as electric vehicles, which was the case in the 2020 Municipal Fleet Electrification assessment which recognized the lack of commercially available and viable medium and heavy-duty vehicles.

The municipal Fleet Electrification Assessment proposed to install 51 charging stations with 100 chargers and upgrade all 129 vehicles in the light duty fleet to EV by 2030. To

Date, PW has installed 31 charging stations and 61 chargers. In the next two years, another five charger installations are planned but are contingent on an additional budget allocation of \$850,000, primarily for installation at the Corporation yard. In 2020, the fleet included 46 Hybrids and 15 plug-in hybrid-electric vehicles. Since then, the fleet has added 6 EV Sedans, 3 Hybrid SUVs for the Police Department (PD), and 4 hybrid pickup trucks. In the current FY, the city is processing orders for 11 EV Sedans, and 8 PD hybrid SUVs. Public Works is on track to complete conversion of sedans and SUVs to EVs by 2028, two years ahead of the assessment's schedule. In addition, the city fleet has reduced its consumption of traditional gasoline by 33% from a high in 2000, in part due to some of the changes above and because so much of the fleet runs on renewable diesel. Twenty-one of the last years vehicle replacements were either hybrid or run-on renewable diesel.

RATIONALE FOR RECOMMENDATION

Acquisition is in response to Berkeley voters and City Council directives through Measure FF to expand Fire Department capacity in order to implement important life safety programs and projects related to emergency medical service delivery and wildland preparedness and response.

ALTERNATIVE ACTIONS CONSIDERED

None. Vehicles selected specifically to efficiently and effectively provide requested services.

CONTACT PERSON

Greg Ellington, Superintendent, Public Works Maintenance, (510) 981-6469

Attachments:

1: Resolution

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

PURCHASE ORDER: NICHOLAS K CORP DBA THE FORD STORE SAN LEANDRO  
FOR FIVE FORD F-250 4X4 PICKUP TRUCKS

WHEREAS, five new Ford F-250 4X4 Pickup Trucks are needed by the Fire Department to implement key programs and projects regarding emergency medical services delivery and wildland preparedness and response; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive process; and

WHEREAS, Alameda County bid procedures satisfy the procurement requirements of the City of Berkeley; and

WHEREAS, funds in the amount of \$322,000 are available in the FY22 Measure FF Fund 164; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for five Ford F-250 4X4 Trucks with Nicholas K Corp DBA "The Ford Store" San Leandro in an amount not to exceed \$322,000.





Office of the City Manager

CONSENT CALENDAR

October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services

Subject: Contract No. 32100181 Amendment: Alameda County Healthcare Services Agency

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100181 with Alameda County Healthcare Services to increase the total contract amount by \$62,000 for a total contract amount not to exceed \$100,000 for the period of May 1, 2021 to July 31, 2024 for epidemiology and program evaluation services. The contract will allow the Public Health Division to provide the program evaluation required under the 3-year Prop 64 Cohort 2 grant funding that was awarded to the City of Berkeley in May 2021.

FISCAL IMPACTS OF RECOMMENDATION

This amendment will add \$62,000 to the current contract for a new total not to exceed \$100,000 and extends the term end date to July 30, 2024, the expected end date of the Proposition 64 grant. Funding in the amount of \$25,000 is available in the FY 2022 budget in the One-time Grant: No Cap Exp Fund 336 (ERMA GL Account: 336-51-506-559-0000-000-451-612990-). Funding in FY 2023 (\$18,000) and FY 2024 (\$19,000) is subject to appropriation in those future fiscal years in the General Fund (011-51-506-555-0000-000-451-612990-).

CURRENT SITUATION AND ITS EFFECTS

The Proposition 64 Public Health & Safety Grant is a Strategic Plan Priority Project supporting advancement of the Public Health Division's vision for creating a vibrant and healthy Berkeley for all through collaboration with community members and partners to achieve health equity and optimal health for all people in Berkeley through policy, institutional systems change, and service provision. Through this grant, the City of Berkeley will be partnering with community-based, non-governmental organizations (NGOs) to fulfill the objectives and deliverables of the grant. The City will release a Request for Proposals (RFP) to select a qualified community-based, non-governmental organization in accordance to State and Local procurement requirements. In addition to engagement with NGOs and community partners, this Proposition 64 work also requires program evaluation efforts be completed to ensure intended outcome measures and impacts are met over the course of the project.

## BACKGROUND

On May 1, 2021 the City of Berkeley entered into a fully executable contract with the California Board of State and Community Corrections (BSCC) to implement a 3-year project (starting FY 2021-2022) under the Proposition 64 Public Health & Safety Grant Program. Total award amount across all three years is \$1,000,000.

The project proposes that the City of Berkeley partner with community-based, NGOs and other community partners to focus on youth development activities – with a specific focus on youth experiencing at-risk situations – to decrease the rates of substance use among youth under 21 years old. These community-based, non-governmental organization partners will be selected through a public, competitive bidding process (i.e. Request for Proposals) in accordance to State and Local procurement requirements. Project objectives and deliverables include: 1) youth-led culturally competent cannabis education awareness campaign to promote healthy behaviors, prevention/intervention programming, addressing substance abuse, delinquency, dropping out of school and gang/gun violence. Wrap around services will also be offered by partnering NGOs to assist youth and their families to address risk factors and social determinants of health that can contribute to substance misuse by adolescents and young adults. A collaborative taskforce and community advisory committee will also be formed between City of Berkeley departments, NGO partners, social services and community stakeholders to develop mutually agreed upon goals and strategies for this work.

The project also requires a project evaluation component to be held by a third-party evaluation and be based on a Results Based Accountability (RBA) framework. The City of Berkeley has an existing contract with the Alameda County Public Health Community, Assessment and Planning and Evaluation (CAPE) Unit. This unit is comprised of staff who work in three functional areas: Epidemiology, Evaluation, and Results Based Accountability (RBA).

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Health, Housing and Community Services department ensures all contracts include provisions for compliance with the City’s environmental policies. There are no environmental sustainability or climate impacts identified with this amendment.

## RATIONALE FOR RECOMMENDATION

The Public Health Division already has an existing contract with the Alameda County Healthcare Services Agency for epidemiology and program evaluation services. The Alameda County Health Care Services Agency, CAPE Evaluation group has extensive experience in developing and implementing evaluation plans that are accessible and effective in “real life” environments, providing program planning, logic model development, survey design, qualitative assessment, analysis, reporting and presentations. The CAPE epidemiologists regularly collect, analyze and report on Alameda County health data that includes City of Berkeley data and also have been

granted special permission access to data that the Proposition 64 grant work can use to monitor and evaluate performance outcomes related to cannabis education awareness campaigns. Example data sources include CalSCHLS school level data around substance use as well as the California Healthy Kids Survey (CHKS).

ALTERNATIVE ACTIONS CONSIDERED

Contract with another evaluation firm which would require that firm to connect with the Alameda County Healthcare Services Agency, CAPE unit in order to gain access to County and City level data sets to complete the evaluation.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5212

Attachments:

1: Resolution

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

CONTRACT NO. 32100181 AMENDMENT: ALAMEDA COUNTY HEALTHCARE SERVICES AGENCY

WHEREAS, the Health, Housing, and Community Services Department is responsible for providing impactful and meaningful health promotion and health education services for the residents of Berkeley.

WHEREAS, the Health, Housing, and Community Services Department understands the importance of conducting program evaluation to determine impacts to community health

WHEREAS, City and Contractor previously entered into Contract No. 32100181 dated, May 1, 2021, with a not to exceed amount of \$38,000

WHEREAS, it is beneficial for the City to enter into an agreement with a qualified epidemiology and program evaluation team to meet the needs of grant requirements

WHEREAS, funds are available to perform this work in the FY 2022 budget in the ERMA GL Account 336-51-506-559-0000-000-451-612990- (\$25,000) and subsequent years in ERMA GL Account 011-51-506-555-0000-000-451-612990- (\$18,000 in FY 2023 and \$19,000 in FY 2024) and this contract amendment has been entered into the Citywide contract database and assigned a contract number

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32100181 with Alameda County Healthcare Services Agency to increase the total contract amount by \$62,000 for a total contract amount not to exceed \$100,000 for the period of May 1, 2021 to July 31, 2024 for epidemiology and program evaluation services. A record signature copy of said contract and amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Dee Williams-Ridley, City Manager, Office of the City Manager  
 Subject: Appointment of Fire Chief

RECOMMENDATION

Adopt a Resolution confirming the appointment of Abraham Roman as the Fire Chief to be effective October 17, 2021 at an annual salary of \$268,990.

FISCAL IMPACTS OF RECOMMENDATION

The salary and benefits for the Fire Chief are included in the Fiscal Year 2021 Fire Department budget. The position is paid 100% from the General Fund (Budget Code: 011-72-741-831-0000-000-422-511130).

CURRENT SITUATION AND ITS EFFECTS

Abraham Roman has served as the Interim Fire Chief since April 12, 2021 following the resignation of the previous fire chief. He has a lengthy history with the Berkeley Fire Department, starting with the Department in 1999 as a Firefighter/Paramedic, and promoting through the ranks since that time. Chief Roman has served the City and the Department well as Interim Chief following the resignation of the previous chief and I am confident he will continue to do so in the permanent position.

In accordance with the City Charter, Section 28(b) of Article VII, I am submitting my selection for the Fire Chief to the City Council for confirmation. I have selected Abraham Roman for appointment to the Fire Chief position, to be appointed with an annual salary of \$268,990. I am requesting confirmation of this appointment so that I may formally offer this regular at will benefited department head position to Abraham Roman to be effective October 17, 2021.

BACKGROUND

The Berkeley Fire Department has a staff of 153, organized into the following divisions:

Administration: The Administration Division directs the department in field operations, budget and fiscal policy, administrative systems and procedures, employee training and development, and labor and management issues.

Fire Prevention: The Fire Prevention Division plans, organizes and implements all Fire Department prevention and inspection programs, including fire and arson investigations, vegetation management, hazard abatement, code enforcement, public fire safety education, plan checking, and evaluation and development of codes and ordinances.

Fire Suppression: Fire Operations provide emergency services in fire suppression, emergency medical and rescue response, emergency service response, hazardous materials response, fire alarm response, and all other emergency calls.

Training and Safety: The Training Division provides all the required department training to comply with local, county, state, and federal mandates.

Office of Emergency Services: The Office of Emergency Services guides City policy and implements disaster preparedness and response programs, outreach and education, and regional collaboration planning.

Emergency Medical Services: The Emergency Medical Services Division provides Advanced Life Support and staff paramedic transport ambulance units.

The Department also staffs the Disaster and Fire Safety Commission.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Interim Chief Roman joined the Berkeley Fire Department in 1999 as a Firefighter Paramedic. He was promoted to Fire Apparatus Operator in 2001, Fire Lieutenant in 2007, Fire Captain in 2009, and then Deputy Fire Chief and Assistant Fire Chief—Director of Training and Safety in 2012. During his tenure, he has worked in every rank within the Fire Department and has obtained over twenty-five certifications in Fire related trainings. Chief Roman has demonstrated exemplary leadership in managing and directing operations and activities of the Fire Department during very critical times that consisted of responding to the COVID 19 pandemic along with the many Wildfires that have consumed California over the last two years. He has been a leader in the operationalizing measure FF and working with council and staff to map out the five-year plan. He has worked strategically to balance the department's budget while ensuring the equipment and resources are procured for the department. Along with serving as Co-Chair during labor negotiations and securing a two-year contract with the IAFF Local 1227 union. He has been Interim Fire Chief since April 12, 2021. Interim Chief Roman received a Bachelor of Science Degree in Vocational Arts from California State Long Beach.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Appointment of Fire Chief

CONSENT CALENDAR  
October 12, 2021

**Attachments:**

1. Resolution

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

CONFIRMING THE APPOINTMENT OF ABRAHAM ROMAN AS FIRE CHIEF

WHEREAS, Interim Fire Chief Abraham Roman has been a member of the Berkeley Fire Department since September of 1999; and

WHEREAS, Interim Chief Roman has been serving as the Interim Chief of the Berkeley Fire Department from April 12, 2021 to present; and

WHEREAS, Interim Chief Abraham served as the Deputy Fire Chief from February 2018 to April 2021, and prior to that as Assistant Fire Chief-Director of Training and Safety, Fire Captain overseeing the Office of Emergency Services, Fire Lieutenant, including over Special Operations, Fire Apparatus Operator, and a Firefighter/Paramedic; and

WHEREAS, Interim Chief Roman received a Bachelor of Science Degree in Professional Studies from California State University, Long Beach; and

WHEREAS, Interim Chief Roman joined the Berkeley Fire Department in 1999 as a Firefighter Paramedic. He was promoted to Fire Apparatus Operator in 2001, Fire Lieutenant in 2007, Fire Captain in 2009, and then Deputy Fire Chief and Assistant Fire Chief— Director of Training and Safety in 2012. During his tenure, he has worked in every rank within the Fire Department and has obtained over twenty-five certifications in Fire related trainings. Chief Roman has demonstrated exemplary leadership in managing and directing operations and activities of the Fire Department during very critical times that consisted of responding to the COVID 19 pandemic along with the many Wildfires that have consumed California over the last two years. He has been a leader in the operationalizing measure FF and working with council and staff to map out the five-year plan. He has worked strategically to balance the department's budget while ensuring the equipment and resources are procured for the department. Along with serving as Co-Chair during labor negotiations and securing a two-year contract with the IAFF Local 1227 union. He has been Interim Fire Chief since April 12, 2021. Interim Chief Roman received a Bachelor of Science Degree in Vocational Arts from California State Long Beach.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby confirms the City Manager's appointment of Abraham Roman as the Fire Chief with an annual salary of \$268,990 (Budget Code: 011-72-741-831-0000-000-422-511130); on the same terms and conditions as other regular at will employees effective October 17, 2021.





Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: LaTanya Bellow, Director of Human Resources  
 Subject: Adopt a resolution creating the Classification and Salary Range of Program Manager I and II Classifications

RECOMMENDATION

Adopt a Resolution amending Resolution No. 68,709-N.S., Classification and Salary Resolution for Public Employees Union, Local One to include the classification of Program Manager I and II Classifications with an hourly salary range of \$51.7326 - \$62.4561 effective October 12, 2021.

FISCAL IMPACTS OF RECOMMENDATION

The Human Resources Department contracted with Bryce Consulting to develop a base salary recommendation based on internal equity. Bryce Consulting is an agency that provides a variety of human resource services to non-profit and public-sector clients. After considering the internal relationships among classifications, staff is recommending a monthly salary range of \$8,966.98 - \$10,825.72.

| <b>Classification</b> | <b>Step 1</b> | <b>Step 2</b> | <b>Step 3</b> | <b>Step 4</b> | <b>Step 5</b> |
|-----------------------|---------------|---------------|---------------|---------------|---------------|
| Program Manager I     | 51.7326       | 54.2545       | 56.8023       | 59.5945       | 62.4561       |
| Program Manager II    | 60.5676       | 63.5960       | 66.7758       | 70.1146       | 73.2938       |

CURRENT SITUATION AND ITS EFFECTS

The City's classification plan has over 394 job descriptions, specifically 152 are single classifications, most within the manager series. In efforts to streamline administering the City's classification and compensation plans, and support operational flexibility, the city is proposing a Program Manager I and Program Manager II broad classification in the managerial series.

The classification will be used across the organization, similar to the Analyst, Administrative Support classification. This model is alignment with other cities, for example San Francisco has Manager I, Manager II, and Manager III to cover all the various types of divisions/departments and operational needs.

Based on our findings and feedback, the proposed Program Manager I and II classifications would be placed in Public Employee Union, Representation Unit, P1. Additionally, this approach provides flexibility and alignment with career and succession development initiatives. We look to first utilize the classifications to support special programs in the Planning Department, such as our Energy and Recycling programs.

BACKGROUND

The Personnel Board met on April 5, 2021 and approved the classification and salary range for Program Manager I and II Classifications.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to create the necessary classification and salary schedule to accommodate new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Human Resources Director, Human Resources, 510-981-6807.

Attachments:

1: Resolution

- Exhibit A. Program Manager I classification with salary range
- Exhibit B. Program Manager II classification with salary range
- Exhibit C. Organization Chart

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

CLASSIFICATION AND SALARY RANGE: Program Manager I and II Classifications

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the Assistant to the City Manager had recommended adding the Program Manager I and II Classifications; and

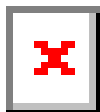
WHEREAS, the City Manager's Office and Human Resources Department have completed a classification and salary review; and

WHEREAS, the Personnel Board approved on April 5, 2021 to approve the classification of Communications Specialist with a hourly salary range of \$ 51.7326 - \$62.4561; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 68,709-N.S., Classification and Salary Resolution for Public Employees Union, Local One is amended to include the classification of Program Manager I and II Classifications with an hourly salary range of \$51.7326 - \$62.4561 effective October 12, 2021.

Exhibits

- A. Program Manager I classification with salary range
- B. Program Manager II classification with salary range
- C. Organization Chart



## Program Manager I

Bargaining Unit: Public Employees Union, Local One

Class Code:  
00000

CITY OF BERKELEY  
Established Date: MMM 00, 20XX  
Revision Date: MMM 00, 20XX

### SALARY RANGE

\$51.7326 - \$62.4561 Hourly  
\$4,138.61 - \$4,996.49 Bi-Weekly  
\$8,966.98 - \$10,825.72 Monthly  
\$107,603.81 - \$129,908.69 Annually

### DESCRIPTION:

#### DEFINITION:

Under general supervision, organizes and manages City programs or projects including the development and implementation of program goals and elements; may supervise professional, technical and clerical staff; and develops procedures, programs and methodologies.

#### CLASS CHARACTERISTICS:

This is the first level in the Program Manager series. The duties of this class involve program and project management work of programs and projects with City and community impact. Directs and administers one or more major City programs. Specific to general instructions are given on the scope and method of completing assignments, and work is subject to periodic review by supervisors for completeness and accuracy. This class differs from that of higher level Program Manager II in that it is the beginning level class, and assignments and work performed are supervised more closely, are not as difficult and complex, and do not require the depth of knowledge as those performed by the latter.

### EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Organizes, coordinates, and manages one or more programs or projects;
2. Coordinates administrative functions associated with program management including budget preparation, financial management, and grant application preparation and administration; manages the procurement process including the development of RFP/RFOs; negotiates terms, conditions and performance standards and administers contracts;
3. Develops procedures, methodologies and performance metrics-related to compliance and program requirements; interprets and applies existing policies to actual situations; identifies and resolves problems;
4. Represents the department in a variety of meetings and forums involving program coordination and implementation;
5. Conducts analyses and makes technical investigations and research on a variety of issues impacting the City;
6. Plans, develops and coordinates studies and prepares and presents findings and recommendations;
7. Formulates, recommends and implements policies, procedures and new service approaches associated with assigned program(s);
8. Serves as liaison with representatives from federal, state, local, private and community organizations in the implementation of assigned program(s);

9. Reviews the effectiveness of service delivery and work flow; makes and implements recommendations regarding program elements;
10. Analyzes laws and regulations and their impact to assigned program(s);
11. Develops and maintains informational and statistical reports regarding program performance, goal attainment, and service levels;
12. Trains public and staff on program(s) to improve implementation, including creating and maintaining educational materials;
13. Maintains regular contact with public, including internal and external meetings and/or site visits to ensure compliance with program requirements;
14. Performs related duties as assigned.

## KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles and practices of project/program development, management and administration in the assigned program area;
2. Management and administrative principles and practices;
3. Principles of budget development and administration;
4. Principles and practices of research, analysis, and report writing;
5. Principles and practices of effective employee supervision, including selection, training, work evaluation and discipline;
6. Pertinent Federal, State, and local statutes, ordinances, and regulations, as needed for area of assignment;
7. Regulatory and programmatic requirements and services as they relate to assigned program.

Ability to:

1. Effectively plan, develop, and implement comprehensive programs;
2. Collect and analyze data and reach a sound conclusion;
3. Use, at a highly proficient level, computers, computer applications, and software including Word, Excel, and other software relevant to the assigned program area;
4. Prepare and present clear and concise technical or analytical reports and visually engaging presentations for City Council and community;
5. Interpret and apply program requirements and/or regulatory practices, rules, and policies to actual situations;
6. Meet deadlines in a highly political environment;
7. Communicate effectively, both orally and in writing;
8. Effectively analyze legislation and/or regulatory changes and their impact to City services;
9. Establish and maintain productive working relationships with those contacted in the course of the work;
10. Use English effectively to communicate in person, over the telephone, and in writing;
11. Use tact, initiative, prudence, and independent judgment within general policy, procedural, and legal guidelines; and
12. Manage and supervise support staff.

## MINIMUM QUALIFICATIONS:

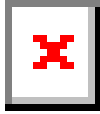
A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from a four year college or university with major coursework in business or public administration, or a related field and three (3) years in the development and implementation of programs.

## OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid

California driver's license as well as a satisfactory driving record. Must be able to attend evening and weekend meetings.



Class Code:  
00000

## Program Manager II

Bargaining Unit: Public Employees Union, Local One

CITY OF BERKELEY  
Established Date: MMM 00, 20XX  
Revision Date: MMM 00, 20XX

### SALARY RANGE

\$60.5676 - \$73.2938 Hourly  
\$4,845.41 - \$5,863.50 Bi-Weekly  
\$10,498.38 - \$12,704.26 Monthly  
\$125,980.61 - \$152,451.10 Annually

### DESCRIPTION:

#### DEFINITION:

Organizes and manages major City programs or projects that have a high degree of visibility and are of substantial impact including the development and implementation of program goals and elements; may supervise professional, technical and clerical staff; and develops procedures, programs and methodologies.

#### CLASS CHARACTERISTICS:

This is the second level class in the Program Manager series, fully competent to perform responsible and difficult program and project management for one or more major City programs that have a significant impact to the City and the community. Incumbents are expected to exercise independent judgment in the development and implementation of program and project goals, administering program budget and supervising staff.

### EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Organizes, coordinates, and manages one or more major programs or projects with high visibility and impact;
2. Coordinates administrative functions associated with program management including budget preparation, financial management, and grant application preparation and administration; manages the procurement process including the development of RFP/RFQs; negotiates terms, conditions and administers contracts;
3. Develops procedures, methodologies and performance metrics-related to compliance and program requirements; interprets and applies existing policies to actual situations; identifies and resolves problems;
4. Represents the department in a variety of meetings and forums involving program coordination and implementation;
5. Conducts complex analyses and makes technical investigations and research on a variety of issues impacting the City;
6. Plans, develops and coordinates complex studies and prepares and presents findings and recommendations;
7. Formulates, recommends and implements policies, procedures and new service approaches associated with assigned program(s);
8. Serves as liaison with representatives from federal, state, local, private and community organizations in the implementation of assigned program(s);

9. Reviews the effectiveness of service delivery and work flow; makes and implements recommendations regarding program elements;
10. Analyzes laws and regulations and their impact to assigned program(s);
11. Develops and maintains informational and statistical reports regarding program performance, goal attainment, and service levels;
12. Trains public and staff on program to improve implementation, including creating and maintaining educational materials;
13. Maintains regular contact with public, including internal and external meetings and/or site visits to ensure compliance with program requirements;
14. Performs related duties as assigned.

## KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Advanced principles and practices of project/program development, management and administration in the assigned program area;
2. Management and administrative principles and practices;
3. Principles of budget development and administration;
4. Advanced principles and practices of research, analysis, and report writing;
5. Principles and practices of effective employee supervision, including selection, training, work evaluation and discipline;
6. Pertinent Federal, State, and local statutes, ordinances, and regulations, as needed for area of assignment;
7. Regulatory and programmatic requirements and services as they relate to assigned program;
8. Principles and practices of grant administration, public procurement, contract law and negotiations.

Ability to:

1. Effectively plan, develop, and implement comprehensive programs with a broad impact and high degree of complexity;
2. Collect and analyze large volumes of data and reach a sound conclusion;
3. Use, at a highly proficient level, computers, computer applications, and software including Word, Excel, and other software relevant to the assigned program area;
4. Prepare and present clear and concise technical or analytical reports and visually engaging presentations for City Council and community;
5. Interpret and apply program requirements and/or regulatory practices, rules, and policies to actual situations;
6. Meet deadlines in a highly political environment;
7. Communicate effectively, both orally and in writing;
8. Effectively analyze legislation and/or regulatory changes and their impact to City services;
9. Establish and maintain productive working relationships with those contacted in the course of the work;
10. Use English effectively to communicate in person, over the telephone, and in writing;
11. Use tact, initiative, prudence, and independent judgment within general policy, procedural, and legal guidelines; and
12. Manage and supervise support staff.

## MINIMUM QUALIFICATIONS:

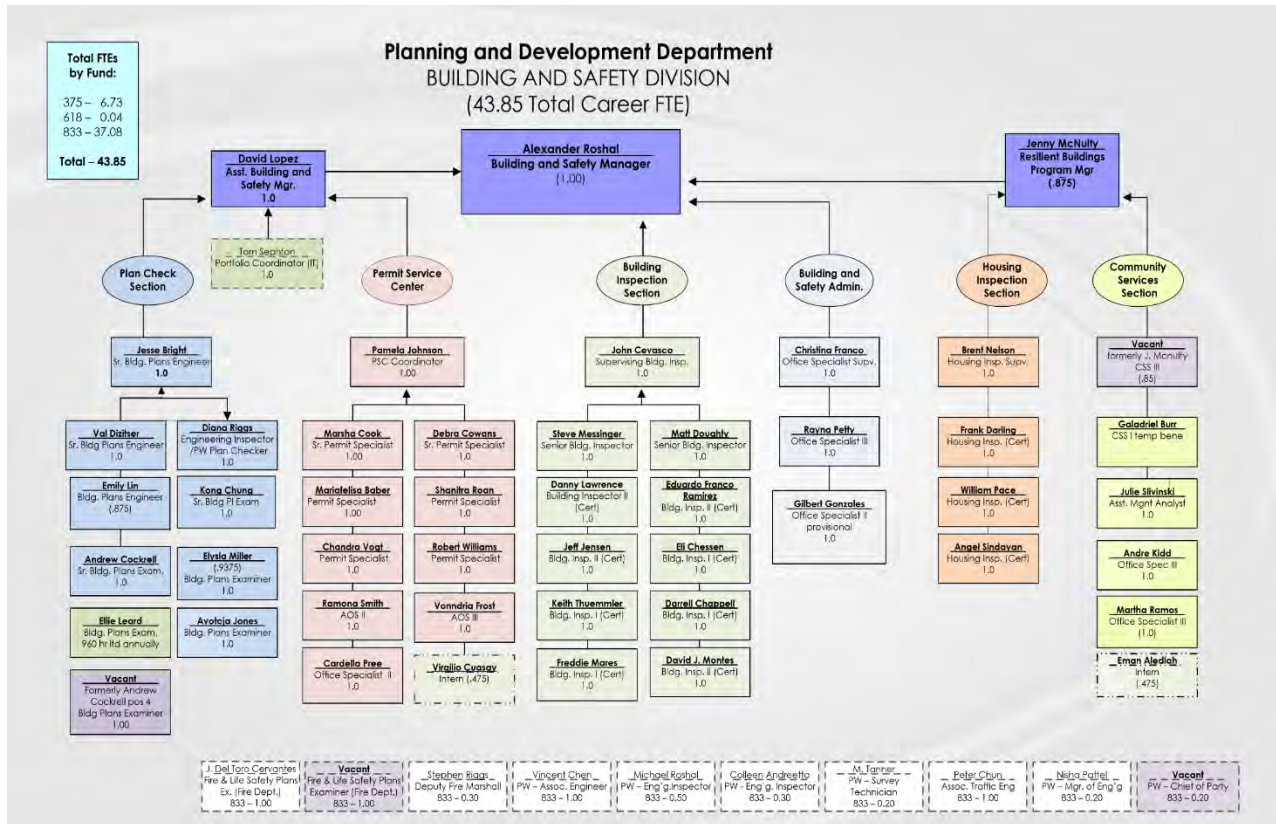
A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from a four year college or university with major coursework in business or public administration, or a related field and five (5) years in the development and implementation of programs.

OTHER REQUIREMENTS



Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record. Must be able to attend evening and weekend meetings.





Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services  
 Subject: Transfer Tax Refund for 1685 Solano Avenue

RECOMMENDATION

Adopt a resolution authorizing the City Manager to grant a transfer tax refund of an estimated \$121,250 to the Bay Area Community Land Trust (BACLT) to support the acquisition and renovation of 1685 Solano Avenue and BACLT's operation of the property as affordable housing.

FISCAL IMPACTS OF RECOMMENDATION

At the time of property acquisition, BACLT will pay the property tax fee to the City. The City's General Fund would forego an estimated \$121,250 of revenue, and the City would issue a reimbursement check to BACLT equal to the amount of transfer taxes paid to the City.

CURRENT SITUATION AND ITS EFFECTS

Providing a transfer tax refund for 1685 Solano Avenue is a Strategic Plan Priority Project that will advance the City's goal to create affordable housing.

BACLT submitted a letter requesting a transfer tax refund related to their pending acquisition of 1685 Solano Avenue, a partially occupied residential building in North Berkeley. BACLT is in contract to purchase the property, and requested a Small Sites Program (SSP) loan from the City to support acquisition and renovation.

The SSP requires that each project's renovation budget and replacement reserves be sufficient to address any immediate and longer-term renovation needs that have been identified by a physical needs assessment. If the City refunds Solano's transfer taxes, BACLT will use those funds to help meet that SSP requirement. BACLT also plans to retain a portion of the project cash flow (that would otherwise go towards repayment of the City loan) to build the replacement reserves in anticipation of the projected capital needs. With the transfer tax refund supplementing the reserves, BACLT would be better positioned to start repaying the City's loan on a faster timeline.

BACKGROUND

1685 Solano Avenue consists of thirteen residential units, four of which are occupied. The current owner is in the process of renovating the property, and the remaining tenants are at risk of Ellis Act Evictions. Using Small Sites Program funds, BACLT plans to complete the renovations, and restrict the vacant units to households earning up to 80% of the area median income. The occupied units would become restricted upon unit turnover. With construction costs continuing to increase, the project would benefit from a reduction in the amount of transfer taxes owed. The funds would be better used to support renovation needs, or for reserves that can help support the project's operations in the long term.

City Council has approved transfer tax waivers on previous Housing Trust Fund and Small Sites Program projects. In 2014, City Council approved a transfer tax refund to the David Brower Center and Resources for Community Development related to the Oxford Plaza development when a transfer to an RCD-affiliated entity for refinancing triggered the transfer tax. In 2019, City Council approved a transfer tax waiver for BACLT's first Small Sites Project, 1638 Stuart Street.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed renovation will include the addition of energy efficient and water efficient fixtures.

RATIONALE FOR RECOMMENDATION

The allocation of this funding will help in the preservation of thirteen units of affordable housing in the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions considered.

CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, 510-981-5228

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

AUTHORIZING AN ESTIMATED \$121,500 TRANSFER TAX REFUND TO BAY AREA COMMUNITY LAND TRUST TO SUPPORT THE RENOVATION AND OPERATION OF 1685 SOLANO AVENUE

WHEREAS, Bay Area Community Land Trust (BACLT) is in contract to purchase 1685 Solano Avenue and estimates \$121,250 in City transfer taxes; and

WHEREAS, BACLT intends to acquire the site and operate it as affordable housing with a cooperative structure; and

WHEREAS, BACLT requested a Small Sites Program (SSP) loan to support the acquisition and renovation of the project; and

WHEREAS, the SSP requires projects to provide renovation and replacement reserve funds to address immediate and longer-term capital needs; and

WHEREAS, a transfer tax refund would provide additional funding for the renovation and the capitalized replacement reserve.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council authorizes the City Manager or her designee to grant an estimated \$121,250 to Bay Area Community Land Trust in transfer tax revenue to support the acquisition, renovation and operation of 1685 Solano Avenue.





Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Savita Chaudhary, Director, Information Technology  
Subject: Contract No. 112798-1 Amendment: Geographic Technologies Group for Additional Geographic Information System (GIS) Projects

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 112798-1 with Geographic Technologies Group (GTG) for Geographic Information System (GIS) professional services, for a total not to exceed \$100,000 and for a total contract value of \$499,411 from September 14, 2016 to June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

This amendment will add \$100,000 to the current contract for a new total not to exceed amount of \$499,411. Funding in the amount of \$100,000 is available in the FY 2022 budget in the Department of Information Technology's FY 2022 IT Cost Allocation Fund (Fund 680).

|                  |                                                                                                |
|------------------|------------------------------------------------------------------------------------------------|
| \$100,000        | FY 2022: 680-35-377-6002-000-472-612990<br>(IT Cost Allocation, GIS, IT Professional Services) |
| <b>\$100,000</b> | <b>Total FY 2022 Professional Services</b>                                                     |

CURRENT SITUATION AND ITS EFFECTS

The GIS Master Plan development and planning process was a citywide effort involving key staff representing multiple departments. Geographic Technologies Group (GTG) has provided reliable consulting services and has proven to be a strong partner in this development and planning process. Two additional GIS projects are required for the City of Berkeley under the GIS Master Plan. Each project complements the City's five-year GIS Master Plan strategy developed in 2017 and completed in 2021.

The first project for FY 2022 is reworking the Parcel Condition widget. Over time, overlapping of some of the parcel layers has uncovered issues regarding the centroid point (of a parcel). This project will refactor the widget to dynamically create the parcel centroid point and ensure compatibility with other layers.

The second project involves expanding GIS services to include implementing and providing training for the ArcGIS HUB, which is a public portal for viewing GIS and related data. Scope for this year includes HUB set up and set up of a Redistricting site. This is urgent work due to the redistricting project going on now. It allows for internal review of potential district maps and views that can be shared with the public as appropriate.

The third project is replacement of the City's existing "Crime Mapping" solution. This is an urgent project that is highest priority. The Crime Mapping software has had repeated failures in the last year and we need to replace it.

The fourth item is a contingency of \$15,000 for GIS layer tasks that come up during the year. These tasks will be individually costed as they arise and that cost will be paid as the tasks are completed.

The fifth item is for training and education for Berkeley Staff for the ArcGIS Hub solution and for the Crime Mapping solution. This training will include making updates to the Hub and publishing information, as well as administering the Hub.

#### BACKGROUND

In May 2016, the City issued a Request for Proposals (RFP) for a Geographical Information Systems (GIS) Master Plan under Specification No.16-11041-C. Of the nine responses, Geographic Technology Group (GTG) best met the City's operational, technology, and fiscal requirements.

The GIS Master Plan development and planning process was a citywide effort involving key staff representing many departments. GTG conducted surveys, interviews and onsite workshops with city staff to do an assessment and analysis of the City's current Enterprise GIS. GTG evaluated the readiness of existing system infrastructure (hardware, software, and network) to support enterprise GIS and maintain service during disasters, assessed parcels and address data sets to meet GIS business needs and Enterprise authoritative source requirements, and developed a governance plan that outlines the administration, maintenance, and support for the enterprise GIS.

In June 2017, Council approved a GTG recommendation that added seven additional GIS projects to compliment the strategy developed in 2016. All projects completed as of June 30, 2019. These projects included:

1. **Comprehensive GIS data assessment of our GIS system and establish a benchmark of data accuracy;**
2. **Establish a Public Portal solution (<https://www.cityofberkeley.info/gisportal/>);**
3. **Assess of GIS Policies and Procedures and update as needed;**



4. **Develop a Mobile GIS Plan to address** the mobile device needs for the upcoming projects for work order, fleet and facilities management.
5. **Develop Key Performance Indicators (KPIs) for GIS to** allow the City of Berkeley to accurately measure GIS performance, quantify the City's accomplishments, and articulate the benefits GIS provides to the community.
6. **Establish City of Berkeley GIS Newsletter to** provide transparency and accountability by keeping stakeholders and community members in the loop through easily accessible media.
7. **Develop GIS Training Curriculum, a** formal ongoing GIS training plan through the GIS SharePoint portal with links to free resources for GIS training available to employees.

This work was completed in FY 2021 and has led to a robust GIS program used by many departments and by the public. The new work for FY 2022 is an extension of that progress in collecting and reporting GIS data and providing data analysis.

In 2021, we added a GreenCity GIS for Park Inventory which includes a comprehensive inventory of all infrastructure (buildings, benches etc) and trees in the City of Berkeley's Parks and medians.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This project will move the City forward in attaining its goals of becoming a viable environmentally sustainable city. While the main project is to provide up to date detailed information on crimes in the city which will enable users to have situational awareness and allow for remote detailed analysis, there are additional benefits to be realized.

Information collected coupled with existing data gives the city, staff and community to collaborate better. Economic potentials, racial, social, equality improvements, environmental preservation, land use etc. are some objectives to name a few that can be accomplished.

Some examples already in use are the city's GIS portal map that has the data like bike lanes, bike boulevards and safe bike racks that enable people to identify areas for safe bicycle usage in the city. City staff also use GIS maps for sewer location, street lights, park infrastructure and other items for internal maintenance.

All this information optimizes efficiency, reduces operational costs and promotes reduction in fossil fuel consumption. This all aligns with the city's goal to reduce greenhouse gas emissions by 2050 to 80% below 2000 levels per Climate Action Plan goals.

In addition, Geographic Technologies Group will conduct all of their work remotely, saving both travel costs and greenhouse gas emissions related to travel.

### RATIONALE FOR RECOMMENDATION

Geographic Technologies Group is well versed in the requirements for public sector GIS. GTG has created and implemented over 200 comprehensive GIS Master Plans for local government. Clients include the California cities of Concord, Pasadena, West Sacramento, West Hollywood and Roseville. GTG has developed the GIS Community Portal for our city and the staff is recommending continuing using their services for the expansion of the functionality of the existing portal.

GIS technologies are powerful tools for improving the quality, accuracy, efficiency, and responsiveness of government services provided by the City of Berkeley. An Enterprise GIS guides a citywide approach to GIS, focused on:

- Using mutually accepted standards, policies, and business practices;
- Encouraging collaborative GIS efforts among City, government, and related organizations;
- Integrating GIS technologies into City business operations;
- Supporting emergency and disaster planning, response, and recovery; and
- Maximizing the cost-effectiveness of GIS investments.

The GIS Steering Committee established the Enterprise GIS Program in 2008 provides central shared resources to support these goals. The program currently includes the following GIS services: Data Services, Online Mapping Services, Applications, Software License Management, and Training and Support.

### ALTERNATIVE ACTIONS CONSIDERED

Staff considered planning and executing these projects without GTG, however the staff considered it would be beneficial to get an outside perspective that could bring with them industry best practices and experience working with other local municipalities to help setup a framework that the City can use for the next three years and beyond. In addition, it is helpful that design of the Hub is consistent with common practices and an up to date design. GTG has set up Hubs for many cities and other government entities.

### CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:  
1: Resolution

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

CONTRACT NO. 112798-1 AMENDMENT:  
GEOGRAPHIC TECHNOLOGIES GROUP FOR ADDITIONAL GIS PROJECTS

WHEREAS, on May 12, 2016, the City issued a Request for Proposals (RFP) for a Geographical Information Systems (GIS) Master Plan (Specification No.16-11041-C) and received nine qualifying vendor responses; and

WHEREAS, the RFP review committee evaluated each proposal and determined that the Geographic Technologies Group proposal best met the City's operational, technological, and fiscal requirements; and

WHEREAS, on November 02, 2016, the original contract was signed to develop a GIS Master Plan; and

WHEREAS, on September 08, 2017, the original contract was amended to include additional tasks to conduct a comprehensive GIS data assessment, deploy a web-based public facing GIS portal, develop GIS policies and SOPs for the City, and establish a one-year GIS work plan; and

WHEREAS, on September 10, 2019 the contract was amended to add two additional projects to enhance the functionality of recently deployed GIS Community portal, and a comprehensive inventory of the City of Berkeley's parks system to prepare for upcoming work order; and

WHEREAS, on August 3, 2020, the contract was amended to add two additional projects to digitize Park boundaries and land use and to set up a web and dashboard applications for City of Berkeley GreenCity GIS software; and

WHEREAS, the contract needs to be amended for five additional projects to enhance our ability to publish data internally and to the public, including crime mapping data; and

WHEREAS, funding for this project in the amount of \$100,000 is available in the Department of Information Technology's Fiscal Year FY 2022 Cost Allocation fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with Geographic Technologies Group for Geographical Information Systems (GIS) Master Plan, for a total not to exceed \$100,000, and for a total contract value of \$499,411 from September 14, 2016 to June 30, 2023.





Office of the City Manager

CONSENT CALENDAR

Oct. 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Information Technology

Subject: Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$492,000 through September 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding for this project is available in the Department of Information Technology's Fiscal Year 2022 Cost Allocation Fund allocation. Spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

|           |                                                            |
|-----------|------------------------------------------------------------|
|           | FY 2022: Professional Services                             |
|           | Budget Code: 680-35-362-376-0000-000-472-612990-           |
| \$120,000 | (IT Cost Allocation, IT Department, Professional Services) |
|           | FY 2022: Professional Services                             |
| \$372,000 | Budget Code: 503-35-362-376-0000-000-412-612990-           |
|           | (FUND\$ Replacement, IT Department, Professional Services) |

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**\$492,000 Total FY 2022 Professional Services**

CURRENT SITUATION AND ITS EFFECTS

The City's Department of Information Technology (DoIT) is currently working on many enterprise projects that impact interactions with our current and new financial systems, as we transition from FUND\$ to Tyler Munis (ERMA). One of the critical projects is the migration of the Accounts Receivable/General Billing (AR/GB) from FUND\$ to ERMA. As part of the analysis over 40 interfaces were identified just for AR/GB that has to be migrated over to the new system. This entails additional work in terms of the current state

(As-Is) analysis, evaluation of the current platform used for integration, designing, building and implementations of these interfaces.

The City has several other key projects that also requires additional expert knowledge in interfaces, reporting and data transfer between the City's financial systems. One of the on-going projects is the Asset works Fleet Management System that requires interfaces to and from Tyler Munis. Multiple projects have interfaces with FUND\$ that needs to be transferred as AR/GB and other MUNIS modules roll out. All these interfaces require deep knowledge of multiple systems and integrations, to fit the new requirements for the implementation.

The implementation of these interfaces requires consultant expertise to be available throughout the duration of the project for successful and timely completion. Any delay in getting the resources would delay the existing projects.

Key efforts to date are as follows: 1) Creation of Reports/Interfaces for the HR/Payroll project like Vacancy Report, Timecard Reports, Sick Leave Adjustment, 2) design, development and configuration for Accela Reports/Interfaces like Delinquency reports, Overpayments etc. and 3) on-going support of Business Licensing module for Rental of Real Property and other business licenses configured in Accela.

Ongoing projects are additional reporting and interfaces for the HR/Payroll project, and working on enabling online Business License renewals and applications for all license types.

The demand for technology exceeds our current skillset and resource capacity. For successful implementation of these projects, we need expert level skills in multiple areas. Currently, Robert Half consultants are helping us bridge the gap, allowing us to complete these projects on-time and within budget.

Additionally, the City regularly participates in purchasing vehicles, or Master Award Schedules (MAS) negotiated by GSA. GSA negotiates long term contracts for prices on supplies, products, and services with suppliers on behalf of government agencies, including local government, that ensure volume discount pricing.

## BACKGROUND

The City has started the process of migrating the Accounts Receivable and General Billing (AR/GB) module from FUND\$ to ERMA. As a result of detailed analysis, over 40 interfaces were identified that required to be migrated over to the new system. This entails a large amount of additional as-is analysis, designing, building, and implementation of these interfaces.

Recently, we lost one of the key IT staff (APAll) that was assisting on this project due to resignation. As we continue looking for a permanent replacement, we need to back fill the role immediately so that we can have continuity in the projects and be able to deliver the projects within time.

This consultant will also help us with day to day operations until we fill in the existing position, as well as provide expertise in the interfaces and integrations area on various projects.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Protiviti Government Services staffs will conduct their work remotely thus reducing greenhouse gas emissions from travel to and from City facilities. There are no other identifiable environmental effects, climate impacts, or sustainability opportunities associated with this report.

RATIONALE FOR RECOMMENDATION

The City is currently using Protiviti Government Services under multiple GSA vehicles across several departments for specific professional services engagements. Protiviti Government Services works with Robert Half International to immediately source analysts with the skillset and experience required to work on these projects.

Additionally, staff determined that not using Protiviti Government Services for the remainder of FY puts some of the projects in jeopardy of not being completed on time and within budget.

ALTERNATIVE ACTIONS CONSIDERED

Hiring additional internal staff to fulfill the needs were considered. However, given the deep technical expertise and knowledge required it would be difficult to hire the appropriate staff and get them trained in a timely manner for the projects.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:  
1: Resolution

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

PROTIVITI GOVERNMENT SERVICES: USING GENERAL SERVICES  
ADMINISTRATION (GSA) VEHICLE FOR PROFESSIONAL SERVICES PURCHASE  
ORDERS

WHEREAS, in July 2020, the City engaged a consultant to assist in various Accela and Tyler Munis projects, which the consultant has aptly done so far; and

WHEREAS, Protiviti Government Services has the expertise in operations and implementations of complex projects, and provides well qualified analysts; and

WHEREAS, the City regularly participates in purchasing vehicles, or Master Award Schedules (MAS) negotiated by GSA, who negotiates long term contracts for prices on supplies, products, and services with suppliers on behalf of government agencies, including local government, that ensure volume discount pricing; and

WHEREAS, one time funding for this project is available in the Department of Information Technology's Fiscal Year (FY) 2021 and 2022 Cost allocation Fund allocation, and spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$492,000 through September 30, 2022.





Office of the City Manager

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront  
 Subject: Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal for Tree Planting

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in the amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

FISCAL IMPACTS OF RECOMMENDATION

The maximum grant award for this grant is \$500,000, which will cover all costs to plant trees (the costs cover project planning and coordination up to 25% of the award, site preparation to create planting locations, materials, project-length labor, equipment rental, and contractor costs). The remaining portion of the project will be covered by Parks Tax Fund for the City's Senior Forestry Climber for project coordination and administration costs. This City staff cost is provided in the grant application as "in-kind match". While local match is not required, the use of local City-funded Forestry staff as in-kind match will make the grant application more competitive. The grant funding cycle is for four fiscal years through March 2025.

Revenue from this grant will be deposited and expensed from the One-Time Grant Fund (Fund 336).

CURRENT SITUATION AND ITS EFFECTS

This program, as provided by California Streets and Highways Code Section 164.56 (Article XIX, Section 1, of the State Constitution), authorizes the legislature to allocate up to \$7 million each fiscal year from the Highway Users Tax Account (Motor Vehicle Revenues, Section 2100). EEM projects must contribute to the mitigation of the environmental effects of transportation facilities. The California Natural Resources Agency (CNRA) prescribes procedures and criteria to evaluate grant project proposals and submits a list of projects recommended for funding to the California Transportation Commission (CTC).

In January of 2021, the CNRA announced the current round of EEM grant funding. This project proposes to plant 600 new site-specific trees and provide related irrigation throughout streets and parks in West Berkeley at the following locations: 1) West side of Aquatic Park; 2) San Pablo Park; 3) University Avenue; and 4) West Berkeley neighborhoods within 1.5 miles of the RTF.

This application window for project proposals closed on March 5<sup>th</sup>. After reviewing the entire applicant pool throughout the state during the summer of 2021, the CNRA selected certain project proposals for a virtual field visit. The City presented a virtual field visit on August 25<sup>th</sup> and was invited to submit a full application in the Fall of 2021. Final award announcements are expected by January 2022.

### BACKGROUND

The EEMP grant program involves tree planting and other activities that mitigate the negative environmental effects of a local Related Transportation Facility (RTF). The I-80 Widening Project of 1994 has been designated as the RTF for this part of the East Bay, and still requires mitigation of increased traffic.

The Parks, Recreation & Waterfront Department has received EEM grants to plant trees throughout Berkeley for over two decades. This project would complement the City's current tree planting project funded by a California State Urban Greening grant to create new sites and plant and water 500 new trees in specific Disadvantaged Communities in West Berkeley through 2024.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

One of the City's Climate Action Plan goals is to maintain the urban forest's present canopy coverage and to provide significant environmental benefits in the form of carbon dioxide absorption and oxygen production, as well as storm water retention and climate control. This project will use the natural systems of trees to achieve these goals. Trees also cool temperatures, beautify neighborhoods, add habitat, and provide health benefits to residents and visitors.

### RATIONALE FOR RECOMMENDATION

This grant will allow the City to expand the urban forest into historically underserved neighborhoods of West Berkeley.

### ALTERNATIVE ACTIONS CONSIDERED

None

### CONTACT PERSONS

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700  
Dan Gallagher, Senior Forestry Supervisor, 981-6687

Attachments:

1: Resolution

RESOLUTION NO. ##-###

APPROVING THE APPLICATION FOR GRANT FUNDS FOR CALIFORNIA STREETS AND HIGHWAYS CODE SECTION 164.56 (ARTICLE XIX, SECTION 1, OF THE STATE CONSITUTION) ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROJECT IN THE AMOUNT OF UP TO \$500,000 FOR TREE PLANTING

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above; and

WHEREAS, the California Natural Resources Agency has been delegated the responsibility for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the California Natural Resources Agency require a resolution certifying the approval of an application by the Applicants governing board before submission of said application to the State; and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California to carry out the Project; and

WHEREAS, funds will be deposited into the and expensed from the One-Time Grant Fund (Fund 336).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley:

1. Approves the filing of an application for the Environmental Enhancement and Mitigation Project;
2. Certifies that applicant understands the assurances and certification in the application, and
3. Certifies that applicant or title holder will have sufficient funds to operate and maintain the project consistent with the land tenure requirements; or will secure the resources to do so, and
4. Certifies that it will comply with the provisions of Section 1771.5 of the State Labor Code, and
5. If applicable, certifies that the project will comply with any laws and regulations including, but not limited to, legal requirements for building codes, health and safety codes, disabled access laws, environmental laws and, that prior to commencement of construction, all applicable permits will have been obtained, and
6. Certifies that applicant will work towards the Governor's State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1, and
7. Appoints the City Manager, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project(s).

BE IT FURTHER RESOLVED, that the City of Berkeley authorizes the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

BE IT FURTHER RESOLVED, that a record signature copy of said agreements and any amendments to be on file in the City of Berkeley's Office of the City Clerk.



Office of the Mayor

CONSENT CALENDAR

October 12, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmember Susan Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Subject: City Policy Regarding Scheduling City Meetings on Significant Religious Holidays

RECOMMENDATION

Adopt a Resolution establishing an official City of Berkeley policy to avoid scheduling of meetings of the City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on any religious holiday that incorporates significant work restrictions and direct the City Manager to identify those holidays in consultation with community religious leaders.

BACKGROUND

The City of Berkeley traditionally does not schedule any City related meetings on Christian religious holidays such as Christmas, Easter, and Good Friday where such meetings would conflict with religious services and celebration. Currently there is not a policy to refrain from scheduling meetings on other religious holidays such as Rosh Hashana, Yom Kippur, Passover (1<sup>st</sup> night), Diwali, Chinese New Year, Birth of Baja'u'llah, Kwanzaa, Gantan-sai, Eid al-Fitr and Eid al-Adha.

While consideration has been taken to avoid scheduling meetings on such dates, it is not a consistent practice and, as such, conflicts have occurred. Ensuring that a formal policy is in place to avoid scheduling on all religious holidays that incorporate significant work restrictions will ensure that people of all religions and faiths are treated equally.

FINANCIAL IMPLICATIONS

Staff time to consult with community religious leaders

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

RESOLUTION NO.

ESTABLISHING A PRACTICE TO AVOID SCHEDULING CITY MEETINGS ON ALL SIGNIFICANT RELIGIOUS HOLIDAYS

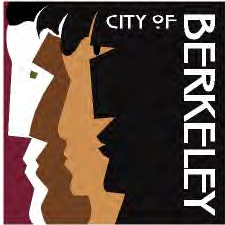
WHEREAS, The City of Berkeley traditionally does not schedule any City related meetings on Christian religious holidays such as Christmas, Easter, and Good Friday where such meetings would conflict with religious services and celebration; and

WHEREAS, there is no formal policy that addresses the scheduling of meetings on other religious holidays that incorporate significant work restrictions such as Rosh Hashana, Yom Kippur, Passover (1<sup>st</sup> night), Diwali, Chinese New Year, Birth of Baja'u'llah, Kwanzaa, Gantan-sai, Eid al-Fitr and Eid al-Adha; and

WHEREAS, while consideration has been taken to avoid scheduling meetings on such dates, it is not a consistent practice and, as such, conflicts have occurred; and

WHEREAS, ensuring that a policy is in place to avoid scheduling on religious holidays that incorporate significant work restrictions will ensure that all beliefs and people are treated equally

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it will be the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on any religious holiday that incorporates significant work restrictions and such days shall be identified through consultation with community religious leaders.



CONSENT CALENDAR  
Oct. 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin (Author), Councilmember Kesarwani (Author)

Subject: Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas

RECOMMENDATION

In order to deter gun violence and obtain evidence to solve criminal investigations, adopt the following recommendations:

1. Authorize the City Manager to install security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime, including appropriate arterial streets serving as entry into and exit out of the City of Berkeley;
2. Refer to the City Manager an environmental safety assessment of the high crime areas specifically in South and West Berkeley;
3. Refer costs for security cameras and lighting to the Annual Appropriations Ordinance (AAO) #1 budget process.

We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever.

Key intersections entering and leaving Berkeley for security camera installation could include those listed below. Arterial intersections along University, Ashby and Alcatraz in close proximity to gun violence in South and West Berkeley should be prioritized.

- 6th/University
- 7th/Ashby
- San Pablo Ave./Ashby
- Sacramento/Alcatraz
- Alcatraz/Adeline
- Ashby/Telegraph
- Gilman/6<sup>th</sup>
- College/Alcatraz
- Ashby/Domingo
- Ashby/Claremont

Other locations within Berkeley may include the following:

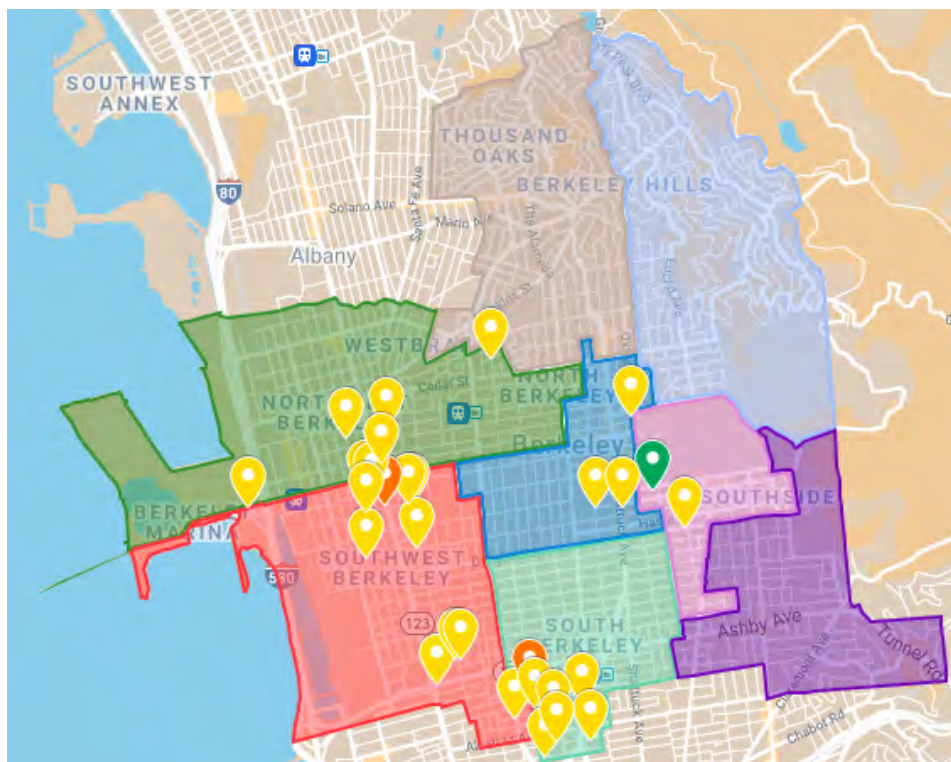
- University/San Pablo
- University/Sacramento
- Sacramento/Ashby
- George Florence Park
- 10<sup>th</sup>/Bancroft
- 8<sup>th</sup>/Channing
- 8<sup>th</sup>/Addison

**FINANCIAL IMPLICATIONS**

Approximately \$500,000 to \$1 million for purchasing security cameras including camera storage and maintenance, as well as signage installation and increased lighting. Estimated one-time costs to install cameras, signage and lighting are likely to range from \$75,000 to \$150,000 per intersection, plus \$40,000 annually for data, software and maintenance.

**CURRENT SITUATION AND ITS EFFECTS**

According to the Berkeley Police Department, there were 29 shootings in 2021 as of September 6, compared to 22 shootings by the same date in 2020. Only 10 of the investigations on those shootings have been closed with an identified suspect, and the Department has recovered 70 firearms this year so far. 22 of those firearms, including 4 rifles, were recovered during detective follow-up investigations.





*2021 Berkeley Gunfire Map*<sup>1</sup>

On the morning of Saturday, September 4, 2021, West Berkeley residents reported 8-10 gunshots from two cars driving on 10<sup>th</sup> St past George Florence Park.<sup>2</sup> Panicked parents grabbed their children and ran for cover, but the park is fenced in on 3 sides, and is only open on the side of the street where the gunfire was identified. Police responded to the scene and found evidence of a second shooting just two blocks away at 9<sup>th</sup> and Allston. This follows recent shootings at 8<sup>th</sup> and Channing on August 20, and one that injured a man at San Pablo and Allston on August 14.<sup>3</sup> Residents of this neighborhood are alarmed by the surge in gun violence and have urged the City to install security cameras in public spaces with high incidence of violent crime, along with other evidence-based policy responses, to ensure safer streets.

Shootings often involve suspects who flee the area of the crime in their vehicles. Police investigating the crime rely on private security cameras owned by residents and/or businesses in order to obtain video evidence. Installing high-quality cameras at major arterials would ensure access to videos and allow investigators to check the videos for suspects fleeing the crime area in their vehicle. High-quality images of suspect vehicles would provide valuable investigative leads. The City already urges private property owners with security cameras to register their cameras with the Berkeley Police Department to assist in criminal investigations, and property owners readily avail themselves of this resource. Valuable public safety resources should not be delegated entirely to the voluntary cooperation of private entities, particularly when violent gunfire has occurred in many public spaces including parks and major intersections.

Strategically placed cameras should be of sufficient quality to capture high resolution video. Cameras would not be equipped with Automated License Plate Readers (ALPR), and would not be monitored. The recordings would be an investigative resource which officers could access while investigating specific crimes and could assist in a reduction of crime. This would be an additional element of our Police Department's crime prevention strategies.

"Stationary security cameras affixed to City property or facilities" are not regulated under the Surveillance Technology Ordinance (c.f. BMC Section 2.99.020.1.i). As a result, stationary camera installation at major thoroughfares would be exempt from the requirements of BMC Chapter 2.99.

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<sup>1</sup> Raguso, E. (2021). The 2021 Berkeley Gunfire Map. *Berkeleyside*. Retrieved Sept. 13, 2021 from <https://www.berkeleyside.org/2021/05/22/2021-berkeley-gunfire-map>

<sup>2</sup> Raguso, E. (Sept. 4, 2021). Police investigate daytime shoot-out in Berkeley on Saturday. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/09/05/police-investigate-daytime-shoot-out-west-berkeley-saturday>

<sup>3</sup> Raguso, E. (Aug. 14, 2021). Update: Man shot in Berkeley is expected to survive; roadway is open. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/08/14/man-shot-berkeley-traffic-san-pablo-avenue>

Providing security cameras in the public right-of-way is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

**BACKGROUND**

A 2011 report<sup>4</sup> from The Urban Institute’s Justice Policy Center noted that cameras can be an effective tool for preventing crimes and supporting investigations. These tools appear fiscally prudent both as tools for investigations, and with the installation and maintenance of security cameras being less costly than the costs associated with crimes that may take place without them.

Berkeley’s Police Department has been conducting Crime Prevention Through Environmental Design (CPTED) assessments for neighborhoods throughout the City over the past several years. These assessments include recommendations such as: increased lighting, maintenance of properties, landscaping and signage that can be used to deter criminal behavior.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

None.

**CONTACT PERSON**

|                               |                    |              |
|-------------------------------|--------------------|--------------|
| Councilmember Terry Taplin    | Council District 2 | 510-981-7120 |
| Councilmember Rashi Kesarwani | Council District 1 | 510-981-7110 |

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<sup>4</sup> La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. *Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152.*



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
 DISTRICT 2

CONSENT CALENDAR  
 July 27, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-sponsor), Councilmember Hahn (co-sponsor), Vice Mayor Droste (co-sponsor)

Subject: Ghost Gun Ordinance

RECOMMENDATION

Adopt an ordinance amending the Berkeley Municipal Code to prohibit any person other than a licensed manufacturer or importer from possessing, selling, offering for sale, transferring, purchasing, transporting, receiving, or manufacturing an unfinished firearm frame or receiver that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law; and prohibiting any person from possessing, manufacturing or assembling a firearm that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law.

POLICY COMMITTEE RECOMMENDATION

On September 27, 2021, the Public Safety policy committee took the following action:

M/S/C (Wengraf/Kesarwani) to send the item, with a positive recommendation, to Council and directed the author to work with the City Attorney's office to finalize a draft Ordinance and to submit the item as a time critical item for inclusion in the October 12, 2021 Council agenda.

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Prohibiting the sale, distribution, and possession of precursor parts for Privately Manufactured Firearms (PMFs), commonly known as "ghost guns," is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

"Ghost guns" are untraceable and unregulated firearms that are often assembled by unlicensed individuals using build-it-yourself kits. The main precursor part of an assembled firearm is an unfinished "frame" or "receiver," which contains the firing mechanism, to which other parts are attached. Federal law regulates firearm frames and receivers, but not *unfinished* (or sometimes referred to as "80 percent") receivers and frames. These unfinished parts, commonly known as "precursor parts," are not considered "firearms" under the Gun Control Act, so manufacturers and importers are

not required to engrave them with serial numbers, record the identities of their purchasers, or run background checks on customers. (18 U.S.C 921, 27 CFR 478.92.) Privately Manufactured Firearms (PMFs) are known as “ghost guns” because they are assembled using an unfinished frame or receiver that does not have a unique serial number allowing it to be traced to the manufacturer, dealer, and purchaser.

When an end user assembles the gun, California law mandates that they first apply for a serial number from the California Department of Justice, engrave the number on the gun within 10 days of assembly, and then provide information about the gun and the identity of its owner to the DOJ. (Penal Code 29180.) However, this requirement is trivially easy to evade. The lack of background checks makes it possible for persons whom the law recognizes as too dangerous to be permitted to purchase a firearm to still acquire them at a lower cost. The absence of a serial number on ghost guns hinders criminal investigations, endangering public safety.

City law does not regulate the possession, sale, transfer, or manufacture of unfinished firearm parts including frames and receivers. Pursuant to AB-857 (2016), state law as of July 1, 2022 will require that the sale or transfer of precursor parts to be processed by a licensed vendor in a face to face transaction with a background check. City law also does not regulate the manufacture or assembly of firearms that lack serial numbers. State law requires a person who wishes to self-manufacture or assemble a firearm to obtain a serial number from the California Department of Justice pursuant to Penal Code Section 30400 and affix it to the firearm within 10 days of manufacturing or assembling the firearm, and submit to a background check pursuant to Penal Code Section 30400. Possession of an un-serialized PMF is a misdemeanor violation of California Penal Code Section 29180, but even under the new California law, the onus to provide a serial number is on the assembler of the parts rather than the vendor, making the law much easier to evade.

### BACKGROUND

Currently, anyone in California with cash on hand can purchase the parts to make a PMF from the Internet. For example, the Polymer80 website<sup>1</sup> has “80%” kits that are completely legal for California residents to purchase online and ship to their house. As of July 2021, no background checks, waiting periods, sale records, age restrictions, or limits on numbers of purchases apply to purchases of precursor parts or kits.

The California Bureau of Firearms seized 512% more ghost guns from persons identified through the Armed Prohibited Persons System database in 2019 than in 2018. The federal Bureau of Alcohol, Tobacco, and Firearms (ATF) reported in 2019 that 30% of crime guns it recovered in California were ghost guns. In 2020, California far outpaced any other state in PMF seizures at 4,642. Overall, California accounted for 65% of all PMF seizures in the country. In January 2020, the ATF’s Los Angeles Field Division reported that over 40% of its cases involved these weapons. In February 2021, the Los Angeles City Attorney announced that law enforcement had recovered over 700 Polymer80 ghost guns, one brand of ghost gun parts/kits, in Los Angeles in 2020.

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<sup>1</sup> <https://www.polymer80.com/>

Ghost guns have been used in a wide variety of crimes in California, including homicides, robberies, school shootings, mass shootings, killings of law enforcement officers, and domestic violence. According to Berkeley's Interim Police Chief Jennifer Louis, 11 of the 49 guns recovered by the Berkeley Police Department<sup>2</sup> were "ghost guns," including a fully automatic firearm used at an April 22 shooting<sup>3</sup> at Fairview and Harper streets.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin      Council District 2      510-981-7120

ATTACHMENTS

1. Model Ordinance
2. City of San Diego Ordinance
3. Ordinance

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<sup>2</sup> Community Safety Town Hall. (2021, June 24). Vice Mayor Droste et al.

<sup>3</sup> Raguso, E. (2021, May 17). Felon charged with stalking, gunfire in Berkeley. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/05/17/alvin-monroe-shooting-stalking-investigation-berkeley>

**MODEL ORDINANCE BANNING POSSESSION, SALE, AND MANUFACTURE OF UNFINISHED FRAMES AND RECEIVERS AND UNSERIALIZED FIREARMS**

**WHY LOCAL LAWS ARE NEEDED**

1. The increasing availability of ghost guns and the components to assemble them threatens to undermine the effectiveness of gun safety laws critical to public health and safety.
2. Ghost guns are untraceable firearms that are often assembled by unlicensed individuals using build-it-yourself kits. The main precursor part of an assembled firearm is an unfinished “frame” or “receiver,” which contains the firing mechanism, to which other parts are attached. Unfinished frames and receivers are often referred to as “80%” receivers or frames, because they are manufactured just below the percentage of completion that would qualify them as firearms under federal and state law. Sellers often package together an unfinished frame or receiver with all the other parts needed to assemble a ghost gun in a build-it-yourself kit, with the specific purpose of avoiding firearms regulations. Assembling the parts into a lethal ghost gun can readily be done by untrained amateurs using common household tools and has been described as “ridiculously easy.”<sup>1</sup>
3. Ghost gun precursor parts and kits are typically sold by unregulated sellers online, in store fronts, or at gun shows, without the protections that California and federal law apply to the manufacture, sale, and transfer of firearms. No background checks, waiting periods, sale records, age restrictions, or limits on numbers of purchases apply to purchases of precursor parts or kits. In addition, unlike guns produced by licensed firearms manufacturers, a gun assembled using an unfinished frame or receiver does not have a unique serial number allowing it to be traced to the manufacturer, dealer, and purchaser—hence the term “ghost gun.” Although current California law requires individuals who assemble firearms to apply for and affix a serial number, which requires a background check, those requirements are not enforced and it is all too easy for prohibited individuals to evade them.
4. Sales of ghost gun precursor parts and kits present serious safety risks. They are able to skirt the critical consumer safety requirements that apply to new models of handguns sold by licensed dealers and manufacturers in California. California’s Unsafe Handgun Act (UHA) is designed to ensure that firearms sold in the state function properly and are equipped with lifesaving features that protect lawful users and aid law enforcement in identifying individuals who have criminally misused firearms to endanger the public. However, ghost guns assembled from precursor parts and kits typically fail to include essential safety features mandated by the Act, such as passing drop safety tests and

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<sup>1</sup> A police officer who built a Glock-replica handgun from parts said it was “ridiculously easy” to do it. Stefanie Dazio, “Teen used ‘ghost gun’ in California high school shooting,” abcnews.go.com, Nov. 21, 2019, <https://abcnews.go.com/US/wireStory/teen-ghost-gun-california-high-school-shooting-67201760>.

including chamber loaded indicators (which show whether a gun is loaded) and microstamping technology (which allows bullets to be traced to the gun that fired them). A firearm assembled by an untrained amateur also may be of poor quality and unsafe. And purchasers of precursor parts and build kits typically avoid completing the firearms safety test that California requires of firearms purchasers.

5. As ghost gun precursor parts and kits become increasingly available throughout California, the threat to public safety also increases. California police records show that ghost guns have been recovered in a variety of crimes, including homicides, robberies, active shooter incidents, and domestic violence cases. In many instances, the perpetrators sought out ghost guns precisely because they knew they could not pass a background check.<sup>2</sup> The California Bureau of Firearms seized 512% more ghost guns from persons identified through the Armed Prohibited Persons System database in 2019 than in 2018.<sup>3</sup> The ATF recently reported that 30% of crime guns it recovered in California were ghost guns.<sup>4</sup> In January 2020, the ATF's Los Angeles Field Division reported that over 40% of its cases involved these weapons.<sup>5</sup>
6. California law currently requires anyone who builds a ghost gun to apply to the state Department of Justice (DOJ) for a serial number to be affixed to the gun and undergo a background check.<sup>6</sup> Data show there has been minimal compliance with the law.<sup>7</sup>
7. In 2019, the California Legislature enacted AB 879 to strengthen its ghost gun regulations and bring needed accountability, transparency, and regulation to the sale and transfer of firearm precursor parts. Once in effect, the new law will treat the sale of firearm precursor parts in a manner similar to the sale of ammunition under California law by requiring sellers to obtain a vendor license to sell more than one precursor part in any 30-day period. It will

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<sup>2</sup> Alain Stephens, "Ghost Guns Are Everywhere in California," thetrace.org, May 17, 2019, <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

<sup>3</sup> California Office of the Attorney General, Department of Justice, APPS 2019, Annual Report to the Legislature 18, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/apps-2019.pdf>.

<sup>4</sup> Alain Stephens, "Ghost Guns Are Everywhere in California," thetrace.org, May 17, 2019, <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

<sup>5</sup> Brandi Hitt, "'Ghost guns' investigation: Law enforcement seeing unserialized firearms on daily basis in SoCal," abc7.com, January 20, 2020, <https://abc7.com/5893043/>.

<sup>6</sup> Cal. Penal Code § 29180(b): "[P]rior to manufacturing or assembling a firearm, a person manufacturing or assembling the firearm shall ... (1) [a]pply to the Department of Justice for a unique serial number ... pursuant to section 29182 [,] (2) ... [w]ithin 10 days of manufacturing or assembling [the] firearm ... [cause] the unique serial number ... [to] be engraved or permanently affixed to the firearm in a manner that meets or exceeds the requirements imposed ... [on firearms manufacturers by federal law] ... [and] (3) [a]fter the serial number provided by the department is engraved or otherwise permanently affixed to the firearm, ... shall notify the department of that fact ... with sufficient information to identify the owner of the firearm, the unique serial number ... provided by the department, and the firearm ...." Section 29180(c) applies the identical requirement to any person who, as of July 1, 2018, owned a firearm that had not previously been serialized voluntarily under state law or by federal requirement.

<sup>7</sup> Alain Stephens, "Ghost Guns Are Everywhere in California," thetrace.org, May 17, 2019, <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

also require sales of precursor parts by any party to be conducted in person, through licensed precursor part vendors, pursuant to a background check and sale record. Licensed vendors will also be required to comply with additional public safety laws similar to those governing firearm dealers and ammunition vendors under California law, including ensuring employees who handle firearm precursor parts regularly pass background checks and restrictions on trafficking of firearm precursor parts or delivery of such products to minors under 21 and other people ineligible to receive them.

8. However, even when the new law takes effect on July 1, 2022, it will not require vendors to sell precursor parts with serial numbers already affixed and instead will still rely on purchasers to apply for and affix serial numbers themselves—a process that is currently rife with non-compliance.
9. On the federal level, Congress is deadlocked, so a federal law banning ghost guns is not in the cards in the foreseeable future. President Biden issued an executive order in June directing the Attorney General to address the issue, and the AG has now issued proposed federal regulations that will treat unfinished frames/receivers as firearms. This is an important step forward but it will take months until a final regulation is published and even further delay if the regulation is challenged by the gun industry. And executive orders are subject to change when there is a change in administration.
10. The bottom line is that we can't wait until we get strong state and federal laws in place. We must act now on the local level, which will not only protect local jurisdictions but also will help spur action at the state level.

### **MODEL ORDINANCE**

#### **Prohibition on unfinished frames or receivers and unserialized firearms; penalty.**

A. As used in this section, “Unfinished Frame or Receiver” means a piece of any material that does not constitute the frame or receiver of a firearm, rifle, or shotgun but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm, rifle, or shotgun, and which may readily be made into a functional frame or receiver through milling, drilling, or other means. The term shall not include a piece of material that has had its size or external shape altered to facilitate transportation or storage or has had its chemical composition altered.

B. As used in this section, “Manufacture” means to fabricate, make, form, produce or construct, by manual labor or by machinery.

C. As used in this section, “Assemble” means to fit together component parts.

D. As used in this section, “Federal Firearms Importer” means a licensed importer pursuant to 18 U.S. Code § 921(a)(9).



E. As used in this section, “Federal Firearms Manufacturer” means a licensed manufacturer pursuant to 18 U.S. Code § 921(a)(10).

F. It shall be unlawful for any person to possess, transport, purchase, or receive an unfinished frame or receiver, unless either (1) the party possessing, transporting, or receiving the unfinished frame or receiver is a Federal Firearms Importer, a Federal Firearms Manufacturer, or holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485, or (2) the unfinished frame or receiver is either required by federal law to be, and has been, imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

G. It shall be unlawful for any person to sell, offer to sell, transfer, an unfinished frame or receiver, unless either (1) the party receiving the unfinished frame or receiver is a Federal Firearms Importer, a Federal Firearms Manufacturer, or holds a current firearm precursor part vendor license issued pursuant to California Penal Code section 30485, or (2) the unfinished frame or receiver is either required by federal law to be, and has been, imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer, or has been engraved or permanently affixed with a serial number provided by the California Department of Justice.

H. It shall be unlawful for any person to manufacture, cause to be manufactured, assemble, or cause to be assembled a firearm unless the firearm is either (1) imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with all federal laws and regulations regulating the manufacture and import of firearms or (2) engraved or permanently affixed with a serial number provided by the California Department of Justice and the person who manufactured, assembled, or caused to be assembled the firearm has provided the Department with sufficient information to identify the owner of the firearm, the unique serial number or mark of identification provided by the Department, and the firearm in a manner prescribed by the department.

I. It shall be unlawful for any person to possess, offer to sell, transfer, purchase, transport or receive a firearm that is not either imprinted with a serial number issued by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with all federal laws and regulations regulating the manufacture and import of firearms, or engraved or permanently affixed with a serial number provided by the California Department of Justice, unless the party possessing or receiving the firearm is a law-enforcement agency or a Federal Firearms Importer or Federal Firearms Manufacturer.

J. Sections F and G shall not apply to an unfinished frame or receiver that is in possession of:

1. an employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties; or
2. a common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code

Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

K. Section H shall not apply to a firearm that:

1. is in possession of an employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties;
2. has been rendered permanently inoperable; or
3. Is in possession of a common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

L. Section I shall not apply to a firearm that:

1. is in possession of an employee or sworn peace officer of a local, state, or federal law enforcement agency, if the individual is acting in connection with official duties;
2. has been rendered permanently inoperable;
3. is in possession of a common carrier licensed under state law, or a motor carrier, air carrier or carrier affiliated with an air carrier through common controlling interest that is subject to United States Code Title 49, or an authorized agent of any such carrier, when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.
4. is an antique firearm as defined in California Penal Code § 16170;
5. predates 1968;
6. has been determined to be a collector's item pursuant to 26 U.S.C. Chapter 53 or a curio or relic pursuant to 18 U.S.C. Chapter 44; or
7. has been entered into the centralized registry set forth in Section 11106 of the Penal Code prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification.

M. Upon enactment of this ordinance, the [city/county agency] shall promptly take reasonable efforts to inform all residents of its terms. The information shall include notice that all residents who possess any unfinished frame or receiver or any assembled or manufactured firearm that lacks a serial number required under subsections F, G, H, or I of this section will not be penalized under this section if they surrender the non-complying unfinished frame or receiver or assembled firearm to a law enforcement agent or agency.

N. Violations of subsections G of this section, or violations stemming from the same transaction, is punishable as a Class 1 Misdemeanor.

O. The first violation of subsections F, H, I of this section is punishable as a [Class 1] Misdemeanor, unless the violator possesses, transports or receives 3 or fewer firearms or

unfinished frames or receivers, surrenders those firearms or unfinished frames or receivers to law enforcement, and does not commit additional violations of this section in the year following the violation, in which case the first violation will not be penalized. Any and all other or subsequent violations of subsections F, H or I of this section are punishable as a Class 4 Felony.

P. Except for Subsections F, H and I of this section, this ordinance will take effect [earliest possible date under city/county law]. Subsections F, H and I of this section will take effect [90 days] after the other provisions of the ordinance take effect.

Q. If any provision of this article is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions that can be implemented without the invalid provision, and to this end, the provisions of this article are declared to be severable.

### **CRIMINAL JUSTICE CONCERNS**

The primary purpose of these ordinances is to prevent the proliferation of ghost guns into our communities. It is imperative that we be mindful of how the ordinances can and will be applied, and that we work to ensure they do not further criminal justice disparities. The Model Ordinance contains three key provisions that we believe are key to addressing these concerns:

1. Delayed enactment on the prohibition of possession, to ensure that those who are currently in possession of precursor parts and/or ghost guns have time to either dispose of these items or get them properly serialized.
2. A strong education campaign, working with community based organizations, to ensure that people in the community are well aware of the new requirements concerning precursor parts and ghost guns.
3. Reasonable and escalating penalties that focus primarily on penalizing those who are profiting by selling and trafficking precursor parts and ghost guns, and that allow opportunities for individuals to comply with the law without penalties.

### **PREEMPTION ISSUES AND RELEVANT CASES**

California has been extremely active in enacting gun safety legislation but there is no indication the state ever intended to prevent local governments from enacting their own laws addressing this issue. To the contrary, many of the state's gun-safety laws have been enacted after local governments took action. On the specific issue of regulating precursor parts or ghost guns, there is no state law that would preclude city or county ordinances.

We believe that Penal Code § 29180, which requires individuals to obtain serial numbers from the Department of Justice before assembling a firearm and to affix the serial number to the assembled weapon, does not fully and completely cover the subject matter of the statute or meet either of the other tests for implied preemption. The state simply has set up a process for

purchasing precursor parts and applying serial numbers to assembled firearms but does not establish a right to purchase the parts that would preclude local action. Similarly, AB 879 creates additional procedures for the sales of firearm precursor parts and does not address or preclude local laws making it illegal for end users to buy, own, or sell unserialized frames, receivers, or firearms.

Finally, no part of the proposed ordinance—including the provision that would ban possession or sale of existing unserialized firearms—is a total ban on the possession of firearms, as was held preempted in *Fiscal v. City and County of San Francisco* (Ct.App. 2008) 158 Cal.App.4th 895. The proposed ordinance would permit local residents to own precursor parts and assembled firearms, so long as they were serialized. In addition, the portion of *Fiscal* that addressed the total ban on firearm possession relied on Penal Code section 12026, as clarified by Government Code section 53071, which declares the legislature’s intent “to occupy the field of registration and licensing of *commercially manufactured* firearms,” not self-assembled firearms (emphasis added). Similarly, the *Fiscal* court’s holding that the Unsafe Handgun Act preempted a local ordinance banning sales of *handguns* does not apply to the portion of the proposed ordinance that addresses the sale of *precursor parts*. As to the proposed ordinance’s provisions banning the manufacture and sale of unserialized firearms, although the language of the UHA appears broad enough to encompass the manufacture and sale of unserialized handguns,<sup>8</sup> in practice, it appears that standards under the UHA are not being applied to unserialized handguns. Even if the UHA standards were applied, the UHA addresses only firearms capable of being concealed on a person and does not cover long guns.

#### Case law:

- *Cal. Rifle & Pistol Ass'n v. City of W. Hollywood* (1998) 66 Cal.App.4th 1302
- *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109
- *Fiscal v. CCSF* (2008) 158 Cal.App.4th 895
- *Doe v. CCSF* (1982) 136 Cal.App.3d 509
- *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853
- *Nordyke v. King* (Cal. 2002) 44 P.3d 133
- *Calguns Foundation, Inc. v. County of San Mateo* (2013) 218 Cal.App.4th 661
- *Sherwin-Williams Co. v. City of Los Angeles* (Cal. 1993) 844 P.2d 534
- *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644
- *Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283
- *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725
- *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729

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<sup>8</sup> The UHA defines an unsafe handgun as “any pistol, revolver, or other firearm capable of being concealed upon the person“ that lacks specified safety features, Penal Code 31910, and sets penalties for a person “who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun, Penal Code 3200(a)(1).

- *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252–1257
- *T-Mobile West LLC v. City and County of San Francisco* 6 Cal.5th 1107

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 3, DIVISION 00, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 53.18, RELATING TO NON-SERIALIZED, UNFINISHED FIREARM FRAMES OR RECEIVERS AND NON-SERIALIZED FIREARMS.

WHEREAS, San Diego is experiencing a rise in detection and seizure of firearms lacking serial numbers or other identifying markings, commonly known as “ghost guns”; and

WHEREAS, a ghost gun is a firearm constructed using unfinished firearm parts, including unfinished frames or receivers, which house the operating parts of the firing mechanism; and

WHEREAS, ghost gun kits contain all necessary parts to complete assembly and turn an unfinished frame or receiver into a functional firearm; and

WHEREAS, numerous online videos illustrate how to easily assemble a ghost gun; and

WHEREAS, a firearm assembled from a ghost gun kit is non-serialized and untraceable through law enforcement databases; and

WHEREAS, ghost gun kits are widely available for purchase, circumventing the background check process, allowing individuals who are prohibited from possessing or purchasing firearms due to criminal history, restraining orders, or mental illness to easily obtain them; and

WHEREAS, the majority of ghost guns recovered by the San Diego Police Department (SDPD) are seized from individuals prohibited from legally possessing or purchasing firearms; and

WHEREAS, evidence suggests that ghost gun kits and parts are often sold through the internet; and

WHEREAS, the increased availability of ghost guns threatens the public safety and welfare of the residents of San Diego; and

WHEREAS, SDPD recovered 211 ghost guns in calendar year 2020, and has recovered 233 ghost guns through mid-July 2021, an increase from 77 ghost guns in 2019, and 58 in the second half of 2018; and

WHEREAS, ghost guns have been linked to multiple shootings in San Diego between 2018 and 2021; and

WHEREAS, the increase of ghost guns in San Diego is consistent with national trends. Between 2016 and 2020, law enforcement agencies across the country reported approximately 23,906 ghost guns to the Bureau of Alcohol, Tobacco, Firearms, and Explosives as having been recovered from crime scenes, including 325 homicides or attempted homicides; and

WHEREAS, federal law does not fully regulate ghost gun kits or parts; and

WHEREAS, the Congress of the United States has not, expressly or by implication, preempted additional regulation of firearms by state and local authorities; and

WHEREAS, state law regulates some, but not all, aspects of ghost gun kits or parts; and

WHEREAS, state law provisions regulating the sale and purchase of firearm precursor parts do not become effective until July 1, 2022; and

WHEREAS, the Legislature of the State of California has not, expressly or by implication, preempted the entire field of firearms regulation not in conflict with state law; and

WHEREAS, the Council of the City of San Diego (Council) intends this Ordinance to be applied and interpreted consistent with federal and state law; and

WHEREAS, this Ordinance may be enforced by any remedy available in Chapter 1 of the San Diego Municipal Code; and

WHEREAS, the Council finds and declares this Ordinance necessary in order to eliminate non-serialized, untraceable firearms, thereby promoting and protecting the public health, safety, and general welfare of the residents of the City of San Diego; and

WHEREAS, the Council finds and declares this Ordinance will promote effective law enforcement by providing reasonable measures to address the dangers posed to the community by ghost guns; and

WHEREAS, the Council further finds it is within its police powers to implement and enforce the provisions of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 3, Division 00 of the San Diego Municipal Code is amended by adding section 53.18, to read as follows:

**§53.18 Prohibition of Possession or Sale of Non-Serialized, Unfinished Firearm Frames or Receivers and Non-Serialized Firearms**

- (a) Purpose and Intent. It is the purpose and intent of this section that possession, purchase, sale, receipt, and transportation of non-serialized, *unfinished frames* and *unfinished receivers*, and *non-serialized firearms* within the City of San Diego be prohibited for the protection, health, and welfare of the public, to further effective law enforcement, and to provide the City with reasonable measures to address the dangers to the community posed by *non-serialized firearms*, commonly known as “ghost



guns.” This section is intended to be applied and interpreted consistent with state and federal law.

- (b) Definitions. For the purposes of this section, defined terms appear in italics. The following definitions apply in this section:
- (1) *Federal Firearms Importer* means a licensed *firearm* importer as defined in 18 U.S.C. § 921(a)(9) (2019), as may be amended.
  - (2) *Federal Firearms Manufacturer* means a licensed *firearm* manufacturer as defined in 18 U.S.C. § 921(a)(10) (2019), as may be amended.
  - (3) *Firearm* has the same meaning as in California Penal Code section 16520(a), as may be amended. As used in this section, *firearm* shall include a *handgun*, *rifle*, or *shotgun*.
  - (4) *Frame* means the primary structural component of a *firearm* to which the fire control components are attached.
  - (5) *Handgun* has the same meaning as in California Penal Code section 16640, as may be amended.
  - (6) *Non-serialized firearm* means a *firearm* that is not either imprinted with a serial number issued to that *firearm* by a *Federal Firearms Importer* or *Federal Firearms Manufacturer* in compliance with federal law or engraved or permanently affixed with a serial number provided by the California Department of Justice for that *firearm*.

- (7) *Person* has the same meaning as in San Diego Municipal Code section 11.0210.
  - (8) *Receiver* means the primary structural component of a *firearm* to which the fire control components are attached.
  - (9) *Rifle* has the same meaning as in California Penal Code section 17090, as may be amended.
  - (10) *Shotgun* has the same meaning as in California Penal Code section 17190, as may be amended.
  - (11) *Unfinished frame* means a piece of any material that does not constitute the completed *frame* of a *firearm*, but that has been shaped or formed in any way for the purpose of becoming the *frame* of a *firearm*, and which may be made into a functional *frame* of a *firearm* through milling, drilling, or other means.
  - (12) *Unfinished receiver* means a piece of any material that does not constitute the completed *receiver* of a *firearm*, but that has been shaped or formed in any way for the purpose of becoming the *receiver* of a *firearm*, and which may be made into a functional *receiver* of a *firearm* through milling, drilling, or other means.
- (c) Prohibition. It is unlawful for any *person* to:
- (1) Possess, purchase, transport, or receive an *unfinished frame* or *unfinished receiver*, unless the *unfinished frame* or *unfinished receiver* is imprinted with a serial number issued to that *unfinished frame* or *unfinished receiver* by a *Federal Firearms Importer* or

*Federal Firearms Manufacturer*, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that *unfinished frame* or *unfinished receiver*.

- (A) This subsection shall not apply to a *Federal Firearms Importer* or *Federal Firearms Manufacturer*.
  - (B) This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
  - (C) This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.
- (2) Sell, offer to sell, transfer, or offer to transfer an *unfinished frame* or *unfinished receiver*, unless the *unfinished frame* or *unfinished receiver* is imprinted with a serial number issued to that *unfinished frame* or *unfinished receiver* by a *Federal Firearms Importer* or *Federal Firearms Manufacturer*, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that *unfinished frame* or *unfinished receiver*.

- (3) Possess, purchase, transport, or receive *a non-serialized firearm*.
  - (A) This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
  - (B) This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.
  - (C) This subsection shall not apply to a *non-serialized firearm* if any of the following conditions apply:
    - (i) The *non-serialized firearm* has been rendered permanently inoperable.
    - (ii) The *non-serialized firearm* is an antique firearm as defined in California Penal Code section 16170, as may be amended.
    - (iii) The *non-serialized firearm* was manufactured or assembled prior to 1968.
    - (iv) The *non-serialized firearm* has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including § 5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44,

including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.

- (v) The *non-serialized firearm* has been entered into the centralized registry set forth in California Penal Code section 11106, as may be amended, prior to July 1, 2018, as being owned by a specific individual or entity if that *firearm* has assigned to it a distinguishing number or mark of identification.
- (D) It shall be an affirmative defense to a violation of this subsection that the *person* is in compliance with California Penal Code section 29180, as may be amended.
- (4) Sell, offer to sell, transfer, or offer to transfer a *non-serialized firearm*. This subsection shall not apply to a *non-serialized firearm* if any of the following conditions apply:
  - (A) The *non-serialized firearm* has been rendered permanently inoperable.
  - (B) The *non-serialized firearm* is an antique firearm as defined in California Penal Code section 16170, as may be amended.
  - (C) The *non-serialized firearm* was manufactured or assembled prior to 1968.
  - (D) The *non-serialized firearm* has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including §

5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44, including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_  
Michelle A. Garland  
Deputy City Attorney

MAG:hm  
July 26, 2021  
Or.Dept:CD5  
Doc. No.: 2710879

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

ORDINANCE NO. #,###-N.S.

ADDING CHAPTER 13.73 OF THE BERKELEY MUNICIPAL CODE, PROHIBITION OF POSSESSION OR SALE OF NON-SERIALIZED, UNFINISHED FIREARM FRAMES OR RECEIVERS AND NON-SERIALIZED FIREARMS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

The Council of the City of Berkeley hereby finds and determines as follows:

- A. Berkeley is experiencing a rise in detection and seizure of firearms lacking serial numbers or other identifying markings, commonly known as “ghost guns”
- B. A ghost gun is a firearm constructed using unfinished firearm parts, including unfinished frames or receivers, which house the operating parts of the firing mechanism.
- D. Ghost gun kits contain all necessary parts to complete assembly and turn an unfinished frame or receiver into a functional firearm. Numerous online videos illustrate how to easily assemble a ghost gun.
- E. A firearm assembled from a ghost gun kit is non-serialized and untraceable through law enforcement databases.
- F. Ghost gun kits are widely available for purchase, circumventing the background check process, allowing individuals who are prohibited from possessing or purchasing firearms due to criminal history, restraining orders, age, or mental illness to easily obtain them.
- G. The majority of ghost guns recovered by the Berkeley Police Department (“BPD”) are seized from individuals prohibited from legally possessing or purchasing firearms.
- H. The increased availability of ghost guns threatens the public safety and welfare of the residents of Berkeley.
- I. As of September 24, 2021, 22 of the 77 guns seized by BPD to date in 2021 were ghost guns or rifles. There have been 34 shootings in the City so far this year, up from 25 at this time last year.
- J. Ghost guns have been linked to multiple shootings in Berkeley in recent years.
- K. The increase of ghost guns in Berkeley is consistent with national trends. Between 2016 and 2020, law enforcement agencies across the country reported approximately 23,906 ghost guns to the Bureau of Alcohol, Tobacco, Firearms, and

Explosives as having been recovered from crime scenes, including 325 homicides or attempted homicides.

L. Federal law does not fully regulate ghost gun kits or parts. The Congress of the United States has not, expressly or by implication, preempted additional regulation of firearms by state and local authorities. State law regulates some, but not all, aspects of ghost gun kits or parts.

M. State law provisions regulating the sale and purchase of firearm precursor parts do not become effective until July 1, 2022.

N. The Legislature of the State of California has not, expressly or by implication, preempted the entire field of firearms regulation not in conflict with state law; and

O. The Council of the City of Berkeley ("Council") intends this Ordinance to be applied and interpreted consistent with federal and state law.

P. Council finds and declares this Ordinance necessary in order to eliminate non-serialized, untraceable firearms, thereby promoting and protecting the public health, safety, and general welfare of the residents of the City of Berkeley.

Q. Council finds and declares this Ordinance will promote effective law enforcement by providing reasonable measures to address the dangers posed to the community by ghost guns.

R. Council further finds it is within its police powers to implement and enforce the provisions of this Ordinance.

Section 2. Berkeley Municipal Code Chapter 13.73 is added to read as follows:

### **Chapter 13.73**

## **BANNING NON-SERIALIZED PRECURSOR PARTS AND NON-SERIALIZED FIREARMS**

### **13.73.010. Purpose**

Purpose and Intent. It is the purpose and intent of this section that possession, purchase, sale, receipt, and transportation of non-serialized, unfinished frames and unfinished receivers, and non-serialized firearms within the City of Berkeley be prohibited for the protection, health, and welfare of the public, to further effective law enforcement, and to provide the City with reasonable measures to address the dangers to the community posed by non-serialized firearms, commonly known as "ghost guns." This section is intended to be applied and interpreted consistent with state and federal law.

### **13.73.020 Definitions**



Except as where context otherwise requires, the following definitions apply in this chapter:

- A. “Federal Firearms Importer” means a licensed firearm importer as defined in 18 U.S.C. § 921(a)(9) (2019), as may be amended.
- B. “Federal Firearms Manufacturer” means a licensed firearm manufacturer as defined in 18 U.S.C. § 921(a)(10) (2019), as may be amended.
- C. “Firearm” has the same meaning as in California Penal Code section 16520(a), as may be amended. As used in this section, firearm shall include a handgun, rifle, or shotgun.
- D. “Frame” means the primary structural component of a firearm to which the fire control components are attached.
- E. “Handgun” has the same meaning as in California Penal Code section 16640, as may be amended.
- F. “Non-serialized firearm” means a firearm that is not either imprinted with a serial number issued to that firearm by a Federal Firearms Importer or Federal Firearms Manufacturer in compliance with federal law or engraved or permanently affixed with a serial number provided by the California Department of Justice for that firearm.
- G. “Person” has the same meaning as in Berkeley Municipal Code section 1.04.010.
- H. “Receiver” means the primary structural component of a firearm to which the fire control components are attached.
- I. “Rifle” has the same meaning as in California Penal Code section 17090, as may be amended.
- J. “Shotgun” has the same meaning as in California Penal Code section 17190, as may be amended.
- K. “Unfinished frame” means a piece of any material that does not constitute the completed frame of a firearm, but that has been shaped or formed in any way for the purpose of becoming the frame of a firearm, and which may be made into a functional frame of a firearm through milling, drilling, or other means.
- L. “Unfinished receiver” means a piece of any material that does not constitute the completed receiver of a firearm, but that has been shaped or formed in any way for the purpose of becoming the receiver of a firearm, and which may be made into a functional receiver of a firearm through milling, drilling, or other means.

**13.73.030 Prohibition—non-serialized unfinished frames, non-serialized unfinished receivers, non-serialized firearms**

It is unlawful for any person to:

A. Possess, purchase, transport, or receive an unfinished frame or unfinished receiver, unless the unfinished frame or unfinished receiver is imprinted with a serial number issued to that unfinished frame or unfinished receiver by a Federal Firearms Importer or Federal Firearms Manufacturer, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that unfinished frame or unfinished receiver.

1. This subsection shall not apply to a Federal Firearms Importer or Federal Firearms Manufacturer.
2. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
3. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.

B. Sell, offer to sell, transfer, or offer to transfer an unfinished frame or unfinished receiver, unless the unfinished frame or unfinished receiver is imprinted with a serial number issued to that unfinished frame or unfinished receiver by a Federal Firearms Importer or Federal Firearms Manufacturer, or engraved or permanently affixed with a serial number provided by the California Department of Justice for that unfinished frame or unfinished receiver.

C. Possess, purchase, transport, or receive a non-serialized firearm.

1. This subsection shall not apply to an employee or sworn peace officer of a local, state, or federal law enforcement agency if the employee or sworn peace officer is acting within the scope of official duties.
2. This subsection shall not apply to a common carrier licensed or regulated under state or federal law or an authorized agent of a common carrier when acting in the course and scope of duties incident to the receipt, processing, transportation, or delivery of property.
3. This subsection shall not apply to a non-serialized firearm if any of the following conditions apply:
  - (i) The non-serialized firearm has been rendered permanently inoperable.
  - (ii) The non-serialized firearm is an antique firearm as defined in California Penal Code section 16170, as may be amended.

(iii) The non-serialized firearm was manufactured or assembled prior to 1968.

(iv) The non-serialized firearm has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including § 5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44, including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.

(v) The non-serialized firearm has been entered into the centralized registry set forth in California Penal Code section 11106, as may be amended, prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification.

4. It shall be an affirmative defense to a violation of this subsection that the person is in compliance with California Penal Code section 29180, as may be amended.

D. Sell, offer to sell, transfer, or offer to transfer a non-serialized firearm. This subsection shall not apply to a non-serialized firearm if any of the following conditions apply:

1. The non-serialized firearm has been rendered permanently inoperable.
2. The non-serialized firearm is an antique firearm as defined in California Penal Code section 16170, as may be amended.
3. The non-serialized firearm was manufactured or assembled prior to 1968.
4. The non-serialized firearm has been determined to be a collector's item pursuant to 26 U.S.C. Ch. 53, including §5845 (2019), as may be amended, or a curio or relic pursuant to 18 U.S.C. Ch. 44, including § 921(a) (2019), as may be amended, and 27 C. F. R. § 478.11 (2019), as may be amended.

#### **13.73.040 Outreach, enforcement**

A. Upon enactment of this ordinance, the City [city/county agency] shall promptly take reasonable efforts to inform all residents of its terms. The information shall include notice that all residents who possess any unfinished frame or receiver or any assembled or manufactured firearm that lacks a serial number required under subsections A, B, C, or D of section 13.73.030 will not be penalized under this section if they surrender the non-complying unfinished frame or receiver or assembled firearm to a law enforcement agent or agency.

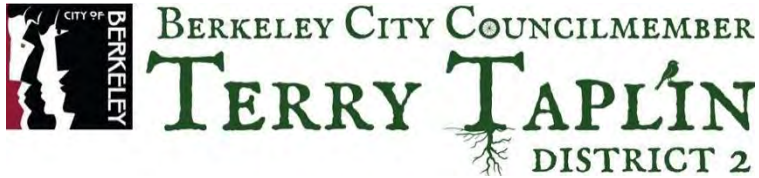
B. A violation of subsection B of section 13.73.030, or a violation stemming from the same transaction, is punishable as a Class 1 Misdemeanor.

C. Every violation of subsections A, C, or D of section 13.73.030 shall constitute a misdemeanor and upon conviction shall be punishable as set forth in Chapter 1.20 of this code. The first violation will not be penalized if the violator possesses, transports or receives three (3) or fewer firearms or unfinished frames or receivers, surrenders those firearms or unfinished frames or receivers to law enforcement, and does not commit additional violations of this chapter in the year following the violation.

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. Effective date. Except for subsections A, C, and D of section 13.73.030, this ordinance shall take effect thirty (30) days after its adoption. Subsections A, C, and D of this section will take effect ninety (90) days after the other provisions of the ordinance take effect.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



CONSENT CALENDAR  
Oct. 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Mayor Arreguín (co-sponsor), Councilmember Robinson (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: Letter to Senate Budget Committee Chair Sen. Skinner Regarding Berkeley Pier

#### RECOMMENDATION

Send a letter to State Senator Nancy Skinner (D-Berkeley), Chair of the Senate Budget Committee, requesting state budget allocations for urgent infrastructure needs at the Berkeley Municipal Pier.

#### FINANCIAL IMPLICATIONS

None.

#### CURRENT SITUATION AND ITS EFFECTS

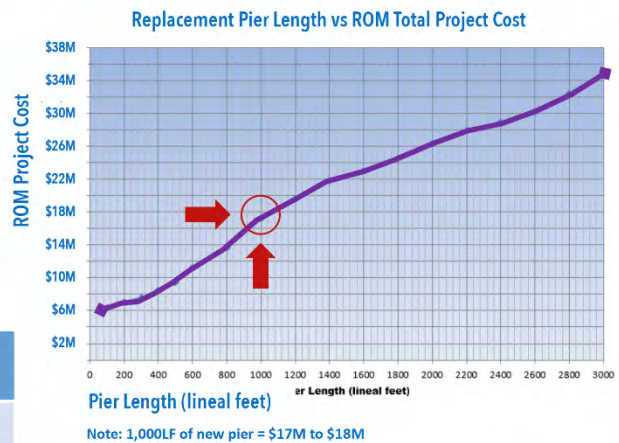
The Marina Fund is projected to exhaust all reserves in FY2022, and its operating deficit will increase to an annual \$800,000. The Berkeley Marina contains over \$200 million in infrastructure assets, with an estimated \$113 million needed in repairs, including a severely dilapidated pier. The Marina Fund has never had a permanent revenue source for capital improvements, and significant deficits have been documented as early as 1999.<sup>1</sup> Funding for infrastructure replacement has been provided in piecemeal fashion through an assortment of grants, loans, the Marina Fund when possible, and more recently, Measure T1 funds. The Berkeley Marina Area Specific Plan (BMASP) project is now underway to plan a revitalization of the area.

The City of Berkeley and Water Emergency Transportation Authority (WETA)'s Pier & Ferry Feasibility Study<sup>2</sup> estimates a \$32-44 million replacement cost of the pier for a full 70-year lifespan. Currently, proposed concepts in the Berkeley Municipal Pier-Ferry Project include a replacement pier of only one-third to one-half of the full 3000 lineal foot length of the existing pier. The currently recommended \$17.5 million covers the cost of 1,000 feet, but \$35 million would cover the cost of the full 3000 lineal feet.

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Marina%20Fund%20Update%20041218.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Marina%20Fund%20Update%20041218.pdf)

<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Public%202021-08-010-Pier-Ferry\\_W2.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Public%202021-08-010-Pier-Ferry_W2.pdf)

## Pier Structural Assessment – Project History



| Renovation Options       | Estimated Project Costs* (3,000 LF Pier) | Repair Interval   Longevity | Life Cycle Costs |
|--------------------------|------------------------------------------|-----------------------------|------------------|
| 1. Rehabilitation        | \$22–\$48M                               | 10 yrs   10–15 yrs          | \$2M/yr          |
| 2. Seismic Strengthening | \$41–\$65M                               | 10–15 yrs   30–50 yrs       | \$1M/yr          |
| 3. Replacement           | \$32–\$44M                               | 20+ yrs   70 yrs            | \$0.5M/yr        |

\* Escalated to Year 2023

← Recommended Option



Source: Berkeley/WETA Pier & Ferry Feasibility Study – Community Workshop #2 slides

According to Parks and Waterfront Commission Chairperson Gordon Wozniak, there is a desperate need for \$8 million to dredge the entrance to the main harbor, where boats often run aground at low tide; and the South Sailing Basin, which turns into a mud flat at low tide. With a total funding of \$35 million, the City would have two options: (1) replace the entire 3,000 ft pier, or (2) replace 2,000 ft of the existing pier and dredge both the entrance to the main harbor and the South Sailing Basin.

Funding capital improvements at the Marina Pier is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

In May 2021, Governor Gavin Newsom announced a historic \$76 billion state budget surplus, and paired it with federal aid in the SB 129 budget revision, dubbed the “California Comeback Plan.”<sup>3</sup> The budget bill, brought by Senate Budget Committee Chair Sen. Nancy Skinner, received only one line-item veto.<sup>4</sup> It contained major capital expenditures, such as \$6 billion to expand hotel acquisition through Project Homekey.

California’s large budget surplus was the result of its progressive tax structure and strong economic conditions in the face of the COVID-19 pandemic. As vaccination increases and local businesses begin reopening, it is not unreasonable to presume that

<sup>3</sup> <https://www.gov.ca.gov/2021/07/12/california-roars-back-governor-newsom-signs-100-billion-california-comeback-plan-to-accelerate-states-recovery-and-tackle-persistent-challenges/>

<sup>4</sup> <https://www.gov.ca.gov/wp-content/uploads/2021/07/SB-129-Line-Item-Veto.pdf>

this pattern may repeat itself next year. Given the Berkeley Marina's central location in the Bay Area metropolitan area, near-future plans for ferry service, and the City's many critical infrastructure needs—including an estimated \$1 billion in unfunded liabilities—the State of California must commit to allocating surplus revenues to meet one-time infrastructure replacement costs while the City develops long-term plans for operating revenues.

Replacing the full 3,000-foot pier will also ensure that the Marina can be a major source of revenue from recreational activities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin      Council District 2      510-981-7120

Attachments:

1: Letter

The Honorable Nancy Skinner, Chair  
Standing Committee on Budget and Fiscal Review  
State Capitol, Room 5019  
Sacramento, CA 95814

October 12, 2021

Dear Senator Skinner:

As you may know, the City of Berkeley's Municipal Pier urgently needs replacement. However, the City and the Water Emergency Transportation Authority (WETA) lack sufficient funds for a full replacement to accommodate all recreational activities as well as plans for a new ferry. Therefore, we humbly request that the California State Senate consider an appropriation of at least \$17.5 million in the next budget to match the City's recommendation and fund a full replacement of the Marina Pier.

The City of Berkeley and WETA's Pier & Ferry Feasibility Study estimates a \$32-44 million replacement cost of the pier for a full 70-year lifespan. Currently, proposed concepts in the Berkeley Municipal Pier-Ferry Project include a replacement pier of only one-third to one-half of the full 3000 lineal foot length of the existing pier. \$17.5 million covers the cost of 1,000 feet, but \$35 million would cover the cost of the full 3,000 lineal feet.

Additionally, there is a desperate need for \$8 million to dredge the entrance to the main harbor, where boats often run aground at low tide, and the South Sailing Basin, which turns into a mud flat at low tide. Even a State contribution of \$8 million would allow a 2,000 ft long replacement pier to be built, which would accommodate substantially more recreation and pedestrian usage. A longer pier that enables more recreational uses also increases potential revenue for the City.

In your capacity as Chair of the State Senate's Standing Committee on Budget and Fiscal Review, we ask you to consider allocating state funds for infrastructure replacement at the Berkeley Pier. This would go a long way toward restoring a vital public resource in our community, while also guaranteeing future revenue potential and stability for the City's Marina Fund. Thank you very much for your tireless service for the people of Senate District 9.

Respectfully yours,

City Council, City of Berkeley  
2180 Milvia St  
Berkeley, CA 94704





CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Infrastructure and Affordable Housing Finance Plan for Adeline Corridor

RECOMMENDATION

Refer to the November Annual Appropriation Ordinance an allocation of \$200,000 to fund a Consultant to design and implement an infrastructure and affordable housing finance strategy for the Adeline Corridor Plan that was adopted by the City Council on December 8, 2020.

The proposed analysis should examine the feasibility of various infrastructure financing tools, such as an Enhanced Infrastructure Finance District (EIFD), Community Facilities District, Affordable Housing Authority, Community Revitalization and Investment Authority, pursuit of state and Federal grants, and other public and private financing tools. The project team should determine which financing mechanism(s) would be most appropriate to fund elements of the Adeline Corridor Plan, and future community-oriented projects. Upon identifying the appropriate funding tools, the consultant would then proceed with implementation based on further feedback from City Council and the community.

CURRENT SITUATION

The Adeline Corridor Plan was passed in December of 2020. To support equitable development within the Berkeley Community, we must support the development of small businesses and accessible housing options for low-income communities.

This proposal is a response to the COVID-19 Pandemic and the devastating effects it has had on our community. According to a recent census, 56% of California small businesses experienced large negative effects from the pandemic<sup>1</sup> and the inequity in income growth throughout the United States has been exasperated by COVID-19<sup>2</sup>. The Adeline Corridor Plan is important to fight against the economic effects this epidemic has had on our low and middle-income communities. To combat k-shaped economic recovery<sup>3</sup>, and hastening exits of longtime residents from the Adeline corridor, it is all the more important that we achieve our goal of developing the Adeline Corridor. To more efficiently achieve our goals, we must find new avenues for funding the Adeline Corridor Plan.

<sup>1</sup> <https://www.ppic.org/blog/the-economic-toll-of-covid-19-on-small-business/#:~:text=Fifty%2Dsix%20percent%20of%20California,face%20the%20most%20severe%20setbacks>.

<sup>2</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0249121#sec004>

<sup>3</sup> <https://apnorc.org/projects/despite-signs-of-economic-recovery-the-most-economically-vulnerable-americans-face-serious-financial-challenges/>

The barrier to equitably developing the Adeline Corridor is funding. To combat the crisis in funding, we propose that a Consultant be hired to design and implement a financial plan to ensure the success of the Adeline Corridor Plan while also ensuring the success of future community-oriented projects. The Adeline Corridor Plan was adopted last year and requires a significant amount of funding. That is why creating a specialized project team into our plans will be instrumental in realizing the plan as outlined below, empowering economic development, and above all else, supporting our cultural heritage.

The Adeline Corridor Plan intends to<sup>4</sup>:

- Increase individual affordable housing units
- Increase pedestrian and bike lane safety
- Develop the Ashby BART station
- Create a Business Improvement District (BIPD)
- Redesign Adeline Street
- Strengthen community assets
- Protect the Berkeley Flea Market
- Increase constituent's access to resources
- Improve the tree line along walkways
- Build equitable green space
- Promotion of Public Art

The project team will assess the financial feasibility of an Enhanced Infrastructure Financing District (EIFD), Community Facilities District, Affordable Housing Authority, Community Revitalization and Investment Authority, pursuit of state and federal grants, and other public and private financing tools, that would support the Adeline Corridor Plan.

An EIFD could provide for projects that contribute to economic development, including affordable housing. Therefore, to effectively leverage our taxes in favor of improving our community, we would like to invite the council to consider funding a Consultant to assess the efficiency and practicality of an EIFD for the funding of the Adeline Corridor Project. For example, an EIFD could contribute to the economic development of Berkeley by providing funding that will facilitate the commencement of work on the Adeline Corridor Plan. Furthermore, an EIFD could be helpful because as outlined by the Adeline Corridor Plan, 50% of all housing developments for the next 20 years along the corridor must remain affordable for the lowest incomes and highest needs.<sup>5</sup> Therefore, an EIFD could account for the funding that would be accrued from higher housing revenue that is being forfeited through the current plan's commitment to low and middle-income housing availability.

Additionally, the project would use green construction to build mixed-use buildings, structured parking, commercial and civic spaces on the ground floor, and new public

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<sup>4</sup> <https://www.cityofberkeley.info/council3/adeline/>

<sup>5</sup> <https://www.cityofberkeley.info/council3/adeline/>

space surrounding Ashby BART station<sup>6</sup>. In combination with green planning, the Adeline Corridor Plan will redesign Adeline Street from the Oakland border north to Derby Street, creating more public open spaces out of paved space, reducing crossing distances, and making the street more comfortable for pedestrians and cyclists<sup>7</sup>.

Furthermore, the Adeline Corridor Plan intends to support capital improvements that strengthen existing institutions such as the Berkeley Flea Market, the South Berkeley Farmers Market, and the annual Juneteenth Festival, as well as future institutions such as the African American Holistic Resource Center<sup>8</sup>.

## BACKGROUND

EIFDs were formed through expanding on Tax Increment Financing (TIF), which freezes property tax revenue from a designated area at a base level. In the following years, this revenue is separated from other property tax revenue and can be leveraged to improve the designated area or repay bonds issued against the anticipated TIF revenue<sup>9</sup>. A funding leveraging system like this will be instrumental for our goal of developing the projected 1,450 residential units and 65,000 square feet of commercial space through 2040<sup>10</sup>.

An EIFD is a type of tax increment financing that allows the city to utilize tax revenue to fund community-orientated economic development projects (i.e. Infrastructure, Affordable Housing, mixed-use development and sustainable development, Transit-oriented development, Parks and Open Space, etc). An EIFD is ideal for the Adeline Corridor Plan due to its flexible design. EIFDs can be used on a single street, in a neighborhood, or throughout an entire city<sup>11</sup>. The flexibility of EIFDs opens a pathway to funding long-term development projects. It operates similar to an Infrastructure Financing District (IFD), with the key differences being expanding capabilities of what can be financed<sup>12</sup>, extending project timelines, and improving public engagement requirements<sup>13</sup>. Finally, an EIFD is ideal due to the precision and flexibility it offers to funding allocation. Through an EIFD we can fund a public square and individual affordable housing units within one category of financing district.

## REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

West Sacramento formed the first EIFD encompassing approximately 4,144 acres—about 25% of the city—in 2017<sup>14</sup>. The EIFD is expected to finance multiple projects,

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<sup>6</sup> <https://www.cityofberkeley.info/council3/adeline/>

<sup>7</sup> <https://www.cityofberkeley.info/council3/adeline/>

<sup>8</sup> <https://www.cityofberkeley.info/council3/adeline/>

<sup>9</sup> <https://scag.ca.gov/post/enhanced-infrastructure-financing-district-eifd>

<sup>10</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/2020\\_12\\_08\\_ADOPTED\\_ACSP\\_2.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/2020_12_08_ADOPTED_ACSP_2.pdf)

<sup>11</sup> <https://www.cacities.org/Policy-Advocacy/Hot-Issues/New-Tax-Increment-Tools>

<sup>12</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1145](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1145)

<sup>13</sup>

[https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill\\_id=201920200AB116&version=20190AB11698AMD](https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=201920200AB116&version=20190AB11698AMD)

<sup>14</sup> <https://www.keysermarston.com/post/west-sacramento-adopts-states-first-eifd>

including sidewalk and streetscape improvements, parks, recreational facilities and open spaces, childcare facilities, affordable housing, bridges, and more<sup>15</sup>. West Sacramento chose to utilize EIFDs as a tool to restore the city's ability to bond against future revenue to finance infrastructure investments<sup>16</sup>. Thus, the EIFD allows for more efficient lot development, which in turn, creates community revenue gains sooner than possible without the tax leveraging program.

Recently, Sacramento has begun development of Aggie Square utilizing an EIFD. In October of 2020, a city council item noted the intention to develop the Aggie Square project. Aggie Square intends to create a public-private partnership between the University of California Davis (UC) and Wexford Science and Technology (Wexford)<sup>17</sup>. In February of 2021, Sacramento released a plan which outlines preliminary costs at Phase 1. The city estimates this development would add approximately \$5 billion annually and 25,000 ongoing jobs to the 6-county region by the time Aggie Square construction is finalized<sup>18</sup>. The formation of the EIFD was pursued because it was deemed necessary for financing the construction of public infrastructure and development that serves the Aggie Square project and the surrounding community while providing significant community-wide benefits<sup>19</sup>.

Another example we intend to follow is LA county's city of La Verne, which established its own EIFD in 2017. The city expects to establish a new light rail station by 2026<sup>20</sup>. The development includes approximately 1,700 residential units, a 150-bed hotel, and 100,000 square feet of retail space<sup>21</sup>. Not only will the EIFD project enhance the aesthetics of the city, but it will also improve functionality through dedicated bikeways, and increasing community walkability. In La Verne's 2020 summary, the total cost of renovation is estimated to be about 33 million with project improvements to highways, pedestrian safety, lighting, landscaping, a pedestrian bridge, pipelines, and sewers<sup>22</sup>. On the city's website, they explain that the idea is that by having the improvements in place sooner, it will spur development to occur faster, which in turn will help to pay for more of the identified projects<sup>23</sup>.

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<sup>15</sup> <https://www.cityofwestsacramento.org/government/departments/administrative-services/eifd-formation>

<sup>16</sup> [https://live-terner-center-for-housing-innovation.pantheon.berkeley.edu/wp-content/uploads/2020/10/Enhanced\\_Infrastructure\\_Financing\\_Districts\\_West\\_Sacramento.pdf](https://live-terner-center-for-housing-innovation.pantheon.berkeley.edu/wp-content/uploads/2020/10/Enhanced_Infrastructure_Financing_Districts_West_Sacramento.pdf)

<sup>17</sup> [https://sacramento.granicus.com/MetaViewer.php?view\\_id=22&clip\\_id=4752&meta\\_id=603641](https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4752&meta_id=603641)

<sup>18</sup> <http://www.cityofsacramento.org/-/media/Corporate/Files/CMO/Major-Projects/Aggie-Square-EIFD-DRAFT-IFP-020221.pdf>

<sup>19</sup> [https://sacramento.granicus.com/MetaViewer.php?view\\_id=22&clip\\_id=4752&meta\\_id=603641](https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4752&meta_id=603641)

<sup>20</sup> <https://www.sfchronicle.com/opinion/article/How-one-small-city-could-show-way-for-California-13960717.php>

<sup>21</sup> <https://www.cityoflaverne.org/index.php/documents/community-development/1602-eifd-la-verne-amended-and-restated-ifp/file>

<sup>22</sup> <https://www.cityoflaverne.org/index.php/documents/community-development/1602-eifd-la-verne-amended-and-restated-ifp/file>

<sup>23</sup> <https://www.cityoflaverne.org/index.php/home/bulletins/287-social-gas-requests-regulatory-approval-to-replenish-natural-gas-supply-at-aliso-canyon-storage-facility>

Similarly, San Francisco is currently employing an IFD (Infrastructure Financing District) to improve infrastructure on Treasure Island and Yerba Buena Island. The crucial difference between an IFD and an EIFD is that an EIFD enables project timelines to be extended from 30 years to 45 years<sup>24</sup>. This IFD will be used to develop 300 acres of open space, transit facilities, streets, geotechnical improvements, sea level rise adaptations, over 2,000 affordable houses, and amidst other communally beneficial projects<sup>25</sup>. This financing plan was ideal for this project because it allows for an acceleration of development activity, as verified by consultants<sup>26</sup>.

As made clear from locales across our state, by financing development plans, EIFDs can have an economically and culturally transformative impact on our communities. Additionally, and EIFD will better support our community due to the biannual financial and performance audits required within the program, unlike IFDs, which have no such requirements<sup>27</sup>.

### HISTORICAL CONTEXT

To expand on our legacy, we must also acknowledge our past. Before the existence of Adeline Street, Berkeley was inhabited by the Lisjan Ohlone people. They are a community native to the East Bay and were displaced by European and Mexican settlers beginning in the early 1800s. While the history of the Ohlone tribe is long, it is important to realize that they are still a thriving community today.

After the displacement of indigenous peoples and the acquisition of California, there were decades of growth within our south Berkeley community throughout the 1900s. In response to the San Francisco Earthquake of 1906, thousands fled into Berkeley and Oakland, which caused the small community surrounding the Lorin Railroad Station to grow exponentially. Along with this experience, Adeline Street became a thriving commercial and residential suburb.

South Berkeley—by the 1930s—became one of the most racially diverse districts in the Bay Area. This is directly correlated with the implementation of racially discriminatory real estate practices throughout the Bay Area that kept property ownership concentrated in the hands of white households. Practices like these continue to impact the generational wealth of Black and Brown constituents today<sup>28</sup>.

Moving into the 1960s, racial inequality came to the forefront of the discussion around the development of the San Francisco Area Rapid Transit System (BART), as it intended to build upon the existing streetcar tracks. However, those plans would separate—and effectively segregate—the largely white east Adeline neighborhood from the African-American neighborhood to the west.

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<sup>24</sup> <https://cceda.com/wp-content/uploads/EIFD-Resource-Guide-Feb-20161.pdf>

<sup>25</sup> <https://sftreasureisland.org/sites/default/files/CAB%20IFD-CFD%20Summary%2002%2007%2017.pdf>

<sup>26</sup> <https://sftreasureisland.org/sites/default/files/CAB%20IFD-CFD%20Summary%2002%2007%2017.pdf>

<sup>27</sup> [https://edacademy.org/wp-content/uploads/2018/03/03.16.18\\_915-1015\\_TreasureIsland.pdf](https://edacademy.org/wp-content/uploads/2018/03/03.16.18_915-1015_TreasureIsland.pdf)

<sup>28</sup> <https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>

Through fighting back against these policies, the community made a landmark decision. Constituents voted to raise their taxes upwards of 20 million dollars<sup>29</sup> to pay for two BART stations to be built underground, one of these being the Ashby BART<sup>30</sup>.

Utilizing an EIFD, we can work to continue the legacy built around Ashby BART station. The Adeline Corridor Project intends to bring financial justice to our community by ensuring economic growth for our diverse district three community.

#### CONSULTATION/OUTREACH OVERVIEW

The EIFD Plan should include a fiscal impact analysis to demonstrate that the EIFD will not have an adverse impact on the city's general fund. In other words, the analysis must show that the cost of providing services to the district area and the entire city can still be supported by the general fund if all or a portion of the property tax increment is diverted to the district<sup>31</sup>.

#### RATIONALE FOR RECOMMENDATION

An EIFD could provide funding for the Adeline Corridor project, allow for community support/input, and ensure the means of funding for our infrastructure projects. Securing an EIFD for Adeline Street will enable us to investigate the long-term benefits of EIFDs and expand our repertoire of funding avenues for future development concepts.

#### ALTERNATIVES TO CONSIDER

If unable to secure additional funding, an alternate solution is allowing district members to vote to increase their taxes. Through this vote, citizens would vote to leverage their own taxes as a method to ensure efficient project building. A vote like this would parallel the 1960s vote constituents participated in to ensure the BART stations did not segregate our communities. This would continue District Three's historic commitment to racial equity.

#### FISCAL IMPACTS OF RECOMMENDATION

\$250,000 in funding.

#### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang  
Tessa Stapp  
Hillary Phan

[bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)  
510-981-7130  
510-981-7131

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<sup>29</sup><https://www.mercurynews.com/2019/09/15/the-dramatic-surprising-and-sometimes-irreverent-history-of-bart-revealed-in-live-podcast-taping/>

<sup>30</sup><https://www.bart.gov/about/history/history2>

<sup>31</sup><https://www.cityofwestsacramento.org/government/departments/administrative-services/eifd-formation>





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Adopt a resolution in support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

RECOMMENDATION

Adopt a resolution in support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit.

Send copies of the resolution to Senators Feinstein and Padilla, Congresswoman Lee, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The current federal incentive structure for deploying residential renewable energy, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans. For example, individuals who decide to install solar panels on their buildings must have sufficient cash or credit available to cover the full cost of the parts and installation upfront. Under current tax law, the federal government only reimburses qualifying installations when the individual completes their taxes. This situation disproportionately benefits wealthy individuals and corporations.

Currently, the Senate and the House of Representatives are considering modifications to existing energy related tax provisions. It is therefore prudent to request that that any legislative package include a “direct pay” or any similar cash payment program for residential energy properties as defined in 26 U.S.C. § 25D, providing federal assistance upfront as opposed to at tax time.

BACKGROUND

It is estimated that 42% percent of all U.S energy-related greenhouse emissions come from household decisions.<sup>1</sup> Incentivizing American households to reduce residential emissions and lower their energy bills could have a significant impact on the nation’s overall greenhouse emissions inventory.

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<sup>1</sup> Rewiring America, About Us, July 15, 2021, <https://www.rewiringamerica.org/our-mission>.

A direct pay Section 25D subsidy would facilitate increased accessibility to clean energy and would especially benefit the nation's low-income households who spend a disproportionate amount of their incomes to energy. These lower income households have less ability to pay the upfront costs of clean energy investments and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases.

Some have expressed opposition to amending Section 25D due to unfounded concerns over fraud and in the difficulty of overseeing and auditing this expanded program. Yet research shows that lower-income households have the lowest levels of tax evasion of any income group.<sup>2</sup> In addition, safeguards, as well as procedural solutions, that ensure section 25D direct pay – or a similar program – can be implemented so as to strengthen eligibility verification and eliminate the potential for fraud or misuse.

By adopting this resolution in support and sending letters to federal elected officials, Berkeley would be joining more than 300 environmental justice advocates, environmental groups and renewable energy companies who have already lobbied the Senate Finance and House Ways & Means Committees to support a direct pay option for the residential energy efficiency property tax credit.<sup>3</sup>

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for the Clerk to send the letter to the specified elected officials.

#### ENVIRONMENTAL SUSTAINABILITY

Adopting direct pay for residential energy efficient property tax credits could help include lower income communities in the fight against climate change and carbon emissions.

#### CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

#### ATTACHMENTS

1. Resolution
2. Letters

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<sup>2</sup> Brookings, How Big is the Problem of Tax Evasion, April 9, 2019, <https://www.brookings.edu/blog/up-front/2019/04/09/howbig-is-the-problem-of-tax-evasion/>.

<sup>3</sup> Environmental Justice and Renewable Energy Supporters Call on Congress to Make the Residential Tax Incentive Accessible for Lower-Income Households, PR Web, September 20, 2021, [https://www.prweb.com/releases/environmental\\_justice\\_and\\_renewable\\_energy\\_supporters\\_call\\_on\\_congress\\_to\\_make\\_the\\_residential\\_tax\\_incentive\\_accessible\\_for\\_lower\\_income\\_households/prweb18121265.htm](https://www.prweb.com/releases/environmental_justice_and_renewable_energy_supporters_call_on_congress_to_make_the_residential_tax_incentive_accessible_for_lower_income_households/prweb18121265.htm)



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

RESOLUTION IN SUPPORT OF DIRECT PAY PROVISION FOR 26 U.S.C. § 25D  
RESIDENTIAL ENERGY EFFICIENT PROPERTY TAX CREDIT

Whereas, the credit structure of the federal incentive for the deployment of renewable energy for residential customers, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans; and

Whereas, the Senate and the House of Representatives are currently considering modifications to existing energy related tax provisions, and a coalition comprised of more than 300 environmental justice advocates, environmental groups and renewable energy companies have requested that any legislative package this session include a “direct pay” or any similar cash payment program for residential energy properties as defined in 26 U.S.C. § 25D; and

Whereas, including this amendment in legislation would reduce inequalities between low-income and higher-income Americans by ensuring quick access to ITC benefits and would enhance accessibility to clean energy to households who spend a disproportionate amount of their incomes on energy; and

Whereas, this modification of § 25D could further incentivize American households to reduce residential emissions since forty-two percent of all U.S. energy-related greenhouse emissions come from household decisions.

NOW, THEREFORE BE IT RESOLVED, the City Council of Berkeley expresses its support for including a direct pay provision in the § 25D Residential Energy Efficient Property Tax Credit.

BE IT FURTHER RESOLVED that copies of this Resolution will be sent to Senator Feinstein, Senator Padilla, Congresswoman Barbara Lee, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady.

The Honorable Senator Padilla  
United States Senate  
112 Hart Senate Office Building  
Washington, DC 20510

**Re: Support for Direct Pay Provision for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Senator Padilla:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Senator Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

**Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Senator Feinstein:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Congresswoman Lee  
United States House of Representatives  
2470 Rayburn House Office Building  
Washington, D.C. 20515

**Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Congresswoman Lee:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Chairman Ron Wyden  
U.S. Senate U.S. Senate  
Committee on Finance Committee on Finance  
219 Dirksen Senate Office Building 219 Dirksen Senate Office Building  
Washington, D.C., 20510

**Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Senator Wyden:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Chairman Richard Neil  
The U.S. House of Representatives  
Ways & Means Committee  
1102 Longworth HOB  
Washington, D.C., 20515

**Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Congressman Neil:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Ranking Member Mike Crapo  
U.S. Senate  
Committee on Finance Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C., 20510

**Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Senator Crapo:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Ranking Member Kevin Brady  
The U.S. House of Representatives  
Ways & Means Committee Ways & Means Committee  
1102 Longworth HOB 1102 Longworth HOB  
Washington, D.C., 20515

**Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit**

Dear Congressman Brady:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Subject: Adopt a Resolution Denouncing Texas Anti-Abortion Law (SB 8) and Reaffirming Reproductive Freedom in Berkeley

RECOMMENDATION

Adopt a resolution to denounce the Texas abortion law, Senate Bill (SB) 8, banning most abortions after six weeks of pregnancy. The resolution will also reaffirm the City of Berkeley's commitment to reproductive freedom.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

A Texas law, known as Senate Bill (SB) 8, banning most abortions after about six weeks of pregnancy went into effect on September 1, 2021 after the Supreme Court formally denied a request from Texas abortion providers to freeze the new law. The law prohibits abortion once a fetal heartbeat can be detected, which is often before a woman is aware of her pregnancy. SB 8 is nearly a complete ban on abortions and is one of the most restrictive in the United States and the entire developed world. The law bars state officials from actually enforcing it, a design intended to make it difficult to challenge in the courts. Usually a lawsuit aiming to block such a law as unconstitutional names state officials as defendants. Instead, the Texas law deputizes private citizens – including those from outside Texas – to sue clinics and anyone who performs an abortion or “aids and abets” a procedure.

Plaintiffs who have no connection to the patient or the clinic may sue and recover legal fees, as well as \$10,000 if they are successful. The law allows doctors, staff, and anyone else involved to be potential defendants; however, patients cannot be sued. Teenagers, who often don't realize they are pregnant until later in a pregnancy, low-income people, who may need to find \$550 to cover the cost of the procedure, and people of color and undocumented immigrants are some of the most vulnerable individuals who will be impacted by this law, disproportionately. With a 5-4 vote the Supreme Court refused to block SB 8.

The Supreme Court's decision not to block the unconstitutionally restrictive law appears in direct opposition to past precedents. The Biden Administration is suing Texas over the new state law, arguing that it was enacted "in open defiance of the Constitution" and asking a judge to quickly declare the law invalid. The case filed by the Department of Justice will likely reach the Supreme Court, but without any additional court action at this point, the law remains in effect.

Opposition to Texas's SB 8 and similar anti-abortion legislation that serves to eliminate a woman's right to choose and hinder the availability of reproductive healthcare is in line with the City's longstanding values and legislative priorities. In addition to denouncing the anti-abortion law in Texas, the proposed resolution declares the City of Berkeley as a safe harbor for reproductive freedom.

The City of Berkeley has a well-established record of supporting women's rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services. As opponents of reproductive freedom continue their attempts to strike down decades of precedent, Berkeley has an opportunity to be a model of a city committed to the defense of reproductive freedoms. Ensuring access to autonomy in reproductive decisions and access to care will enhance our residents' quality of life.

#### ENVIRONMENTAL SUSTAINABILITY

The right to reproductive freedom and choice is compatible with our goals for environmental sustainability.

#### CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

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

DENOUNCING TEXAS ANTI-ABORTION LAW (SB 8) AND REAFFIRMING  
REPRODUCTIVE FREEDOM IN BERKELEY

WHEREAS, a Texas law, known as Senate Bill (SB) 8, banning most abortions after about six weeks of pregnancy went into effect on September 1, 2021 after the Supreme Court formally denied a request from Texas abortion providers to freeze the new law; and

WHEREAS, the law prohibits abortion once a fetal heartbeat can be detected, which is often before a woman knows that she is pregnant, effectively amounting to a nearly complete ban on abortions in the state; and

WHEREAS, rather than naming state officials as defendants, the Texas law deputizes private citizens – including those from outside Texas – to sue clinics and anyone who performs an abortion or “aids and abets” a procedure. Plaintiffs who have no connection to the patient or the clinic may sue and recover legal fees, as well as \$10,000 if they are successful; and

WHEREAS, the Supreme Court refused to block the Texas law, with the 5-4 conservative majority saying the abortion providers who had challenged the law in an emergency application to the court had not made their case in the face of “complex and novel” procedural questions; and

WHEREAS, the law will have unequal consequences on women and people of child-bearing age in Texas, with certain vulnerable populations facing potentially dire consequences, including teenagers, low-income people, people of color and undocumented immigrants; and

WHEREAS, autonomy and agency in reproductive matters are central to secure gender, economic, and racial equity in all aspects of life; and

WHEREAS, in 1969 the California Supreme Court recognized that the U.S. Constitution protects the fundamental right to choose whether to carry a pregnancy to term or seek an abortion; and

WHEREAS, in 2002, California enacted the Reproductive Privacy Act, which prevents the state from interfering with the right to choose between carrying a pregnancy to term or to obtain an abortion; and

WHEREAS, the City of Berkeley has a well-established record of supporting women’s rights and reproductive health for all; and

WHEREAS, in 1985, the City of Berkeley officially declared its support of reproductive rights and commemorated Roe v. Wade and the City has continually taken action to support state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby denounces SB 8, the Texas law banning most abortions after six weeks of pregnancy, and denounces the Supreme Court's decision not to block this restrictive law.

BE IT ALSO RESOLVED, that the City of Berkeley will defend and advocate for health equity and reproductive freedom, so that every resident in our community may have safe access to the reproductive services they need.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Subject: Support for H.R. 3755 and S.1975 – Women’s Health Protection Act of 2021

RECOMMENDATION

Adopt a Resolution in support of H.R. 3755 and S.1975 – Women’s Health Protection Action of 2021 (Rep. Chu) (Sen. Blumenthal) and send copies to House Representatives Judy Chu and Barbara Lee; Senators Richard Blumenthal, Dianne Feinstein and Alex Padilla; Vice President Kamala Harris and President Joe Biden.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

The constitutional right of women to safe abortion services is essential to the health, safety and progress of our nation. Abortion access allows pregnant people to make their own deeply personal decisions about their future.

Ever since the Supreme Court’s landmark ruling on Roe v Wade on January 22, 1973, protecting a pregnant woman’s liberty to choose to have an abortion without excessive government interference, anti-abortion advocates have worked to obstruct access to abortion services. They have used violence and blockades, restrictions on insurance coverage and lawsuits to overturn the ruling.

H.R. 3755 and S.1975 would legislate protection of a pregnant person’s ability to determine whether to continue or end a pregnancy and to protect a health care provider’s ability to provide abortion services throughout the country. Congressional action is necessary to put an end to over-reaching regulations, to federally protect access to abortion services for everyone regardless of where they live, and to protect the ability of health care providers to provide these services in a safe and accessible manner.

The City of Berkeley has a well-established record of supporting women’s rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and

advancing reproductive rights, access to healthcare, and funds for preventative health care services.

ENVIRONMENTAL SUSTAINABILITY

The right to reproductive freedom and choice is compatible with our goals for environmental sustainability.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [H.R. 3755](#)

3: [S.1975](#)

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

SUPPORT FOR H.R. 3755 AND S.1975– WOMEN’S HEALTH PROTECTION ACT OF 2021 (Rep. Chu) (Sen. Blumenthal)

WHEREAS, Abortion services are essential to health care and access to those services is central to people’s ability to participate equally in the economic and social life of the United States. Abortion access allows people who are pregnant to make their own decisions about their pregnancies, their families, and their lives; and

WHEREAS, Ever since the Supreme Court’s landmark ruling on Roe v Wade on January 22, 1973, protecting a pregnant woman’s liberty to choose to have an abortion without excessive government restriction, anti-abortion advocates have worked to obstruct access to abortion services; and

WHEREAS, The City of Berkeley has a well-established record of supporting women’s rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services; and

WHEREAS, H.R. 3755 and S.1975 would legislate protection of a pregnant person’s ability to determine whether to continue or end a pregnancy and to protect a health care provider’s ability to provide abortion services; and

WHEREAS, Congressional action is necessary to put an end to harmful restrictions, to federally protect access to abortion services for everyone regardless of where they live, and to protect the ability of health care providers to provide these services in a safe and accessible manner.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that we declare to the United States Congress and the President and Vice President of the United States full support of H.R. 3755 and S.1975.

BE IT FURTHER RESOLVED that we ask our Congressional Representatives to work with their colleagues to ensure passage of H.R.3755 and S.1975. Lives and justice depend on it.

Shown Here:  
Introduced in House (06/08/2021)

117TH CONGRESS  
1ST SESSION

# H. R. 3755

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2021

Ms. CHU (for herself, Mr. ALLRED, Ms. BARRAGÁN, Mr. BERA, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BROWN, Ms. BROWNLEY, Ms. BUSH, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CASE, Mr. CASTEN, Ms. CASTOR of Florida, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CLEAVER, Mr. COHEN, Mr. CONNOLLY, Mr. COOPER, Mr. COURTNEY, Mr. CRIST, Mr. CROW, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFAZIO, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mr. DOGGETT, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. ESCOBAR, Mrs. FLETCHER, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. GALLEG0, Ms. GARCIA of Texas, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mrs. HAYES, Mr. HIMES, Ms. HOULAHAN, Ms. JACKSON LEE, Ms. JACOBS of California, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Mr. JONES, Mr. KAHELE, Ms. KELLY of Illinois, Mr. KILMER, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTH1, Ms. KUSTER, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mrs. LEE of Nevada, Ms. LEE of California, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. LIEU, Mr. LOWENTHAL, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MOULTON, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NEWMAN, Ms. NORTON, Mr. O’HALLERAN, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PAYNE, Ms. PINGREE, Mr. POCAN, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. RASKIN, Miss Rice of New York, Ms. ROSS, Mr. RYAN, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHRADER, Mr. SHERMAN, Mr. SIREs, Mr. SMITH of Washington, Mr. SOTO, Ms. SPEIER, Mr. STANTON, Ms. STRICKLAND, Mr. SWALWELL, Ms. TLAIB, Mr. TONKO, Mr. TORRES of New York, Mr. TRONE, Ms. UNDERWOOD, Mr. VARGAS, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mr. WELCH, Ms. WILD, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. PERLMUTTER, Ms. TITUS, Mr. AUCHINCLOSS, Mr. ESPAILLAT,



Mrs. WATSON COLEMAN, Mr. BUTTERFIELD, Mr. MCGOVERN, Mr. TAKANO, Mr. KEATING, Mr. COSTA, Mr. HUFFMAN, Mr. CASTRO of Texas, Ms. DAVIDS of Kansas, Mr. CARTWRIGHT, Mr. LAWSON of Florida, Mr. SCHNEIDER, Ms. SEWELL, Mr. RUPPERSBERGER, Mr. KIM of New Jersey, Ms. ADAMS, Mr. YARMUTH, Mr. BRENDAN F. BOYLE of Pennsylvania, Ms. SÁNCHEZ, Mr. EVANS, Mr. LYNCH, Mrs. TRAHAN, Mr. PASCRELL, Mr. NEAL, Mr. SUOZZI, Mr. PANETTA, Mr. PETERS, Mr. THOMPSON of California, Ms. LOFGREN, Mrs. MCBATH, Ms. SCHRIER, Mr. HORSFORD, Mr. KIND, Mrs. BEATTY, Mr. KHANNA, Mr. HIGGINS of New York, Mr. GREEN of Texas, Ms. JOHNSON of Texas, Mr. RUIZ, Mrs. MURPHY of Florida, Mr. PAPPAS, Mr. GOTTHEIMER, Mr. MRVAN, Ms. MANNING, Mr. GRIJALVA, and Mr. BEYER) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Women’s Health Protection Act of 2021”.

### SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Abortion services are essential to health care and access to those services is central to people’s ability to participate equally in the economic and social life of the United States. Abortion access allows people who are pregnant to make their own decisions about their pregnancies, their families, and their lives.

(2) Since 1973, the Supreme Court repeatedly has recognized the constitutional right to terminate a pregnancy before fetal viability, and to terminate a pregnancy after fetal viability where it is necessary, in the good-faith medical judgment of the treating health care professional, for the preservation of the life or health of the person who is pregnant.

(3) Nonetheless, access to abortion services has been obstructed across the United States in various ways, including blockades of health care facilities and associated violence, prohibitions of, and restrictions on, insurance coverage; parental involvement laws (notification and consent); restrictions that shame and stigmatize people seeking abortion services; and medically

unnecessary regulations that neither confer any health benefit nor further the safety of abortion services, but which harm people by delaying, complicating access to, and reducing the availability of, abortion services.

(4) Reproductive justice requires every individual to have the right to make their own decisions about having children regardless of their circumstances and without interference and discrimination. Reproductive Justice is a human right that can and will be achieved when all people, regardless of actual or perceived race, color, national origin, immigration status, sex (including gender identity, sex stereotyping, or sexual orientation), age, or disability status have the economic, social, and political power and resources to define and make decisions about their bodies, health, sexuality, families, and communities in all areas of their lives, with dignity and self-determination.

(5) Reproductive justice seeks to address restrictions on reproductive health, including abortion, that perpetuate systems of oppression, lack of bodily autonomy, white supremacy, and anti-Black racism. This violent legacy has manifested in policies including enslavement, rape, and experimentation on Black women; forced sterilizations; medical experimentation on low-income women’s reproductive systems; and the forcible removal of Indigenous children. Access to equitable reproductive health care, including abortion services, has always been deficient in the United States for Black, Indigenous, and other People of Color (BIPOC) and their families.

(6) The legacy of restrictions on reproductive health, rights, and justice is not a dated vestige of a dark history. Presently, the harms of abortion-specific restrictions fall especially heavily on people with low incomes, BIPOC, immigrants, young people, people with disabilities, and those living in rural and other medically underserved areas. Abortion-specific restrictions are even more compounded by the ongoing criminalization of people who are pregnant, including those who are incarcerated, living with HIV, or with substance-use disorders. These communities already experience health disparities due to social, political, and environmental inequities, and restrictions on abortion services exacerbate these harms. Removing medically unjustified restrictions on abortion services would constitute one important step on the path toward realizing Reproductive Justice by ensuring that the full range of reproductive health care is accessible to all who need it.

(7) Abortion-specific restrictions are a tool of gender oppression, as they target health care services that are used primarily by women. These paternalistic restrictions rely on and reinforce harmful stereotypes about gender roles, women’s decision-making, and women’s need for protection instead of support, undermining their ability to control their own lives and well-being. These restrictions harm the basic autonomy, dignity, and equality of women, and their ability to participate in the social and economic life of the Nation.

(8) The terms “woman” and “women” are used in this bill to reflect the identity of the majority of people targeted and affected by restrictions on abortion services, and to address squarely the targeted restrictions on abortion, which are rooted in misogyny. However, access to abortion services is critical to the health of every person capable of becoming pregnant. This Act

is intended to protect all people with the capacity for pregnancy—cisgender women, transgender men, non-binary individuals, those who identify with a different gender, and others—who are unjustly harmed by restrictions on abortion services.

(9) Since 2011, States and local governments have passed nearly 500 restrictions singling out health care providers who offer abortion services, interfering with their ability to provide those services and the patients’ ability to obtain those services.

(10) Many State and local governments have imposed restrictions on the provision of abortion services that are neither evidence-based nor generally applicable to the medical profession or to other medically comparable outpatient gynecological procedures, such as endometrial ablations, dilation and curettage for reasons other than abortion, hysteroscopies, loop electrosurgical excision procedures, or other analogous non-gynecological procedures performed in similar outpatient settings including vasectomy, sigmoidoscopy, and colonoscopy.

(11) Abortion is essential health care and one of the safest medical procedures in the United States. An independent, comprehensive review of the state of science on the safety and quality of abortion services, published by the National Academies of Sciences, Engineering, and Medicine in 2018, found that abortion in the United States is safe and effective and that the biggest threats to the quality of abortion services in the United States are State regulations that create barriers to care. These abortion-specific restrictions conflict with medical standards and are not supported by the recommendations and guidelines issued by leading reproductive health care professional organizations including the American College of Obstetricians and Gynecologists, the Society of Family Planning, the National Abortion Federation, the World Health Organization, and others.

(12) Many abortion-specific restrictions do not confer any health or safety benefits on the patient. Instead, these restrictions have the purpose and effect of unduly burdening people’s personal and private medical decisions to end their pregnancies by making access to abortion services more difficult, invasive, and costly, often forcing people to travel significant distances and make multiple unnecessary visits to the provider, and in some cases, foreclosing the option altogether. For example, a 2018 report from the University of California San Francisco’s Advancing New Standards in Reproductive Health research group found that in 27 cities across the United States, people have to travel more than 100 miles in any direction to reach an abortion provider.

(13) An overwhelming majority of abortions in the United States are provided in clinics, not hospitals, but the large majority of counties throughout the United States have no clinics that provide abortion.

(14) These restrictions additionally harm people’s health by reducing access not only to abortion services but also to other essential health care services offered by many of the providers targeted by the restrictions, including—

(A) screenings and preventive services, including contraceptive services;

(B) testing and treatment for sexually transmitted infections;

(C) LGBTQ health services; and

(D) referrals for primary care, intimate partner violence prevention, prenatal care and adoption services.

(15) The cumulative effect of these numerous restrictions has been to severely limit the availability of abortion services in some areas, creating a patchwork system where access to abortion services is more available in some States than in others. A 2019 report from the Government Accountability Office examining State Medicaid compliance with abortion coverage requirements analyzed seven key challenges (identified both by health care providers and research literature) and their effect on abortion access, and found that access to abortion services varied across the States and even within a State.

(16) International human rights law recognizes that access to abortion is intrinsically linked to the rights to life, health, equality and non-discrimination, privacy, and freedom from ill-treatment. United Nations (UN) human rights treaty monitoring bodies have found that legal abortion services, like other reproductive health care services, must be available, accessible, affordable, acceptable, and of good quality. UN human rights treaty bodies have likewise condemned medically unnecessary barriers to abortion services, including mandatory waiting periods, biased counseling requirements, and third-party authorization requirements.

(17) Core human rights treaties ratified by the United States protect access to abortion. For example, in 2018, the UN Human Rights Committee, which oversees implementation of the ICCPR, made clear that the right to life, enshrined in Article 6 of the ICCPR, at a minimum requires governments to provide safe, legal, and effective access to abortion where a person’s life and health is at risk, or when carrying a pregnancy to term would cause substantial pain or suffering. The Committee stated that governments must not impose restrictions on abortion which subject women and girls to physical or mental pain or suffering, discriminate against them, arbitrarily interfere with their privacy, or place them at risk of undertaking unsafe abortions. Furthermore, the Committee stated that governments should remove existing barriers that deny effective access to safe and legal abortion, refrain from introducing new barriers to abortion, and prevent the stigmatization of those seeking abortion.

(18) UN independent human rights experts have expressed particular concern about barriers to abortion services in the United States. For example, at the conclusion of his 2017 visit to the United States, the UN Special Rapporteur on extreme poverty and human rights noted concern that low-income women face legal and practical obstacles to exercising their constitutional right to access abortion services, trapping many women in cycles of poverty. Similarly, in May 2020, the UN Working Group on discrimination against women and girls, along with other human rights experts, expressed concern that some states had manipulated the COVID–19 crisis to restrict access to abortion, which the experts recognized as “the latest example illustrating a pattern of restrictions and retrogressions in access to legal abortion care across the country” and

reminded U.S. authorities that abortion care constitutes essential health care that must remain available during and after the pandemic. They noted that barriers to abortion access exacerbate systemic inequalities and cause particular harm to marginalized communities, including low-income people, people of color, immigrants, people with disabilities, and LGBTQ people.

(19) Abortion-specific restrictions affect the cost and availability of abortion services, and the settings in which abortion services are delivered. People travel across State lines and otherwise engage in interstate commerce to access this essential medical care, and more would be forced to do so absent this Act. Likewise, health care providers travel across State lines and otherwise engage in interstate commerce in order to provide abortion services to patients, and more would be forced to do so absent this Act.

(20) Health care providers engage in a form of economic and commercial activity when they provide abortion services, and there is an interstate market for abortion services.

(21) Abortion restrictions substantially affect interstate commerce in numerous ways. For example, to provide abortion services, health care providers engage in interstate commerce to purchase medicine, medical equipment, and other necessary goods and services. To provide and assist others in providing abortion services, health care providers engage in interstate commerce to obtain and provide training. To provide abortion services, health care providers employ and obtain commercial services from doctors, nurses, and other personnel who engage in interstate commerce and travel across State lines.

(22) It is difficult and time and resource-consuming for clinics to challenge State laws that burden or impede abortion services. Litigation that blocks one abortion restriction may not prevent a State from adopting other similarly burdensome abortion restrictions or using different methods to burden or impede abortion services. There is a history and pattern of States passing successive and different laws that unduly burden abortion services.

(23) When a health care provider ceases providing abortion services as a result of burdensome and medically unnecessary regulations, it is often difficult or impossible for that health care provider to recommence providing those abortion services, and difficult or impossible for other health care providers to provide abortion services that restore or replace the ceased abortion services.

(24) Health care providers are subject to license laws in various jurisdictions, which are not affected by this Act except as provided in this Act.

(25) Congress has the authority to enact this Act to protect abortion services pursuant to—

(A) its powers under the commerce clause of section 8 of article I of the Constitution of the United States;

(B) its powers under section 5 of the Fourteenth Amendment to the Constitution of the United States to enforce the provisions of section 1 of the Fourteenth Amendment; and

(C) its powers under the necessary and proper clause of section 8 of Article I of the Constitution of the United States.

(26) Congress has used its authority in the past to protect access to abortion services and health care providers’ ability to provide abortion services. In the early 1990s, protests and blockades at health care facilities where abortion services were provided, and associated violence, increased dramatically and reached crisis level, requiring Congressional action. Congress passed the Freedom of Access to Clinic Entrances Act (Public Law 103–259; 108 Stat. 694) to address that situation and protect physical access to abortion services.

(27) Congressional action is necessary to put an end to harmful restrictions, to federally protect access to abortion services for everyone regardless of where they live, and to protect the ability of health care providers to provide these services in a safe and accessible manner.

(b) PURPOSE.—It is the purpose of this Act—

(1) to permit health care providers to provide abortion services without limitations or requirements that single out the provision of abortion services for restrictions that are more burdensome than those restrictions imposed on medically comparable procedures, do not significantly advance reproductive health or the safety of abortion services, and make abortion services more difficult to access;

(2) to promote access to abortion services and women’s ability to participate equally in the economic and social life of the United States; and

(3) to invoke Congressional authority, including the powers of Congress under the commerce clause of section 8 of article I of the Constitution of the United States, its powers under section 5 of the Fourteenth Amendment to the Constitution of the United States to enforce the provisions of section 1 of the Fourteenth Amendment, and its powers under the necessary and proper clause of section 8 of article I of the Constitution of the United States.

### SEC. 3. DEFINITIONS.

In this Act:

(1) ABORTION SERVICES.—The term “abortion services” means an abortion and any medical or non-medical services related to and provided in conjunction with an abortion (whether or not provided at the same time or on the same day as the abortion).

(2) GOVERNMENT.—The term “government” includes each branch, department, agency, instrumentality, and official (and other person acting under color of law) of the United States or a State.

(3) HEALTH CARE PROVIDER.—The term “health care provider” means any entity or individual (including any physician, certified nurse-midwife, nurse practitioner, and physician assistant) that—

(A) is engaged or seeks to engage in the delivery of health care services, including abortion services, and

(B) if required by law or regulation to be licensed or certified to engage in the delivery of such services—

(i) is so licensed or certified, or

(ii) would be so licensed or certified but for their past, present, or potential provision of abortion services permitted by section 4.

(4) MEDICALLY COMPARABLE PROCEDURE.—The term “medically comparable procedures” means medical procedures that are similar in terms of health and safety risks to the patient, complexity, or the clinical setting that is indicated.

(5) PREGNANCY.—The term “pregnancy” refers to the period of the human reproductive process beginning with the implantation of a fertilized egg.

(6) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States, and any subdivision of any of the foregoing.

(7) VIABILITY.—The term “viability” means the point in a pregnancy at which, in the good-faith medical judgment of the treating health care provider, based on the particular facts of the case before the health care provider, there is a reasonable likelihood of sustained fetal survival outside the uterus with or without artificial support.

#### **SEC. 4. PERMITTED SERVICES.**

(a) GENERAL RULE.—A health care provider has a statutory right under this Act to provide abortion services, and may provide abortion services, and that provider’s patient has a corresponding right to receive such services, without any of the following limitations or requirements:

(1) A requirement that a health care provider perform specific tests or medical procedures in connection with the provision of abortion services, unless generally required for the provision of medically comparable procedures.

(2) A requirement that the same health care provider who provides abortion services also perform specified tests, services, or procedures prior to or subsequent to the abortion.

(3) A requirement that a health care provider offer or provide the patient seeking abortion services medically inaccurate information in advance of or during abortion services.

(4) A limitation on a health care provider’s ability to prescribe or dispense drugs based on current evidence-based regimens or the provider’s good-faith medical judgment, other than a limitation generally applicable to the medical profession.

(5) A limitation on a health care provider’s ability to provide abortion services via telemedicine, other than a limitation generally applicable to the provision of medical services via telemedicine.

(6) A requirement or limitation concerning the physical plant, equipment, staffing, or hospital transfer arrangements of facilities where abortion services are provided, or the credentials or hospital privileges or status of personnel at such facilities, that is not imposed on facilities or the personnel of facilities where medically comparable procedures are performed.

(7) A requirement that, prior to obtaining an abortion, a patient make one or more medically unnecessary in-person visits to the provider of abortion services or to any individual or entity that does not provide abortion services.

(8) A prohibition on abortion at any point or points in time prior to fetal viability, including a prohibition or restriction on a particular abortion procedure.

(9) A prohibition on abortion after fetal viability when, in the good-faith medical judgment of the treating health care provider, continuation of the pregnancy would pose a risk to the pregnant patient’s life or health.

(10) A limitation on a health care provider’s ability to provide immediate abortion services when that health care provider believes, based on the good-faith medical judgment of the provider, that delay would pose a risk to the patient’s health.

(11) A requirement that a patient seeking abortion services at any point or points in time prior to fetal viability disclose the patient’s reason or reasons for seeking abortion services, or a limitation on the provision or obtaining of abortion services at any point or points in time prior to fetal viability based on any actual, perceived, or potential reason or reasons of the patient for obtaining abortion services, regardless of whether the limitation is based on a health care provider’s degree of actual or constructive knowledge of such reason or reasons.



(b) OTHER LIMITATIONS OR REQUIREMENTS.—A health care provider has a statutory right to provide abortion services, and may provide abortion services, and that provider’s patient has a corresponding right to receive such services, without a limitation or requirement that—

(1) is the same as or similar to one or more of the limitations or requirements described in subsection (a); or

(2) both—

(A) expressly, effectively, implicitly, or as implemented singles out the provision of abortion services, health care providers who provide abortion services, or facilities in which abortion services are provided; and

(B) impedes access to abortion services.

(c) FACTORS FOR CONSIDERATION.—Factors a court may consider in determining whether a limitation or requirement impedes access to abortion services for purposes of subsection (b)(2)(B) include the following:

(1) Whether the limitation or requirement, in a provider’s good-faith medical judgment, interferes with a health care provider’s ability to provide care and render services, or poses a risk to the patient’s health or safety.

(2) Whether the limitation or requirement is reasonably likely to delay or deter some patients in accessing abortion services.

(3) Whether the limitation or requirement is reasonably likely to directly or indirectly increase the cost of providing abortion services or the cost for obtaining abortion services (including costs associated with travel, childcare, or time off work).

(4) Whether the limitation or requirement is reasonably likely to have the effect of necessitating a trip to the offices of a health care provider that would not otherwise be required.

(5) Whether the limitation or requirement is reasonably likely to result in a decrease in the availability of abortion services in a given State or geographic region.

(6) Whether the limitation or requirement imposes penalties that are not imposed on other health care providers for comparable conduct or failure to act, or that are more severe than penalties imposed on other health care providers for comparable conduct or failure to act.

(7) The cumulative impact of the limitation or requirement combined with other new or existing limitations or requirements.

(d) EXCEPTION.—To defend against a claim that a limitation or requirement violates a health care provider’s or patient’s statutory rights under subsection (b), a party must establish, by clear and convincing evidence, that—

(1) the limitation or requirement significantly advances the safety of abortion services or the health of patients; and

(2) the safety of abortion services or the health of patients cannot be advanced by a less restrictive alternative measure or action.

**SEC. 5. APPLICABILITY AND PREEMPTION.**

(a) IN GENERAL.—

(1) Except as stated under subsection (b), this Act supersedes and applies to the law of the Federal Government and each State government, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act, and neither the Federal Government nor any State government shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this Act, notwithstanding any other provision of Federal law, including the Religious Freedom Restoration Act of 1993 ([42 U.S.C. 2000bb et seq.](#)).

(2) Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(b) LIMITATIONS.—The provisions of this Act shall not supersede or apply to—

(1) laws regulating physical access to clinic entrances;

(2) insurance or medical assistance coverage of abortion services;

(3) the procedure described in section 1531(b)(1) of title 18, United States Code; or

(4) generally applicable State contract law.

**SEC. 6. EFFECTIVE DATE.**

This Act shall take effect immediately upon the date of enactment of this Act. This Act shall apply to all restrictions on the provision of, or access to, abortion services whether the restrictions are enacted or imposed prior to or after the date of enactment of this Act, except as otherwise provided in this Act.

**SEC. 7. LIBERAL CONSTRUCTION.**

(a) LIBERAL CONSTRUCTION.—In interpreting the provisions of this Act, a court shall liberally construe such provisions to effectuate the purposes of the Act.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to authorize any government to interfere with a person’s ability to terminate a pregnancy, to diminish or in any way negatively affect a person’s constitutional right to terminate a pregnancy, or to displace any other remedy for violations of the constitutional right to terminate a pregnancy.

## SEC. 8. ENFORCEMENT.

(a) ATTORNEY GENERAL.—The Attorney General may commence a civil action for prospective injunctive relief on behalf of the United States against any government official that is charged with implementing or enforcing any limitation or requirement that is challenged as a violation of a statutory right under this Act. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—Any individual or entity, including any health care provider, aggrieved by an alleged violation of this Act may commence a civil action for prospective injunctive relief against the government official that is charged with implementing or enforcing the limitation or requirement that is challenged as a violation of a statutory right under this Act. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(2) HEALTH CARE PROVIDER.—A health care provider may commence an action for prospective injunctive relief on its own behalf and/or on behalf of the provider’s patients who are or may be adversely affected by an alleged violation of this Act.

(c) EQUITABLE RELIEF.—In any action under this section, the court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.

(d) COSTS.—In any action under this section, the court shall award costs of litigation, as well as reasonable attorney fees, to any prevailing plaintiff. A plaintiff shall not be liable to a defendant for costs in any non-frivolous action under this section.

(e) JURISDICTION.—The district courts of the United States shall have jurisdiction over proceedings under this Act and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

(f) ABROGATION OF STATE IMMUNITY.—A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity)

are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

**SEC. 9. SEVERABILITY.**

If any provision of this Act, or the application of such provision to any person, entity, government, or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons, entities, governments, or circumstances, shall not be affected thereby.



Office of the City Manager

PUBLIC HEARING

October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning & Development Department

Subject: ZAB Appeal: 1205 Peralta Ave, Variance/Use Permit #ZP2020-0060

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to deny Zoning Permit #ZP2020-0060 for a Variance to legalize the elimination of two off-street parking spaces by conversion of an existing 18 foot x 20 foot garage to habitable space, and a Use Permit to legalize the addition of three bedrooms on a lot that is non-conforming for density, lot coverage, setbacks, usable open space and parking.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On April 8, 2021, ZAB conducted a public hearing and approved staff's recommendation to deny: 1) the unpermitted elimination of two existing parking spaces; and 2) the addition of three unpermitted bedrooms beyond the permit threshold of five on the lot. After considering the staff report and administrative record, and hearing comments from the applicant and the neighbors, the ZAB upheld staff's recommendation and denied the project without prejudice. (Motion: Tregub / Second: Olson; and unanimous vote of 8-0-0-1: Yes: Duffy, Kim, O'Keefe, Olson, Hauser, Thompson, Gaffney, Tregub; No: None; Abstain: None; Absent: Kahn.)

On April 13, 2021, staff issued the notice of the ZAB decision, which established a 14-day appeal period.

On April 26, 2021, an appeal was filed with the City Clerk/Council by the applicant/owner Cathy Nason and her attorney Rena Rickles.

On September 28, 2021, staff posted the City Council notice of public hearing near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area. This public hearing is required to resolve the appeal.

## BACKGROUND

On July 24, 2020, Cathy Nason (property owner) and Teresa Cambare (architectural designer) submitted a Variance and Use Permit application for a second-story addition to one of the four dwelling units (Unit 4) on a lot that is non-conforming for lot coverage, density, useable open space and parking.

The proposed project required a Variance (BMC 23B.44.030) to increase the lot coverage by an addition to non-conforming structures that are non-conforming for maximum allowable lot coverage (BMC 23C. 04.070.C). It required Use Permits for additions to lawful non-conforming structures that are non-conforming by reason of residential density (BMC 23C. 04.070.E) and for the addition of bedrooms beyond five to the parcel (BMC 23D.20.050.A). It also required Administrative Use Permits (AUPs) for alteration of a portion of a building which encroaches into a non-conforming yard (BMC 23C.04.070.B), for a major residential addition (BMC 23D.20.030), and for additions over 14 feet in average height (BMC 23D.20.070.C).

Staff advised the applicant that the proposed additions on a lot that is over density, over lot coverage, and non-conforming for parking and usable open space, and with multiple neighborhood objections, would not be recommended for approval. Staff also suggested that the applicant limit proposed work to interior improvements of Unit 4 only, without changes to building's existing footprint and envelope.

On August 24, 2020, staff issued a notice of incomplete application to the applicant. This letter required the applicant to provide multiple application submittal requirements that were missing and, if available, provide proof of permits for the previous conversion of part of the existing garage to Unit 3 and the addition of three bedrooms on the lot.

On September 22, 2020, the applicant submitted revised plans to eliminate the second story addition and to only proceed with interior improvements to Unit 4. However, the applicant was required to continue applying for a Variance to legalize the conversion of the garage to living space in Unit 3 and Use Permit to legalize the addition of three bedrooms on the lot.

On February 11, 2021, since progress was not made on the completion of the land use permit applications, the Code Enforcement Unit issued a Notice of Violation to the property owner for the illegal conversion of the garage and unpermitted addition of bedrooms on the subject lot.

On March 22, 2021, after 11 rounds of comments from staff, the application was deemed complete.

On March 25, 2021, staff posted the Zoning Adjustment Board (ZAB) Notice of Public Hearing near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area.

Thirty-one communications were received from the neighbors in objection to the project between April 16, 2020 and March 31, 2021 and are included within Attachment 5 of the April 8, 2021 staff report to the ZAB.

On April 8, 2021, the ZAB approved staff's recommendation to deny without prejudice Variance & Use Permit # ZP2020-0060. As described in the staff report, suggested Variance findings provided by the applicant were insufficient to support the required Variance findings for the elimination of parking. Specifically, there were no exceptional circumstances on the property (Finding 1), the Variance was not necessary for the preservation of substantial property rights (Finding 2), and the project would generally be detrimental (Finding 3). Although findings to enlarge a non-conforming structure that exceeds allowable lot coverage and density could be made in isolation, the enlargement (garage conversion to habitable space) was dependent on the approval of the Variance to legalize the removal of parking from the site and hence could not be supported by staff. Use Permit non-detriment findings for the addition of three bedrooms beyond the permit threshold of five also could not be made because the lot is over density, there is a small amount of common space within dwellings relative to the number of bedrooms, there is a small amount of usable open space, and there are no off-street parking spaces on the lot. These additions would be over intensification of this substandard size lot and could be considered detrimental.

### **ZAB Hearing**

At the April 8, 2021 hearing, ZAB members discussed the issues around the impact of the project. The captioner's record of the ZAB discussion is provided as Attachment 3 to this report. The ZAB discussion focused on the legalization of the three unpermitted bedrooms (two in Unit 2 and one in Unit 3) and the unpermitted conversion of garage to living space and bedroom for Unit 3.

The applicant expressed that the lot coverage, density, parking and usable open space non-conformities on the site are due to "pre-existing" conditions and that the conversion of garage to a bedroom made sense from a business standpoint. She noted that their plan was to keep the remainder of the garage as a storage room and not to use it as a bedroom. She added that the narrow width of the existing driveway would make the garage unusable even if it were converted back to its original state.

Several neighbors spoke to the long history of unpermitted conversions and additions on this site and noted that illegal construction began with the previous owner (the applicant's father) and continued after the current owner (the applicant) inherited the property.

The ZAB pointed out that they make decisions based on the underlying land use law and not based on intentions or existing conditions. The ZAB expressed concerns over relocation of the tenants or an increase in rent levels and lack of windows for the bedroom labeled as "storage". The ZAB encouraged the applicant to work with the neighbors and resolve the underlying conditions that have been the source of distrust between the neighborhood and the applicant.

Staff elaborated on what a denial of the application would mean for this property and noted that the two additional unpermitted bedrooms in Unit 2 can be removed by opening the closures from the original dining room (now an unpermitted bedroom) and the hallway to the living room. Staff informed the ZAB that a Condition of Approval for the storage room can prevent it from becoming an additional bedroom for Unit 3 in the future. Furthermore, staff noted that the denial of the Variance means that most of Unit 3 must be converted back to the original two-space garage and that might affect its functionality.

### **ZAB Action**

The ZAB unanimously voted to deny the project without prejudice. The ZAB requested that, if this project come back to ZAB for a future Variance and Use Permit, then the applicant should clearly depict the legally existing versus proposed conditions on the plans, that the Rent Stabilization Board be involved and the sitting tenants be notified of any changes that would happen to their habitable space and their rent ceiling.

### ENVIRONMENTAL SUSTAINABILITY

The project denied by the ZAB is in compliance with all state and local environmental requirements.

### RATIONALE FOR RECOMMENDATION

Applicant/Appellant's Appeal Issues and Staff Responses: The appellant raised several issues in their appeal letter (Attachment 4) related to Units 2, 3, and 4, and the converted garage. The applicant/appellant disagrees with the characterization of the legal status of certain rooms on the property as bedrooms or common areas, arguing that the work on the property is an improvement that makes the units more functional, that parking could not be provided on the site, and that parking is not a problem in the area. The applicant/appellant therefore believes ZAB acted in error.

The issues raised in the appellant's letter and staff's responses are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter for the full text.

**Appeal Issue 1:** Appellant believes that errors were made in describing the existing conditions and the effect of the proposed modifications to the property, and that the denial would result in less desirable conditions.

- Regarding Unit #2 (rear building upper floor), the appellant noted:

*“ Lisa Farmer, a tenant, has lived in that unit for 26 years. This writer [Applicant representative Rena Rickles] visited Unit 2 and spoke with Lisa. It is clearly a 2-bedroom apartment, with a small living room and kitchen. Based on kitchen appliances and cabinets, this unit was built in the late forties. The ZAB decision*

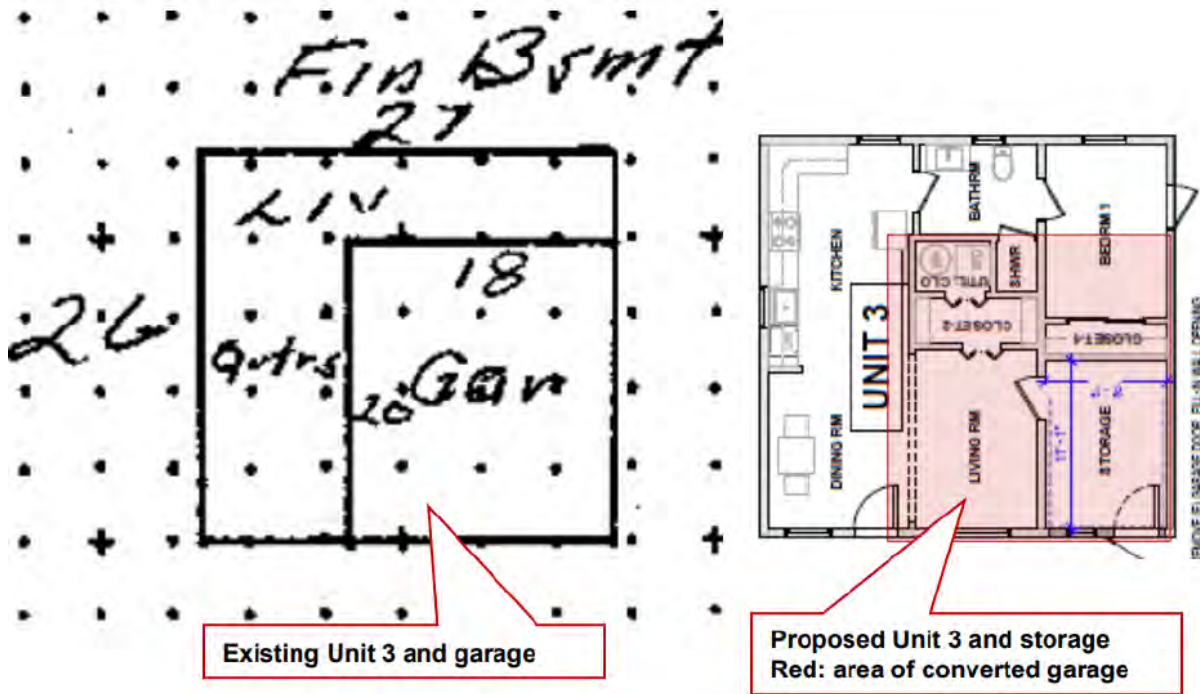


*requires that the living room be counted as a bedroom, and removed, essentially transforming Unit 2 into a dormitory.”*

**Staff Response:** The City adopted a bedroom ordinance in 2005 (BMC 13.42.020.B) as a response to concerns about overcrowding lots such as the subject lot. This ordinance requires a zoning permit and findings of compatibility and non-detriment for the addition of a fifth or more bedrooms on a lot. City records indicate that Unit 2 was built as a one-bedroom unit and later converted to a three-bedroom unit by closing off the dining area and the living room without permits. The ZAB was unable to make findings for approval of the additional bedrooms and denied this addition.

- Regarding Unit 3 (rear building ground floor), the applicant noted:

*“ Unit #3 is a one-bedroom, with a living room area and a kitchen. It has been rented since February. The living room was created out of a tiny one-bedroom and part of the unused and inaccessible garage. The ZAB decision requires that*



*the living room be removed and returned to a garage use by slicing off the living room to re-create a garage space. The tenant’s only common area would then be an 8’4”-wide corridor running from the front door to the kitchen “*

**Staff Response:** According to the City records, approximately 272 square feet of the original 360 square feet garage area has been converted to living space for Unit 3 without a permit or the required City of Berkeley building and safety inspections. This unit was originally built in the 1940s without a separate living area or bedroom; appropriate zoning and building permits must be obtained.

As of March 2021, the City no longer requires one parking space for newly constructed dwelling units. However, since this is not a new project, it does not qualify for such a waiver of parking. Elimination of parking requires a Variance on the subject lot and the ZAB was not able to make the required Variance findings to approve the elimination of two parking spaces on this lot.

In terms of tenant history of this Unit, at the ZAB public hearing on April 8, 2021, the applicant stated that plans for renting out Unit 3 have been on pause due to Covid-19.

- Regarding Unit 4 (rear unit of the front building), the applicant noted:

*“Unit #4: It is now a 3-bedroom unit without any common area, except the kitchen. It is Applicant’s intention to convert the second of the disallowed bedrooms into a living room to create a common space gathering area.”*

Staff Response: The only reason this unit has no common area is because of the unpermitted addition of a third bedroom to the unit. Staff, the neighbors and the ZAB did not have any objections to removing the unpermitted third bedroom and bringing this unit back to its original state.

**Appeal Issue 2:** Appellant claims that the following misleading information was presented to the ZAB:

- “ - *Incorrect or misleading Information, which was material to the decision was Presented to the ZAB.*
- *Witnesses falsely described 1205 as the densest, with the least open space of any property on the block(?). (See Exhibit B. Vicinity Map; Overhead View)*
- *Staff overcounted the number of existing bedrooms by 3: In Unit 2, Staff designated the living room and dining room as bedrooms. In Unit 3, Staff designated the living room as a bedroom. These rooms are being used as common area rooms and should not be counted as bedrooms unless one assumes that one enters their apartments directly into a bedroom.*
- *On-street parking was incorrectly described as heavily impacted. A parking study will show, even during Covid, many on-street available parking spaces.*
- *Unit 3 was erroneous labeled as unoccupied (unfortunately by Applicant’s Architect).”*

Staff Response: The ZAB conducted a public hearing and deliberated based on all of the evidence including the Staff Report, testimony and the findings. For the witness testimony please refer to the Captioner’s record page 46 to 54.

**Appeal Issue 3:** Appellant believes the Variance findings can be made:

*“- The Findings to Deny the Variance to Legalize the “Conversion” of On-Site Garage Cannot Be Factually Sustained.*

- *At one time there had been a “2-car garage” on site. Part of that garage was converted to living space at least as early as 1989; the remainder, in 2020. However, based on the site plan, there no way that this structure could ever have functioned as a garage:*
  - *The driveway from the street to the garage is 6’8”;* this is 2’ narrower than City of Berkley minimum allowable driveway width, and impassable by most cars.
  - *The curve radius for a car to enter or exit the garage, cannot be met.*
  - *A car cannot back out of either of the spaces without running over and into the mandated “green” open space; the amount of green space on this property is already below standard.*
- *On these facts the Variance Findings for Denial cannot be made; Variance Findings for Approval can be made:*
  1. *The property is unique in that the location for the proposed parking cannot be accessed by a vehicle;*
  2. *Most of the homes on this street also do not have on-site parking (See Exhibit B, On-site parking converted to other uses);*
  3. *The parking study will show that there is ample vacant street parking; there are many AC Transit buses within a block of this property.”*

Staff Response:

Due to the age of various buildings and the changes made over time to the Zoning Ordinance, many buildings and sites are non-conforming in this district to varying degrees, including the subject site. For instance, the site includes four units on a lot that only allows for one. Staff does not believe that the illegal conversion of the garage (noted in an original code enforcement case in 1993) qualifies as an exceptional or extraordinary condition for purposes of making the Variance finding. Staff has not received a parking study from the applicant so there is no formal data on the availability of on-street parking.

Neighbors have expressed that they believe there would be an adverse impact on the street parking due to elimination of off-street parking from this four-unit property. Anecdotal evidence from aerial photos and street view indicate that there is parking available midday. It appears that most homes in the neighborhood have a driveway and/or garage for off-street parking. There is no RPP program in the neighborhood, so on-street parking is also available to residents and visitors at all times of the day.

As for the accessibility of the garage, the applicant originally submitted plans showing a driveway width of 7 feet 9 inches and tandem parking for four vehicles. A property survey was completed in August of 2020 that showed a driveway width 6 feet 7 inches to the property line, with the adjacent fence at the wider location. Berkeley's current driveway standards indicate that a width of 8 to 10 feet should be provided for a driveway such as this, as well as a 2-foot wide landscape strip along adjacent property lines. Therefore, the driveway is also a non-conforming condition on the property. Nonetheless, the garage was previously constructed and available for parking, so reducing the parking would require the Variance (typical passenger vehicles range in width from 5 feet 10 inches to 6 feet 8 inches, with most falling in the middle of the range). The required findings for such a permit are: there are exceptional circumstances on the property, the variance is necessary for the preservation of substantial property rights, and the project would not be generally detrimental.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to deny the proposed project. The ZAB left open the possibility of a different outcome if unspecified modifications were made to the project. Staff recommends that the City Council uphold the ZAB decision to deny the unpermitted elimination of parking spaces and addition of bedrooms on this lot.

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

#### Action Deadline:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess) then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

#### CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534

Steven Buckley, Land Use Planning Manager, (510) 981-7411

Nilu Karimzadegan, Project Planner, (510) 981-7419

#### Attachments:

1. Draft Resolution
  - Exhibit A: Findings and Conditions
  - Exhibit B: Project Plans dated March 22, 2021
2. ZAB Packet dated April 8, 2021
3. Captioner's Record, ZAB Hearing April 8, 2021
4. Applicant's Appeal Letter dated April 26, 2021
5. Index to Administrative Record
6. Administrative Record
7. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S DENIAL OF ZONING PERMIT #ZP2020-0060 FOR A VARIANCE TO LEGALIZE THE ELIMINATION OF TWO PARKING SPACES BY CONVERSION OF AN EXISTING 18 FOOT X 20 FOOT GARAGE TO HABITABLE SPACE AND A USE PERMIT TO LEGALIZE THE ADDITION OF BEDROOMS ON A LOT THAT IS NON-CONFORMING FOR DENSITY, LOT COVERAGE, USABLE OPEN SPACE AND PARKING; AND DISMISSING THE APPEAL

WHEREAS, on July 24, 2020, Cathy Nason (property owner) and Teresa Cambare (architectural designer) filed a Variance and Use Permit application for a second-story addition to one of the four units on a lot that is non-conforming for lot coverage, density, useable open space and parking; and

WHEREAS, on February 11, 2021, the Code Enforcement Unit issued a Notice of Violation addressed to the property owner for the illegal conversion of the garage and unpermitted addition of bedrooms on the subject lot; and

WHEREAS, on March 22, 2021, staff deemed this application complete; and

WHEREAS, on March 25, staff posted the ZAB Notice of Public Hearing near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, On April 8, 2021, the ZAB conducted the public hearing in accordance with BMC Section 23B.32.030, determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines ("Existing Facilities") and denied the project without prejudice; and

WHEREAS, on April 13, 2021, staff issued the notice of the ZAB decision, which established a 14-day appeal period; and

WHEREAS, on April 26, 2021, an appeal was filed by the applicant/owner Cathy Nason and her attorney Rena Rickles to the City Clerk/Council; and

WHEREAS, on or before September 28, 2021, staff posted the public hearing notice near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on October 12, 2021, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant denying the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the

decision of the ZAB to deny #ZP2020-0060as shown in the project plans in Exhibit B, and dismisses the appeals.

Exhibits

A: Findings and Conditions

B: Project Plans, dated March 22, 2021

FINDINGS FOR DENIAL  
APRIL 8, 2021**1205 Peralta Avenue**

**Variance/Use Permit #ZP2020-0060 to eliminate two required off-street parking spaces by legalizing conversion of an existing 18 ft. x 20 ft. garage to habitable space and Use Permit to legalize the addition of bedrooms six through eight on a parcel that is non-conforming for density, lot coverage, setbacks, usable open space and parking.**

**PERMITS REQUIRED**

- Variance under [Berkeley Municipal Code](#) (BMC) Section 23B.44.030.B to eliminate required parking.
- Use Permit, under BMC Section 23C.04.070.C, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable lot coverage.
- Use Permit, under BMC Section 23C.04.070.E, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable density.
- Use Permit under BMC Section 23D.20.050.A to legalize the sixth, seventh and eighth bedrooms on the lot.

**I. VARIANCE FINDINGS FOR DENIAL**

Pursuant to Berkeley Municipal Code Section 23B.44.030.B, the City cannot make the findings required by Berkeley Municipal Code Section 23B.44.030.A, and therefore must deny the Variances to eliminate the two existing required off-street parking spaces on the lot by conversion of garage to habitable space;

- There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District:*

The applicant has provided no evidence, nor can staff find evidence of circumstance or conditions that apply to the land, building or use which do not generally apply to land buildings and/or uses in the same District. Neither the nonconforming use of the lot nor illegal conversion of garage is considered unique or otherwise exceptional or extraordinary. Similarly, due to the age of buildings and the various changes made over time to the Zoning Ordinance, many buildings and sites are non-conforming in this District to varying degrees, including the subject site. This finding cannot be made.

- The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner:*

The applicant has not provided evidence that the use of the property with its unpermitted condition is necessary for the preservation and enjoyment of substantial property rights. In fact, the property owners purchased, and have managed, a property with four lawful, rental dwelling units for several years. This finding cannot be made.

- iii. *The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole:*

The illegal conversion of the existing garage has eliminated the two available and required off-street parking spaces on the site. Staff has received correspondence from the neighbors stating that the lack of parking spaces on the subject lot puts an additional burden on street parking which is already strained. This finding cannot be made because eliminating the two parking spaces will adversely impact the improvements in said neighborhood as it impacts on-street parking for this over-densified site for the neighborhood and the tenants.

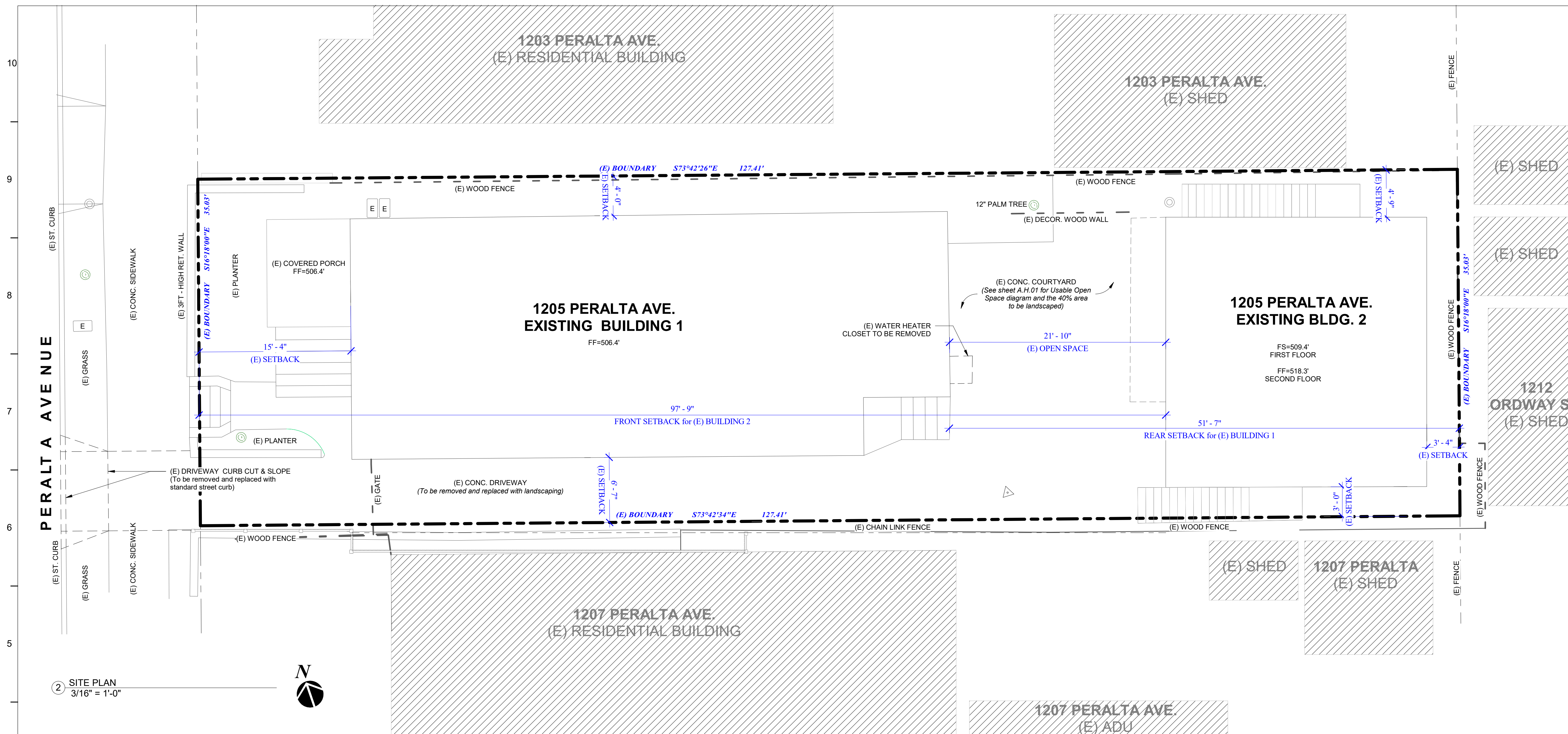
In conclusion, the required Variances to approve the illegal dwelling cannot be made as there is no exceptional circumstance on the property (Finding 1), the variance is not necessary for the preservation of substantial property rights (Finding 2), and the project would be generally detrimental (Finding 3).

## **II. ADDITION OF BEDROOMS FINDINGS FOR DENIAL**

Pursuant to BMC Section 23D.20.050.A, the addition of more than five bedrooms on the parcel requires the approval of a Use Permit. Specifically, the Board is unable to make the required “non-detriment” findings pursuant to BMC Section 23B.32.040 that there would not be a substantial impact to the “health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City because:

Pursuant to BMC Section 23D.20.050.A, the Zoning Adjustments Board finds that the addition of the sixth, seventh and eighth bedrooms is over intensification of this substandard size lot. Two illegal bedrooms have been added to Unit 2 leaving no common space for this unit and one bedroom is created through illegal conversion of the garage for a total of three additional bedrooms on this lot. Additionally, this property only provides about 458 sq. ft. of usable open space with no off-street parking spaces. Although staff considers residential density per dwelling, the addition of bedrooms will increase number of residents on the project and, therefore, increase the intensity of use. Therefore, the addition of three bedrooms, will not support the residential use on the parcel, is not consistent with the purposes of the R-1A District and would be considered detrimental.





2 SITE PLAN  
3/16" = 1'-0"



ARCHITECTURAL DESIGNER:

**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING

VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

03/22/2021  
DESIGNER: TERESA CAMBARE

CONSULTANT

**1205 PERALTA AV. UNIT 4 TENANT IMPROVEMENT**

**Cathy Nason (Owner)**

1205 Peralta Ave,  
Berkeley CA 94706

**SITE PLAN**

| REVISION NO.  | DESCRIPTION  | DATE |
|---------------|--------------|------|
|               |              |      |
| PROJECT NO.   | 1205-19P     |      |
| DATE          | 03/22/2021   |      |
| DRAWN BY      | TC           |      |
| <b>A.H.00</b> |              |      |
| SCALE         | As indicated |      |

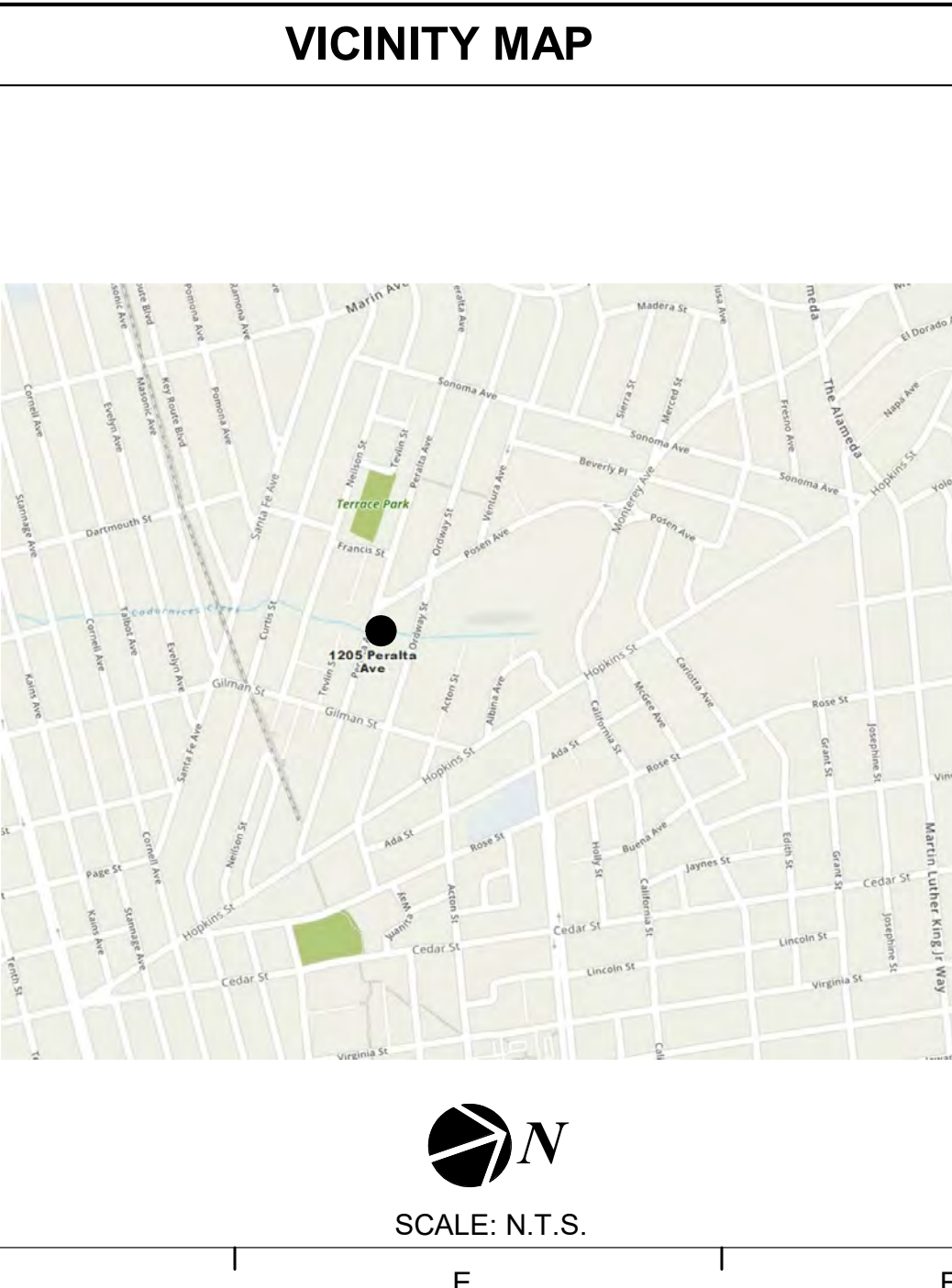
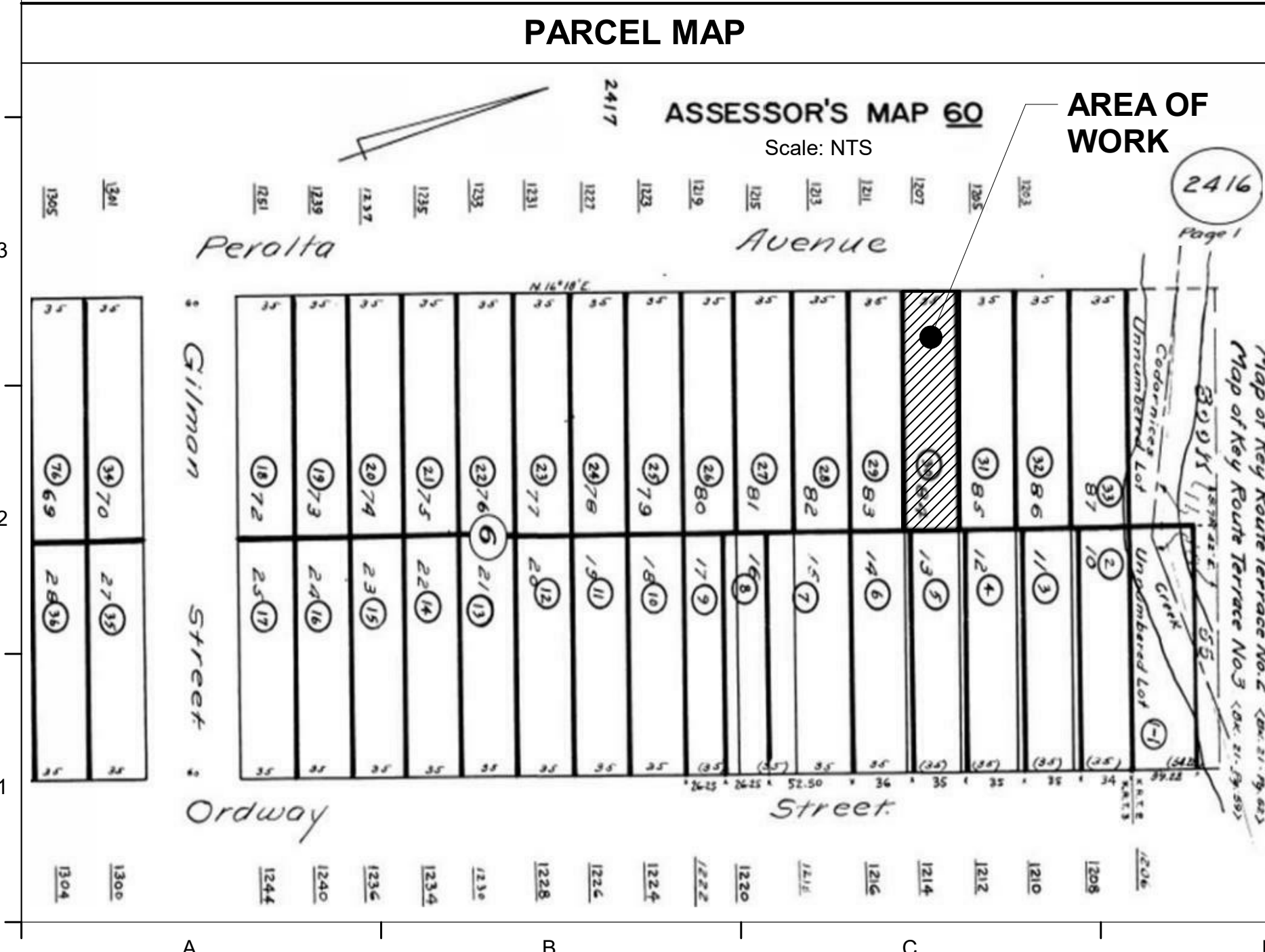
**SHEET NOTE:**

A. LOCATIONS AND SIZES OF THE ADJACENT RESIDENTIAL BUILDING FOOTPRINTS SHOWN IN THIS PLAN ARE APPROXIMATE ONLY. NO SITE MEASUREMENTS NOR AN OFFICIAL SITE SURVEY WERE CONDUCTED NOR MADE AVAILABLE FOR THE PURPOSE OF THIS PROJECT.

B. THE MOST RECENT RECORDED BOUNDARY SURVEY OF THIS LOT PRIOR TO THE RECORD OF SURVEY FILED BY HOGAN LAND SERVICES, WAS AT THE TIME OF THE SUBJECT PARCEL'S CREATION IN SEPTEMBER 1906 VIA MAP OF KEY ROUTE TERRACE NO. 3 FILED IN BOOK 21 OF MAPS PAGE 59 ALAMEDA COUNTY RECORDS.

| LOT SETBACK SCHEDULE                                                                                           |                                       |                                                                                                                |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------|----------------------------------------------------------------------------------------------------------------|
| EXISTING                                                                                                       | REQUIRED                              | PROPOSED (No Change)                                                                                           |
| <b>BUILDING 1</b><br>FRONT (West): 15'-4"<br>REAR (East): 51'-7"<br>SIDE (North): 4'-0"<br>SIDE (South): 6'-7" | SEE RESIDENTIAL STANDARDS TABLE BELOW | <b>BUILDING 1</b><br>FRONT (West): 15'-4"<br>REAR (East): 51'-7"<br>SIDE (North): 4'-0"<br>SIDE (South): 6'-7" |
| <b>BUILDING 2</b><br>FRONT (West): 97'-9"<br>REAR (East): 3'-4"<br>SIDE (North): 4'-9"<br>SIDE (South): 3'-0"  |                                       | <b>BUILDING 2</b><br>FRONT (West): 97'-9"<br>REAR (East): 3'-4"<br>SIDE (North): 4'-9"<br>SIDE (South): 3'-0"  |

| PROJECT TEAM                                                                                                                     |                                          | PARCEL DATA                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------|------------|--------|-----------|--------|-----------------------------------|--------|------------------------------------------|--------|------------------------------|--------|----------------------------|
| <b>OWNER/BUILDER:</b><br>CATHY NASON<br>1205 PERALTA AVE.,<br>BERKELEY, CA 94706<br>Phone: (530) 913-1584                        |                                          | PROJECT ADDRESS: 1205 PERALTA ST,<br>BERKELEY CA 94706                                                                                                                                                                                                                                                                                                                                                                                             |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| <b>ARCHITECTURAL DESIGNER:</b><br>TERESA CAMBARE<br>Cambare Designs<br>Phone: (408) 204-3413<br>EMAIL: teresa@cambaredesigns.com |                                          | OWNER: CATHY NASON<br>APN: 060-241603100<br>YEAR BUILT: 1913<br>CONSTRUCTION TYPE: TYPE V-B<br>OCCUPANCY: R2<br>ZONING DISTRICT: R-1A<br>GEN. PLAN AREA: LMDR                                                                                                                                                                                                                                                                                      |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| <b>STRUCTURAL ENGINEER:</b><br>TBD                                                                                               |                                          | <b>SHEET INDEX</b>                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| <b>CONTRACTOR:</b><br>TBD                                                                                                        |                                          | <table border="1"> <thead> <tr> <th>SHEET #</th> <th>SHEET NAME</th> </tr> </thead> <tbody> <tr> <td>A.H.00</td> <td>SITE PLAN</td> </tr> <tr> <td>A.H.01</td> <td>DIAGRAMS AND EXISTING FLOOR PLANS</td> </tr> <tr> <td>A.H.10</td> <td>PROPOSED FLOOR PLANS &amp; BUILDING SECTIONS</td> </tr> <tr> <td>A.H.11</td> <td>PROPOSED EXTERIOR ELEVATIONS</td> </tr> <tr> <td>A.H.12</td> <td>PROPOSED PERSPECTIVE VIEWS</td> </tr> </tbody> </table> |  | SHEET # | SHEET NAME | A.H.00 | SITE PLAN | A.H.01 | DIAGRAMS AND EXISTING FLOOR PLANS | A.H.10 | PROPOSED FLOOR PLANS & BUILDING SECTIONS | A.H.11 | PROPOSED EXTERIOR ELEVATIONS | A.H.12 | PROPOSED PERSPECTIVE VIEWS |
| SHEET #                                                                                                                          | SHEET NAME                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.00                                                                                                                           | SITE PLAN                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.01                                                                                                                           | DIAGRAMS AND EXISTING FLOOR PLANS        |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.10                                                                                                                           | PROPOSED FLOOR PLANS & BUILDING SECTIONS |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.11                                                                                                                           | PROPOSED EXTERIOR ELEVATIONS             |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.12                                                                                                                           | PROPOSED PERSPECTIVE VIEWS               |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |



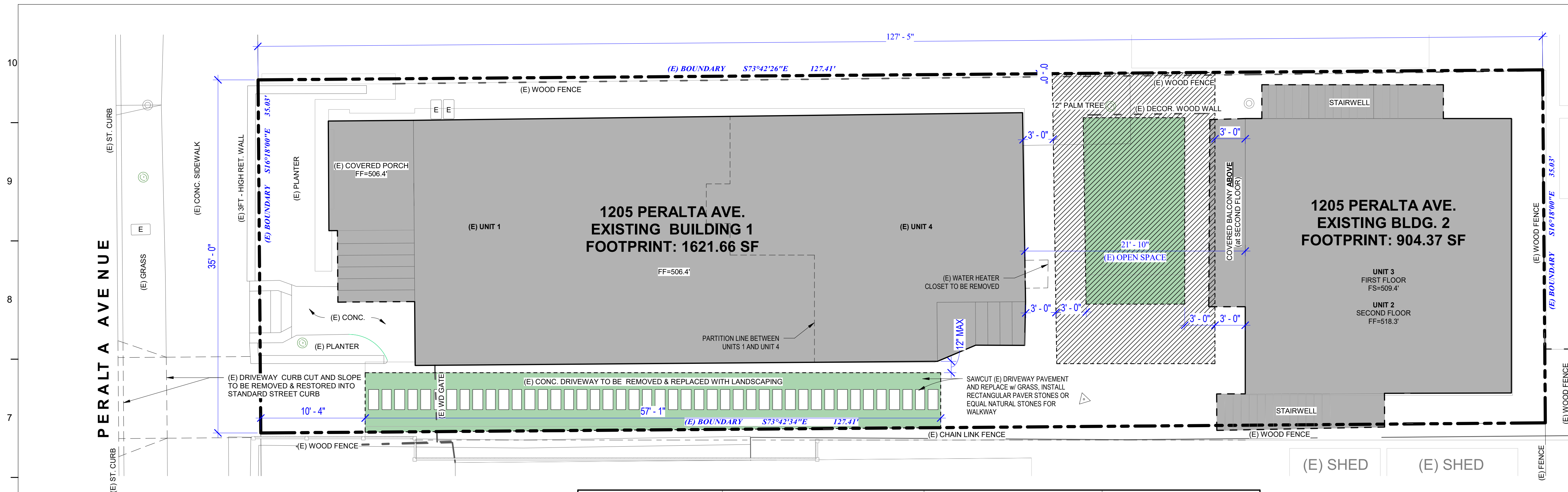
| PROJECT TEAM                                                                                                                     |                                          | PARCEL DATA                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------|------------|--------|-----------|--------|-----------------------------------|--------|------------------------------------------|--------|------------------------------|--------|----------------------------|
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| <b>ARCHITECTURAL DESIGNER:</b><br>TERESA CAMBARE<br>Cambare Designs<br>Phone: (408) 204-3413<br>EMAIL: teresa@cambaredesigns.com |                                          | OWNER: CATHY NASON<br>APN: 060-241603100<br>YEAR BUILT: 1913<br>CONSTRUCTION TYPE: TYPE V-B<br>OCCUPANCY: R2<br>ZONING DISTRICT: R-1A<br>GEN. PLAN AREA: LMDR                                                                                                                                                                                                                                                                                      |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| <b>STRUCTURAL ENGINEER:</b><br>TBD                                                                                               |                                          | <b>SHEET INDEX</b>                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
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| SHEET #                                                                                                                          | SHEET NAME                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.00                                                                                                                           | SITE PLAN                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.01                                                                                                                           | DIAGRAMS AND EXISTING FLOOR PLANS        |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.10                                                                                                                           | PROPOSED FLOOR PLANS & BUILDING SECTIONS |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.11                                                                                                                           | PROPOSED EXTERIOR ELEVATIONS             |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |
| A.H.12                                                                                                                           | PROPOSED PERSPECTIVE VIEWS               |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |         |            |        |           |        |                                   |        |                                          |        |                              |        |                            |

| Zoning District* | Density (Min. Lot Area Per Unit; sq. ft.) | Height Limit (ft.)** |      |                                     |      | Min. Setbacks (ft.)**           |      |                   |                           | Max. Lot Coverage**             |                                                                                                                              |                     | Min. Open Space** (sq. ft. per unit) |                 |     |
|------------------|-------------------------------------------|----------------------|------|-------------------------------------|------|---------------------------------|------|-------------------|---------------------------|---------------------------------|------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------------------|-----------------|-----|
|                  |                                           | Additions            |      | New Main Buildings                  |      | Front                           | Rear | Side              | Street Side (Corner Lots) | Between Main Bldgs. on Same Lot | Stories in Main Bldg.                                                                                                        | Non-Corner Lots (%) |                                      | Corner Lots (%) |     |
|                  |                                           | Average              | Max. | Avg.                                | Max. |                                 |      |                   |                           |                                 |                                                                                                                              |                     |                                      |                 |     |
| R-1A             | 1                                         | 14 <sup>5</sup>      | --   | Front Bldg.: 28'<br>Rear Bldg.: 22' | --   | Front Bldg.: 3<br>Rear Bldg.: 2 | 20   | 20 <sup>8,9</sup> | 4 <sup>11</sup>           | 4 <sup>12</sup>                 | 1 <sup>st</sup> story: 8 <sup>10</sup><br>2 <sup>nd</sup> story: 12 <sup>10</sup><br>3 <sup>rd</sup> story: 16 <sup>10</sup> | All                 | 40                                   | 45              | 400 |



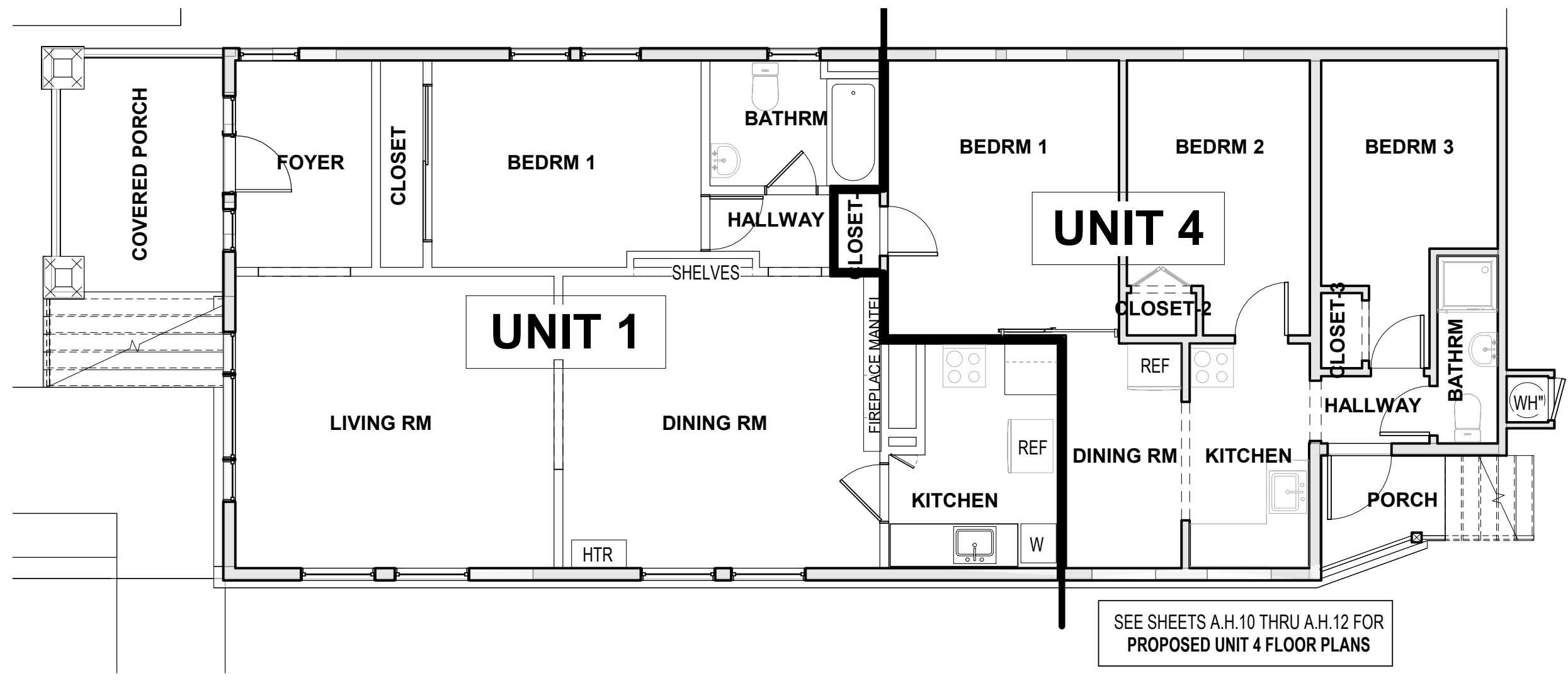
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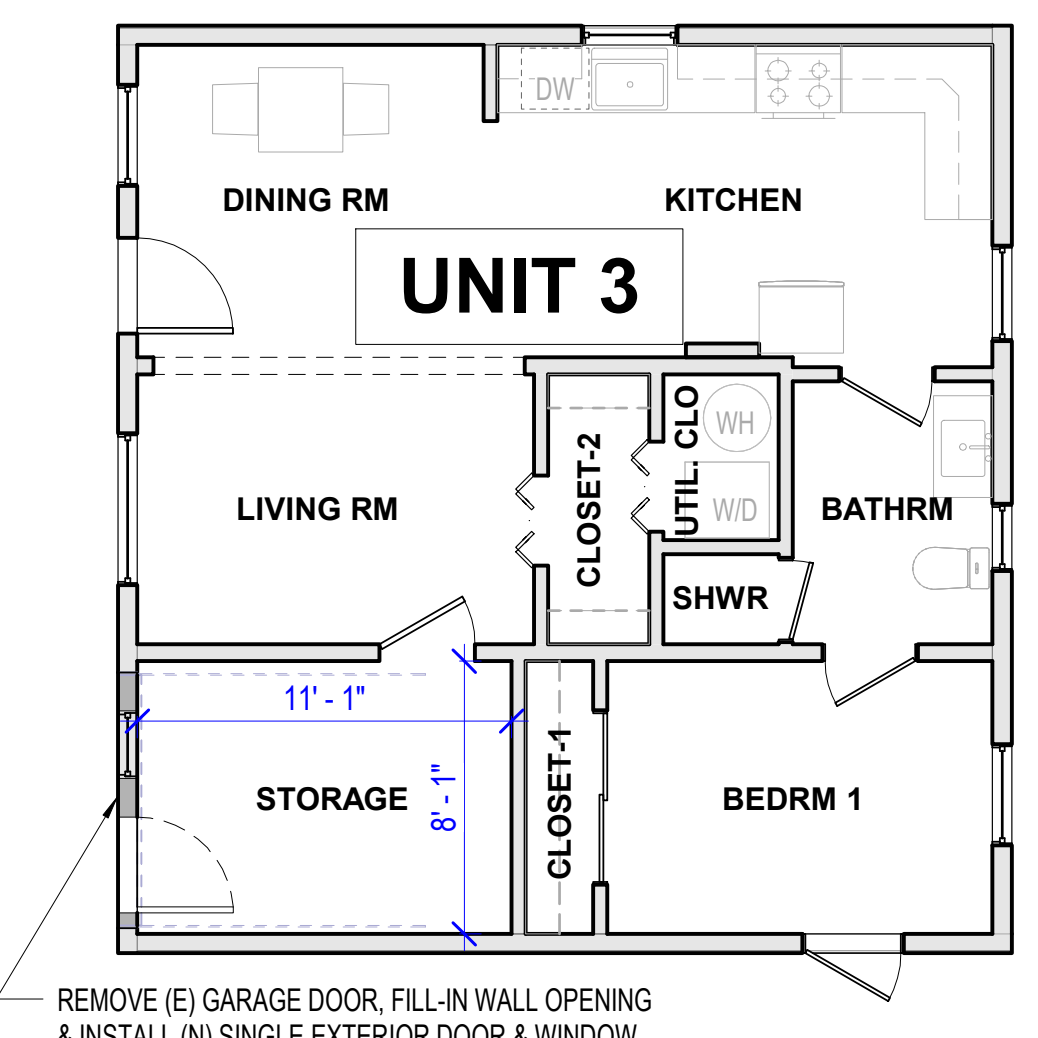


1 DIAGRAMS - BUILDING FOOTPRINT, USABLE OPEN SPACE, & LOT COVERAGE  
3/16" = 1'-0"

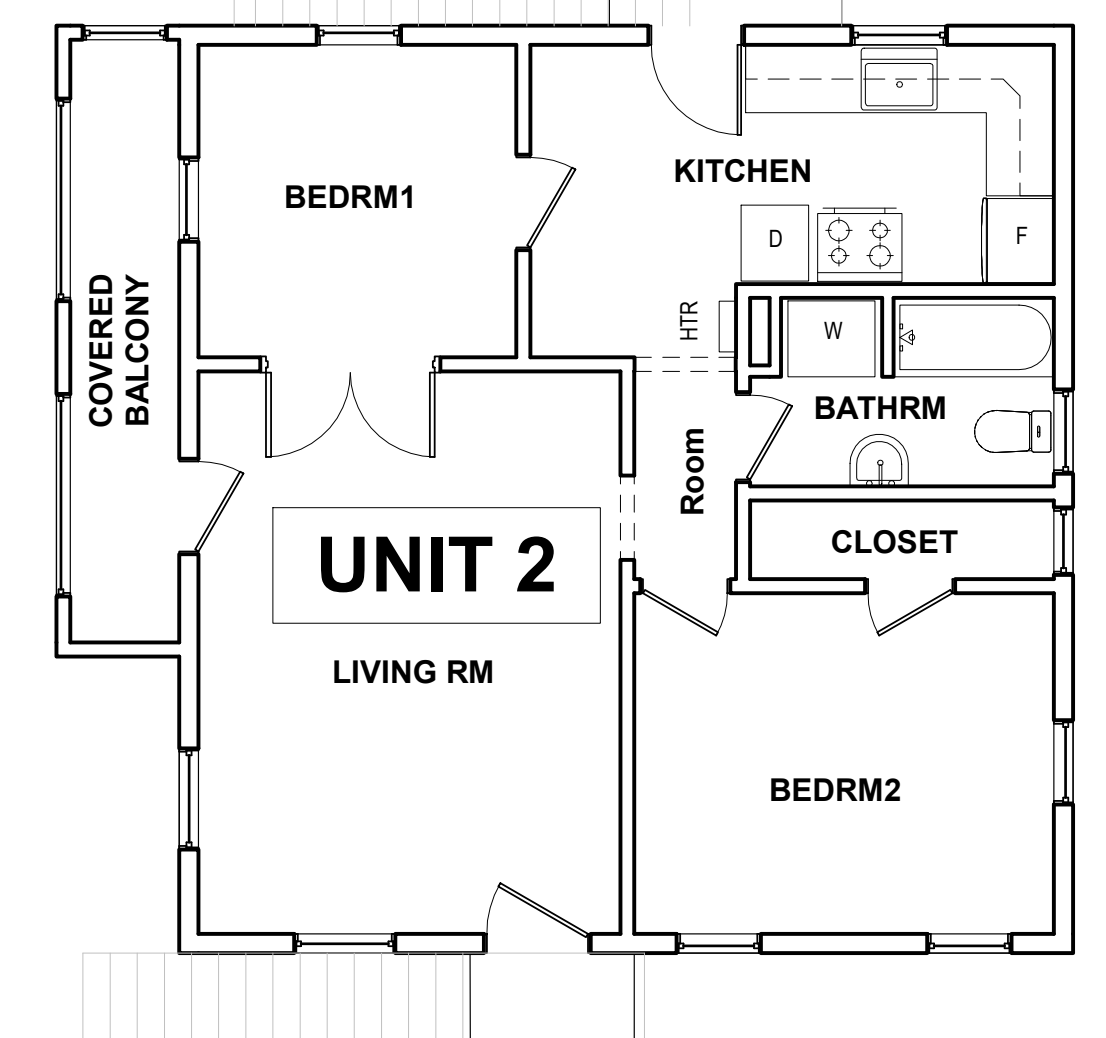
| LOT AREA:                | EXISTING BUILDING FOOTPRINTS              | EXISTING LOT COVERAGE: 56.6%              | EXISTING USABLE OPEN SPACE             |
|--------------------------|-------------------------------------------|-------------------------------------------|----------------------------------------|
| LOT DEPTH: 127.41' s.f.  | TOTAL BUILDING 1 FOOTPRINT: 1621.66 s.f.  | (FOOTPRINT / LOT AREA)                    | TOTAL U.O.S. AREA: 458.92 s.f.         |
| LOT WIDTH: 35.03' s.f. x | TOTAL BUILDING 2 FOOTPRINT: 904.37 s.f. + | TOTAL BUILDING FOOTPRINTS: 2526.03 s.f. / | 40% Landscaped U.O.S.: 183.57 s.f.     |
| LOT AREA: 4463.17 s.f.   | TOTAL BUILDING FOOTPRINTS: 2526.03 s.f.   | LOT AREA: 4463.17 s.f.                    | Shading Legend:                        |
|                          | Building Footprint Shading Legend:        | LOT COVERAGE: 0.566 (56.6%)               | Total usable open space: [Hatched Box] |
|                          |                                           |                                           | 40% Landscaped U.O.S.: [Green Box]     |



3 BUILDING 1 (SINGLE STORY DUPLEX) - UNITS 1 & 4 EXISTING FLOOR PLAN  
3/16" = 1'-0"



2 BUILDING 2 (TWO STORIES) - UNIT 3 (Ground Floor) EXISTING FLOOR PLAN  
3/16" = 1'-0"



4 BUILDING 2 (TWO STORIES) - UNIT 2 (Second Floor) EXISTING FLOOR PLAN  
3/16" = 1'-0"

| EXISTING GROSS FLOOR AREA SCHEDULE<br>PER OFFICIAL SITE SURVEY |                                                 | PROPOSED GROSS FLOOR AREA SCHEDULE |                              |
|----------------------------------------------------------------|-------------------------------------------------|------------------------------------|------------------------------|
| BUILDING 1                                                     | BUILDING 2                                      | BUILDING 1                         | BUILDING 2                   |
| UNIT 1: 935.97 s.f.                                            | UNIT 2: 786.12 s.f.                             | UNIT 1: 935.97 s.f.                | UNIT 2: 786.12 s.f.          |
| UNIT 4: 631.68 s.f. +                                          | UNIT 3: 359.82 s.f. +                           | UNIT 4: 631.68 s.f. +              | UNIT 3: 719.82 s.f. +        |
| TOTAL GFA: 1567.65 s.f.                                        | TOTAL GFA: 1145.94 s.f.                         | TOTAL GFA: 1567.65 s.f.            | Subtotal GFA: 1505.94 s.f.   |
|                                                                | Where Unit 3 18'x20' (E) garage area = 360 s.f. | (NO CHANGE)                        | Storage @ Unit 3: 88.00 s.f. |
|                                                                |                                                 |                                    | TOTAL GFA: 1417.94 s.f.      |

ARCHITECTURAL DESIGNER:

**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING

VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

*Teresa Cambare*  
03/22/2021  
DESIGNER: TERESA CAMBARE

CONSULTANT

**1205 PERALTA AV.  
UNIT 4 TENANT  
IMPROVEMENT**

**Cathy Nason  
(Owner)**

1205 Peralta Ave,  
Berkeley CA 94706

**DIAGRAMS AND EXISTING  
FLOOR PLANS**

| REVISION NO.  | DESCRIPTION  | DATE |
|---------------|--------------|------|
|               |              |      |
| PROJECT NO.   | 1205-19P     |      |
| DATE          | 03/22/2021   |      |
| DRAWN BY      | TC           |      |
| <b>A.H.01</b> |              |      |
| SCALE         | As indicated |      |



ARCHITECTURAL DESIGNER:



**Cambare Designs**

DESIGNS ASBUILT BUILDING INFORMATION MODELING

VACAVILLE, CALIFORNIA  
 PHONE: (408) 204-3413  
 EMAIL: TERESA@CAMBAREDESIGNS.COM

CONSULTANT

**1205 PERALTA AV.  
 UNIT 4 TENANT  
 IMPROVEMENT**

**Cathy Nason  
 (Owner)**

1205 Peralta Ave,  
 Berkeley CA 94706

**PROPOSED FLOOR PLANS  
 & BUILDING SECTIONS**

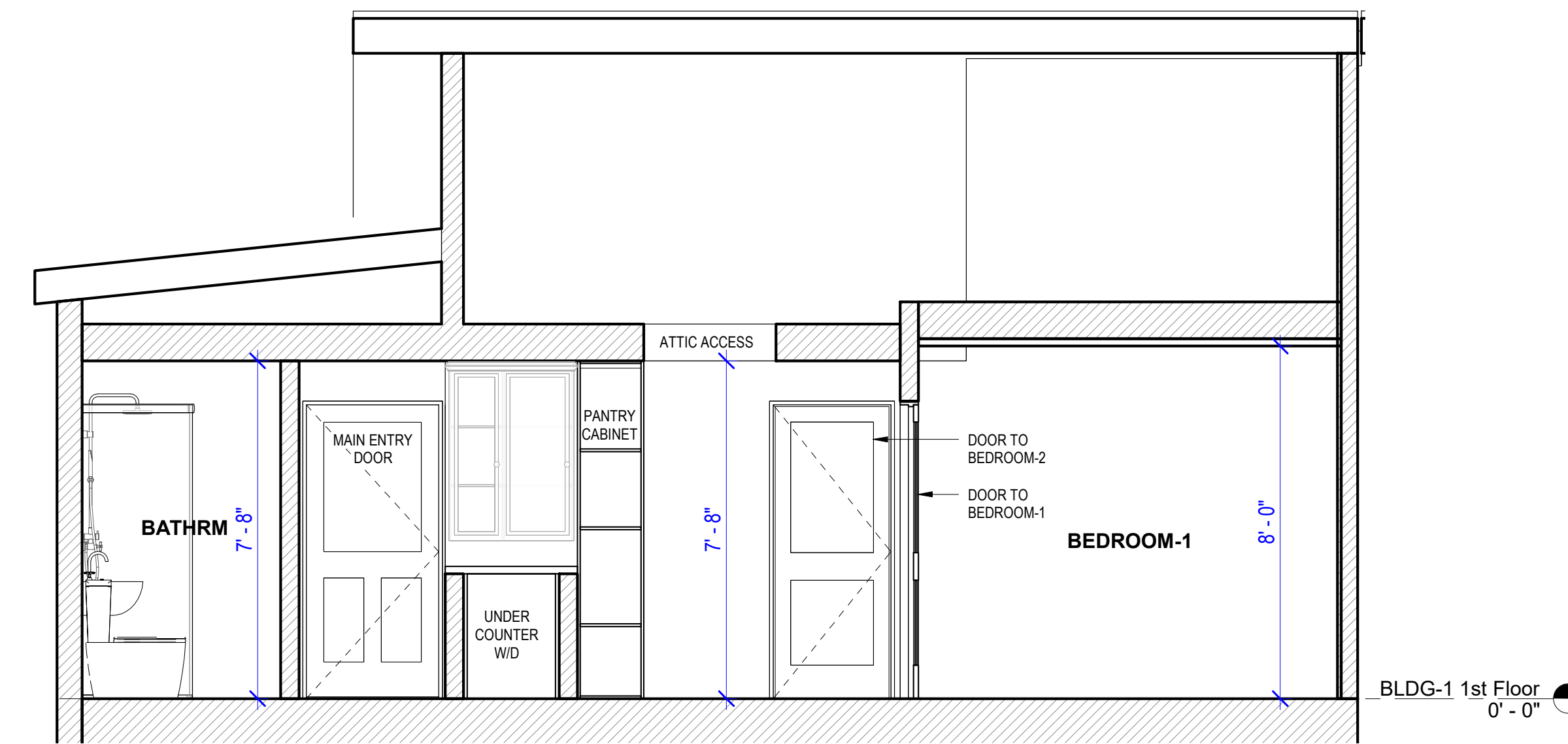
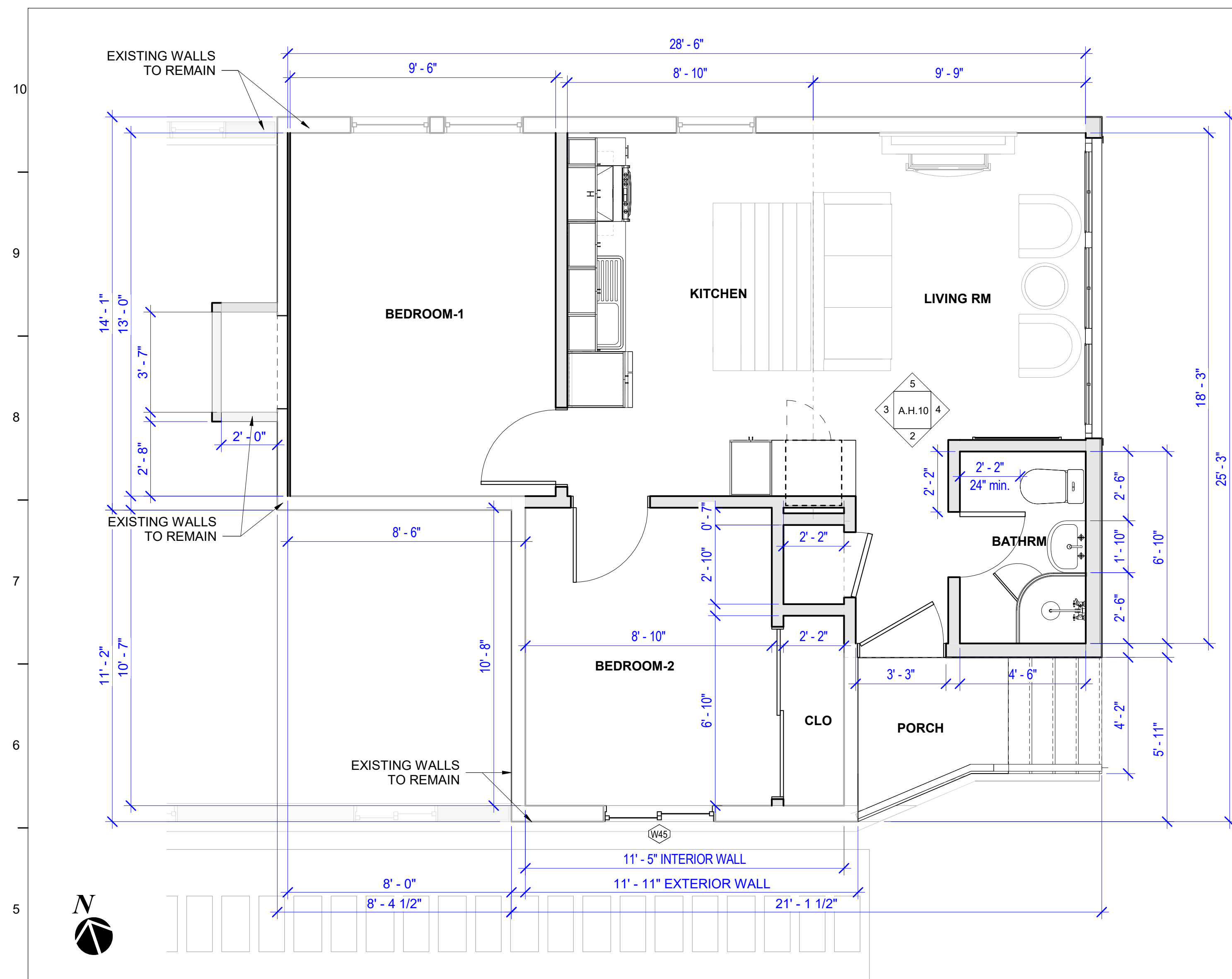
REVISION NO. DESCRIPTION DATE

PROJECT NO. 1205-19P  
 DATE 03/22/2021  
 DRAWN BY TC

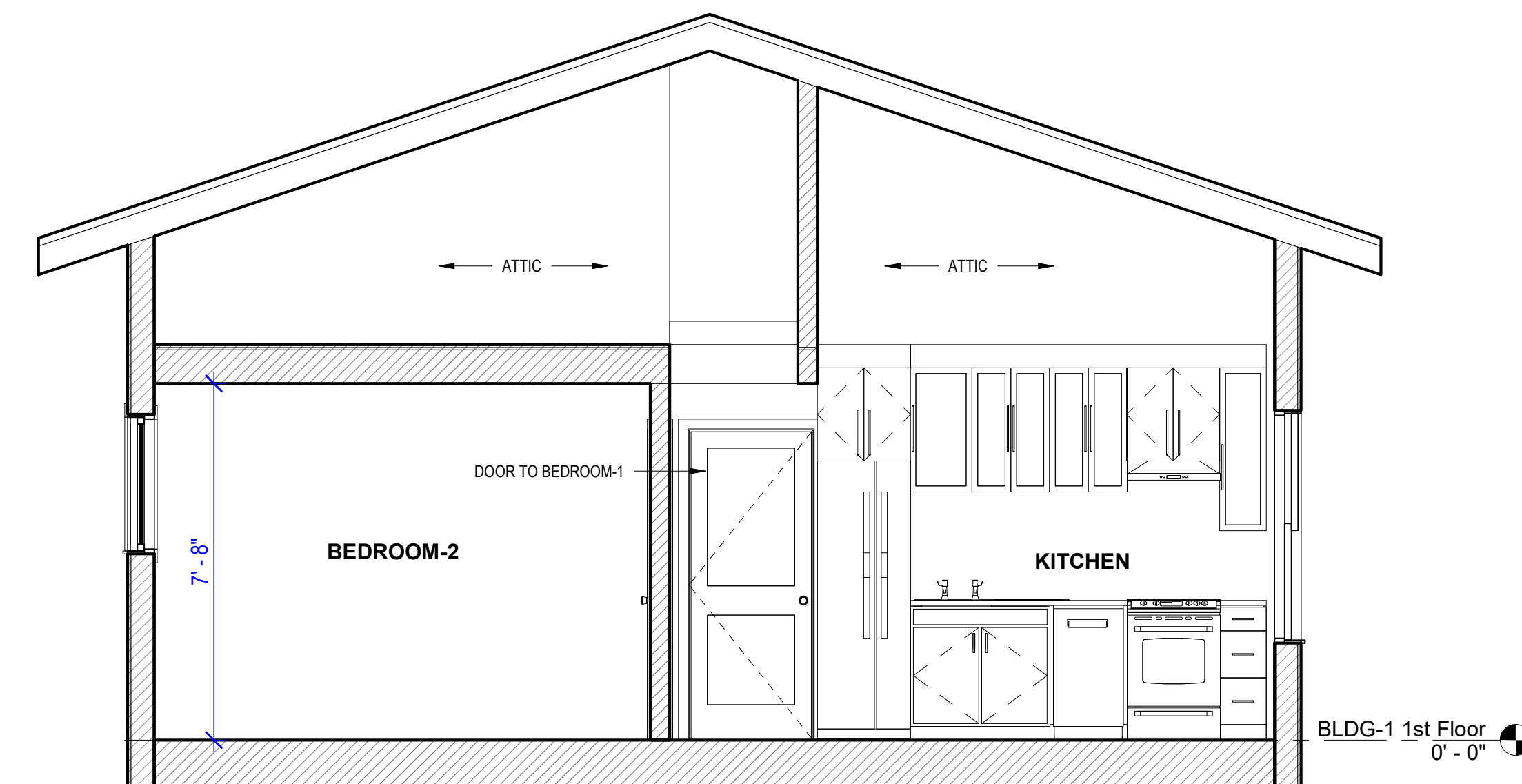
**A.H.10**

SCALE 3/8" = 1'-0"

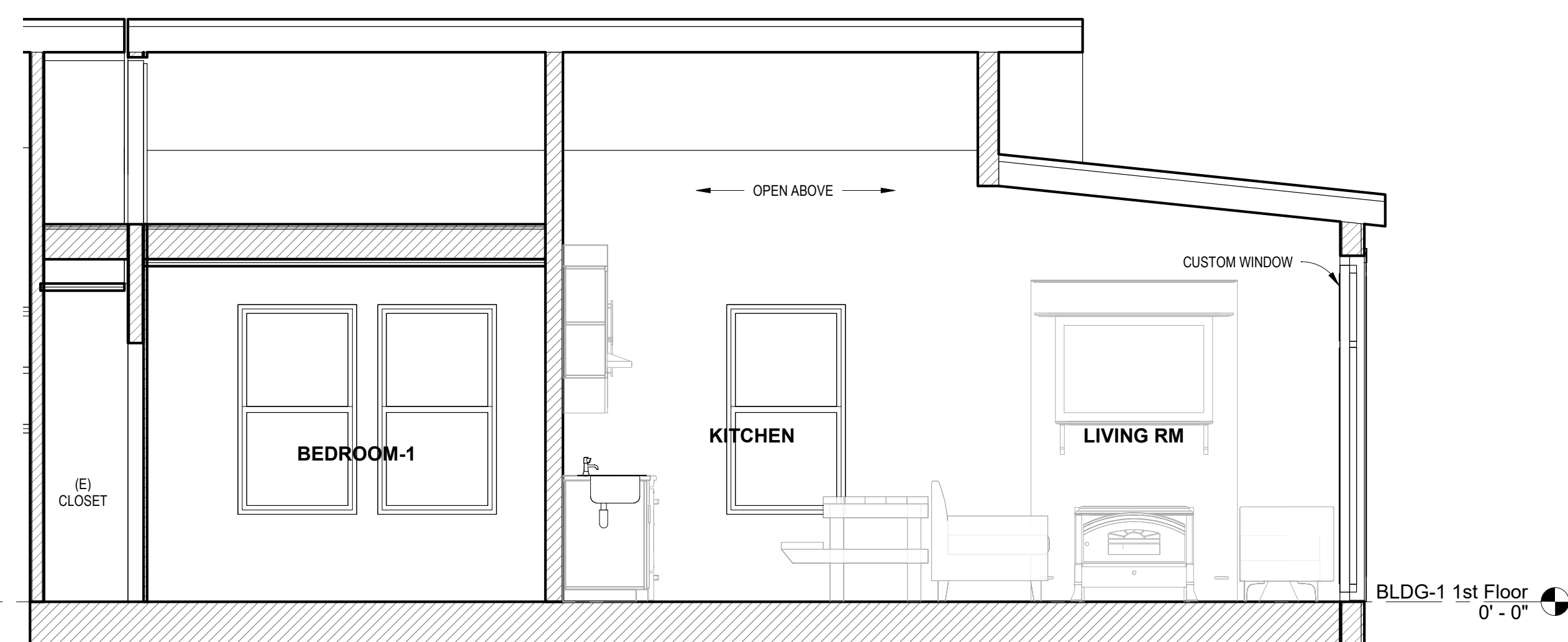
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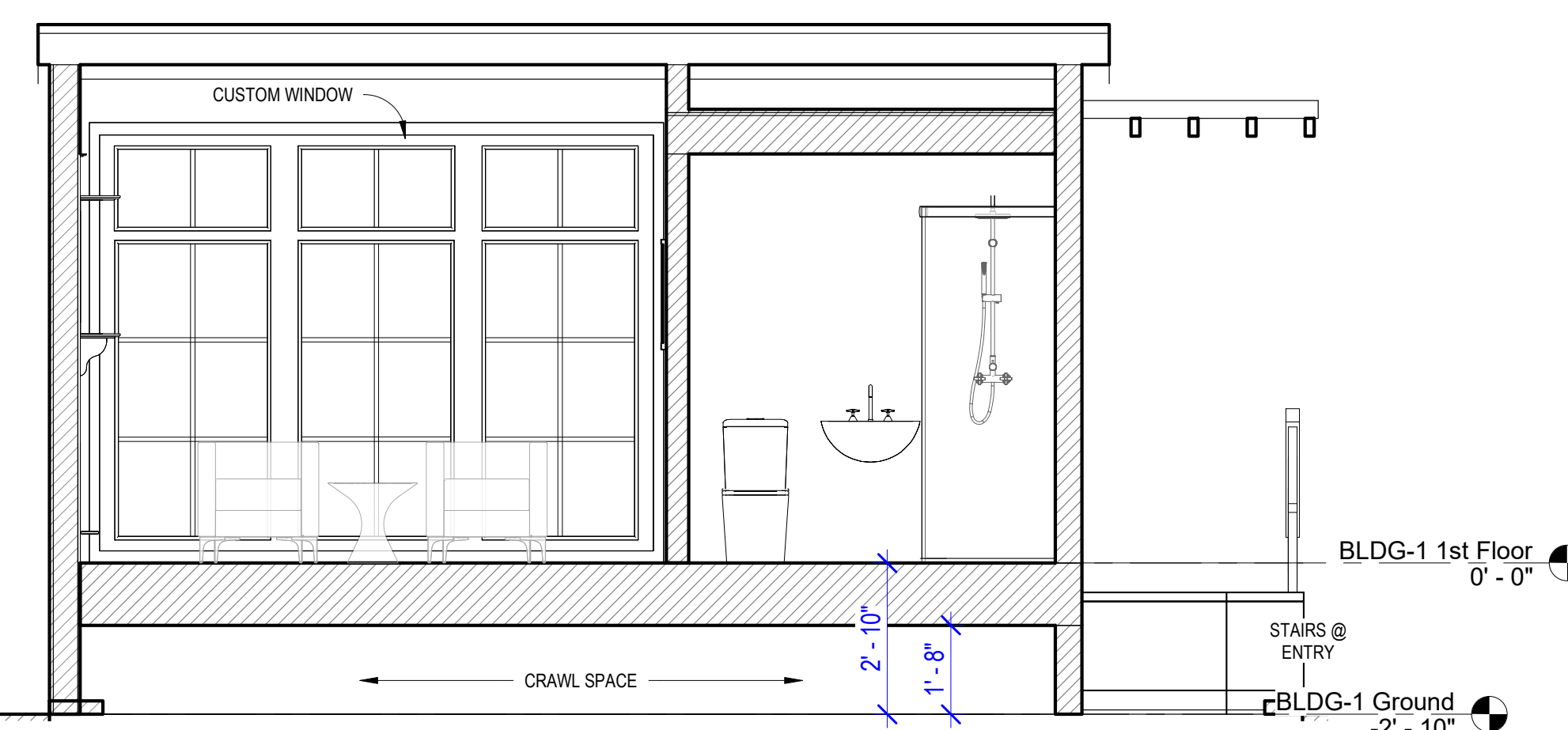
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 3/8" = 1'-0"



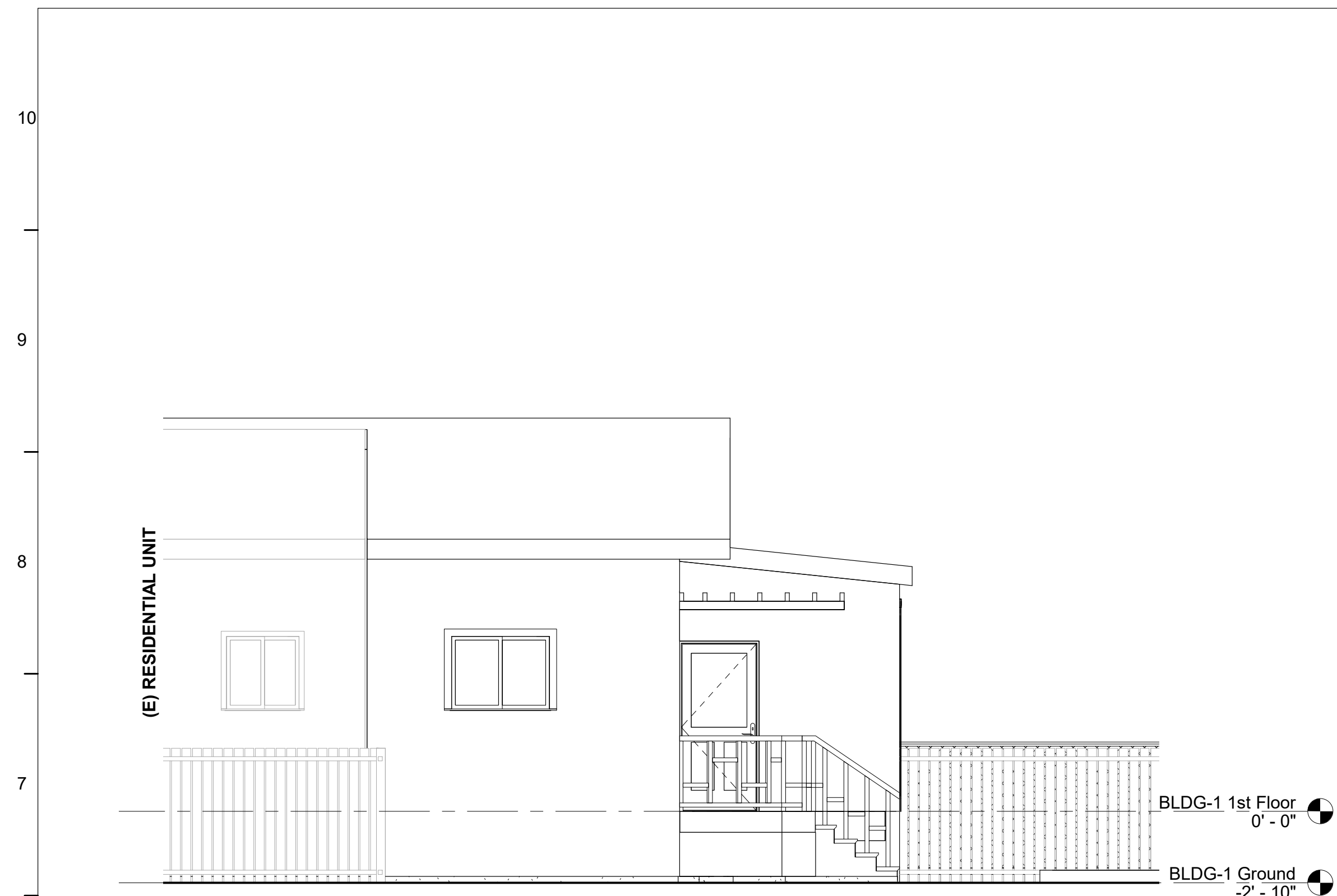
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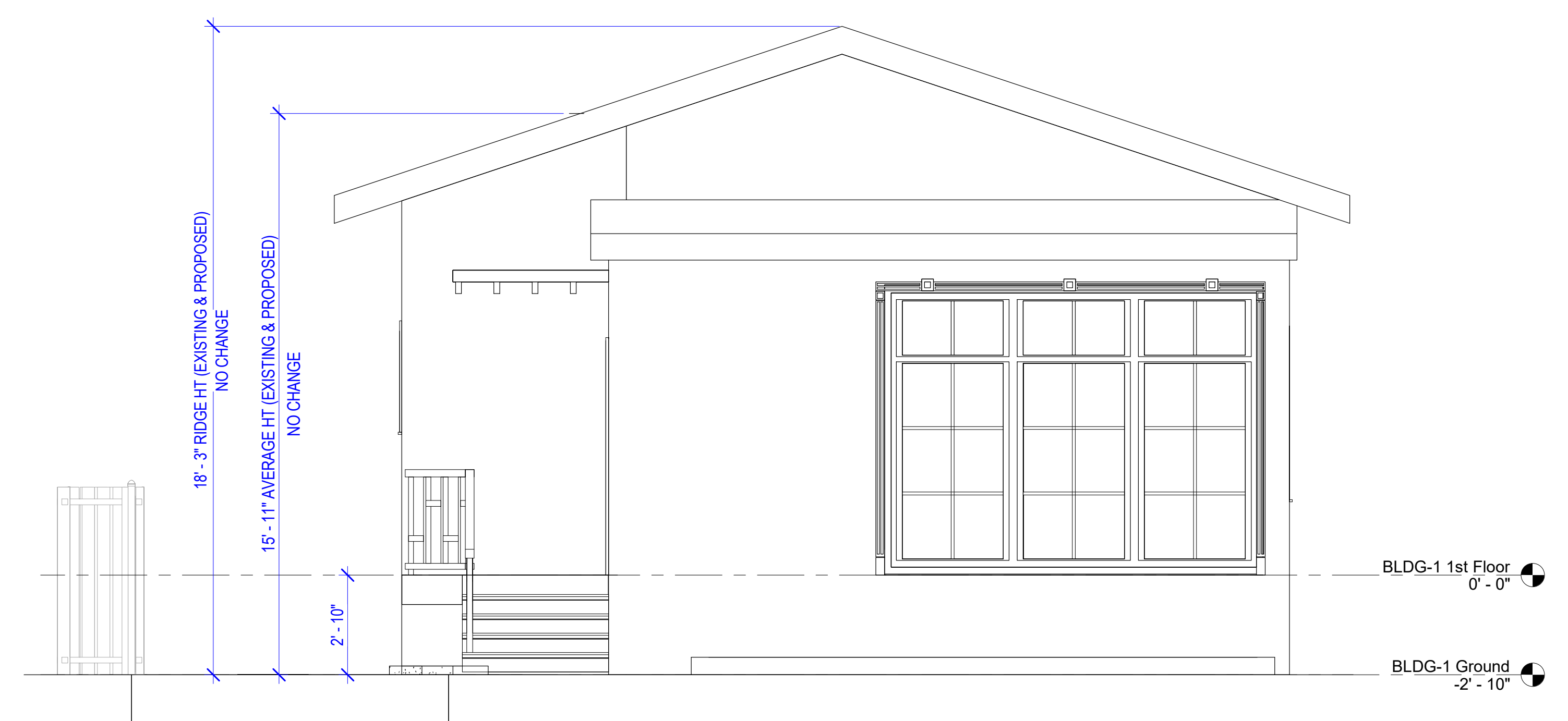
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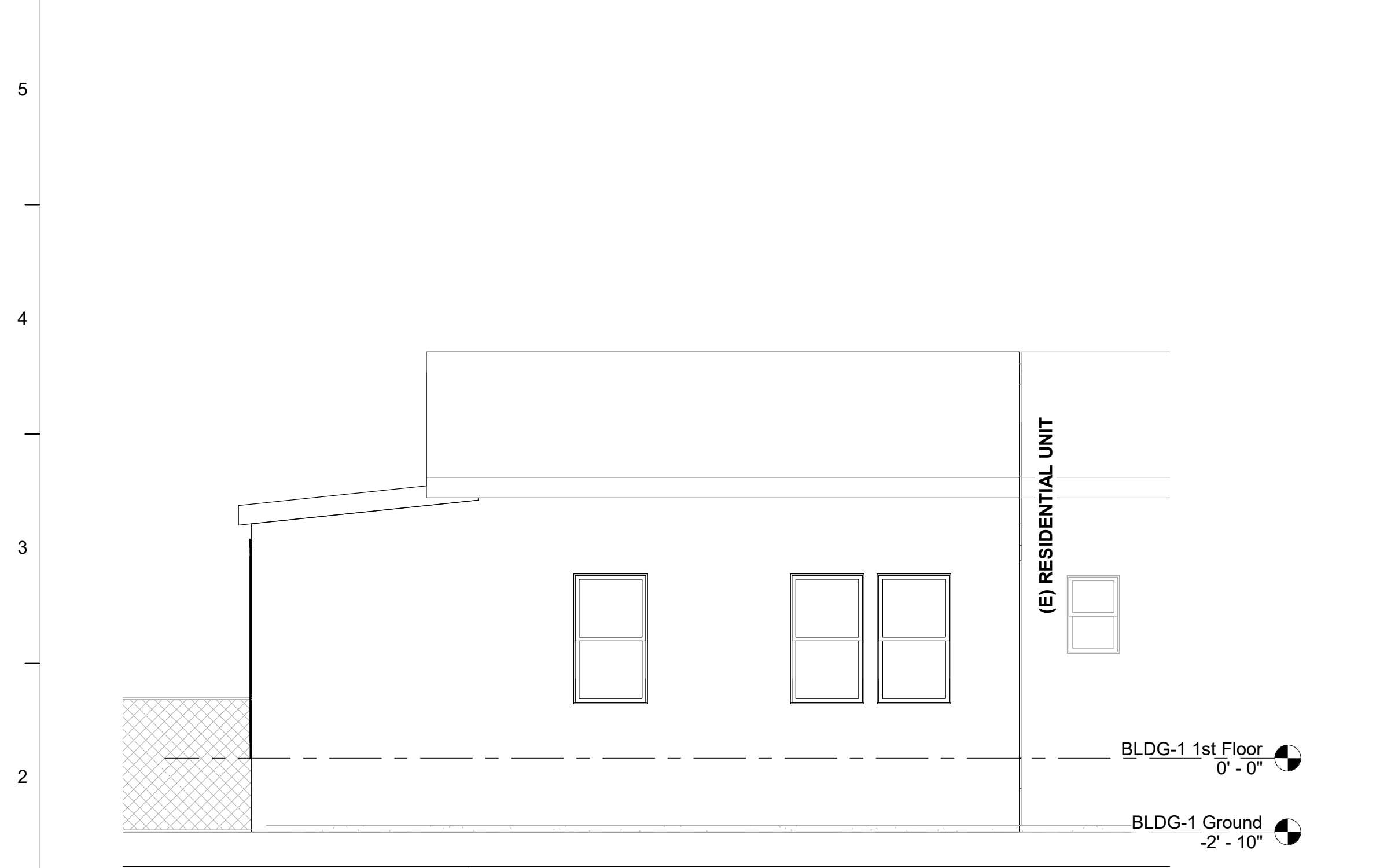
4 BUILDING 1 UNIT 4 SECTION - C  
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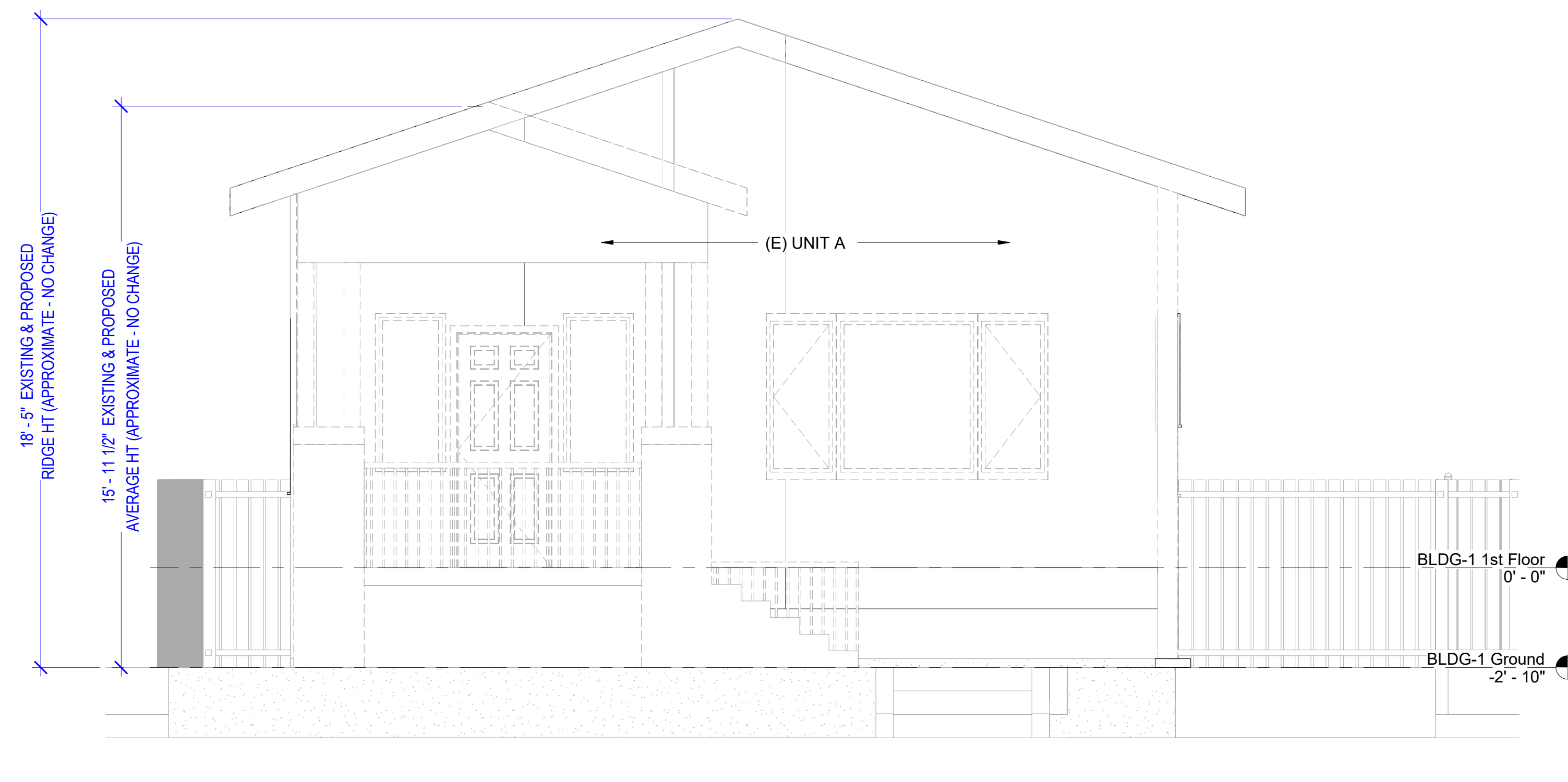
④ Exterior Elevation - South (Right Side)  
1/4" = 1'-0"



① Exterior Elevation - East (Rear)  
3/8" = 1'-0"



③ Exterior Elevation - North (Left Side)  
1/4" = 1'-0"



② Exterior Elevation - West (Front)  
3/8" = 1'-0"

ARCHITECTURAL DESIGNER:



**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING  
VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

CONSULTANT

**1205 PERALTA AV.  
UNIT 4 TENANT  
IMPROVEMENT**

**Cathy Nason  
(Owner)**

1205 Peralta Ave,  
Berkeley CA 94706

**PROPOSED EXTERIOR  
ELEVATIONS**

| REVISION NO. | DESCRIPTION | DATE |
|--------------|-------------|------|
|              |             |      |
|              |             |      |

|             |            |
|-------------|------------|
| PROJECT NO. | 1205-19P   |
| DATE        | 03/22/2021 |
| DRAWN BY    | Author     |

**A.H.11**

SCALE As indicated

3/22/2021 11:16:38 AM



Z O N I N G  
A D J U S T M E N T S  
B O A R D  
S T A F F R E P O R T

FOR BOARD ACTION  
APRIL 8, 2021

## 1205 Peralta Avenue

**Variance/Use Permit #ZP2020-0060 to eliminate two required off-street parking spaces by legalizing conversion of an existing 18 ft. x 20 ft. garage to habitable space and Use Permit to legalize the addition of bedrooms six through eight on a parcel that is non-conforming for density, lot coverage, setbacks, usable open space and parking.**

### I. Background

#### A. Land Use Designations:

- General Plan: LMDR – Low Medium Density Residential
- Zoning: R-1A – Limited Two-Family Residential District

#### B. Zoning Permits Required:

- Variance under [Berkeley Municipal Code](#) (BMC) Section 23B.44.030.B to eliminate required parking.
- Use Permit, under BMC Section 23C.04.070.C, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable lot coverage.
- Use Permit, under BMC Section 23C.04.070.E, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable density.
- Use Permit under BMC Section 23D.20.050.A to legalize the sixth, seventh and eighth bedrooms on the lot.

**C. CEQA Determination:** It is staff's recommendation to ZAB that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities"). The determination is made by ZAB.

#### D. Parties Involved:

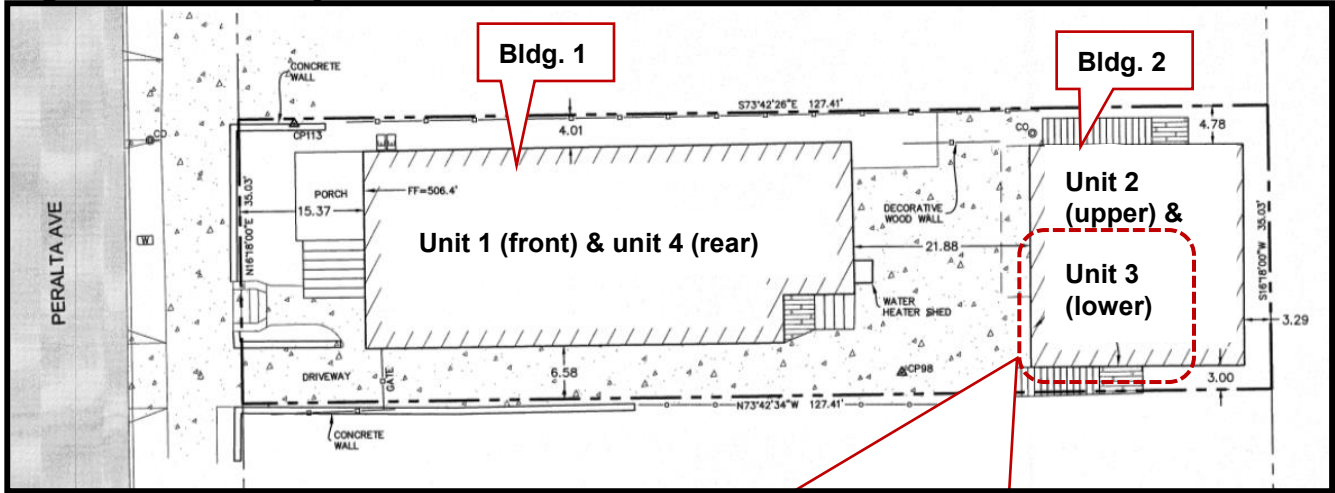
- Applicant & Owner: Teresa Cambare & Cathy Nason, P.O. Box 142, Inverness, CA 94937



Figure 1: Zoning Map



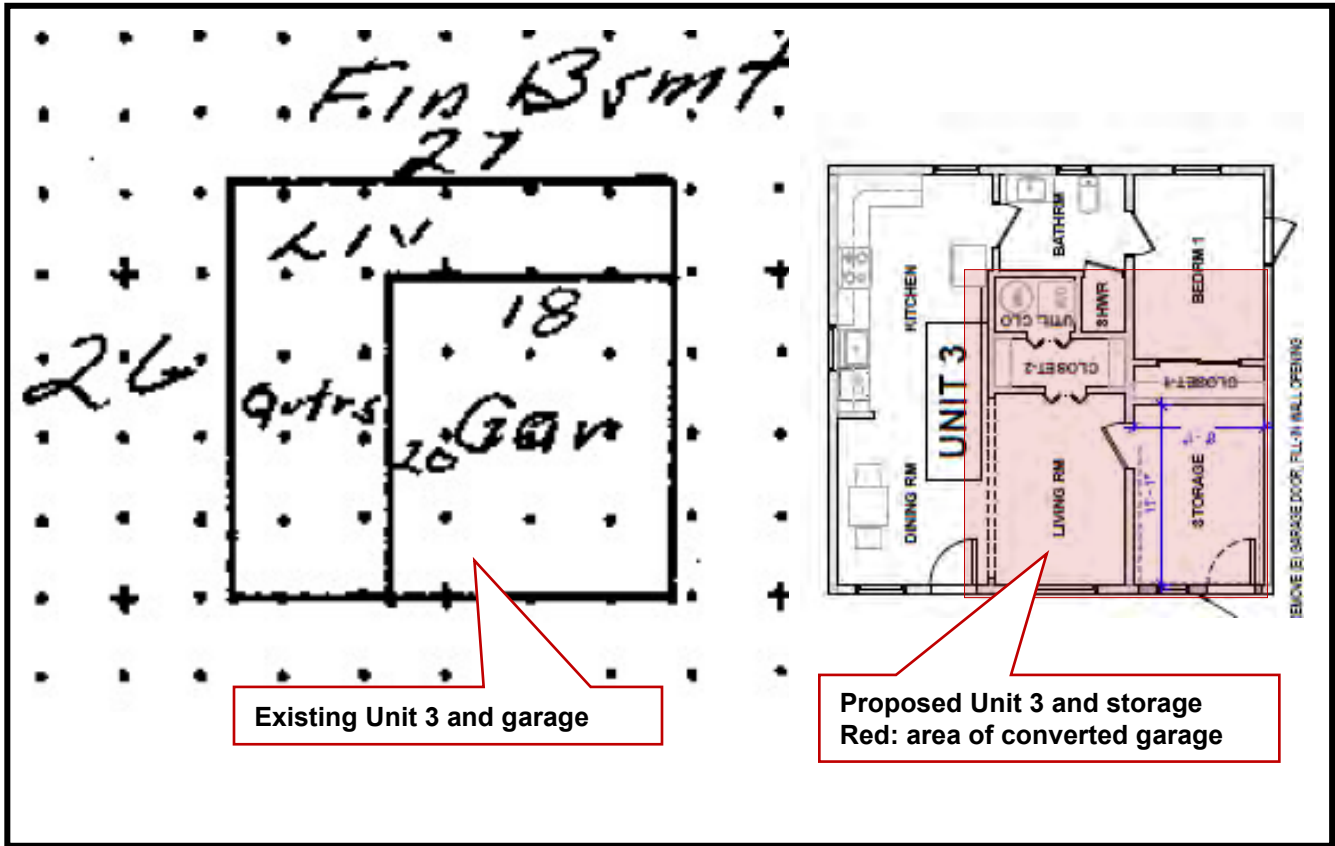
Figure 2: Site Survey



Area of existing 18 'X 20' garage converted to living space for Unit 3 and storage

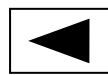


Figure 3: Converted garage and Unit 3 enlarged plan



Existing Unit 3 and garage

Proposed Unit 3 and storage  
Red: area of converted garage





**Table 1: Land Use Information**

| Location               |       | Existing Building                                                                                                                           | Zoning District                                | General Plan Designation              |
|------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------|
| Subject Property       |       | A one-story building containing 2 dwellings in the front and a two-story building containing 2 dwellings in the rear (Total of 4 dwellings) | Limited Two-Family Residential District (R-1A) | Low Medium Density Residential (LMDR) |
| Surrounding Properties | North | One-story building with 1 dwelling unit (1203 Peralta Avenue)                                                                               | Limited Two-Family Residential District (R-1A) |                                       |
|                        | South | One-story building with 1 dwelling unit (1207 Peralta Avenue)                                                                               | Limited Two-Family Residential District (R-1A) |                                       |
|                        | East  | Two-story building with 1 dwelling unit (1214 Ordway Street)                                                                                | Limited Two-Family Residential District (R-1A) |                                       |
|                        | West  | 1204 Peralta Avenue (two-story), 1206 Peralta Avenue (one-story) & 1208 Peralta Avenue (two-story) buildings each with 1 dwelling unit      | Limited Two-Family Residential District (R-1A) |                                       |

**Table 2: Special Characteristics**

| Characteristic                                                                                 | Applies to Project? | Explanation                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.) | No                  | These fees apply to projects with more than 7,500 square feet of new non-residential gross floor area. This project is not subject to these resolutions because no new non-residential space is proposed.                                                                                                                                             |
| Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)    | No                  |                                                                                                                                                                                                                                                                                                                                                       |
| Creeks                                                                                         | No                  | No open creek or culvert exists within 40 ft. of the site.                                                                                                                                                                                                                                                                                            |
| Housing Accountability Act (Gov't Code Section 65589.5)                                        | Yes                 | The proposed project is a "Housing Development Project" <sup>1</sup> as defined by Government Code because it does not propose to add dwelling units as it is a use consisting of residential units, however, the project requests Variance approval to eliminate required parking, so Section j of the HAA is not applicable. See Section V.A below. |
| Housing Crisis Act of 2019 (SB330)                                                             | No                  | This project meets the definition of "housing development project" as defined in 65589.5 and is subject to sections of Senate Bill 330. See section V.B.                                                                                                                                                                                              |
| Oak Trees                                                                                      | No                  | There are no oak trees on the site.                                                                                                                                                                                                                                                                                                                   |
| Rent Controlled Units                                                                          | Yes                 | The four existing dwellings are subject to the City's Rent Stabilization and Eviction for Good Cause Program (BMC Chapter 13.76).                                                                                                                                                                                                                     |

<sup>1</sup> Per Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) Residential units only; (B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses with at least two-thirds of the square footage designated for residential use; and (C) Transitional housing or supportive housing.

| Characteristic                                                       | Applies to Project? | Explanation                                                                                                                                    |
|----------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Residential Preferred Parking (RPP)                                  | No                  | The site is not within a Residential Preferred Parking Area.                                                                                   |
| Seismic Hazards Mapping Act (Liquefaction, Fault-rupture, Landslide) | No                  | The site is not located within an area susceptible to liquefaction, Fault-rupture or Landslide as shown on the State Seismic Hazard Zones map. |
| Soil/Groundwater Contamination                                       | No                  | The site is not located on a hazardous waste site pursuant to Government Code Section 65962.5                                                  |
| Transit                                                              | Yes                 | There is a bus stop along Gilman and Ordway streets within 0.2 mile of project that provides access to an AC Transit bus route (12).           |

**Table 3: Project Chronology**

| Date           | Action                               |
|----------------|--------------------------------------|
| July 24, 2020  | Application submitted                |
| March 22, 2021 | Application deemed complete          |
| March 25, 2021 | Public hearing notices mailed/posted |
| April 8, 2021  | ZAB hearing                          |

**Table 4: Development Standards**

| Standards per BMC Sections 23D.28.070 |                    | Existing                              | Proposed  | Permitted/ Required                        |
|---------------------------------------|--------------------|---------------------------------------|-----------|--------------------------------------------|
| Lot Area (sq. ft.)                    |                    | 4,463                                 | No Change | 5,000 min.                                 |
| Gross Floor Area (sq. ft.)            | Front Building     | 1,567                                 | No Change | N/A                                        |
|                                       | Rear Building      | 1,145                                 | 1,505     |                                            |
| Bedrooms                              | Front Building     | 3                                     | 3         | 4 max.<br>(without AUP or UPPH)            |
|                                       | Rear Building      | 2                                     | 5         |                                            |
| Dwelling Units                        | Total              | 4                                     | No Change | 1 max                                      |
| Building Height                       | Average            | 16 ft. (bldg. 1)<br>20 ft. ( bldg. 2) | No Change | 28 ft. max.                                |
|                                       | Stories            | 1 (bldg. 1)<br>2 ( bldg. 2)           | No Change | 3 max.                                     |
| Building Setbacks                     | Front              | 15 ft. 3 in.                          | No Change | 20 ft. min.                                |
|                                       | Rear               | 3 ft. 3 in.                           | No Change | 20 ft. min                                 |
|                                       | Left Side (south)  | 4 ft.                                 | No Change | 4 ft. min.                                 |
|                                       | Right Side (north) | 3 ft.                                 | No Change | 4 ft. min.                                 |
| Lot Coverage (%)                      |                    | 56.6                                  | No Change | 40 max.                                    |
| Usable Open Space (sq. ft.)           |                    | 458 sq. ft.                           | No Change | 1,600 min. (400 sq. ft. per dwelling unit) |
| Parking Automobile                    |                    | 2 (permitted)                         | 0         | 4 min. (1 per dwelling unit)               |

## II. Project Setting

- A. Neighborhood/Area Description:** The subject site is located in a residential neighborhood that primarily consists of one and two-story residential properties which range considerably in density to include single-family dwellings and duplexes with other conforming and non-conforming setbacks. While the majority of the surrounding uses are residential, a commercial strip on Gilman Street is within walking distance.
- B. Site Conditions:** The approximately 127 ft. x 35 ft. subject lot is elevated by about 2 ft. above the street level. It includes a one-story building in the front and a two-story building in the rear of the lot. The front building was originally built as a single family dwelling and was later converted to two units. The rear two-story building was originally built as a dwelling on the second floor and a "basement apartment" attached to a two-car garage on the ground floor. The area between the front and the rear building is completely paved. There is an approximately 6.5 ft. wide driveway leading to now an 8' x 11' space remainder of the original 18' X 20' two-spaced garage. The existing boundary fence and the set of stairs leading up to upper story unit of the rear building on the south side of the lot is located outside the property line and on the neighboring property at 1207 Peralta Avenue. The property does not comply with the R-1A District requirements for density, lot coverage, usable open space, setbacks and off-street parking space.
- C. Background:** The front building was originally constructed in 1917 as a one-story single family dwelling later converted to two units and the rear two-story building including two units were added in 1940 for a total of four units on this lot. City records indicate that the front building (two units) originally included a total of three permitted bedrooms (one bedroom for the front unit and two bedrooms for the rear unit) and the rear building (two units) originally included two permitted bedrooms (one for each unit) for a total of five permitted bedrooms on the lot. Over the years unpermitted bedrooms were added to this lot increasing the number of bedroom to eight. Currently, there are two unpermitted bedrooms in the upper unit of the rear building (6<sup>th</sup> and 7<sup>th</sup> bedrooms) and the unpermitted conversion of garage to living space for Unit 3 has created an additional room that is considered the 8<sup>th</sup> bedroom on this lot. Bedroom means any Habitable Space in a Dwelling Unit or habitable Accessory Structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement (BMC13.42.020B).

An application was submitted on July 24, 2020 for addition of a second story (rear unit in the front building) and addition of a fourth bedroom to Unit 4. Staff advised the applicant that the proposed additions on a lot that is over density; is over lot coverage; is non-conforming for parking and usable open space; and is not supported by the neighborhood, will not be recommended for approval by staff. Staff suggested that

the applicant limit proposed work to interior improvements of Unit 4 without any changes to building's existing footprint and envelope. Furthermore, staff advised that the applicant restore the garage to its original size and remove the unpermitted bedrooms on this lot or legalize the unpermitted elimination of parking by a Variance and legalize the addition of bedrooms by a Use Permit. City's Code Enforcement Unit confirmed the illegal conversion of the garage and identified unpermitted addition of bedrooms on this lot. A Notice of Violation was issued to the applicants on February 11, 2021.

### III. Project Description

The project requests a Variance to eliminate the two existing required off-street parking spaces thereby legalizing the conversion of a two-car garage into 360 sq. ft. of additional living space. Additionally, the project proposes to increase the legally permitted number of bedrooms on the parcel from five (5) to eight (8) resulting in two additional bedrooms in the upper unit (Unit 2) and an additional bedroom in the ground floor of the rear building.<sup>2</sup>

### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application on July 24, 2020 to the City, a pre-application poster was erected by the applicant. On July 28, 2020, the City mailed Neighborhood Notification Postcards to abutting and confronting neighbor properties and posted a Neighborhood Poster within the neighborhood in three locations. On March 25, 2021, the City mailed 132 public hearing notices to property owners and occupants, and to interested neighborhood organizations. The City also posted notices within the neighborhood in three locations. At the time of this writing, staff has received 31 communications expressing concerns regarding the history of illegal development on this property, unpermitted construction within Unit 3, number of unpermitted bedrooms, density, parking, lot coverage, and usable open space on this lot. See Attachment 6 for all correspondence.

**B. Committee Review:** This project is not subject to advisory committee review.

### V. Issues and Analysis

**A. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

---

<sup>2</sup> What is labeled as a "storage" on the ground floor of the rear building, meets the City of Berkeley definition of a bedroom (BMC13.42.020B). The applicants currently have an online advertising for this room as an upcoming bedroom for unit 3. Staff has therefore considered the space as habitable.

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The project is requesting a Variance to eliminate the two existing parking spaces so Paragraph j of the HAA does not apply.

**B. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is an historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is an historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

The project site is not designated as a Landmark or Structure of Merit by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria. However, the property is of common design with other small scale single and multi-family residential development in the neighborhood; the neighborhood has not previously been considered as having historical value. Therefore, this section does not apply to the project. Standard conditions of approval have been included with the permit to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources occurs.

2. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on March 22, 2020. Should ZAB determine the application is categorically exempt from CEQA at the April 8, 2021 public hearing, the application must be approved or disapproved by June 7, 2021.
3. Government Code §66300(d) states that a City “shall not approve a housing development application that will require the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished.” The project does not involve the demolition any dwelling units. Therefore, no replacement units are required.

**C. Variance Findings:** Pursuant to BMC 23D.12.050, off-street parking spaces may not be reduced below or, if already less than may not be further reduced below, the requirements of this chapter for similar uses or structures. The project is, therefore, requesting Variance approval to eliminate the required parking per BMC Section 23B.44.030.A. The findings required to approve a Variance along with staff analysis follow:

Finding #1: “There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District”.

In support of this Finding the applicant has provided the following evidence (For the sake of brevity, the Variance Statements are not re-stated in their entirety. Please refer to Attachment 3 for the full text):

- *“The existing non-conforming parking of this lot is due to the small size of the lot which is reduced by the addition of the second building at the rear of the property.*
- *The existing non-conforming parking of this lot is due to the modified size of the garage attached to Unit 3.*
- *This condition is pre-existing prior to the change in ownership.*
- *It will eliminate the need to relocate the current tenant of Unit 3 which will cause further loss of income for the landlord and incur additional unnecessary expenses.*
- *Restoring the existing non-compliant garage to its original state (prior to converting a portion of it into a bedroom) could affect the entire building’s integrity and would incur further consulting costs to hire a structural engineer, construction costs, design costs, and other fees for building alteration.*
- *Restoring the garage would mean losing the only bedroom in Unit 3 which will cause a change in the overall use of the entire unit.”*

Although the statements, some subjective, may be true, they do not highlight how they represent exceptional or extraordinary circumstance applying to this property that do not generally apply to other properties in the same zoning district. Due to the age of buildings and the various changes made over time to the Zoning Ordinance, many buildings and sites are non-conforming in this district to varying degrees, including the subject site. This property is located in the R-1A Limited Two-Family Residential District. It is a nonconforming lot as it contains four units on a 4,463 sq. ft. lot that allows a maximum of one unit. The lot is also over lot coverage, does not provide the required usable open space and provides two parking spaces where four are required. While the existing garage did not accommodate required parking for all four units, it provided two spaces. The illegal conversion of the existing garage is not relevant to the size of the subject lot or any other non-conforming conditions. Staff does not believe that the illegal conversion of garage qualifies as an exceptional or extraordinary condition for purposes of making this finding. Staff cannot identify any extraordinary conditions on the site that supports this finding to permit non-compliance with the parking standard that applies to all other properties within the district.

Finding #2: “The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property’s owner”.

In support of this Finding the applicant has provided the following evidence:

*“We are proposing to reclassify the existing non-conforming garage in Unit 3 into a storage room instead, rather than restoring it to its original state. Granting this request will unquestionably preserve the current use and enjoyment of this unit, as well as the unit above, the surrounding adjacent lots; as well as prevent further financial hardship for the property owner. “*

The applicant has not provided evidence that the use of the property with its unpermitted condition is necessary for the preservation and enjoyment of substantial property rights. The subject property contains four legal dwelling units that represents a substantial property right in a zoning district that allows a maximum of two units for most lots, and only one on this substandard sized parcel. The applicant has not provided evidence that the use of the property with its unpermitted condition is necessary for the preservation and enjoyment of substantial property rights.

Finding #3: *“The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole”.*

In support of this Finding the applicant has provided the following evidence:

*“In addition to the proposed solution mentioned above (re-classifying the garage to storage) the current non-compliant garage in Unit 3, will in fact, also prevent adverse effects to the health and safety of the tenants within this lot and the neighboring properties by preserving the integrity of the building.”*

The illegal conversion of the existing garage has eliminated the two available and required off-street parking spaces on the site. Staff has received correspondence from the neighbors stating that the lack of parking spaces on the subject lot puts an additional burden on street parking which is already strained. This finding cannot be made because eliminating the two parking spaces will adversely impact the improvements in said neighborhood as it impacts on-street parking for this over-densified site for the neighborhood and the tenants.

Finding #4: “Any other variance findings required by the Section of the Ordinance applicable to that particular Variance”.

This Finding is not applicable to the Variance requests.

In summary, the required Variances to approve the illegal dwelling cannot be made as there is no exceptional circumstance on the property (Finding 1), the variance is not necessary for the preservation of substantial property rights (Finding 2), and the project would be generally detrimental (Finding 3).

**D. Addition of Bedrooms:**

Pursuant to BMC Section 23D.20.050.A, the addition of more than five bedrooms on the parcel requires the approval of a Use Permit. Specifically, the Board must make the required “non-detriment” findings pursuant to BMC Section 23B.32.040 that there would not be a substantial impact to the “health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City. The Board shall deny an application for a Use Permit if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination.”

Historically, staff has considered the number of units on a lot, as well as the amount of common space within a dwelling (living room/dining room/kitchen) relative to the number of bedrooms, as factors when evaluating the addition of bedrooms to a lot or building. Two illegal bedrooms have been added to Unit 2 leaving no common space for this unit and one bedroom is created through illegal conversion of the garage for a total of three additional bedrooms on this lot. Additionally, this property only provides about 458 sq. ft. usable open space with no off-street parking spaces. Staff believes that the addition of sixth, seventh and eighth bedrooms is over intensification of this substandard size lot. Therefore, the addition of three bedrooms could be considered detrimental.

**E. Addition to Structure on Parcel with Non-Conforming Lot Coverage and Density:**

Pursuant to BMC Section 23C.04.070, an addition and/or enlargements of a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage and density is permitted with a Use Permit if the existing use of the property is conforming, and the addition/enlargement complies with all applicable laws (i.e. development standards) and does not increase lot coverage or residential density, respectively; or exceed the height limit. As previously mentioned, the property is non-conforming for lot coverage—it has a legal lot coverage of 56% where a maximum of 40% is permissible—and residential density because four dwelling units were established on the subject property while only one dwelling units permissible based on the size of the lot. The proposed project would convert 360 sq. ft. of the existing garage to habitable space within the building’s footprint and hence does not increase lot coverage. Additionally, the new square footage would be part of an existing dwelling unit, no new dwelling unit is proposed, therefore, there will be no increase in residential density. Although the findings to enlarge a non-conforming structure can be made in isolation, the enlargement is dependent on the approval of a Variance.



**F. General Plan Consistency:** The project fails to comply with the following 2002 General Plan policy:

1. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

## VI. Recommendation

Because of the project's inconsistency with the Zoning Ordinance and General Plan, staff recommends that the Zoning Adjustments Board:

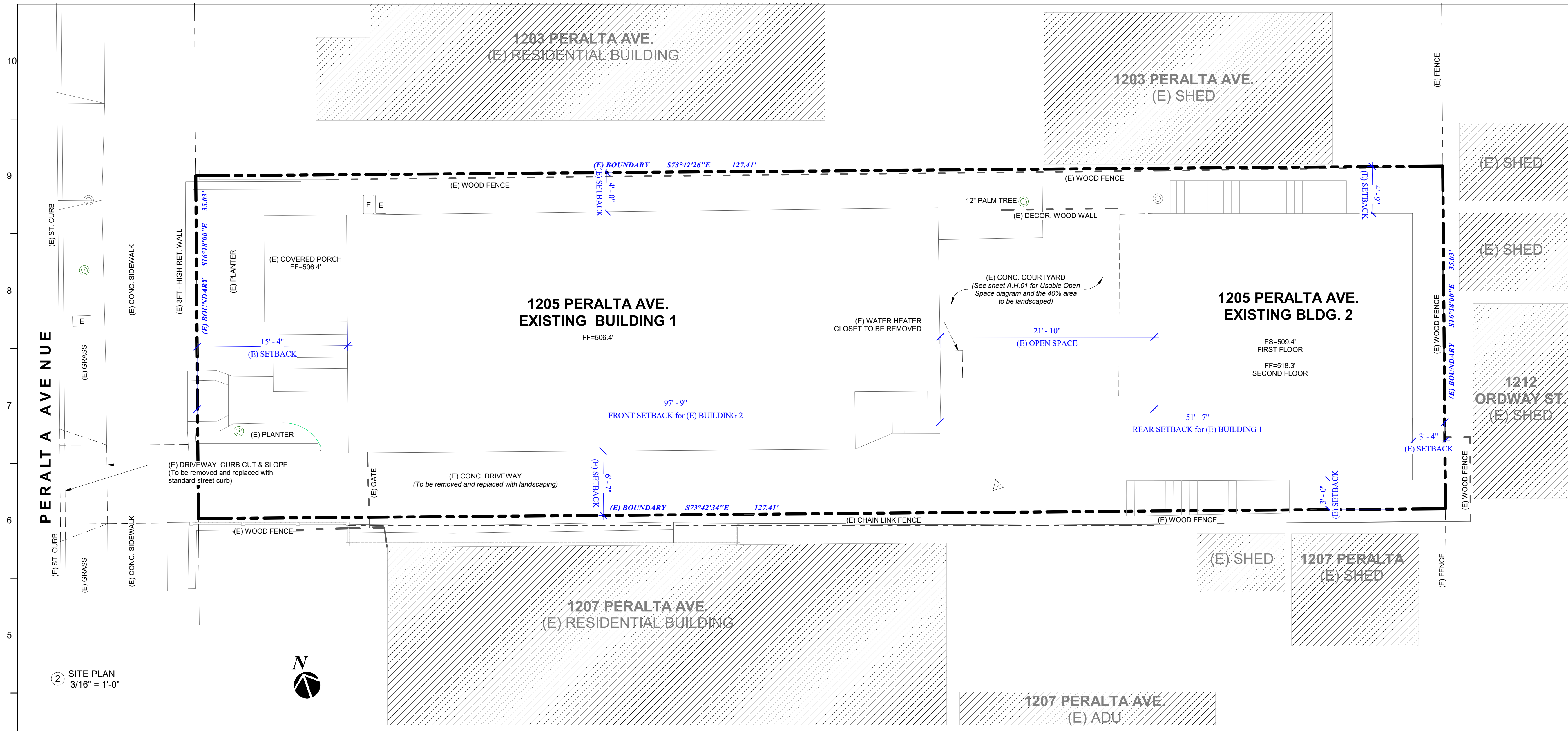
**DENY** Use Permit/Variance #ZP2020-0060 pursuant to Section 23B.32.040 and subject to the attached Findings (see Attachment 1).

### Attachments:

1. Project Plans, received March 22, 2021
2. Findings of Denial
3. Applicant Statement, received March 22, 2021
4. Notice of Public Hearing, dated March 25, 2021
5. Correspondences Received


**Staff Planner:** Nilu Karimzadegan, nkarimzadegan@cityofberkeley.info, (510) 981-7419





2 SITE PLAN  
3/16" = 1'-0"

ARCHITECTURAL DESIGNER:



**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING

VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

*Teresa Cambare*  
03/22/2021  
DESIGNER: TERESA CAMBARE

CONSULTANT

**1205 PERALTA AV.  
UNIT 4 TENANT  
IMPROVEMENT**

**Cathy Nason  
(Owner)**

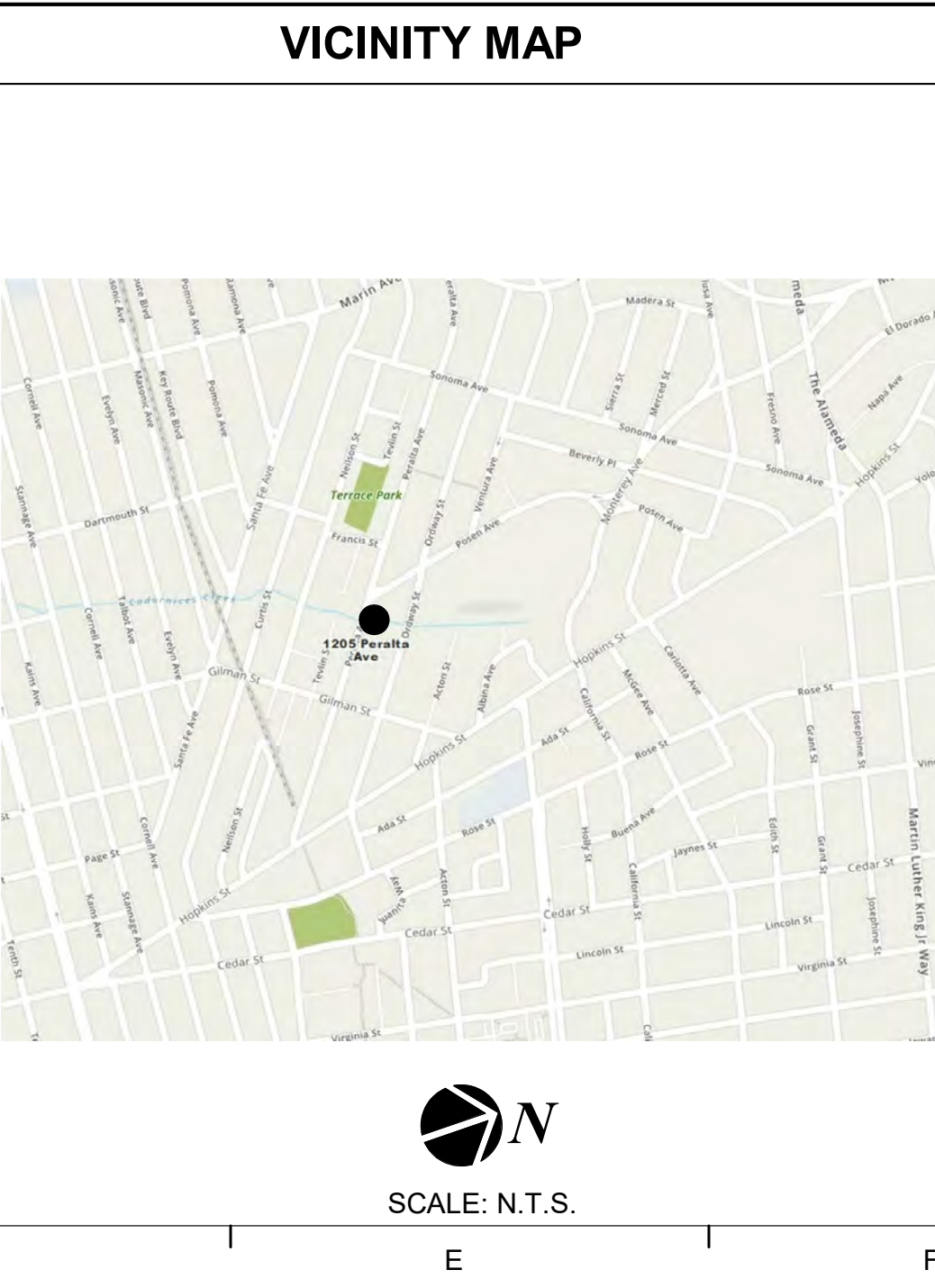
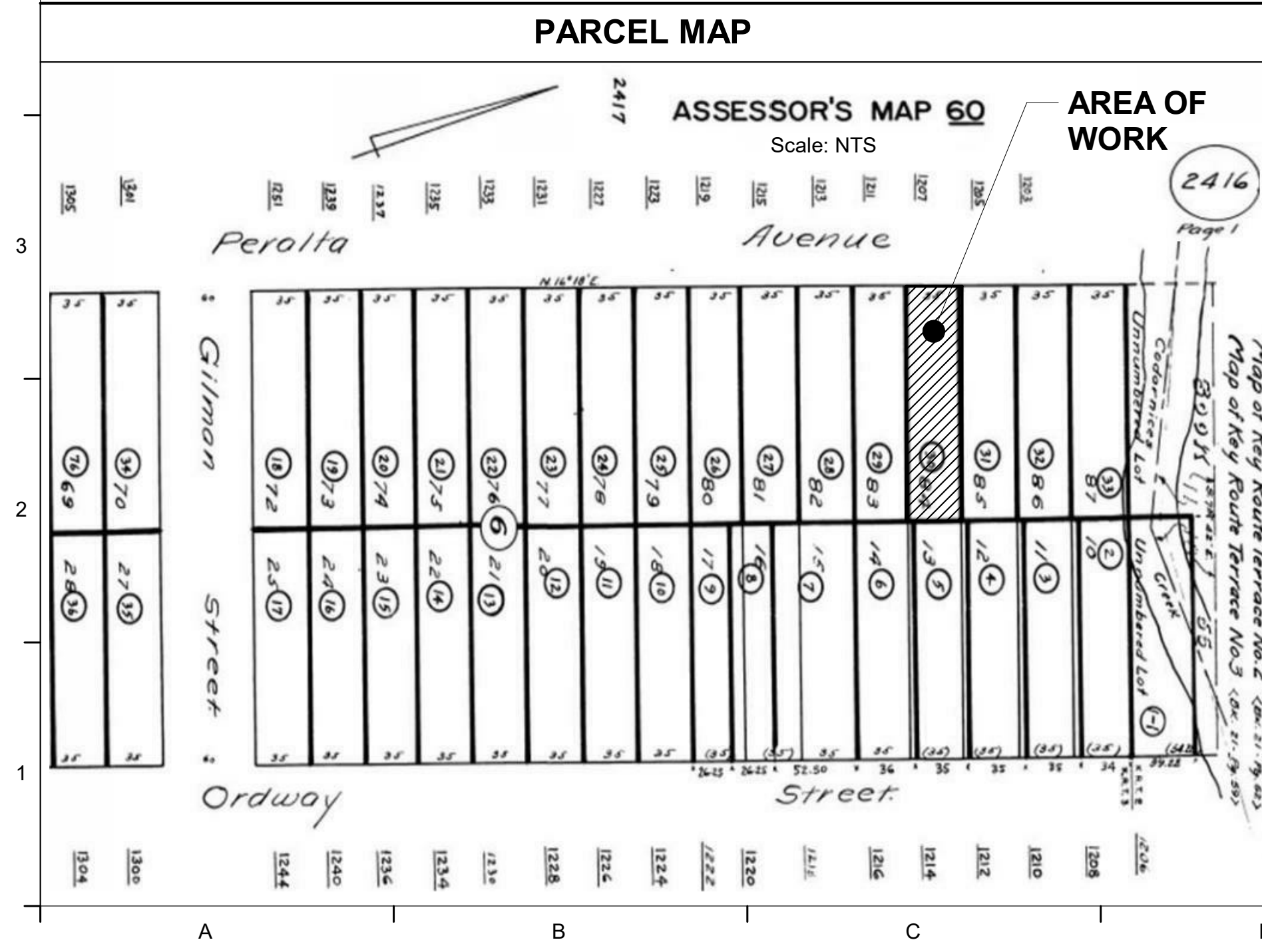
1205 Peralta Ave,  
Berkeley CA 94706

**SITE PLAN**

| REVISION NO.  | DESCRIPTION  | DATE |
|---------------|--------------|------|
|               |              |      |
| PROJECT NO.   | 1205-19P     |      |
| DATE          | 03/22/2021   |      |
| DRAWN BY      | TC           |      |
| <b>A.H.00</b> |              |      |
| SCALE         | As indicated |      |

- SHEET NOTE:**
- LOCATIONS AND SIZES OF THE ADJACENT RESIDENTIAL BUILDING FOOTPRINTS SHOWN IN THIS PLAN ARE APPROXIMATE ONLY. NO SITE MEASUREMENTS NOR AN OFFICIAL SITE SURVEY WERE CONDUCTED NOR MADE AVAILABLE FOR THE PURPOSE OF THIS PROJECT.
  - THE MOST RECENT RECORDED BOUNDARY SURVEY OF THIS LOT PRIOR TO THE RECORD OF SURVEY FILED BY HOGAN LAND SERVICES, WAS AT THE TIME OF THE SUBJECT PARCEL'S CREATION IN SEPTEMBER 1906 VIA MAP OF KEY ROUTE TERRACE NO. 3 FILED IN BOOK 21 OF MAPS PAGE 59 ALAMEDA COUNTY RECORDS.

| LOT SETBACK SCHEDULE                                                                                           |                                       |                                                                                                                |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------|----------------------------------------------------------------------------------------------------------------|
| EXISTING                                                                                                       | REQUIRED                              | PROPOSED (No Change)                                                                                           |
| <b>BUILDING 1</b><br>FRONT (West): 15'-4"<br>REAR (East): 51'-7"<br>SIDE (North): 4'-0"<br>SIDE (South): 6'-7" | SEE RESIDENTIAL STANDARDS TABLE BELOW | <b>BUILDING 1</b><br>FRONT (West): 15'-4"<br>REAR (East): 51'-7"<br>SIDE (North): 4'-0"<br>SIDE (South): 6'-7" |
| <b>BUILDING 2</b><br>FRONT (West): 97'-9"<br>REAR (East): 3'-4"<br>SIDE (North): 4'-9"<br>SIDE (South): 3'-0"  |                                       | <b>BUILDING 2</b><br>FRONT (West): 97'-9"<br>REAR (East): 3'-4"<br>SIDE (North): 4'-9"<br>SIDE (South): 3'-0"  |



**PROJECT TEAM**

**OWNER/BUILDER:**  
CATHY NASON  
1205 PERALTA AVE.,  
BERKELEY, CA 94706  
Phone: (530) 913-1584

**ARCHITECTURAL DESIGNER:**  
TERESA CAMBARE  
Cambare Designs  
Phone: (408) 204-3413  
EMAIL: teresa@cambaredesigns.com

**STRUCTURAL ENGINEER:**  
TBD

**CONTRACTOR:**  
TBD

**PARCEL DATA**

PROJECT ADDRESS: 1205 PERALTA ST,  
BERKELEY CA 94706

OWNER: CATHY NASON  
APN: 060-241603100  
YEAR BUILT: 1913  
CONSTRUCTION TYPE: TYPE V-B  
OCCUPANCY: R2  
ZONING DISTRICT: R-1A  
GEN. PLAN AREA: LMDR

**SHEET INDEX**

| SHEET # | SHEET NAME                               |
|---------|------------------------------------------|
| A.H.00  | SITE PLAN                                |
| A.H.01  | DIAGRAMS AND EXISTING FLOOR PLANS        |
| A.H.10  | PROPOSED FLOOR PLANS & BUILDING SECTIONS |
| A.H.11  | PROPOSED EXTERIOR ELEVATIONS             |
| A.H.12  | PROPOSED PERSPECTIVE VIEWS               |

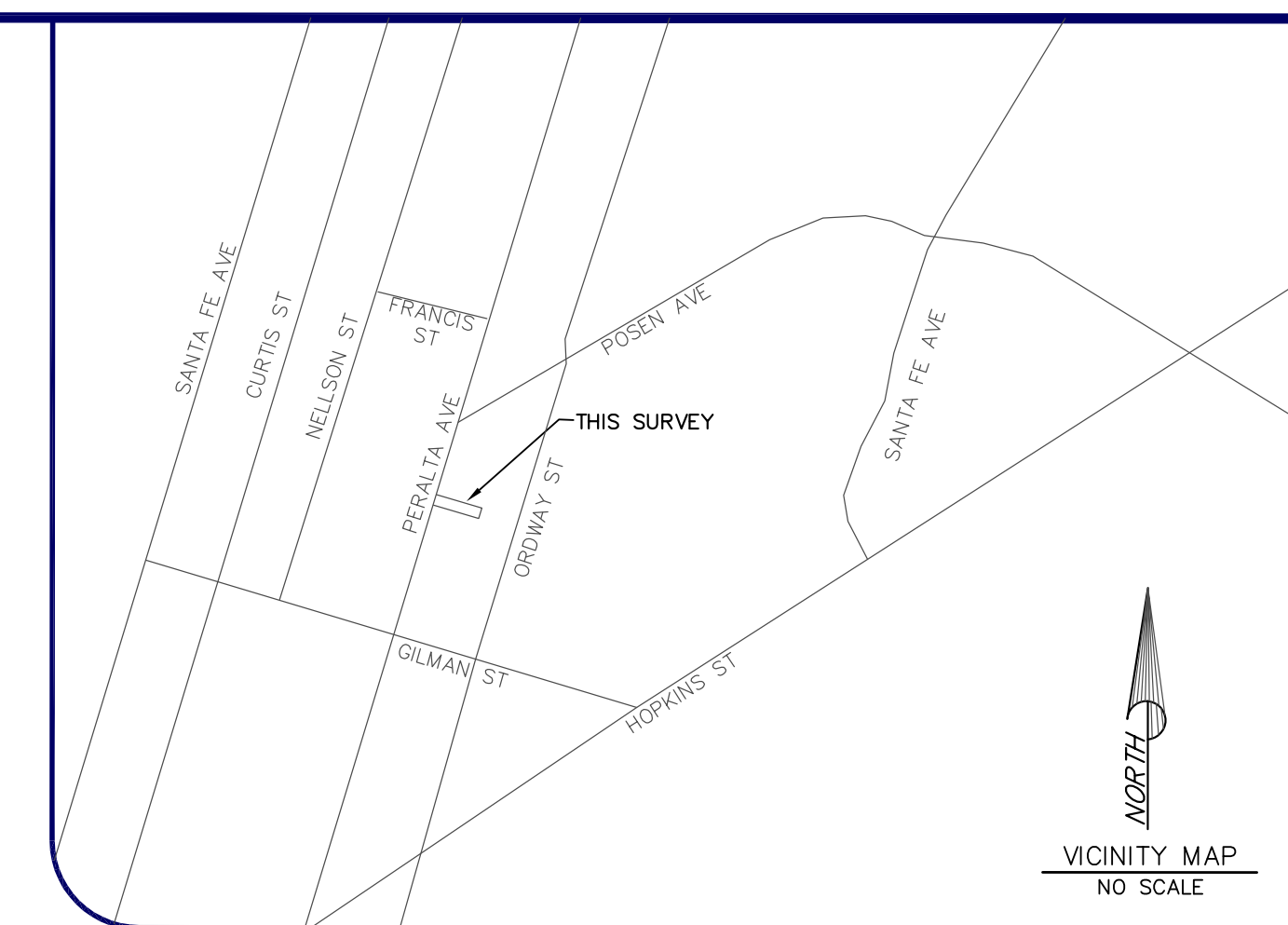
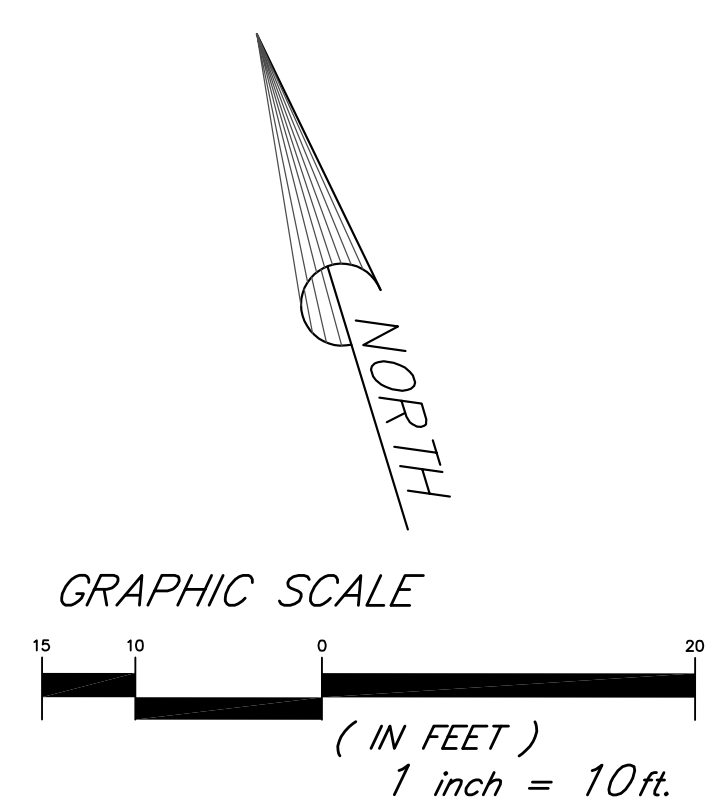
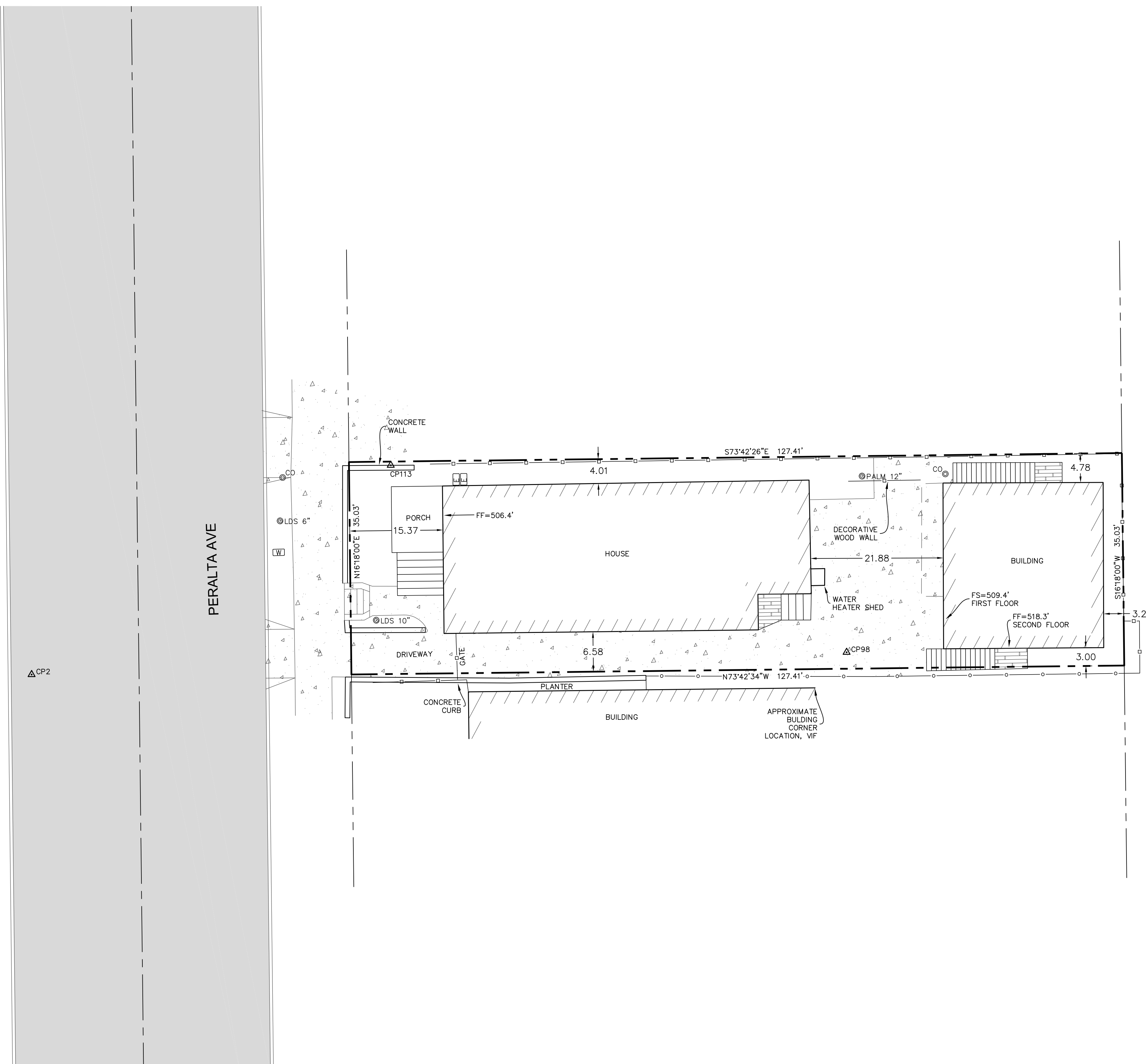
**RESIDENTIAL DEVELOPMENT STANDARDS**

| Zoning District* | Density (Min. Lot Area Per Unit; sq. ft.) | Height Limit (ft.)** |                 |                    |      | Min. Setbacks (ft.)** |                   |                 |                           | Max. Lot Coverage**                                                                                                          |                       |                     | Min. Open Space** (sq. ft. per unit) |                 |
|------------------|-------------------------------------------|----------------------|-----------------|--------------------|------|-----------------------|-------------------|-----------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------|--------------------------------------|-----------------|
|                  |                                           | Additions            |                 | New Main Buildings |      | Front                 | Rear              | Side            | Street Side (Corner Lots) | Between Main Bldgs. on Same Lot                                                                                              | Stories in Main Bldg. | Non-Corner Lots (%) |                                      | Corner Lots (%) |
|                  |                                           | Average              | Max.            | Avg.               | Max. |                       |                   |                 |                           |                                                                                                                              |                       |                     |                                      |                 |
| R-1A             | 14 <sup>5</sup>                           | --                   | 28 <sup>7</sup> | --                 | 3    | 20                    | 20 <sup>8,9</sup> | 4 <sup>11</sup> | 4 <sup>12</sup>           | 1 <sup>10</sup> story: 8 <sup>10</sup><br>2 <sup>10</sup> story: 12 <sup>10</sup><br>3 <sup>10</sup> story: 16 <sup>10</sup> | All                   | 40                  | 45                                   | 400             |



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2:\NLS\Projects\4457\Name\Draws\4457\NLS\4457\4457-1300-CD-02.dwg, 1/22/2021 7:48:17 AM, Burdette POF



**LEGEND**

|       |                                |
|-------|--------------------------------|
| ---   | RECORD BOUNDARY LINE           |
| - - - | RECORD ADJOINING BOUNDARY LINE |
| ---   | RECORD EASEMENT LINE           |
| ---   | RECORD CENTERLINE              |
| ---   | EDGE OF CONCRETE               |
| ---   | EDGE OF BUILDING               |
| ---   | BUILDING OVERHANG              |
| ---   | WOOD FENCE                     |
| ---   | CHAINLINK FENCE                |
| ---   | MINOR CONTOUR                  |
| ---   | MAJOR CONTOUR                  |
| ---   | ASPHALT CONCRETE SURFACE       |
| ---   | CONCRETE SURFACE               |
| ---   | DECKING                        |

**SYMBOLS**

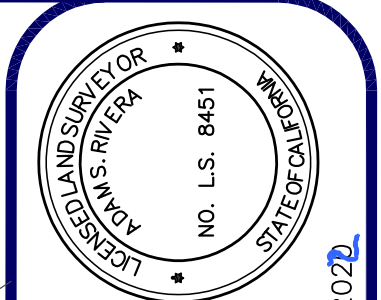
|   |                          |
|---|--------------------------|
| ⊠ | WATER METER              |
| ⊞ | ELECTRIC METER           |
| ⊞ | SEWER CLEAN OUT          |
| △ | RANDOM CONTROL POINT W/# |
| ⊙ | TREE TYPE & DIA.         |

**ABBREVIATIONS**

|      |                          |
|------|--------------------------|
| FF   | FINISHED FLOOR ELEVATION |
| FS   | FINISHED SLAB ELEVATION  |
| LDS  | LANDSCAPE TREE           |
| PALM | PALM TREE                |
| VIF  | VERIFY IN FIELD          |

**NOTES:**

- 1) THE PURPOSE OF THIS MAP IS FOR PLANNING AND THE CONTENT IS RELATIVE TO THE INTENDED USE. UNAUTHORIZED CHANGES OR ADDITIONS TO THE EXISTING DATA SHOWN ON THIS MAP IS STRICTLY PROHIBITED. ANY USES OF THIS MAP BEYOND THE STATED PURPOSE REQUIRES THE AUTHORIZATION OF HOGAN LAND SERVICES.
- 2) BOUNDARY LINES SHOWN HEREON ARE BASED ON A BOUNDARY DETERMINATION BEING PERFORMED BY THIS OFFICE. THE BOUNDARY INFORMATION SHOWN IS PRELIMINARY AND IS SUBJECT TO CHANGE, PLEASE CONTACT THIS OFFICE OR REVIEW THE COMPLETED AND FILED RECORD OF SURVEY PRIOR TO RELYING ON ANY INFORMATION SHOWN HEREON.
- 3) HORIZONTAL CONTROL:  
CENTERLINE MONUMENTS FOUND ALONG PERALTA AVENUE(N16°18'00"E )
- 4) VERTICAL CONTROL:  
ELEVATION DATUM IS ASSUMED, BASED ON CP 2 (497.89 FEET)
- 5) THE MOST RECENT RECORDED BOUNDARY SURVEY OF THIS LOT PRIOR TO THE RECORD OF SURVEY BEING FILED BY THIS OFFICE, WAS AT THE TIME OF THE SUBJECT PARCEL'S CREATION IN SEPTEMBER 1906 VIA MAP OF KEY ROUTE TERRACE NO. 3 FILED IN BOOK 21 OF MAPS PAGE 59 ALAMEDA COUNTY RECORDS.



THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AT THE REQUEST OF CATHERINE NASON IN JUNE, 2020

ADAM S. RIVERA PLS 8451 EX: 12/31/2022

|        |         |
|--------|---------|
| DRN:   | ABF     |
| CHK:   | TWR     |
| PM:    | ASR     |
| DATE:  | 1/22/21 |
| JOB #: | 4627    |

**HOGAN LAND SERVICES**  
A CALIFORNIA CORPORATION

1702 4TH STREET  
SANTA ROSA, CA 95404  
Tel (707) 544-2104

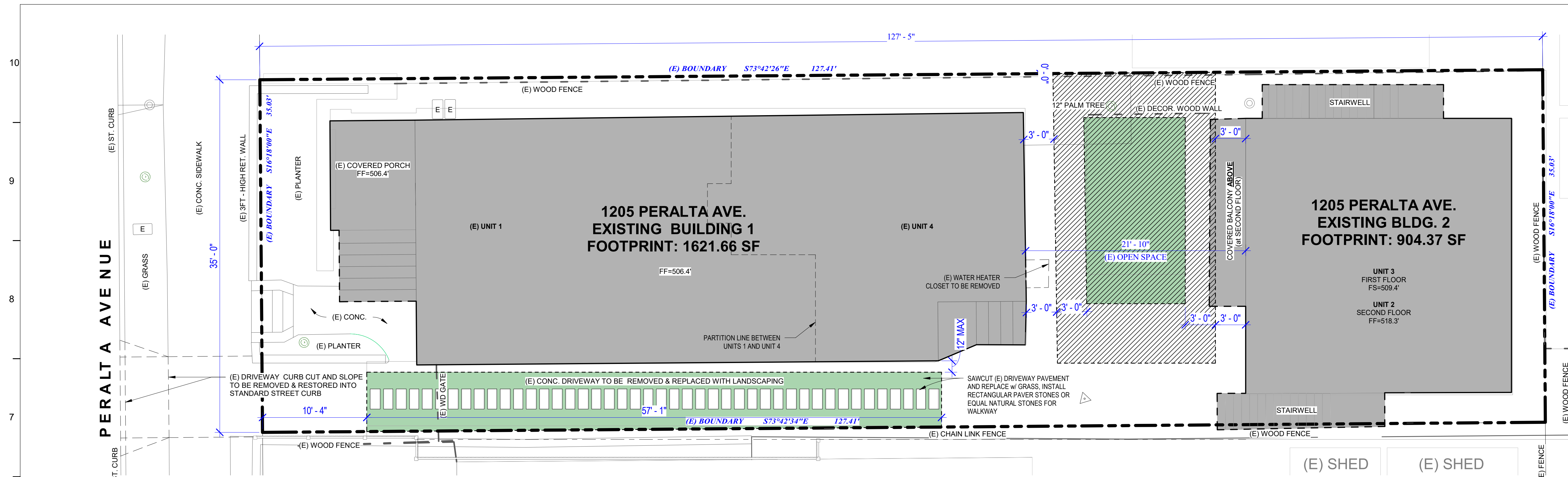
Fax (707) 522-2105  
www.hoganls.com

**SITE MAP**

APN: 60-2416-31

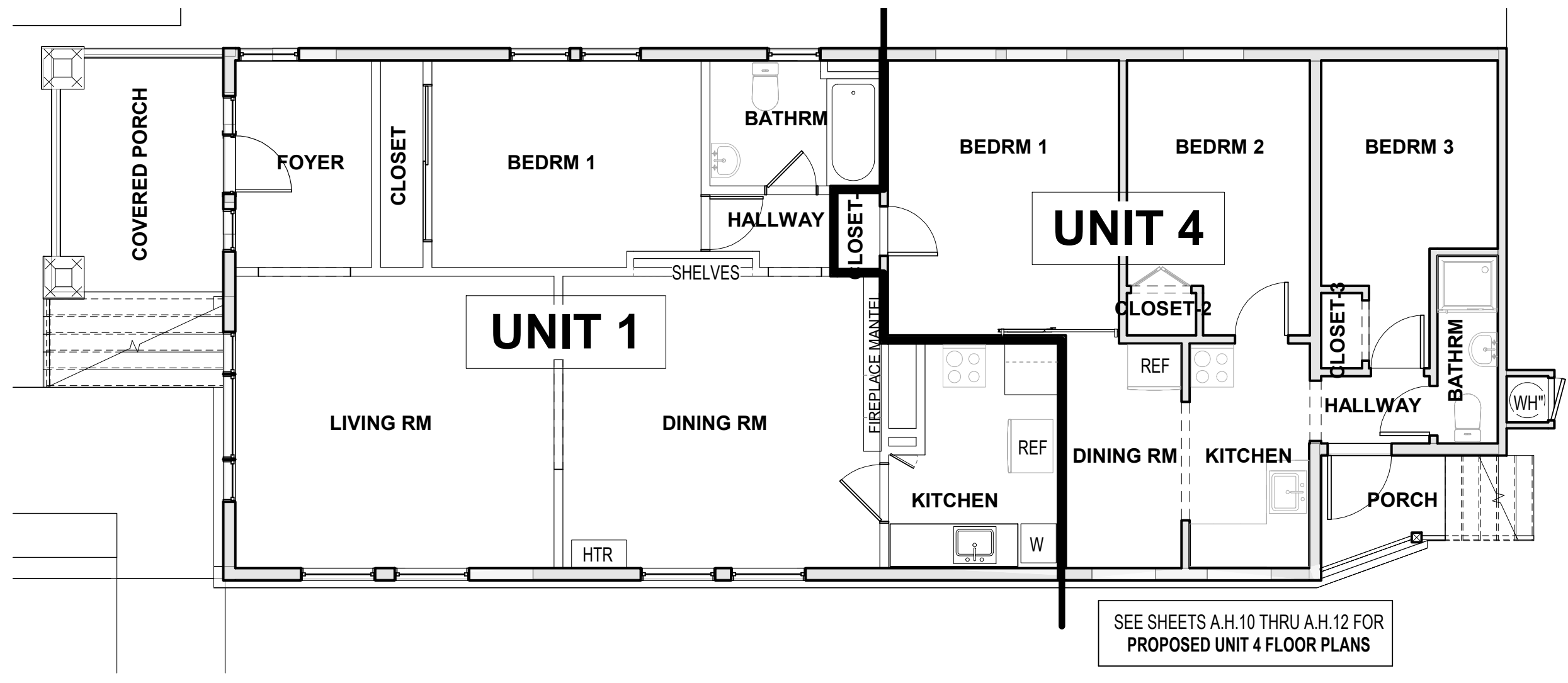
1205 PERALTA AVE  
BERKELEY, CALIFORNIA

1 OF 1

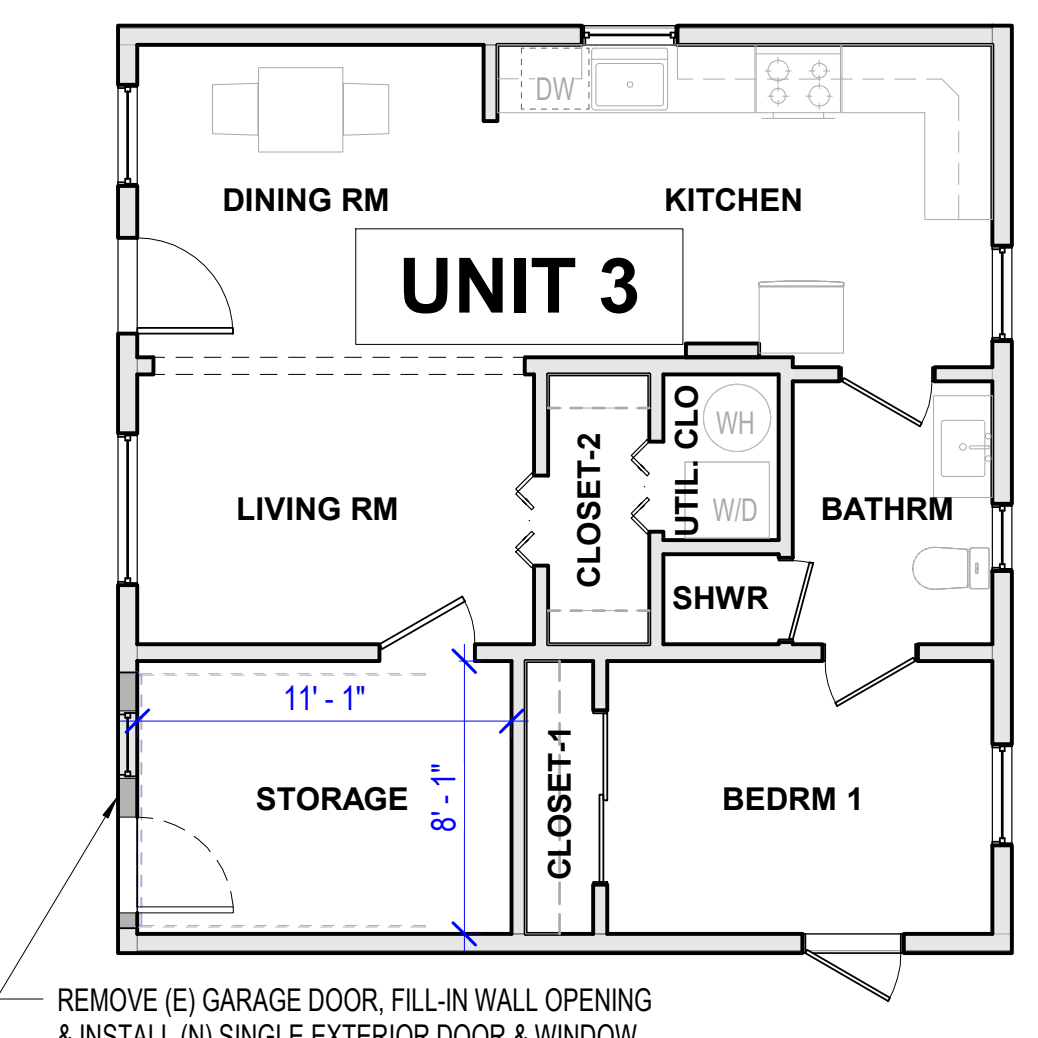


1 DIAGRAMS - BUILDING FOOTPRINT, USABLE OPEN SPACE, & LOT COVERAGE  
3/16" = 1'-0"

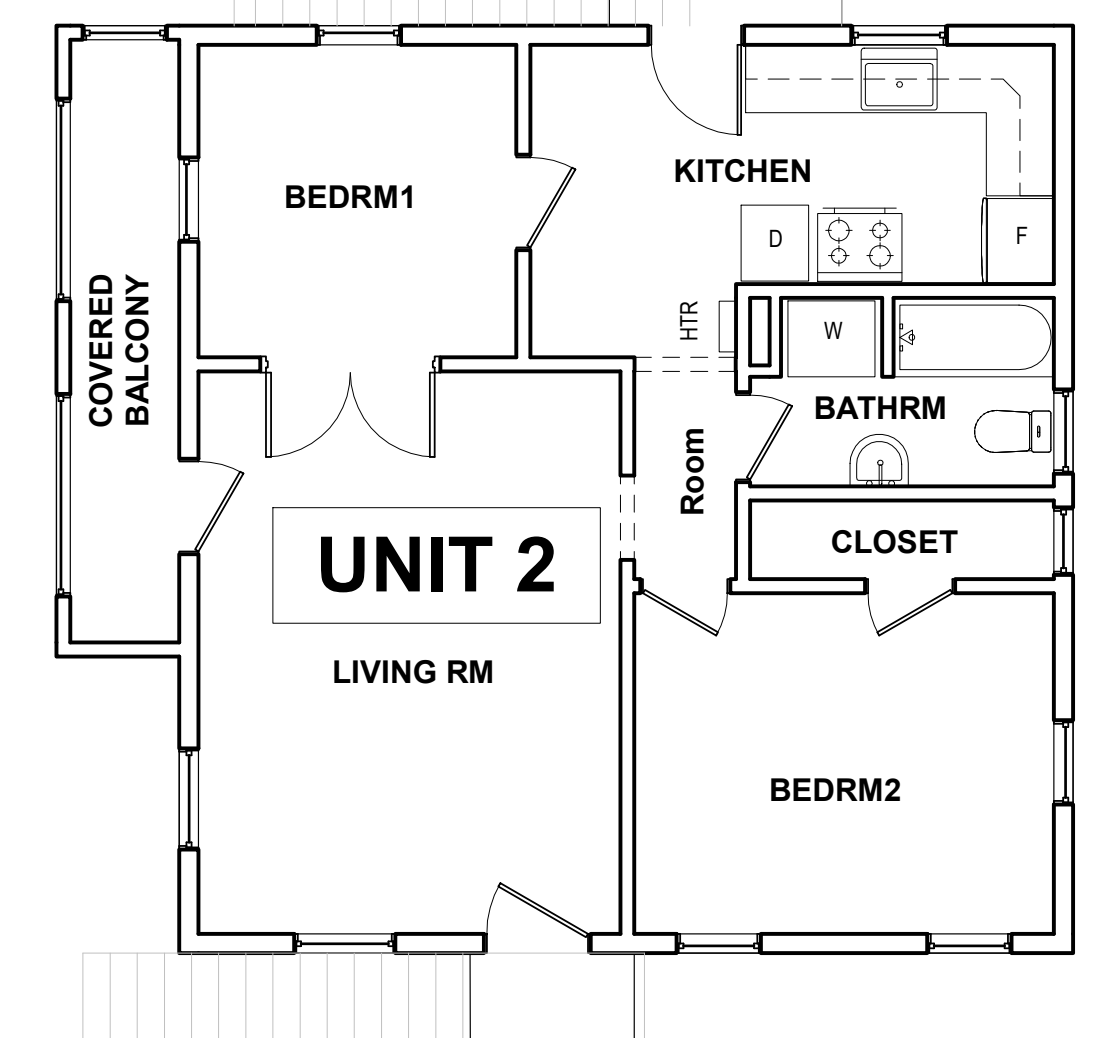
| LOT AREA:                | EXISTING BUILDING FOOTPRINTS              | EXISTING LOT COVERAGE: 56.6%              | EXISTING USABLE OPEN SPACE             |
|--------------------------|-------------------------------------------|-------------------------------------------|----------------------------------------|
| LOT DEPTH: 127.41' s.f.  | TOTAL BUILDING 1 FOOTPRINT: 1621.66 s.f.  | (FOOTPRINT / LOT AREA)                    | TOTAL U.O.S. AREA: 458.92 s.f.         |
| LOT WIDTH: 35.03' s.f. x | TOTAL BUILDING 2 FOOTPRINT: 904.37 s.f. + | TOTAL BUILDING FOOTPRINTS: 2526.03 s.f. / | 40% Landscaped U.O.S.: 183.57 s.f.     |
| LOT AREA: 4463.17 s.f.   | TOTAL BUILDING FOOTPRINTS: 2526.03 s.f.   | LOT AREA: 4463.17 s.f.                    | Shading Legend:                        |
|                          | Building Footprint Shading Legend:        | LOT COVERAGE: 0.566 (56.6%)               | Total usable open space: [Hatched Box] |
|                          |                                           |                                           | 40% Landscaped U.O.S.: [Green Box]     |



3 BUILDING 1 (SINGLE STORY DUPLEX) - UNITS 1 & 4 EXISTING FLOOR PLAN  
3/16" = 1'-0"



2 BUILDING 2 (TWO STORIES) - UNIT 3 (Ground Floor) EXISTING FLOOR PLAN  
3/16" = 1'-0"



4 BUILDING 2 (TWO STORIES) - UNIT 2 (Second Floor) EXISTING FLOOR PLAN  
3/16" = 1'-0"

| EXISTING GROSS FLOOR AREA SCHEDULE<br>PER OFFICIAL SITE SURVEY |                                                 | PROPOSED GROSS FLOOR AREA SCHEDULE |                              |
|----------------------------------------------------------------|-------------------------------------------------|------------------------------------|------------------------------|
| BUILDING 1                                                     | BUILDING 2                                      | BUILDING 1                         | BUILDING 2                   |
| UNIT 1: 935.97 s.f.                                            | UNIT 2: 786.12 s.f.                             | UNIT 1: 935.97 s.f.                | UNIT 2: 786.12 s.f.          |
| UNIT 4: 631.68 s.f. +                                          | UNIT 3: 359.82 s.f. +                           | UNIT 4: 631.68 s.f. +              | UNIT 3: 719.82 s.f. +        |
| TOTAL GFA: 1567.65 s.f.                                        | TOTAL GFA: 1145.94 s.f.                         | TOTAL GFA: 1567.65 s.f.            | Subtotal GFA: 1505.94 s.f.   |
|                                                                | Where Unit 3 18'x20' (E) garage area = 360 s.f. | (NO CHANGE)                        | Storage @ Unit 3: 88.00 s.f. |
|                                                                |                                                 |                                    | TOTAL GFA: 1417.94 s.f.      |

ARCHITECTURAL DESIGNER:

**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING  
VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

03/22/2021  
DESIGNER: TERESA CAMBARE

CONSULTANT

**1205 PERALTA AV.  
UNIT 4 TENANT  
IMPROVEMENT**

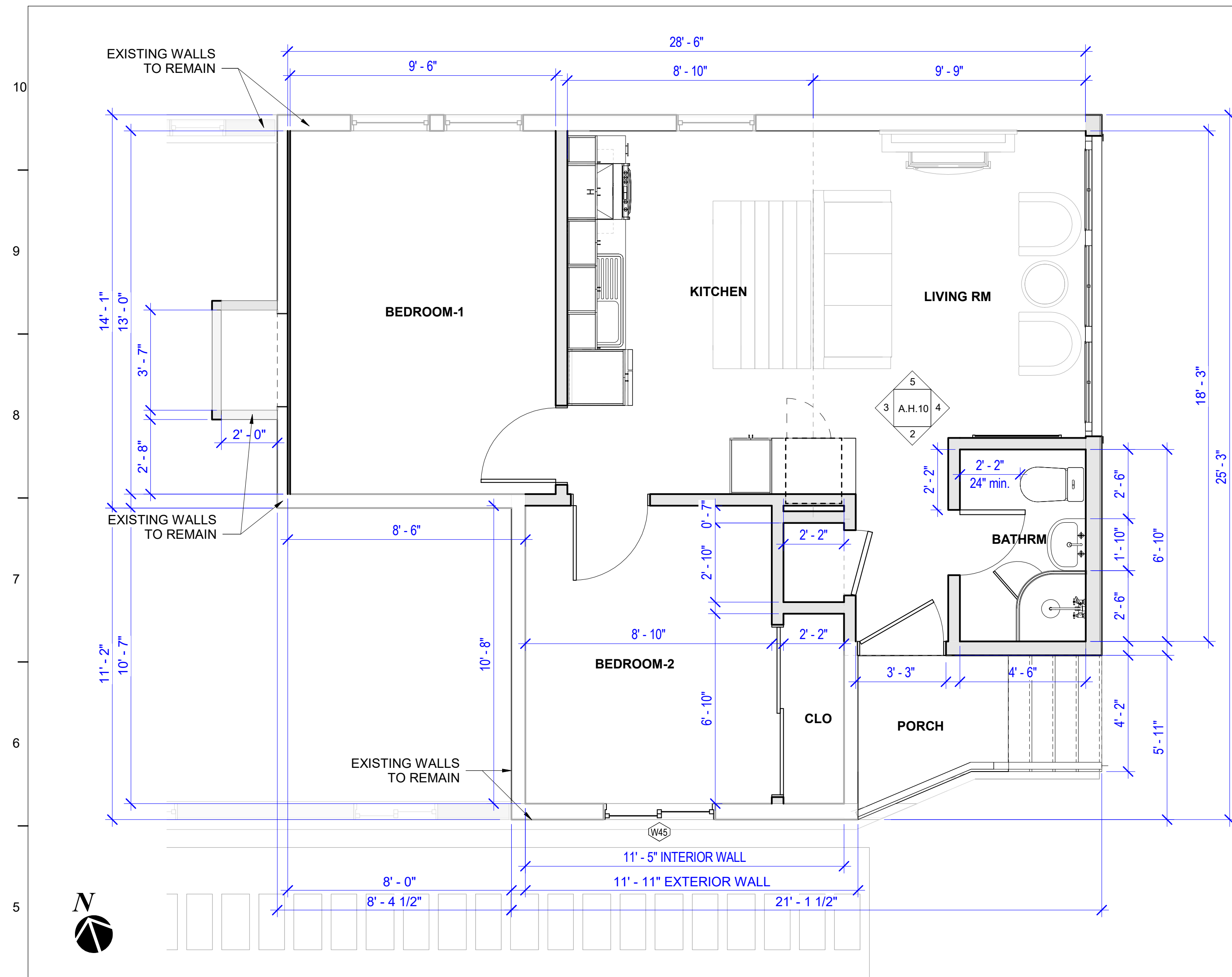
Cathy Nason  
(Owner)

1205 Peralta Ave,  
Berkeley CA 94706

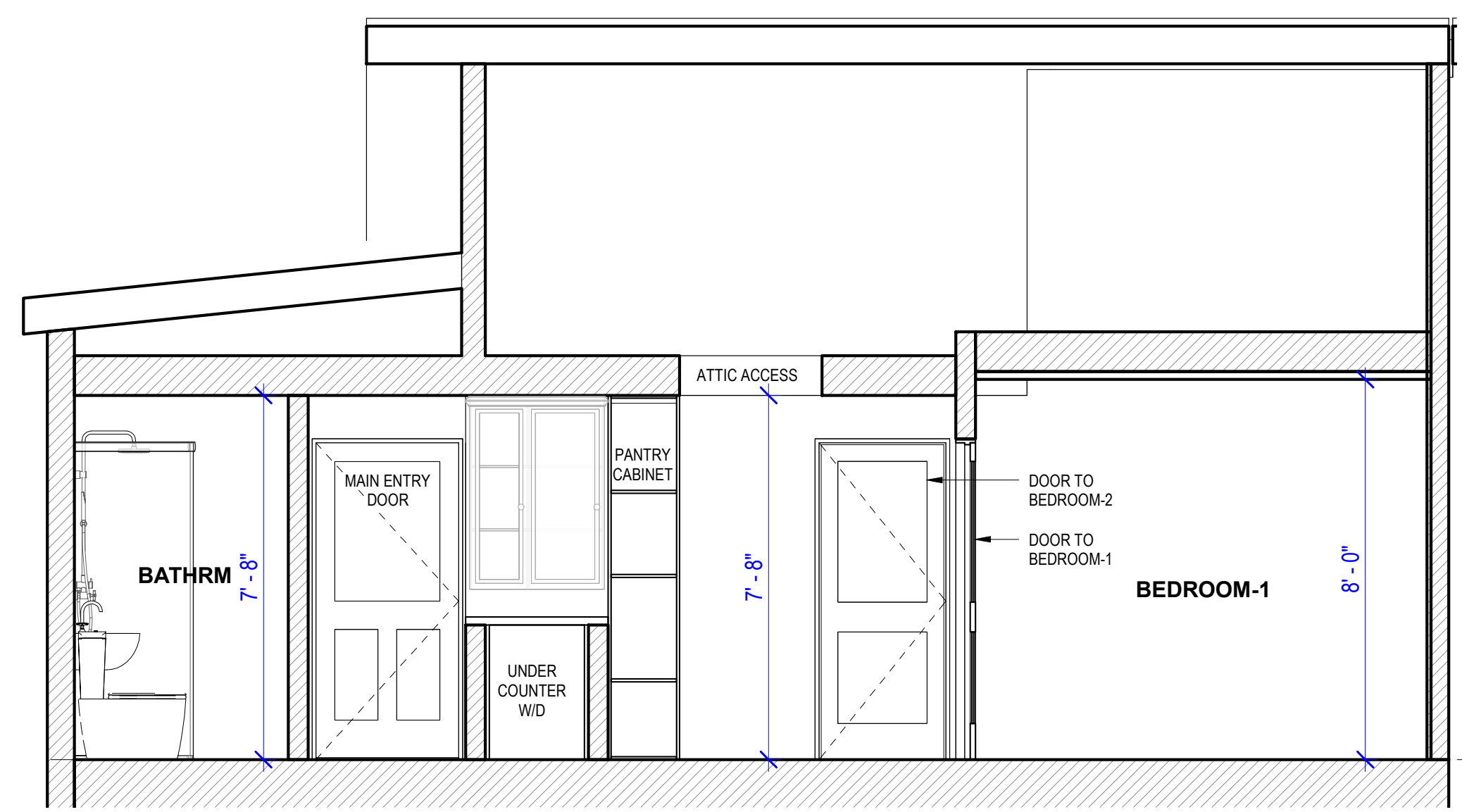
**DIAGRAMS AND EXISTING  
FLOOR PLANS**

| REVISION NO.  | DESCRIPTION  | DATE |
|---------------|--------------|------|
|               |              |      |
| PROJECT NO.   | 1205-19P     |      |
| DATE          | 03/22/2021   |      |
| DRAWN BY      | TC           |      |
| <b>A.H.01</b> |              |      |
| SCALE         | As indicated |      |

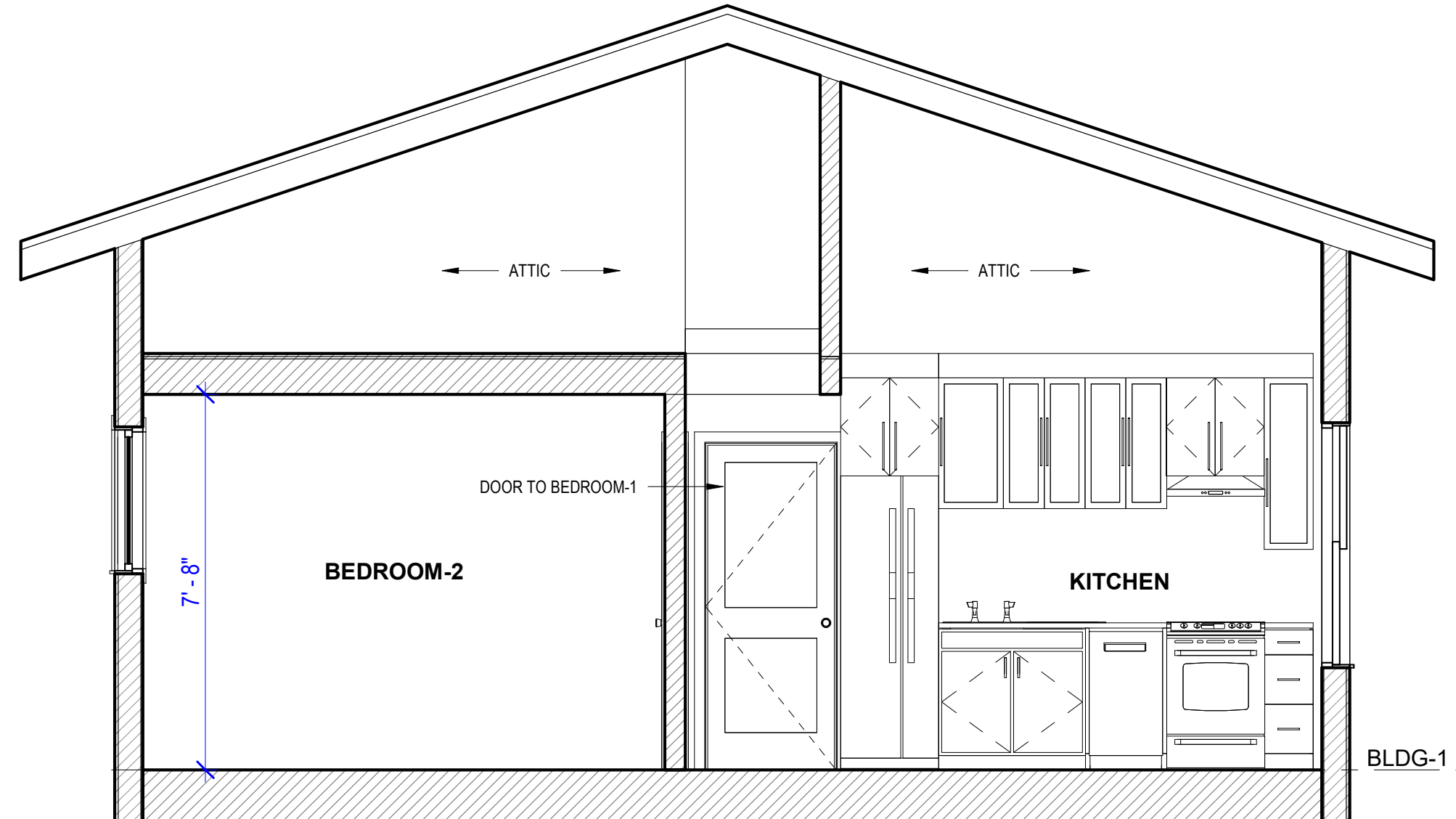




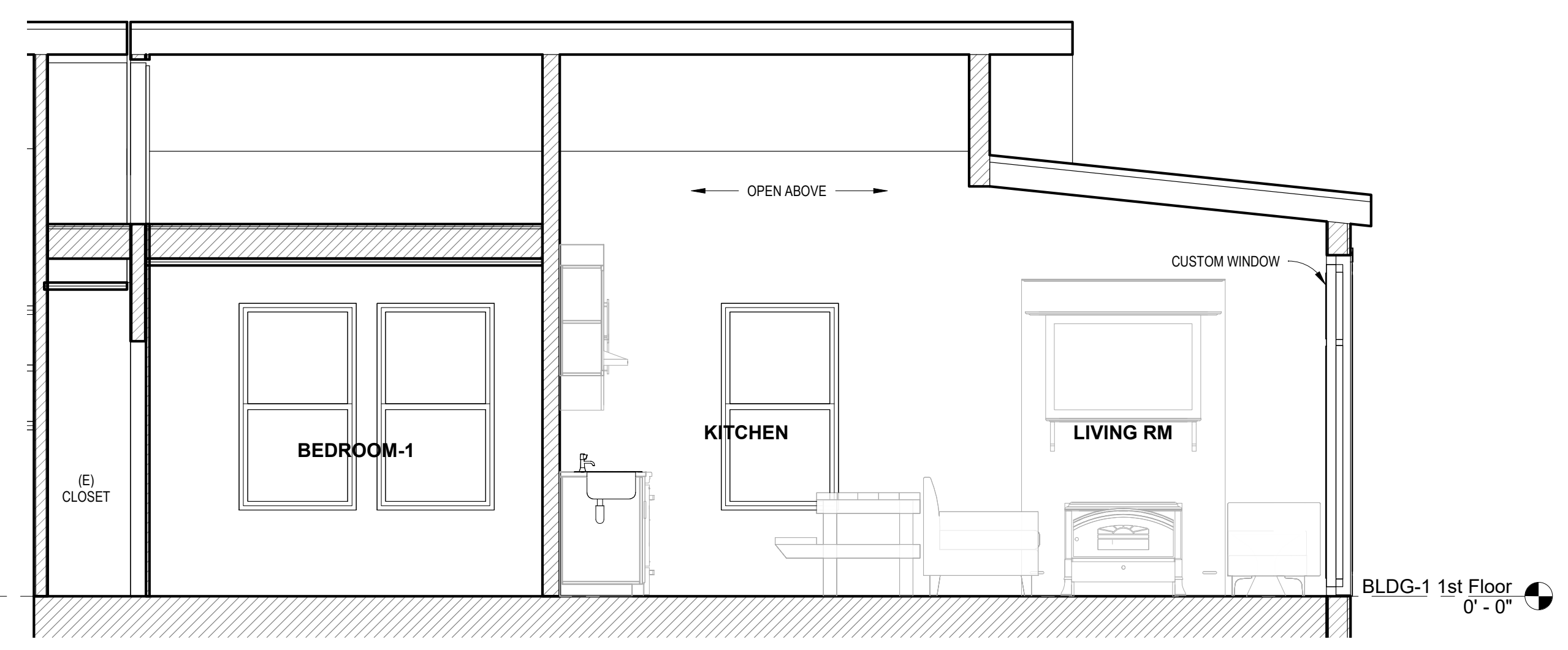
1 1st Floor  
3/8" = 1'-0"



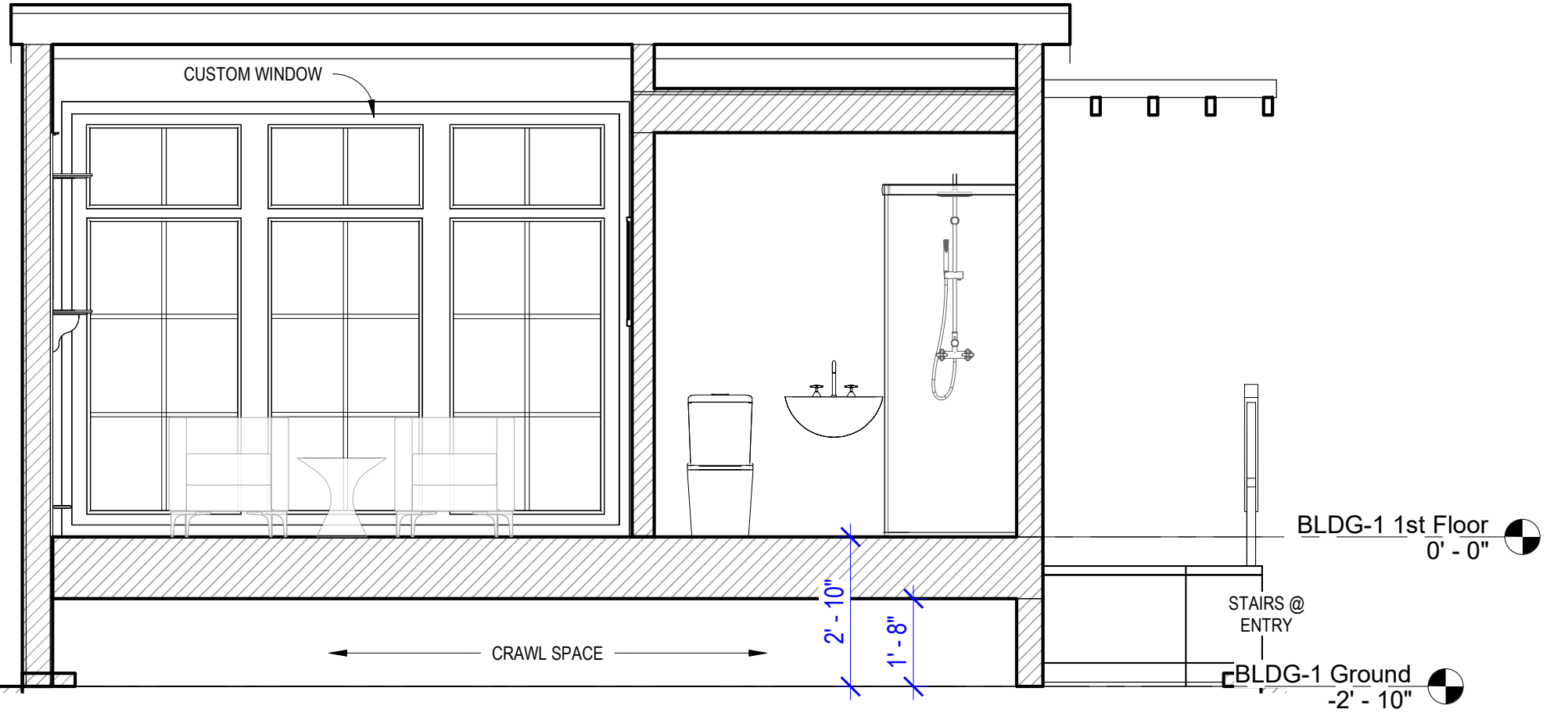
2 BUILDING 1 UNIT 4 SECTION - A  
3/8" = 1'-0"



3 BUILDING 1 UNIT 4 SECTION - B  
3/8" = 1'-0"



5 BUILDING 1 UNIT 4 SECTION - D  
3/8" = 1'-0"



4 BUILDING 1 UNIT 4 SECTION - C  
3/8" = 1'-0"

ARCHITECTURAL DESIGNER:



**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING  
VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

CONSULTANT

**1205 PERALTA AV.  
UNIT 4 TENANT  
IMPROVEMENT**

**Cathy Nason  
(Owner)**

1205 Peralta Ave,  
Berkeley CA 94706

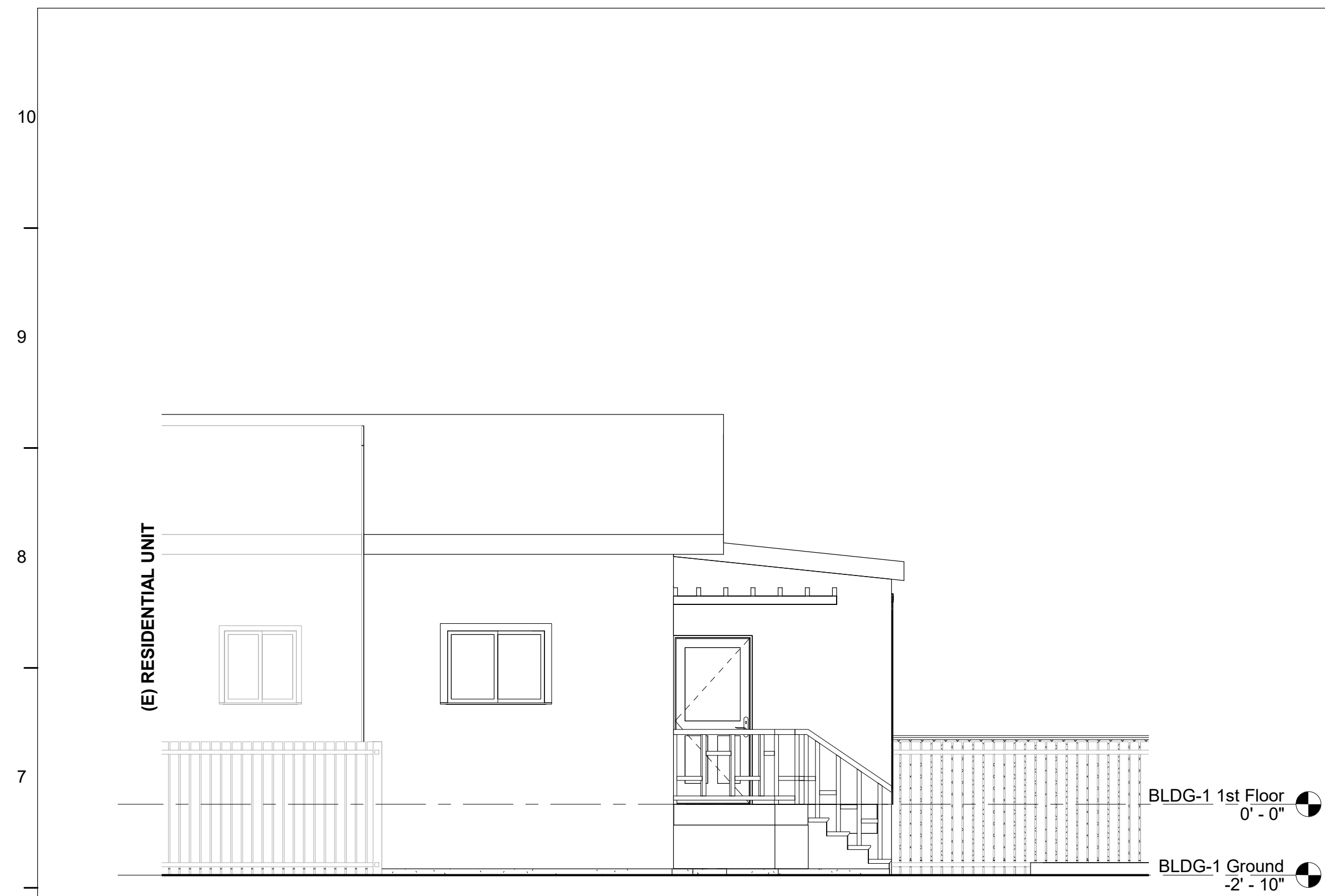
**PROPOSED FLOOR PLANS  
& BUILDING SECTIONS**

| REVISION NO. | DESCRIPTION | DATE |
|--------------|-------------|------|
|              |             |      |
| PROJECT NO.  | 1205-19P    |      |
| DATE         | 03/22/2021  |      |
| DRAWN BY     | TC          |      |

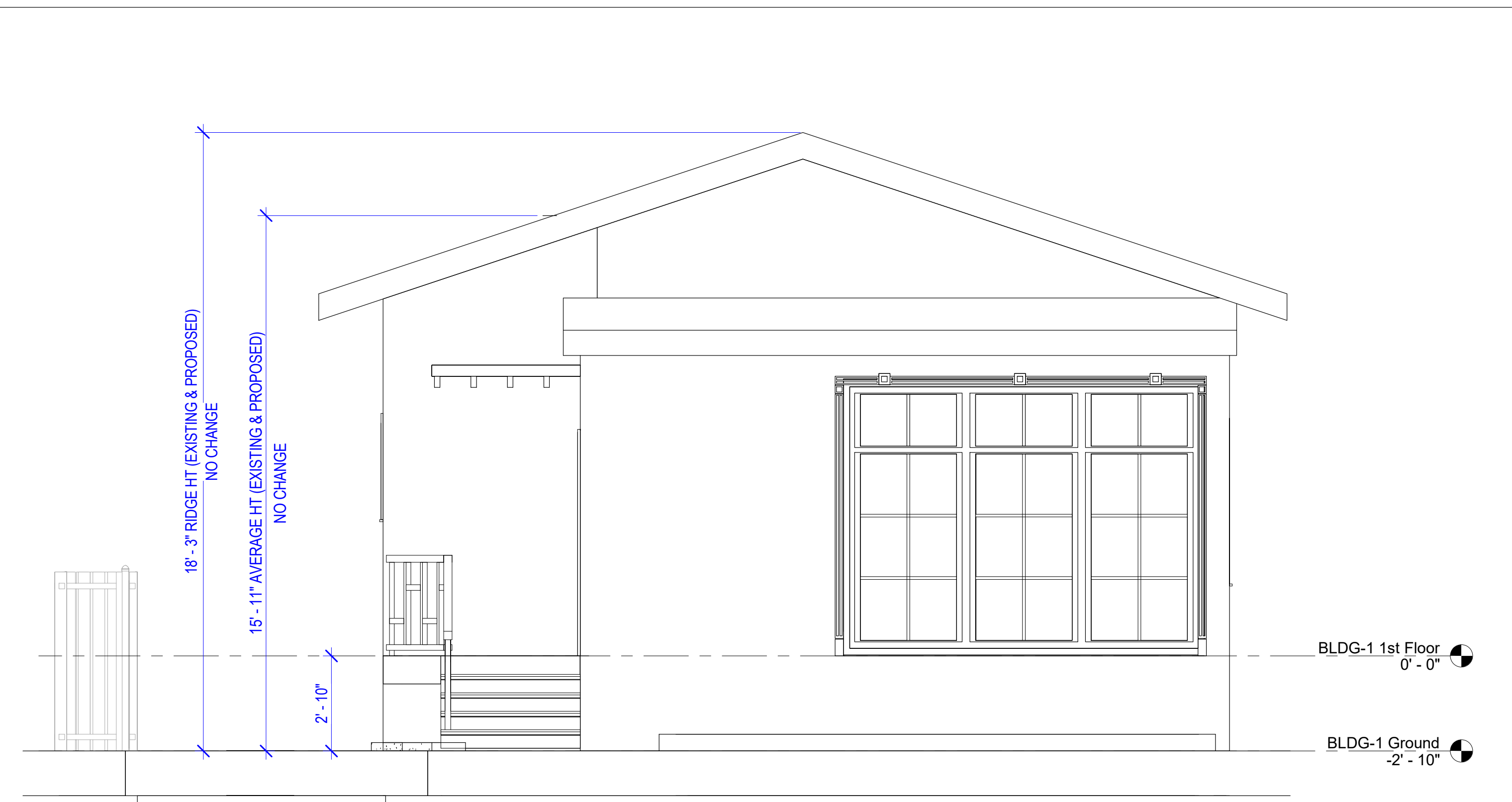
**A.H.10**

SCALE 3/8" = 1'-0"

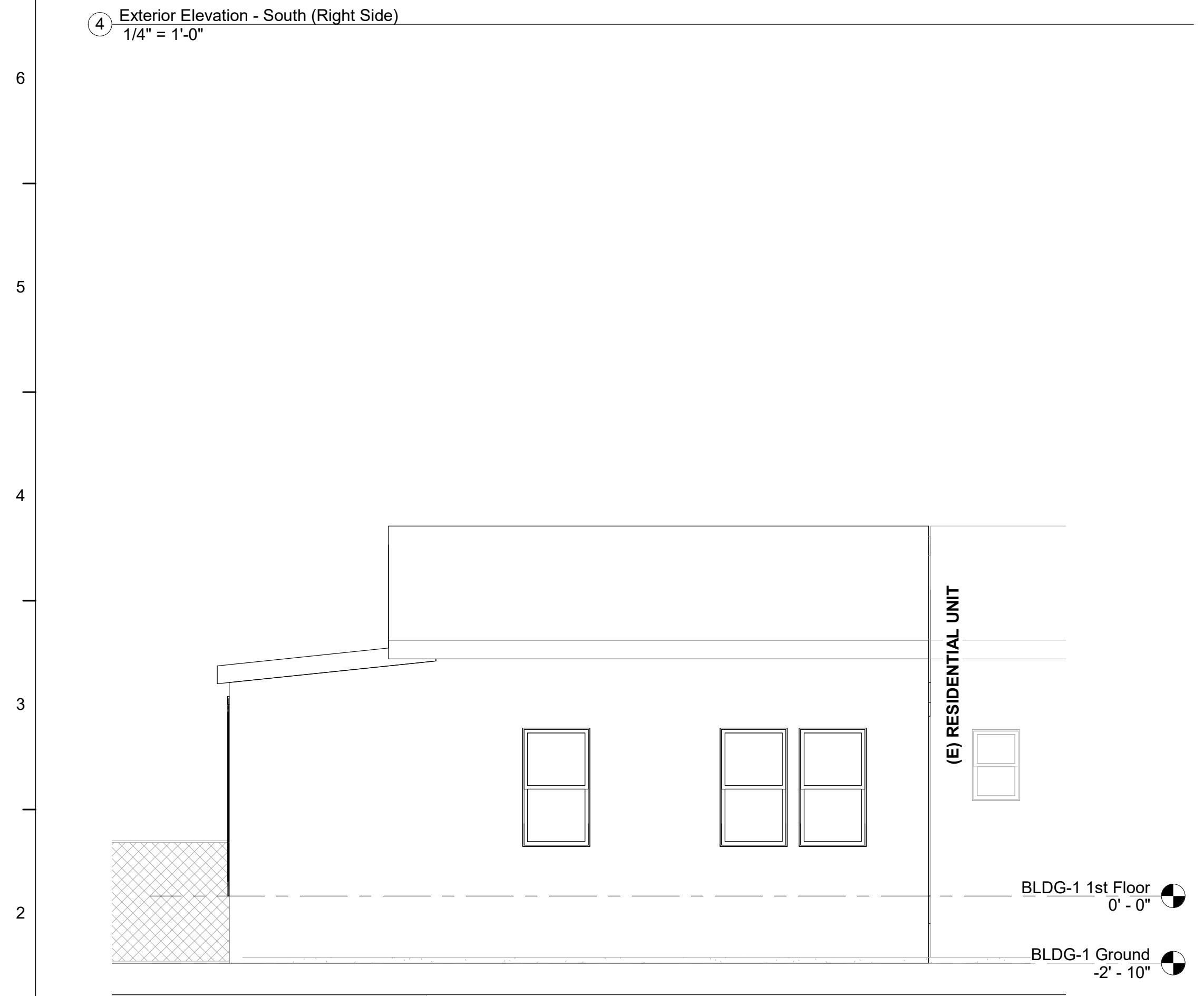
3/22/2021 11:16:37 AM



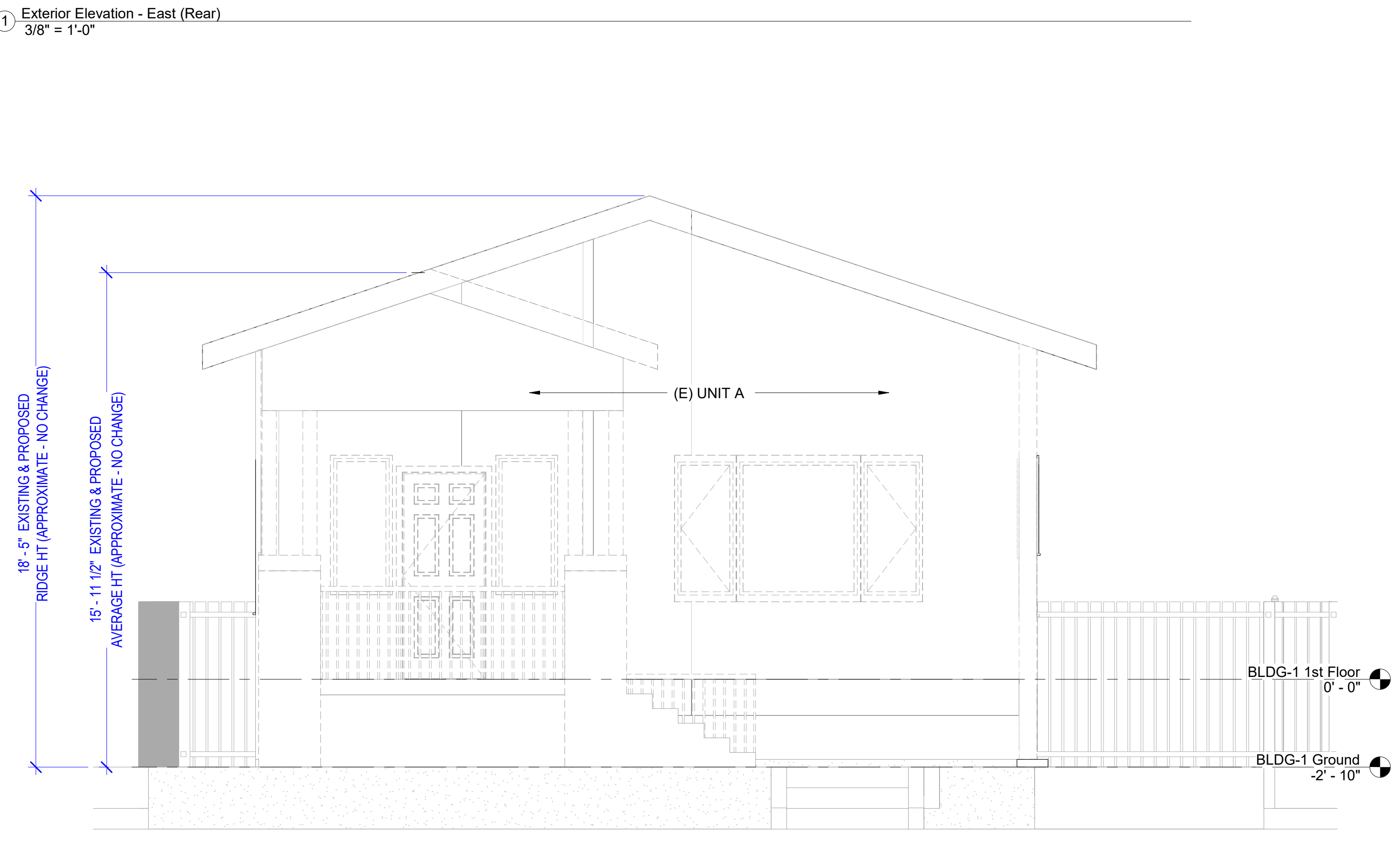
④ Exterior Elevation - South (Right Side)  
1/4" = 1'-0"



① Exterior Elevation - East (Rear)  
3/8" = 1'-0"



③ Exterior Elevation - North (Left Side)  
1/4" = 1'-0"



② Exterior Elevation - West (Front)  
3/8" = 1'-0"

ARCHITECTURAL DESIGNER:



**Cambare Designs**  
DESIGNS ASBUILT BUILDING INFORMATION MODELING  
VACAVILLE, CALIFORNIA  
PHONE: (408) 204-3413  
EMAIL: TERESA@CAMBAREDESIGNS.COM

CONSULTANT

**1205 PERALTA AV.  
UNIT 4 TENANT  
IMPROVEMENT**

**Cathy Nason  
(Owner)**

1205 Peralta Ave,  
Berkeley CA 94706

**PROPOSED EXTERIOR  
ELEVATIONS**

| REVISION NO.  | DESCRIPTION  | DATE |
|---------------|--------------|------|
|               |              |      |
|               |              |      |
| PROJECT NO.   | 1205-19P     |      |
| DATE          | 03/22/2021   |      |
| DRAWN BY      | Author       |      |
| <b>A.H.11</b> |              |      |
| SCALE         | As indicated |      |

3/22/2021 11:16:38 AM

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## FINDINGS FOR DENIAL

APRIL 8, 2021

# 1205 Peralta Avenue

**Variance/Use Permit #ZP2020-0060 to eliminate two required off-street parking spaces by legalizing conversion of an existing 18 ft. x 20 ft. garage to habitable space and Use Permit to legalize the addition of bedrooms six through eight on a parcel that is non-conforming for density, lot coverage, setbacks, usable open space and parking.**

### PERMITS REQUIRED

---

- Variance under [Berkeley Municipal Code](#) (BMC) Section 23B.44.030.B to eliminate required parking.
- Use Permit, under BMC Section 23C.04.070.C, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable lot coverage.
- Use Permit, under BMC Section 23C.04.070.E, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable density.
- Use Permit under BMC Section 23D.20.050.A to legalize the sixth, seventh and eighth bedrooms on the lot.

### I. VARIANCE FINDINGS FOR DENIAL

---

Pursuant to Berkeley Municipal Code Section 23B.44.030.B, the City cannot make the findings required by Berkeley Municipal Code Section 23B.44.030.A, and therefore must deny the Variances to eliminate the two existing required off-street parking spaces on the lot by conversion of garage to habitable space;

- i. *There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District:*

The applicant has provided no evidence, nor can staff find evidence of circumstance or conditions that apply to the land, building or use which do not generally apply to land buildings and/or uses in the same District. Neither the nonconforming use of the lot nor illegal conversion of garage is considered unique or otherwise exceptional or extraordinary. Similarly, due to the age of buildings and the various changes made over time to the Zoning Ordinance, many buildings and sites are non-conforming in this District to varying degrees, including the subject site. This finding cannot be made.

- ii. *The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner:*

The applicant has not provided evidence that the use of the property with its unpermitted condition is necessary for the preservation and enjoyment of substantial property rights. In fact, the property owners purchased, and have managed, a property with four lawful, rental dwelling units for several years. This finding cannot be made.

- iii. *The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole:*

The illegal conversion of the existing garage has eliminated the two available and required off-street parking spaces on the site. Staff has received correspondence from the neighbors stating that the lack of parking spaces on the subject lot puts an additional burden on street parking which is already strained. This finding cannot be made because eliminating the two parking spaces will adversely impact the improvements in said neighborhood as it impacts on-street parking for this over-densified site for the neighborhood and the tenants.

In conclusion, the required Variances to approve the illegal dwelling cannot be made as there is no exceptional circumstance on the property (Finding 1), the variance is not necessary for the preservation of substantial property rights (Finding 2), and the project would be generally detrimental (Finding 3).

## **II. ADDITION OF BEDROOMS FINDINGS FOR DENIAL**

Pursuant to BMC Section 23D.20.050.A, the addition of more than five bedrooms on the parcel requires the approval of a Use Permit. Specifically, the Board is unable to make the required “non-detriment” findings pursuant to BMC Section 23B.32.040 that there would not be a substantial impact to the “health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City because:

Pursuant to BMC Section 23D.20.050.A, the Zoning Adjustments Board finds that the addition of the sixth, seventh and eighth bedrooms is over intensification of this substandard size lot. Two illegal bedrooms have been added to Unit 2 leaving no common space for this unit and one bedroom is created through illegal conversion of the garage for a total of three additional bedrooms on this lot. Additionally, this property only provides about 458 sq. ft. of usable open space with no off-street parking spaces. Although staff considers residential density per dwelling, the addition of bedrooms will increase number of residents on the project and, therefore, increase the intensity of use. Therefore, the addition of three bedrooms, will not support the residential use on the parcel, is not consistent with the purposes of the R-1A District and would be considered detrimental.



3/22/2021

## Variance Statement

### (For the Reduction of Existing Parking)

This variance statement is intended for the reduced number of parking on the lot due to the non-conforming measurements of the available spaces previously delegated as parking. We are requesting consideration for approval of this variance due to the following reasons:

A. *“There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances, or conditions do not apply generally to land, buildings and/or uses in the same District”.*

- 1) As previously determined, the following are pre-existing conditions of this lot:
  - a) Existing non-conforming lot coverage of 56.6% which is approximately 16% over the allowed lot coverage of 40% per code on an R-1A lot
  - b) Existing non-conforming rear setback of 3'-4" towards Building 2, in contrast to the code recommendation of 20'-0" rear setback
  - c) Existing over density of the lot due to a total of 4 dwelling units having over six bedrooms (*See sheet A.H.01 for diagram*)
  - d) Existing lot area of 4463 s.f. which is below the recommended development standards of 5,000 s.f. per 23D.20.070(A)
  - e) Existing non-conforming parking due to the pre-existing conditions of the lot
  - f) Existing non-conforming Usable Open Space of 458.92 s.f. which is below the required minimum of 400 s.f. UOS for each unit

Further information to the aforementioned items above:

- A1a)** - This lot was originally developed in 1913 with the front building as the main dwelling. Over time, the previous owner has made several improvements to the lot which include the second building to the rear of the property, thus resulting in the existing lot coverage of 56.6%. Cathy Nason, as the new owner of this lot did not have prior knowledge of any regulations at the time that may have allowed such improvements resulting to its current condition now.
- A1b)** - As mentioned in item "A1a" above, the resulting non-conforming rear setback towards Building 2 was a condition posited between the time of

the original development in 1913 up until recent years prior to the change in the ownership of this lot.

- A1c)** - The over density in this lot was also a result of the improvements on the lot prior to the change in ownership. The existing Building 1 currently have two units (Units 1 and 4). Unit 1 has one bedroom while Unit 4 had three very small bedrooms. In order to alleviate the over-density, the proposed interior alteration for Unit 4 eliminates one bedroom, thus reducing the total number of bedrooms for this unit to only two.

Continuing on to existing Building 2, this secondary rear building also had two units (Unit 2 at the second floor, and Unit 3 at the ground floor). Unit 2 contains two existing bedrooms. However, I must note, that one of the bedrooms in this unit (bedroom 1), was originally intended as a separate enclosed dining area but was utilized by the current tenant as an additional bedroom. We have depicted this room as a bedroom in the diagram only due to its current utilization. In this regard, **for the purpose of this Variance, we are requesting consideration for this room to be classified as a dining room as it was intended for, in order to further clarify and correct the existing over density issue on this lot.** This unit was already occupied prior to the change in ownership of this lot. Within the clause of tenant rights, tenants can use the rooms in their respective units depending on how it fit their needs regardless of the rooms' intended use, without prior approval from the landlord or the county. and as long as they are not causing building safety issues within their unit and towards their neighbors. Thus, Cathy the new owner of this lot, kept everything as is for this unit.

Moving on to Unit 3 at the ground floor, this unit also previously had a total of two existing bedrooms. Prior to its recent alteration in May 2020, the current living room (*shown in detail 2/A.H.01 of the existing Unit 3 floor plan*) was previously enclosed and was utilized as a bedroom. Again, in an effort to alleviate the over density condition on this lot, this unit was altered to reduce the number of bedrooms to only one.

To sum it up, there were 8 total number of bedrooms on this lot at the time of ownership transfer. After the alteration on Unit 3 on May of 2020, this was reduced to a total of 7 bedrooms. In addition, the proposed

3/22/2021

interior alteration on Unit 4 is intended to further reduce the total number of bedrooms down to 6 bedrooms for the entire lot. And lastly, if and when granted consideration, for Unit 2's bedroom 1 to be classified as a dining room as it was intended to be, we can further reduce the actual total number of bedrooms for this lot down to only 5 bedrooms.

**A1d)** – As previously explained, the original development of this lot was done in 1913. The lot area indicated in this Variance was derived from the updated official boundary survey issued on 01/22/2021 which was based on the September 1906 Map of Key Route Terrace No. 3, Book 21 Page 59 of the Alameda County Records.

No alterations to the lot area had been done since the change of ownership of this lot.

**A1e)** – The existing non-conforming parking of this lot is caused by a couple of factors; first it is due to the small size of the lot which is reduced by the addition of the second building at the rear of the property. Second, was due to the modified size of the garage attached to Unit 3 which had recently been deemed a code violation because its current dimensions do not comply with the prescriptive size of the building codes for it to be classified as a garage. In short, as indicated in the Tabulation form, there are no acceptable parking space for this lot. And again, this condition is pre-existing prior to the change in ownership. Nonetheless, **the code violation for Unit 3's existing garage is currently in progress to be corrected. As such, we are proposing to keep the current non-conforming size of the garage to remain and to reclassify its use into a storage room instead** (which is what it is currently being used for). By granting this request, it will accomplish the following:

- i.* It will eliminate the need to relocate the current tenant of Unit 3 which will cause further loss of income for the landlord and incur additional unnecessary expenses. As we all have known, many people had drastic reduction in income, while others completely lost their income due to the cases of COVID worldwide. Cathy, the owner of this lot, is no exception. She too had been affected by the consequences of COVID and has lost income from tenants who had been unable to pay their rent. Additionally, it was difficult

for her to find new tenants during the entire year of 2019 and 2020, which is ongoing until now in 2021. Relocating the existing tenant will cause further loss of income and posits additional costs for the landlord atop the already depleted income the past two years.

- ii.* It will prevent further undue hardship for the property owner. Restoring the existing non-compliant garage to its original state (prior to converting a portion of it into a bedroom) could affect the entire building's integrity. This in turn, would incur further consulting costs to hire a structural engineer, construction costs, design costs, and other fees for building alteration. Apart from this, the restoring the garage would mean losing the only bedroom in Unit 3 which will cause a change in the overall use of the entire unit. This change then cascades into further alteration cost to make this unit a livable space. All of these additional costs will exacerbate undue hardship for Cathy, the property owner. In short, the previous suggestion to restore the existing non-conforming garage is not a feasible solution.
- iii.* Due to the reclassification of the garage as a storage, there will no longer be a need for the driveway. Thus, in order to regain one street parking, we will go along with the city staff recommendation to convert the existing driveway as a landscaped area, remove the driveway curb cut and replace it with a standard street curb.
- iv.* Lastly, should our request to reclassify the use of the existing non-conforming garage in Unit 3 into a storage room is granted, Cathy, the owner would like to replace the existing garage door with a wall, along with a single exterior door and window, in order to properly enclose the space. *And although per City of Berkeley's comment on 3/19/2021, this room had been reclassified as a bedroom, it's use will be maintained as a storage.*

**A1f)** – The recommended minimum usable open space for this lot is 400 s.f. for each unit, which is a total of 1600 s.f. for the entire lot. We intend to preserve this condition to maintain the tenant's ability to enjoy their environment and to prevent exacerbating the existing over-built condition

of the lot. Additionally, as suggested by city staff, 40% of such usable open space is proposed to be landscaped. See *sheet A.H.01 for diagram*.

B. *“The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property’s owner”.*

- 1) As stated in the applicant statement, the proposed remodeling for Unit 4 is intended to improve the quality of living for its prospective tenants. And since this alteration preserves the existing footprint of the building, there will be no adverse effects to its exterior nor the existing conditions of the lot. Thus, the existing tenants for the remaining units within this lot shall be able to enjoy the use of the common spaces and will not have problems accessing their units even during the time of construction. Moreover, since the building height and footprint will remain the same, the neighboring lots should also be able to enjoy their respective property without any inconvenience.
- 2) As mentioned in item A1e-ii, we are proposing to reclassify the existing non-conforming garage in Unit 3 into a storage room instead, rather than restoring it to its original state. Granting this request will unquestionably preserve the current use and enjoyment of this unit, as well as the unit above, the surrounding adjacent lots; as well as prevent further financial hardship for the property owner.

C. *“The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole”.*

- 1) The proposed interior alteration for Unit 4 is minimal, and as demonstrated in the design, it will remain within the building’s existing footprint and no additional height to the building. Therefore, we do not anticipate any factors during this construction that may adversely affect the health and/or safety of

the existing tenants within this lot, as well as for the neighbors at the surrounding adjacent properties.

- 2) In addition to the statement mentioned in item "B2" above, the proposed solution the current non-compliant garage in Unit 3, will in fact, also prevent adverse effects to the health and safety of the tenants within this lot and the neighboring properties by preserving the integrity of the building.

D. *"Any other variance findings required by the Section of the Ordinance applicable to that particular Variance".*

- 1) Please refer to item "A1e" above.

For further information regarding the conditions of this lot, please refer to the Site Plan on sheet A.H.00 and the Diagrams on sheet A.H.01. See sheets A.H.10 thru A.H.12 for the proposed floor plans for Unit 4.



Z O N I N G  
A D J U S T M E N T S  
B O A R D

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NOTICE OF PUBLIC HEARING

## 1205 Peralta Avenue

**Variance/Use Permit #ZP2020-0060 to eliminate two required off-street parking spaces by legalizing conversion of an existing 18 ft. X 20 ft. garage to habitable space and storage and Use Permit to legalize the addition bedrooms six through eight on a parcel that is non-conforming for density, lot coverage, setbacks, usable open space and parking.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on April 8, 2021, **conducted via Zoom, see the Agenda for details at:**

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2021-04-08\\_Draft\\_ZAB\\_Agenda.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-04-08_Draft_ZAB_Agenda.pdf). The meeting starts at 7:00 p.m.

**PUBLIC ADVISORY:** This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

**A. Land Use Designations:**

- General Plan: LMDR – Low Medium Density Residential
- Zoning: R-1A – Limited Two-Family Residential District

**B. Zoning Permits Required:**

- Variance under [Berkeley Municipal Code](#) (BMC) Section 23B.44.030.B to eliminate required parking.
- Use Permit, under BMC Section 23C.04.070.C, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable lot coverage.
- Use Permit, under BMC Section 23C.04.070.E, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable density.
- Use Permit under BMC Section 23D.20.050.A to legalize the sixth, seventh and eighth bedrooms on the lot.

**C. CEQA Recommendation:** It is staff's recommendation to ZAB that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section

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15301 (“Existing Facilities”) and Section 15303 (“New Construction or Conversion of Small Structures”) of the CEQA Guidelines. The determination is made by ZAB.

#### D. Parties Involved:

- Applicant & Owner: Teresa Cambare & Cathy Nason, P.O. Box 142, Inverness, CA 94937

#### Further Information:

All application materials are available online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7419 or [nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

#### Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

#### Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.



**Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



#### **Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

#### **SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division ([zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)) to request hard-copies or electronic copies.

#### **Notice Concerning Your Legal Rights:**

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
  - A. That this belief is a basis of your appeal.

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- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.
- If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
-

## Karimzadegan, Niloufar

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**Subject:** FW: 1205 Peralta Ave ZP2020-0060

**From:** Karen Fiene [mailto:kfiene@mills.edu]

**Sent:** Wednesday, March 31, 2021 4:57 PM

**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>

**Cc:** Karen Fiene I. <kfiene@mills.edu>; Mehri Ansari <mehri@ansariinc.com>; Mel Lyons <mlyons@lmi.net>

**Subject:** 1205 Peralta Ave ZP2020-0060

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To: Niloufar Karimzadegan

Re: RE: 1205 Peralta Ave/ZP2020-0060

Hi Nilu,

I would like to submit comments based on the revised plans for 1205 Peralta which includes the request for a **variance** to eliminate 2 off street parking spaces and a **use** permit to legalize bedrooms 6-7-8.

As an architect and a planner I completely support densification and have no problem with ADU's and responsible legal additions and expansions. My family has lived next door to 1205 for 30 years accepting the noise, cars and activities of 4 families and have not complained because we understand the great need for housing and we like our neighbors. It is important to note that there is a long history of illegal conversions on this property by the previous landlord, Andy Lipnosky and now the current landlord, his daughter Cathy Nason, which has made us wary. I list a few instances of these illegal conversions below.

Unit 4 is little more than a studio yet 3 bedrooms were illegally crammed into a 630 sf space. It was Nason's intention to capitalize on this illegal conversion and build a bloated second story addition with a "rec room". Only after this plan was denied was the more modest plan to revert back to the original 2 bedrooms on a single level proposed.

Unit 3, which originally had a 2 car garage has been slowly whittled away until there is only a partial garage remaining. Earlier illegal conversions created first one bedroom and then a second. Last fall the new owner removed a wall to create a living room out of one of the bedrooms, with the intent to create a second bedroom out of the remaining garage in the future. Due to the amount of construction materials and noise I became alarmed that work was being done illegally and alerted the planning department. They came to inspect and found that a bearing wall had been removed and an improperly sized header installed and covered up. The City required a retroactive permit and required an upsizing of the header. This was not only illegal but could have caused damage in a seismic event.

Ms. Nason wants to add a window and a regular door into the former garage and use it for storage. This seems suspiciously like a future bedroom and in fact would be considered one by the City's definition. If the one bedroom is allowed to remain **the storage area should not have a door to the living room and does not need a normal door and a window, it should remain storage which could be used by the tenants.**

Unit 2, the upper level unit, was originally a one bedroom with a living room and dining room. It appears that perhaps the tenant made some changes to enclose the dining room to make a small bedroom for her son and doing that made the living room technically a third bedroom. In this case I don't believe there was a motive to

gain additional renters and I would personally not want any decisions to negatively impact this tenant who has been our neighbor for 27 years. **But it does not make sense to legalize this unit as a 3 bedroom.** It would seem a simple step to restore this to a one bedroom unit.

**We cannot support the legalization of additional bedrooms on a lot that is over density and over lot coverage by 16%, with no off street parking and undersized open space.**

Although the driveway and remaining partial garage are no longer an option for parking, our fear is that if the variance to eliminate 2 off street parking spaces is approved it would embolden further development proposals. However removing concrete and adding green space would enhance the living conditions of the tenants.

Kind regards,  
Karen Fiene and Mel Lyons

**Karen Fiene, FAIA, LEED AP**  
Senior Director of Facilities, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323  
cell: 510-708-1347*

**Karimzadegan, Niloufar**

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**Subject:** FW: Comments for 4/8/21 ZAB Meeting re 1205 Peralta Avenue

**From:** Joan Sprinson [mailto:jsprinson@gmail.com]

**Sent:** Wednesday, March 31, 2021 4:55 PM

**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>

**Subject:** Comments for 4/8/21 ZAB Meeting re 1205 Peralta Avenue

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Comments for 4/8/21 ZAB Meeting re 1205 Peralta Avenue

I am writing to express my opposition to a Use Permit to allow more than 5 bedrooms at 1205 Peralta Avenue. I have lived 2 houses from the subject property for the last 24 years and have had the opportunity to witness significant unpermitted construction at the subject address, in which the number of bedrooms has been increased. As a neighbor, I am impacted by the lack of off-street parking associated with this property, and my concern increases with the various applications to increase the number of bedrooms and the density on the lot.

The applicant's variance statement submitted on 3/22/21 contains several inaccuracies that misrepresent the history of 1205 Peralta and the current state of affairs, which I would like to correct.

A1c) paragraph 1: states that Unit 4 (which totals 620 square ft), had three very small bedrooms prior to the change in ownership. Ms. Nason's father, Andrew Lipnosky, died in 1/2011. In 2013, after a long-term tenant vacated, extensive unpermitted interior and exterior modifications were made while the property was owned by a family trust and under the management of Lipnosky Real Estate. In fact, although the unit was registered with the City as a 2 bedroom unit, up until that time, it had 1 bedroom, a living room, and a sunporch. After the modifications, the unit was advertised and rented out as a 2 bedroom unit at least twice (photo of the billboard outside the property, as well as copies of digital ads are available). To my knowledge, this unit was never represented as a 3-bedroom unit until the current owner applied for a permit to create a 3-bedroom (with a rec room that could easily be turned into a 4th bedroom), 2 story unit in 2020. In her application, she claimed she was just making a small, poorly designed space, with 3 very small bedrooms, more appealing without increasing the number of bedrooms.

A1c) paragraph 2: Ms. Nason claims incorrectly that Unit 3 previously had a total of 2 existing bedrooms. According to multiple sources, the unit had 1 BR. After Ms. Nason became the legal owner, she enlarged the bedroom, put in a laundry, and created another bedroom out of a portion of the garage that is now a living room. In her initial submission to the Planning Dept, the architectural drawings labelled this entire unit as storage. When she was required by City staff to provide drawings of all units on the lot, and it became apparent that the number of bedrooms on the lot might doom her application, she took out a load-bearing wall in the front bedroom and turned it into a living room. In June 2020, she then turned around and advertised the unit as a 1 BR unit, soon to be 2 BR (after the conversion of remaining half garage) to a bedroom, with a price break

prior to the conversion. Her property management company also gave identical information to prospective tenants.

A1e) iv. The applicant states that she has abandoned her plan to make a second bedroom in Unit 3 by converting the remaining half garage into a storage space. However, she requests to replace the roll-up garage door with a regular door for a person and install a window. If she intends this space as storage for the entire property (which she has previously mentioned), instead of a second bedroom, a window is certainly not needed nor advisable, nor is a door into the living room of unit 3.

In closing, I am strongly opposed to granting a Use Permit that would allow more than 5 bedrooms at 1205 Peralta Avenue.

Joan Sprinson

1201 Peralta Avenue

**Karimzadegan, Niloufar**

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**Subject:** FW: #ZP2020-0060. 1205 PERALTA AVENUE USE PERMIT & VARIANCE APPLICATION**From:** Veronika [<mailto:veronikasf321@gmail.com>]**Sent:** Wednesday, March 31, 2021 4:08 PM**To:** Zoning Adjustments Board (ZAB) <[Planningzab@cityofberkeley.info](mailto:Planningzab@cityofberkeley.info)>**Subject:** #ZP2020-0060. 1205 PERALTA AVENUE USE PERMIT & VARIANCE APPLICATION

**WARNING:** This email originated outside of City of Berkeley.

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**TO:** Members of the Zoning Board

**RE:** 1205 Peralta Avenue owned by Cathy (Lipnosky) Nason

**DATE:** March 30, 2021

Even though I plan to attend the meeting on 4/8/21 along with my neighbors, I would like to raise several points which have led us to be suspicious of what happens at 1205 Peralta.

Over the years there have been a number of problems with this property, ranging from tenants dealing drugs to various projects, mostly involving the addition of walls and bedrooms, a majority of projects which I would dare say has been done without permits. All of this has taken place on a lot which is non-conforming with regard to density, parking, open space, lot coverage, and front, side and rear setbacks.

Ms. Nason's father, Andy Lipnosky, was a master of self-help when it came to working without permits and it is likely that my attitude toward Ms. Nason has been affected by my experiences with her father. Additionally, months ago she submitted and then withdrew a very different application which my neighbors and I found totally unacceptable; several of us neighbors expect that a version of that previous development plan will be resurrected. Fortunately that is not now the case but I still find myself more than wary.

You may hear the applicant talk about the need for housing; this property furnishes quite a bit of housing and we, the neighbors, favor creating affordable housing. Our neighborhood has a number of multiple dwellings and ADU's. Over my back fence is an ADU, next door is an ADU, over

the fence next-door is an ADU, five lots south of me is an ADU and several other households of neighbors are considering ADUs. On other blocks in this modest neighborhood there are more.

We neighbors are considering the four units on the property not in terms of Use Permits and Variances, but in terms of the original configuration of the Units, what they have become, and what we would like them to be.

— Unit 1 is not an issue.

— **Unit 2** was a comfortable one-bedroom apartment when friends of mine lived there and should **revert to one-bedroom.**

— **Unit 3** was a small one-bedroom which has become a three bedroom unit. While I would not like to live in it as a two-bedroom unit, we see no reason to oppose having Ms. Nason be granted her desire to **change it into a two-bedroom unit.**

— **Unit 4** was a studio apartment during all the time the previous neighbor, now deceased, lived there. It shared a west wall with a large space which had been built as a two-car garage but used as storage space. After his death the unit magically became a one-bedroom unit when space from the adjoining storage space was appropriated. We have no problem with **converting the original studio into a one-bedroom** but are suspicious that Ms. Nason has plans to take the remaining square footage from the **storage space to create a second bedroom.** In fact, **prospective tenants** have been **told** that was **her plan** and the unit has been **advertised** in that way. Please note that the plans show the storage space with a window. Why a window in a storage space? Recently there have been a number of thefts and strangers wandering into neighbors' backyards, so it seems that a solid wall minus the window will provide greater security as well as eliminate our suspicions. Therefore, **retain the storage space and remove the window, replace with solid door.**

In conclusion, I have listed what we, the neighbors, wish to see. Speaking for myself, I would like to trust Ms. Nason and her architect but do not. In fact, given recent information I have learned, I am again more suspicious than ever; I believe that they have further development plans for this property in spite of the limitations of the lot. We, the neighbors, are doing our best to keep our modest Berkeley neighborhood a place where people can still afford to live—although it has become increasingly more difficult. I wonder if Ms. Nason and her neighbors in their multi-million-dollar neighborhood struggle with that concern.



Thank you very much for considering these points of view,  
Veronika Sakowska Fukson, 1213 Peralta

**Karimzadegan, Niloufar**

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**From:** Alan Tobey <atobey@gmail.com>  
**Sent:** Wednesday, March 31, 2021 12:17 PM  
**To:** Karimzadegan, Niloufar  
**Subject:** Comment for 4/8 ZAB Meeting - 1205 Peralta Ave - variance and use permit

**WARNING:** This email originated outside of City of Berkeley.

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My wife Ruth and I have lived at 1228 Peralta Ave., as neighbors to the property being considered by the ZAB, since 1978 — more than 40 years.

We consider ourselves fortunate that the virtues that first attracted us to this special block have continued or even improved: mild weather, a streetscape of buildings first built in the 1920s, a special soil block that moderates earthquake forces, a low rate of property crime, a prime location which has become ever more walkable as time goes on, and other factors. Especially positive has been the human dimension: the 1200 block of Peralta draws a diversity of residents who deliberately move in to capture these very virtues and to join an active local-political community.

And we've shared the dilemma of having 1205 Peralta among us. We and our neighbors have no collective opposition to increasing density on this block or elsewhere in Berkeley — for example, there are several ADU projects underway. But it's hard to accommodate the exceptional degree to which modifications imposed on this narrow single lot and the two buildings it contains, most often without a permit, have defied zoning constraints and normal human reason. As the Planning Department describes the situation (with their single sentence expanded to a list), this is "a parcel that is non-conforming for

- density,
- lot coverage setbacks,
- usable open space and
- parking."

This may be the only multi-unit residential rental building in Westbrae that provides NO off-street parking, requiring the owner to apply for a variance on grounds that basically amount to "I don't want to."

Lot coverage has not only exceeded city standards but has even appropriated space beyond their property line. The recent addition of a small interior garden does not compensate for this over-coverage.

And density requires a special mention. The apparent attempt to reconfigure an array of already-small bedrooms to create a total of EIGHT bedrooms on one small and narrow lot is startling in its greediness. Whether the current situation comprises either 5 or 6 bedrooms has been debated, but the ambition is beyond debate. The frequent adding on, tearing out and squeezing in of new rent-paying bedrooms seems inspired by the philosophy of the Winchester Mystery House: keep building or die. It's simply time to stop.

And yet: Most Peralta neighbors have adjusted to these physical excesses and yet find the property a contributor to neighborhood life and harmony for one simple reason: its residents are very much a positive part of our block and actively add to the diversity we work to maintain. Yet we cannot justify making zoning decisions based on the character of the present inhabitants.

So we have sought over several years to find an accommodation with the owner. Others will present in detail our current thinking of what should be done; but as my summary I can describe how to get there. Reversing most planning logic, in this case we could be bold and make as a linked decision:

**APPROVE THE PARKING VARIANCE AND  
DENY THE USE PERMIT AS CURRENTLY REQUESTED**

I believe that a majority of our 1200 block would be willing to concede the practical reality: contributing to overloading local street parking is a *de facto* reality even if it's the spoils of civic defiance. But that concession should be allowed to continue only IF the interior proposals are rejected in their current form.

We believe that the permitted limit for the two buildings together should be A TOTAL OF FIVE bedrooms on this property. Five is a number naturally supported by the existing structure without cramming, and restoring that limit would likely require the reversal of only the most recent of unfortunate modifications. Beyond that, some detailed attention to the plans would further improve the outcome; for example, a space identified as a "storeroom" should not have a window, which would qualify it as a potential bedroom (and temptation to return to bad habits).

This sort of trade — forgive one violation in exchange for improving the livability of the buildings — seems like the only way through. If the owner is unwilling, the only outcome should be to deny both applications and move toward enforcing the existing statutory limits.

Otherwise this property may become a notorious example of how NOT to achieve greater housing density in Berkeley. Better that we create a POSITIVE example of how neighbors can solve problems by working creatively together.

Alan Tobey  
1228 Peralta Ave.  
510-717-1824

**Karimzadegan, Niloufar**

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**Subject:** FW: Re : 1205 Peralta new proposed design

**From:** Karen Fiene [mailto:kfiene@mills.edu]

**Sent:** Wednesday, September 30, 2020 2:29 PM

**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>

**Cc:** wtiana@gmail.com; jsprinson@gmail.com; helen@jswdarch.com; mlyons@lmi.net; veronikasf321@gmail.com; ruthtobey@gmail.com; SSI@berkeley.edu; ian@mitroff.net; Karen Fiene I. <kfiene@mills.edu>

**Subject:** Re: Re : 1205 Peralta new proposed design

**WARNING:** This email originated outside of City of Berkeley.

**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Hi Nilu,

Thank you for the revised permit documents, we will look this over. From your response it appears there are still several variances and use permits required. I have a few clarifications I'm wondering if you can address.

How many off-street parking spaces are required on this non-conforming over density lot?

Can an off-street parking space encroach into open space that is already under sized?

Is the 2'-0" planting strip required alongside the driveway along the full length of it?

Are there penalties or fines for properties that have increased the number of bedrooms over 5 without a permit?

Are there penalties or fines for properties that have reduced garage size without a permit?

We will be interested to see if the owners still want to pursue the project.

Best regards,

Karen

**Karen Fiene, FAIA, LEED AP**

Director of Facilities, Compliance and Sustainability

*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323  
cell: 510-708-1347*

To: Zoning Adjustment Board, Regarding 1205 Peralta Avenue  
**Record ZP2020-0060; Parcel Number: 060 241603100**  
September 23, 2020

I write this letter to emphatically recommend rejection of the permit application at 1205 Peralta Ave. As an adjacent neighbor to this property for almost 30 years I can attest to the effects that an over density property has on the surrounding neighborhood, especially when off street parking and open space requirements are existing non-conforming. I ask you to consider that just because a nonconforming condition is preexisting does not make it right and does not deserve the same consideration as an addition that meets the spirit of the zoning and planning code.

The applicant, Cathy Nason, states that a lack of parking for four units with 7 current bedrooms is existing nonconforming, therefore we should ignore the impact of having 7-10 additional cars on the street. Although the property once had a two-car garage there have been several unpermitted conversions that have steadily removed any pretense of parking a car on the premises. The plan showing 4 cars lined up the driveway showcases a lack of understanding of off-street parking requirements.

Nason expresses a desire to create decent housing, yet provides no open space save a concrete area between the units that has been spruced up with a few potted plants and a statue. The zoning code requires 400 sf of open space per unit, yet this project has only 857 sf, barely half what a project this size should provide and would actually remove a tree to make way for construction. The lack of green space also creates more runoff and greater heat island effect radiating heat to the surrounding houses.

The argument that the building height over 14'-0" will actually cool the house to the north, thus saving on cooling costs is specious. In reality this modest house at 1203 Peralta with all of the living spaces on the south side will lose any possibility of seeing the blue sky. It is not just that the remodel casts a shadow, it's that the additional height further reduces access to sun and light. The impact on this property would be significant, possibly lowering the value of the property, and therefore story poles and a proper shadow and light study should be submitted for consideration. It should be noted that the shadow study for the new addition

only shows the Spring condition, conveniently leaving out the more restrictive Winter shadow impact.

In addition, the 3'-6" deep cantilever on the south side which overhangs the driveway brings the addition to within 5'-11" of our house, the narrowest condition in the entire neighborhood. A deck on the street side of the unit will be directly above our bedroom. Yet Nason claims this will have "no impact" on the neighbors.

By far the most egregious aspect of this project is the claim that there were **7 bedrooms** when Nason acquired the property, as noted on the drawings, and all she is doing is enlarging the existing condition. City records show that this property with two separate buildings comprise 4 living units with a total of **5 bedrooms**, 3 in the front house and two in the back. The unit under consideration had a single tenant for 33 years. Although records show this unit as having 2 bedrooms there are neighbors who were in this **544 sf** space and it was only a single bedroom. After the tenant died the unit was illegally converted to 2 bedrooms by turning a tacked-on mudroom into a second bedroom and relocating the hot water heater outside. It is unclear at what point this mysterious third bedroom was added but the plan reveals the absurdity of a 3 bedroom unit in what would be a studio apartment in any other situation.

On a parallel track, while this permit was being filed, Nason has engaged in *additional* illegal activity. According to city records the lower unit of the rear building was originally a single bedroom with a 2-car garage, however neighbors who were in the space said it was actually a studio with no enclosed bedroom. When that tenant died a few years ago the unit was converted without permit to a two bedroom by taking over part of the garage and was publicly advertised as such for \$3500. (It is worth noting that a building inspection filed in City records from 1993 reports "illegal garage conversion and creation of additional unit". This is likely when the original studio was converted to a one bedroom by taking over one of the garage car spaces).

On May 22<sup>nd</sup> of this year I submitted a complaint for unpermitted construction activity in this unit and a city inspector visited the site. It was clear that a bearing wall had been removed and a new header put in to convert one of the 2 bedrooms to a living room in order to temporarily reduce the number of bedrooms on site during this application period. But since the work was already

enclosed it had to be uncovered. They found the header to be inadequate and required it to be replaced. Now, interestingly, the unit is being advertised as a one bedroom, but “a large second bedroom is scheduled to be added”, where clearly they plan to convert the remaining one car garage, (already reduced in size to the point a car couldn’t fit in it). This would create an **8<sup>th</sup> bedroom** on this property. And if the “rec room” in the new addition is counted as a bedroom, which it undoubtedly will become, that is **9 bedrooms** on a property that should only accommodate 5. Incidentally, the permit submission showed this lower unit in the rear building as "storage", further evidence of Nason's willingness to bend the truth. But worse than bending the truth, the latest activity put lives at risk.

The neighbors on this street are not against upgrading property, in fact we welcome affordable units that are in character with local density and context. But we firmly object to an absentee landlord whose family has serially ignored this property and its lack of amenities, and who now claims to be providing necessary housing by capitalizing upon the illegal actions of her father. Cathy Nason seems most intent on extracting as much wealth as possible from an overbuilt property that has been out of compliance for decades. We respectfully ask the Zoning Adjustment Board to please protect the spirit of the R1-A zoning ordinance and reject this application.

Best Regards,

Karen Fiene, FAIA, LEED AP  
1207 Peralta Ave  
Berkeley, CA 94706  
510-708-1347  
kfiene@mills.edu

Re: ZP2020-0060

To whom it may concern:

As a concerned neighbor, I am writing to express my strongest opposition to the application for a variance and permits to expand and remodel the existing house and second dwelling structure at 1205 Peralta Avenue.

This property already grossly exceeds both lot coverage and zoned occupancy, as there are a total of four dwelling units already there with a total of six bedrooms. The proposed project would add substantial height to the front house, cutting off both light and views for the neighbor to the north at 1203 Peralta. The living spaces at 1203 (living room, dining and kitchen area as well as the back deck) are all on the south side of the house. Since the house at 1205 is already so very close to the property line, the proposed upward expansion would result in serious year round darkening at 1203. There would no longer be any view of the sky to the south from 1203.

Although the applicant's variance statement avers that "the cantilevered portion of the second floor does not cause any detriment to the existing tenants of the other units in this lot, nor the neighbors to the south of the property," the homeowners at 1207 to the south already feel uncomfortable with the proximity of the house at 1205. The space between the existing houses at 1205 and 1207 is the narrowest of any houses on our block. The homeowners at 1207 definitely do not want to see the proposed cantilevered addition to 1205 extend within 6 feet of the property line. Also, the privacy of the back deck of the home to the south at 1207 would also be impacted by the proposed enlargement of 1205.

With four units, there are a minimum of four cars used by the tenants on the 1205 Peralta property. While the plans show a marked garage, the size of the space has been reduced and used for storage, so no car could conceivably fit in the space. Nor can any vehicle navigate the driveway at 1205, so all vehicles use street parking, which is already precious and hard to find, particularly on the twice monthly street sweeping days.

The request for the variance and permits for 1205 Peralta are actually the result of the previous landlord (father to the current landlord) putting in walls to make unusably tiny rooms that now are being described in the project application as in need of enlargement and upgrade.

I'm all for smart growth, and realize that Berkeley needs to add living spaces to end the continuous urban sprawl, but the project at 1205 Peralta is ill-conceived and would make a bad situation worse for our neighborhood.

I strongly recommend the denial of the request for variance and permits for the project at 1205 Peralta Avenue.

Ruth Tobey  
1228 Peralta Avenue



**Karimzadegan, Niloufar**

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**Subject:** FW: Misc.  
**Attachments:** Overview of 1205 Peralta History.docx

**From:** Joan Sprinson [mailto:jsprinson@gmail.com]  
**Sent:** Wednesday, September 2, 2020 11:16 AM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Subject:** Misc.

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Hi Nilu,

Thanks for answering my questions on the Residential Building Record on Monday.

On your June 15th email to Cambare and Nason, you reference a “UPPH for *over* 6th bedroom”. I am puzzled because on Zoning Information Guide #1 says that increasing the number of bedrooms on the property to five or more requires an AUP (for a 5th bedroom) or a Use Permit (for a sixth bedroom or greater). Is the threshold for requiring a Use Permit  $\geq 6$  bedrooms or  $> 6$  bedrooms (in other words  $\geq 7$  BR)?

You mentioned that the applicant had requested a site visit by a Zoning Inspector. Will the findings of this inspection or site visit be uploaded to the City’s site, like the other info related to this permit process? Do you know the planned date for this inspection? I think it would be an excellent idea and an efficient use of zoning inspector resources if s/he visited Unit 3 while at this address.

I’ve developed a brief overview for the Zoning Inspector that, I think will be pertinent. Please note that this is a draft, but I’m happy to share it if you think it’d be helpful. Also, I have some relevant photos, but I have no idea the best way to share them because of the large file size, either at this time or when we submit our comments to the application. What do you advise for sharing photos?

Finally, we have questions about the information shown in the attached screen shots shown below. They clearly relate to the compliance inspection triggered by a neighbor’s complaint to the City about the recent removal of a load-bearing wall in Unit 3 and the removal of a bedroom in the process. But, it is unclear to me what this info means and what the status is. Assuming this is unrelated to planning, is there a phone number or email address you could give me to get more information?

Thanks!

Joan

**Karimzadegan, Niloufar**

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**From:** Tiana Wages <wtiana@gmail.com>  
**Sent:** Thursday, August 27, 2020 11:24 AM  
**To:** Karimzadegan, Niloufar  
**Subject:** Impact of 1205 Peralta Overbuilding on 1203 Peralta

**Categories:** Red Category

WARNING: This email originated outside of City of Berkeley.  
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Dear Nilou,

I am submitting these photographs to try to illustrate the impact 1205 Peralta permit to overbuild would have on the quality of life on 1203 Peralta, where I live.

My name is Tiana Wages and I live North of the proposed Application to Build the Second Story on the 1205 Front Structure, that faces the Peralta Avenue.

As everyone in the neighborhood is aware, that lot has 2 structures. The back building is 2 stories and contains 2 apartments, the front building has 2 apartments on its first floor. Numerous un-permitted remodelings have been executed over the years and the property has never been in good condition and upkeep. For example, the added back porch (serving as the additional bedroom) has had a blue tarp over it for the past year, as it has been leaking on the last tenants...

A true and conscientious repair would call for upgrading the existing living spaces, enabling and upgrading them for people with Modest Means to live comfortably. Which everybody in the neighborhood supports!

This brings me to the complaint about the proposed overbuilding.

The owners are requesting to Grandfather the existing setback of 3'-5" towards my house, justifying it with a ridiculous excuse, knowing it is not OK!!

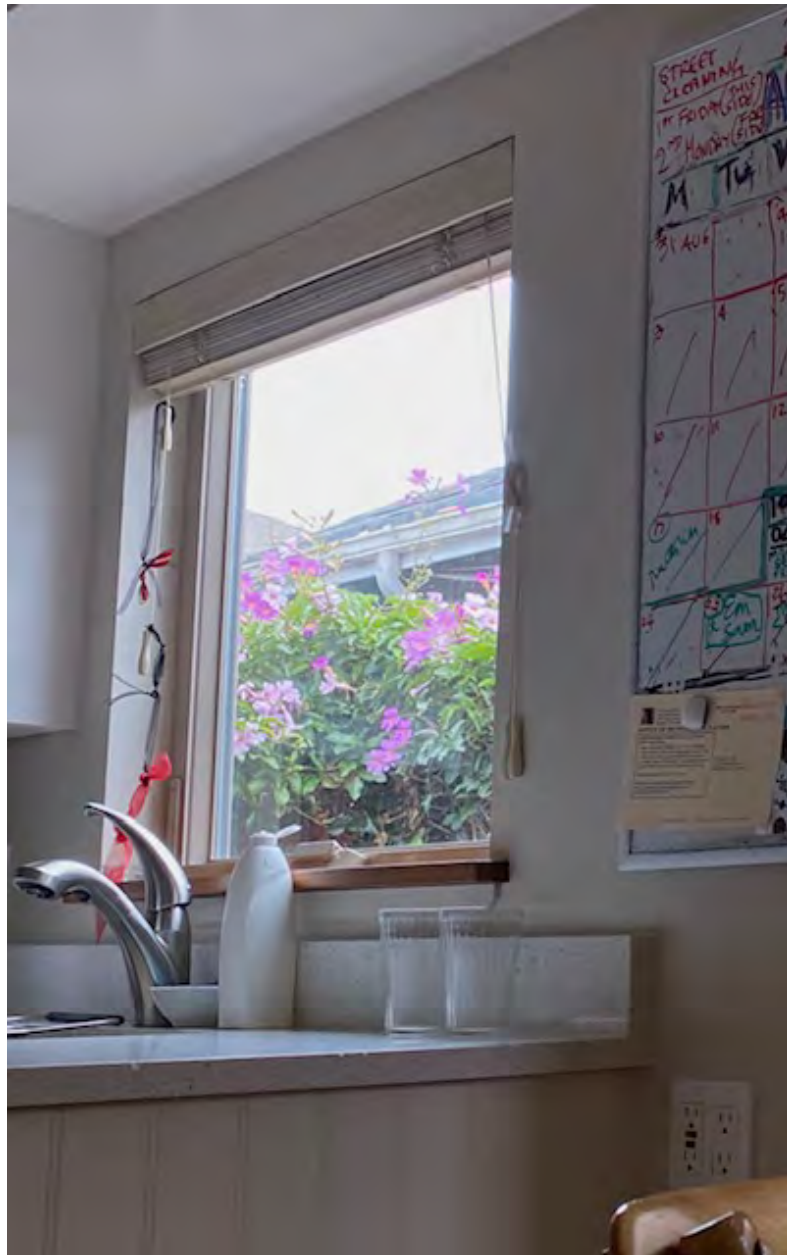
If the Second Story is allowed to be built, it will cause No Light and No Visible Sky into my main Living areas, as illustrated in these photographs. The affected rooms are my Living Room, Kitchen nook and Kitchen itself, with the patio: my grandchildren deserve to see the sky when they have lunch, not to sit in darkness!!!





You can see the current roof line through the kitchen window. I took the picture today, with an overcast sky, so it is difficult to see.











This is taken today from my Living Room, showing part of the kitchen nook with the table.

The second story would tower over my small patio, with their East-looking windows eliminating any privacy to that portion of my yard, which the grandkids use all the time.

Their statement “improving quality of life for a tenant” does not call for having 3 bathrooms! It only justifies a potentially high rent and points to the intent of turning the upstairs “recreation room” into the fourth bedroom! For example, in their advertisement to the public about the previously — unpermitted — remodel of the back house first floor apartment, they did exactly that: they promised to turn a one bedroom apartment into 2 bedrooms, after including the remaining part of the garage “when no one would be looking!!”

In addition to the impact on my personal quality of life I feel appalled at the blatant greed and manipulation this strictly commercial plan brings to the Neighborhood. I hope that the Zoning Commission will protect our interests and not allow this overbuilding to proceed.

Thank you,  
Tiana Wages  
1203 Peralta Avenue

Sent from my iPhone



**Karimzadegan, Niloufar**

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**Subject:** FW: Concerned Neighbors

**From:** Ian Mitroff [mailto:ian@mitroff.net]  
**Sent:** Wednesday, August 26, 2020 10:26 AM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Subject:** Concerned Neighbors

**WARNING:** This email originated outside of City of Berkeley.  
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To the Berkeley Planning Department

Niloufar Karimzadegan  
Assistant Planner  
[Nkarimzadegan@cityofberkeley.info](mailto:Nkarimzadegan@cityofberkeley.info)

Dear Mr. Karimzadegan:

We are writing to you as concerned neighbors with regard to the proposed expansion of the property at 1205 Peralta Ave, Berkeley, 94706.

It is our understanding that the property is already greatly overbuilt in that the lot coverage is substantially beyond the allowable limit.

Furthermore, given the current number of four rental units--we don't know the exact number of renters--there are no parking spaces available on the property itself. This puts an additional burden on street parking which is already strained. It will be even worse if the expansion is approved.

Finally, it is also our understanding that over the years the owner has created additional spaces to the structure without his obtaining any proper permits from the City.

For these reasons, we are asking that the proposed expansion be denied.

Sincerely,

Ian I. Mitroff, PhD

Professor Emeritus, USC

Senior Research Affiliate, Center for Catastrophic Risk

Management, UC Berkeley

1216 Peralta Ave, Berkeley

[ian@mitroff.net](mailto:ian@mitroff.net)

510-333-0126

Donna D. Mitroff, PhD

President, the Kidvocate Group

1216 Peralta Ave, Berkeley

**Karimzadegan, Niloufar**

---

**Subject:** FW: Your 1205 Peralta Ave Microfiche Records

**From:** Joan Sprinson [mailto:[jsprinson@gmail.com](mailto:jsprinson@gmail.com)]

**Sent:** Saturday, August 22, 2020 3:57 PM

**To:** Sanford, David <[DSanford@cityofberkeley.info](mailto:DSanford@cityofberkeley.info)>

**Cc:** Karimzadegan, Niloufar <[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)>; Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>

**Subject:** Re: Your 1205 Peralta Ave Microfiche Records

Hello again David,

I have a question on one of the documents in the microfiche you provided. On page 11/50 in the microfiche, an illegal garage conversion was reported as part of a housing code inspection. On that page, it indicates that this violation will be referred to the Zoning Department. Do you have access to the historic records from the Zoning Department, and can you document the follow-up by Zoning regarding this issue?

Thanks again for your assistance,

Joan

On Aug 22, 2020, at 10:31 AM, Joan Sprinson <[jsprinson@gmail.com](mailto:jsprinson@gmail.com)> wrote:

Thank you very much, David, for your quick response to my request. This information is very helpful!

Joan

**Karimzadegan, Niloufar**

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**Subject:** FW: Application for Permits --1205 Peralta Avenue  
**Attachments:** Zoning Board Peralta Application.docx

**From:** Veronika [mailto:veronikasf321@gmail.com]  
**Sent:** Friday, August 14, 2020 5:55 PM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Subject:** Application for Permits --1205 Peralta Avenue

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**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Hello Nilou,

I am attaching my statement to members of your staff and members of the Zoning Adjustments Board.

If there is anything which is unclear or inapplicable in what I have submitted, please let me know.

Thank you for your willingness to talk with those of us who are interested in this application and for your work on behalf of the larger Berkeley community.

Stay safe and well,  
Veronika Fukson

*Veronika S. Fukson*

1213 Peralta Avenue  
Berkeley, CA 94706

To: Zoning Staff and Members of the Zoning Adjustments Board

When I read the first notice of work to be done at 1205 Peralta, I felt immediately that the work was beyond what was legally allowable under our Zoning Ordinance. Many years ago I was the Chairperson of the Zoning Board and Planning Commission before I moved to the City Council, so although sections of the Ordinance have been revised and added, I am relatively familiar with this document and the City process. I phoned the owner and then her architect, informing them of "problems" with their application and also of the **many changes WITHOUT PERMITS** which have been made over the years by Ms. Nason's scofflaw father, Andy Lipnosky, from whom she inherited the property. In fact, I advised them that there were objections from adjacent neighbors who had years of experience with the illegal work performed by the former owner and with problems created by some of his former tenants.

I have lived at 1213 Peralta for many years and have appreciated many of the changes which my neighbors have made to their property. On my north side and directly behind my back fence are ADU's of which I approve, so my neighbors and I have no argument with additional dwelling spaces in our neighborhood. Also, many years ago close friends lived for about four years as tenants at 1205, comfortable in a one-bedroom unit at the rear above the garages. This is **NOT** a **NIMBY** issue.

When I spoke with Ms. Nason, she told me that her plan was to make livable the main house back unit—the traffic flow didn't make sense and the space was too crowded. I advised her that the problem of crowding had been caused by her father who had **illegally** erected walls in what **had been a small one-bedroom unit to create a new three-bedroom unit**; he intentionally created an unacceptably overcrowded living space. Now Ms. Nason is using his brazen actions to justify adding a partial second story, thus giving the space an acceptable traffic flow. In addition, he increased the livable square footage of the lower unit in the very back using what had originally been garage space by once again erecting a wall to create a two-bedroom unit. At present, work has taken place to remove the illegal wall and the space is once again a one-bedroom unit. however, her leasing agent has told an interested party that after they receive the permits which are the subject of this hearing, the unit will be made a two-bedroom. It is interesting that it is not part of this application!! So the message is: Do a bit legally and then add some "self-help" with illegal additions--that is how her father operated and she is following his *modus operandi*. And please do not accept any excuses that Ms. Nason didn't own the property when her father slipped in a bedroom or two. She may not have known but was part of a trust, knows now, and is following his example.

All in all, I can find **NO JUSTIFICATION** for the Board to grant any variances as requested by the applicant; the property exceeds lot coverage, already overbuilt with less than the required open space and how many bedrooms one cannot be certain about. Ms. Nason told me that she was planning on creating a garden space between the two buildings with some kind of natural feature—what we have recently learned from a "For Rent" ad is touted as "ZEN." Sadly, there are now some potted plants and a large statue of Buddha, "window dressing" and a very sad commentary on the serious issues of legality, livability and appropriate development. No amount of Zen should help this applicant who doesn't seem to understand the meaning of the Zoning Ordinance and our housing concerns in Berkeley; they apparently don't have them in Inverness.

I request that the Zoning Board **DENY THIS DECEPTIVE APPLICATION** and the applicant's desire to "mine" this property for more than it can handle within the allowances of the Zoning Ordinance.

August 14, 2020

**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta Avenue

**From:** Ruth Tobey [mailto:ruthsobey@gmail.com]  
**Sent:** Wednesday, August 12, 2020 1:05 PM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Subject:** Re: 1205 Peralta Avenue

Thank you so much for your quick help. Please do add my email to your interested party mailing list for this project. I was worried that COVID might impact the process and am glad that we can expect a hearing  
Many thanks  
Ruth Tobey

Sent from my iPhone

On Aug 12, 2020, at 12:09 PM, Karimzadegan, Niloufar <[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)> wrote:

Hi Ruth,

Thank you for your email. Please see project material by clicking on the link below:

<https://aca.cityofberkeley.info/Community/Default.aspx>

You will see this under **zoning (enter address in the search box) : Record Info : attachments.**

<image002.jpg>

In regards to the project, we are aware of the site conditions and the neighborhood objections. I have advised the applicants that the project might not be supported by staff and the applicants wanted to submit this application regardless. They are also aware of the neighborhood objections. All we can do is let them know that there is opposition. They are entitled to apply for a project and request permits, however that does not mean that they are going to obtain what they have asked for.

This project will go to a public hearing in a few months and you have until then to write me emails of objections or support. I will keep all communications received from the neighbors as part of the record to share with the Zoning Officer and include in the packet for the board members who will vote on it. I recommend that you send me your letters sooner so that staff can consider it in making a recommendation to the Zoning Adjustment Board.

You will also have the opportunity to attend a virtual public hearing meeting (Zoom meeting) and speak for or against any project.

Please let me know if you have other questions or concerns. Because so many other people have contacted me regarding this application, I am going to make an "interested party" email list and I can add your email to the list if you would like to receive updates from me throughout the process. Please let me know if that is something that you would like me to do.

I hope this helps!

Best,

-----  
**Nilu Karimzadegan**, Assistant Planner  
City of Berkeley, Land Use Planning

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**From:** Ruth Tobey [<mailto:ruthsobey@gmail.com>]  
**Sent:** Wednesday, August 12, 2020 10:40 AM  
**To:** Karimzadegan, Niloufar <[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)>  
**Subject:** 1205 Peralta Avenue

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Dear Nilu,

I live at 1228 Peralta Avenue and saw the posters on the phone poles about the project at 1205 Peralta. I went to the [cityofberkeley/zoningapplications](http://cityofberkeley.org/zoningapplications) website, but the 1205 project was not listed. The alternative site at buildingeye is not secure and my browser warned me not to use it. Is there any other way to access the application materials for the 1205 Peralta project? That property is already a high density rental property with no offstreet parking. I am deeply concerned about this as well as other aspects of the project as I understand it. Thank you for any leads you can provide.

Ruth Tobey  
1228 Peralta Ave, Berkeley, CA 94706

**Karimzadegan, Niloufar**

---

**Subject:** FW: 1205 Peralta Avenue

**From:** Ruth Tobey [mailto:ruthtobey@gmail.com]  
**Sent:** Wednesday, August 12, 2020 10:40 AM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Subject:** 1205 Peralta Avenue

**WARNING:** This email originated outside of City of Berkeley.  
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Dear Nilu,

I live at 1228 Peralta Avenue and saw the posters on the phone poles about the project at 1205 Peralta. I went to the cityofberkeley/zoningapplications website, but the 1205 project was not listed. The alternative site at buildingeye is not secure and my browser warned me not to use it. Is there any other way to access the application materials for the 1205 Peralta project? That property is already a high density rental property with no offstreet parking. I am deeply concerned about this as well as other aspects of the project as I understand it. Thank you for any leads you can provide.

Ruth Tobey

1228 Peralta Ave, Berkeley, CA 94706



**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta Ave

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**From:** Karen Fiene [mailto:kfiene@mills.edu]  
**Sent:** Monday, August 10, 2020 1:08 PM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Cc:** Tiana Wages <wtiana@gmail.com>; Joan Sprinson <jsprinson@gmail.com>  
**Subject:** 1205 Peralta Ave

**WARNING:** This email originated outside of City of Berkeley.  
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Hi Nilu,

I have received several complaints from neighbors who say the posting at 1205 Peralta is so small and located so far from the street that no one can actually read it. Is there a way to ask the owner to enlarge it or post it closer to the street? It's posted on a porch which is raised about 4' and pushed back with a lot of ivy in front so no one can get close to see it.

There are also the notices on telephone poles across the street from the property saying the neighborhood contact and yellow poster requirements are waived due to Covid. Per our last conversation you said we had about a month to send in a response via email, is that still the case? I will get it to you sooner, but just want to make sure we don't lose our window to respond.

Thank you  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Facilities, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323*  
*cell: 510-708-1347*

**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta Ave APN 060-241603100 Duplex Renovation/Expansion**From:** Karen Fiene [<mailto:kfiene@mills.edu>]**Sent:** Monday, April 27, 2020 5:26 PM**To:** ZoningCounter <[ZoningCounter@cityofberkeley.info](mailto:ZoningCounter@cityofberkeley.info)>**Cc:** Tiana Wages <[wtiana@gmail.com](mailto:wtiana@gmail.com)>; Joan Sprinson <[jsprinson@gmail.com](mailto:jsprinson@gmail.com)>; Helen Degenhardt <[helen@jswdarch.com](mailto:helen@jswdarch.com)>; Mel Lyons <[mlyons@lmi.net](mailto:mlyons@lmi.net)>; Karen Fiene I. <[kfiene@mills.edu](mailto:kfiene@mills.edu)>**Subject:** 1205 Peralta Ave APN 060-241603100 Duplex Renovation/Expansion

Dear City Planner, (I believe one of our neighbors has recently reached out to Fatima Gray so she may already know about this project)

I am the resident in the adjacent property at 1207 Peralta and have some questions about the planning process. I am an architect and have familiarized myself with the planning code but seek clarification on a few things.

In order to facilitate the call I will outline the issues. The owner, Cathy Nason, has procured an architect, Cambare Designs, to prepare permit documents, attached. The plan describes the addition of a second floor over the rear unit of an existing duplex on a site that has a total of 4 units. Neighbors have been given the plans for review, a zoning permit is not on record as having been filed yet. Of note is that this neighborhood is all owner occupied with a max of 2 units. This parcel is owned by an absentee landlord, with 4 units, and we are aware of upgrades that have been done without permits in past years. The general condition of the property has been poor, and there has been no sense of contributing to the scale and character of the neighborhood.

#### Questions and Clarifications:

1. The occupancy is listed as R2 on the permit drawings, but city records call out R-1A. What are the major differences? How can I get a complete copy of regulations for R2 and R-1A designation?
2. Can you confirm which type of AUP will be required? The property has more than 4 bedrooms, the expansion is over 600sf and we believe there are substantial impacts to adjacent neighbors.
3. Would a project like this be subject to design review?
4. Is there any requirement that one of the units be owner occupied?
5. Is it legal to have 4 units in an R-1A?
6. What are the off street parking requirements? My reading of the code is that 2 are required. The existing conditions do not allow for 2 cars, assuming the ADU is exempt. And the proposed plans also do not address off street parking.
7. The required open space of 400 sf per unit = 1600 sf cannot be met given the small open area available, are there exemptions that apply? Otherwise is this proposal legitimate?
8. Proximity to existing house. Plans show a cantilevered second floor will come within 4'-0" of our house.
9. Expanding footprint on second level. The upper level is being cantilevered 3'-0" over existing driveway and over a newly built porch that is an extension of the main floor. Is this considered enlarging the footprint? The drawings say all work is within the existing footprint but this does not look to be the case. Does the new footprint exceed the maximum lot coverage?
10. What is considered a 'detriment' and how does the city react to excessive impact to adjacent properties? In this case one dwelling will lose all of the natural light into the living spaces, and on the other side a balcony will intrude on the privacy of a back garden with a 9'-0" wall looming 4'-0" away. The issue is that the property already feels overbuilt and like a drag on the neighborhood. There are excess cars on

the street, four or more, and the noise and activity of four families, versus one family in almost every other case on the block, feels like too much.

11. Can doing past work without a permit be a consideration in refusing new work to take place until remedied? Two units have had substantial work conducted without any posting of city permits.

Process- can you please confirm if the next steps I have outlined are correct?

1. Owner supplies plans to neighbors, which they have done. Do neighbors legally have to sign off on having received the plans? They have asked that we sign in advance of receiving official notice from the planning department and we don't think this is required. We also noticed the sign they posted is not yellow and only has one elevation, no plan or other supporting information, is that supported by the city?
2. Owner submits plans for zoning approval.
3. Notice of zoning permit request is posted- by who?
4. Neighbors have a chance to comment, how long do we have?
5. What if the planning permit is granted, can we appeal to the ZAB and City Council?
6. Can you give us an idea of how long all of this will take given the Covid-19 conditions?

Thank you very much for your time and assistance

Best regards,

Karen Fiene

1207 Peralta Ave

**Karen Fiene, FAIA, LEED AP**

Director of Construction, Compliance and Sustainability

*pronouns: she, her*

*cell: 510-708-1347*

**Karimzadegan, Niloufar**

---

**Subject:** FW: 1205 Peralta Ave

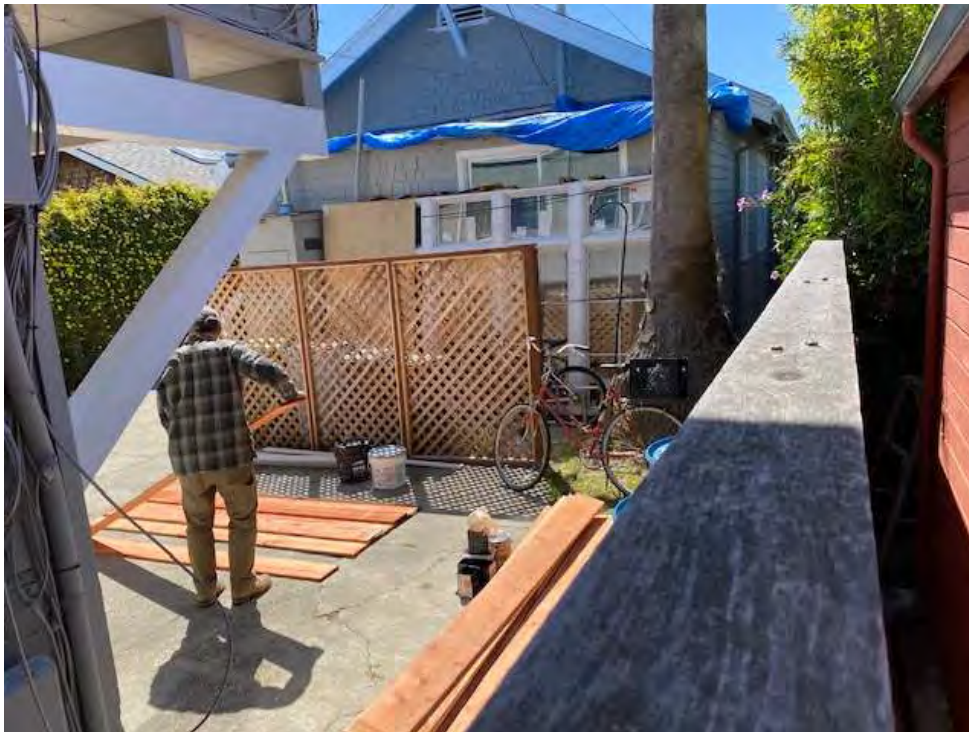
**From:** Karen Fiene [mailto:kfiene@mills.edu]

**Sent:** Friday, May 22, 2020 4:12 PM

**To:** Drouillard, Wanda <WDrouillard@cityofberkeley.info>

**Cc:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>; Schlepp, Victoria <VSchlepp@cityofberkeley.info>; Karen Fiene I. <kfiene@mills.edu>

**Subject:** Re: 1205 Peralta Ave









Hi Wanda,

Thank you for your call. Please see attached photos of work going on currently. You can see the new windows stacked up against the house in preparation for the renovation. The area behind the trellis is where they want to expand a new porch into the open space. We suspect they are going to put a footprint out there now in order to say the lot coverage was already there. This is all under the auspices of beautifying the courtyard. The garage, (of which there were once two, is not regulation size and has been cut in half to create a second bedroom,) is also full of windows for new construction.

Best regards  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323  
cell: 510-708-1347*

On Fri, May 22, 2020 at 2:13 PM Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)> wrote:

Hi Wanda,

Thank you for getting back so quickly. If I understand it you are in Code Enforcement and will only come to the site if Building and Safety deem it necessary. I also understand that Building and Safety have received my first complaint for illegal construction. I am attaching the second complaint, for work taking place right now.

Would you be the one to forward to the Building and Safety Supervisor, or should I submit via a different way?

Best regards  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323*  
*cell: 510-708-1347*

On Fri, May 22, 2020 at 1:56 PM Drouillard, Wanda <[WDrouillard@cityofberkeley.info](mailto:WDrouillard@cityofberkeley.info)> wrote:

Good Afternoon,

The request for service was not submitted to Code Enforcement. I spoke to Building & Safety this week and they confirmed they had received the request for service on the property and will be scheduling an inspection.

No action will be taken at this time from Code Enforcement, if Building & Safety feel it is warrant then Code Enforcement will be involved.

I will forward your concerns and inquiry to the Building & Safety Supervisor in case they want to get in touch with you for any questions regarding the potential violations on the property.

Wanda Drouillard

Code Enforcement Officer

City Manager's Office

**Karimzadegan, Niloufar**

---

**Subject:** FW: 1205 Peralta Ave  
**Attachments:** Request for Service Inspection (Illegal Construction).pdf

**From:** Karen Fiene [mailto:kfiene@mills.edu]  
**Sent:** Friday, May 22, 2020 2:14 PM  
**To:** Drouillard, Wanda <WDrouillard@cityofberkeley.info>  
**Cc:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>; Schlepp, Victoria <VSchlepp@cityofberkeley.info>  
**Subject:** Re: 1205 Peralta Ave

Hi Wanda,

Thank you for getting back so quickly. If I understand it you are in Code Enforcement and will only come to the site if Building and Safety deem it necessary. I also understand that Building and Safety have received my first complaint for illegal construction. I am attaching the second complaint, for work taking place right now. Would you be the one to forward to the Building and Safety Supervisor, or should I submit via a different way?

Best regards  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

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cell: 510-708-1347*

On Fri, May 22, 2020 at 1:56 PM Drouillard, Wanda <[WDrouillard@cityofberkeley.info](mailto:WDrouillard@cityofberkeley.info)> wrote:

Good Afternoon,

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No action will be taken at this time from Code Enforcement, if Building & Safety feel it is warrant then Code Enforcement will be involved.

I will forward your concerns and inquiry to the Building & Safety Supervisor in case they want to get in touch with you for any questions regarding the potential violations on the property.



Wanda Drouillard

Code Enforcement Officer

City Manager's Office

**From:** Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>

**Sent:** Friday, May 22, 2020 1:28 PM

**To:** Karimzadegan, Niloufar <[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)>

**Cc:** Drouillard, Wanda <[WDrouillard@cityofberkeley.info](mailto:WDrouillard@cityofberkeley.info)>; Schlepp, Victoria <[VSchlepp@cityofberkeley.info](mailto:VSchlepp@cityofberkeley.info)>

**Subject:** Re: 1205 Peralta Ave

Hi Nilu,

Thanks so much for the quick response, for the update, and for connecting me to Wanda.

Hi Wanda,

Please let me know the best way to keep the city informed of these activities. I can be reached at 510-708-1347.

I understand that these are unprecedented times, and that we are having to work in unique ways. The entire neighborhood, which is in solidarity, really appreciates your time and input on this matter!

Best regards,

Karen

On Fri, May 22, 2020 at 1:19 PM Karimzadegan, Niloufar <[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)> wrote:

| Hi Karen,

As far as I know, City's Code Enforcement Unit is aware of this issue. My colleague at CE, Wanda is Cced here. Please reach out to her for updates as she might have more information on the status of Notice of Violation. I am with the Land Use Division and working with the applicant on their proposal for additions to the front building. They know that we have been notified on the violations.

Please be patient as this is not normal times and we are dealing with a lot. All your complains are recorded.

Best,

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**Nilu Karimzadegan** |Assistant Planner

Land Use Planning, City of Berkeley

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\*By order of the Berkeley Public Health Officer, joining all six local Bay Area counties, all local residents and City government employees must remain sheltered at home until further notice. This order has been issued to protect public health and safety. Any updates on this situation will be posted at:

<https://www.cityofberkeley.info/coronavirus/>

\*City of Berkeley Holidays:

[https://www.cityofberkeley.info/IT/Holiday\\_and\\_Reduced\\_Service\\_Days.aspx](https://www.cityofberkeley.info/IT/Holiday_and_Reduced_Service_Days.aspx)

---

**From:** Karen Fiene [mailto:[kfiene@mills.edu](mailto:kfiene@mills.edu)]

**Sent:** Friday, May 22, 2020 11:39 AM

**To:** Karimzadegan, Niloufar <[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)>; Schlepp, Victoria

<[VSchlepp@cityofberkeley.info](mailto:VSchlepp@cityofberkeley.info)>

**Subject:** [1205 Peralta Ave](#)

Hi Nilu,

I wanted to get back in touch with you about the property at 1205 Peralta, which we spoke about a few weeks ago. I alerted you, Victoria Schlepp and the city via the complaint form, that there was unpermitted work going on inside the lower level of the back unit. They removed a wall and added a header, all the while telling us that they were just replacing carpet with a wood floor, but we have photos that prove otherwise.

Over this last week they have been busily working away ,again without permit or notice, this time under the pretext they are just fixing up the back patio. However it looks suspiciously like they are building out the area where they want to expand the proposed porch, possibly to make it look like that site coverage was already there. This is the way the owners of this property have operated in the past. As we discussed, it is clear from records that the back unit in the main house did not have 3 bedrooms, yet now it magically does. Their tactic is to say this is an existing condition and all they are doing is improving it.

This ongoing work and blatant disregard for city process and neighborhood intrusion has reached a new level of nuisance. I do not know what else we can do other than to keep reaching out to the city, but so far we have not received any indication that our complaints have been received, or that anyone has come to the site. It is disappointing to see this kind of behavior being allowed to continue with no end in sight.

Thanks for all of the time and attention you and Victoria have given to hear us out, we appreciate anything you are able to do regarding the latest work. As always I am available to talk by phone at 510-708-1347.

All the best

Karen

**Karen Fiene, FAIA, LEED AP**

Director of Construction, Compliance and Sustainability

*pronouns: she, her*

Mills College

[5000 MacArthur Blvd](#)

[Oakland CA 94613](#)

*work: 510-430-2323*

*cell: 510-708-1347*

--

**Karen Fiene, FAIA, LEED AP**

Director of Construction, Compliance and Sustainability

*pronouns: she, her*

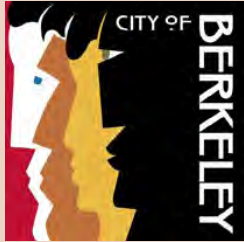
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Building and Safety  
Permit Service Center

**Please Note:**

Anonymous requests will not be processed. The City of Berkeley will not automatically publicize the origin of this request, however if anyone seeks information about this request, it is considered public information.

This form is for illegal construction/code concerns only. Any noise concerns should be directed to the Environmental Health Division.

For unsafe work practices, complete a **Complaint to Investigate Unsafe Work Practices** form.

**Building and Safety**  
1947 Center St. 3<sup>rd</sup>  
Berkeley, CA 94704  
510-981-7440 TTY 6903  
[buildingandsafety@cityofberkeley.info](mailto:buildingandsafety@cityofberkeley.info)

# REQUEST FOR SERVICE

## Inspection for Illegal Construction

**Request Details**

Address: 1205 Peralta Ave  
Concern: Ongoing illegal construction to 4 unit rental. This is the second request for service for inspection of illegal construction. In this case an area that is proposed for new construction, permit submittal pending, is being cleared out to allow access. Workers we have spoken to think the permit is in hand and its "all systems go" But drawings are not submitted yet.

**Owner Information**

Name: Cathy Nason Phone: 530-913-1584  
Address: PO Box 142 City/ST/Zip: Inverness, CA 94937  
Email: cathynason@gmail.com

**Complainant Information**

Name: Karen Fiene Phone: 510-708-1347  
Address: 1207 Peralta Ave City/ST/Zip: Berkeley, CA 94706  
Email: kfiene@mills.edu

**Relationship to the Address of Concern:**  Neighbor  Tenant  Owner  
 Fire Department  Health Department  Other:

*Karen Fiene* 5/22/2020  
Complainant Signature Date

**y**  
Inspector: Priority: Due:  
Action:  Posted NOV  Posted 2<sup>nd</sup> NOV  NFA  Other:

Notes:

Building Inspector Signature Date

Supervising Building Inspector Signature Date Last Revised 07/01/19

**Karimzadegan, Niloufar**

---

**Subject:** FW: 1205 Peralta Ave

**From:** Karen Fiene [mailto:kfiene@mills.edu]

**Sent:** Friday, May 22, 2020 11:39 AM

**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>; Schlepp, Victoria <VSchlepp@cityofberkeley.info>

**Subject:** 1205 Peralta Ave

Hi Nilu,

I wanted to get back in touch with you about the property at 1205 Peralta, which we spoke about a few weeks ago. I alerted you, Victoria Schlepp and the city via the complaint form, that there was unpermitted work going on inside the lower level of the back unit. They removed a wall and added a header, all the while telling us that they were just replacing carpet with a wood floor, but we have photos that prove otherwise.

Over this last week they have been busily working away ,again without permit or notice, this time under the pretext they are just fixing up the back patio. However it looks suspiciously like they are building out the area where they want to expand the proposed porch, possibly to make it look like that site coverage was already there. This is the way the owners of this property have operated in the past. As we discussed, it is clear from records that the back unit in the main house did not have 3 bedrooms, yet now it magically does. Their tactic is to say this is an existing condition and all they are doing is improving it.

This ongoing work and blatant disregard for city process and neighborhood intrusion has reached a new level of nuisance. I do not know what else we can do other than to keep reaching out to the city, but so far we have not received any indication that our complaints have been received, or that anyone has come to the site. It is disappointing to see this kind of behavior being allowed to continue with no end in sight.

Thanks for all of the time and attention you and Victoria have given to hear us out, we appreciate anything you are able to do regarding the latest work. As always I am available to talk by phone at 510-708-1347.

All the best  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323*  
*cell: 510-708-1347*

**Karimzadegan, Niloufar**

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**Subject:** FW: Today!  
**Attachments:** IMG\_1490.jpg; IMG\_1491.jpg; IMG\_1492.jpg

**From:** Karen Fiene [mailto:kfiene@mills.edu]  
**Sent:** Wednesday, May 13, 2020 6:17 PM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Subject:** Fwd: Today!

Hi Nilu,

Our neighbor went inside the illegal construction site and found they had already finished the work. You can see from the images sent earlier that they removed a wall and put in a header. It seems they are trying to reduce the number of bedrooms, but it is unclear. They may also be taking over the garage, which would reduce offstreet parking. You can see why we don't trust this landlord.

Best  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613  
*work: 510-430-2323*  
*cell: 510-708-1347*

----- Forwarded message -----  
**From:** **Tiana Wages** <[wtiana@gmail.com](mailto:wtiana@gmail.com)>  
**Date:** Wed, May 13, 2020 at 6:07 PM  
**Subject:** Today!  
**To:** Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>  
**Cc:** Joan Sprinson <[jsprinson@gmail.com](mailto:jsprinson@gmail.com)>

Hi Karen,  
They did a very fast job today.  
As you can see, they covered up all the work they did yesterday!! It appears as if it has been like this from the start.  
Let the zoning see the photos from yesterday and from today.  
Tiana  
I took these photos from the Front door.

**Karimzadegan, Niloufar**

---

**Subject:** FW: REPORT OF ILLEGAL CONSTRUCTION AT 1205 PERALTA- URGENT

**From:** Karen Fiene [mailto:kfiene@mills.edu]  
**Sent:** Wednesday, May 13, 2020 2:55 PM  
**To:** Schlepp, Victoria <VSchlepp@cityofberkeley.info>  
**Cc:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>; Karen Fiene I. <kfiene@mills.edu>  
**Subject:** Re: REPORT OF ILLEGAL CONSTRUCTION AT 1205 PERALTA- URGENT

Hi Vicky,

To clarify, you are saying that the owner of 1205 has submitted the plans for the remodel to add a second story to the main house, in one of 4 units, and that you have forwarded my email with the list of concerns about that project, including off street parking, open space etc., to zoning.

In addition you are forwarding the current complaint of illegal activity to the code enforcement division.

Thank you so much for your assistance. Please let me know if there are any additional channels we have in order to stop the illegal activity and block what we feel are inappropriate plans for what we think might be an illegal number of units.

Best regards,  
Karen

**Karen Fiene, FAIA, LEED AP**  
 Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

Mills College  
 5000 MacArthur Blvd  
 Oakland CA 94613  
 work: 510-430-2323  
 cell: 510-708-1347

----- Forwarded message -----

**From:** Tiana Wages <[wtiana@gmail.com](mailto:wtiana@gmail.com)>  
**Date:** Wed, May 13, 2020 at 10:31 AM  
**Subject:** 1205 improvements  
**To:** Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>

Hi Karen,

You were talking to the foreman this morning who has told you that “the renters wanted the carpet removed, that is all they were doing”... Well, here are the photos of what they Are Doing.

The workers told me that they are putting the carpet down, among other things.

It looks to me, and you can see it better with your professional eyes, that they are making One Room out of the 2 that they made earlier. Maybe to be compliant with the number of bedrooms on the property??

Also, other code restrictions...



**Karimzadegan, Niloufar**

---

**Subject:** FW: REPORT OF ILLEGAL CONSTRUCTION AT 1205 PERALTA- URGENT

**From:** Karen Fiene [mailto:kfiene@mills.edu]  
**Sent:** Wednesday, May 13, 2020 5:13 PM  
**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>  
**Cc:** Karen Fiene I. <kfiene@mills.edu>  
**Subject:** Re: REPORT OF ILLEGAL CONSTRUCTION AT 1205 PERALTA- URGENT

Hi Nilo,

Thank you for your phone message, I'm sorry I missed you. It helps to know where we are in the permitting process. As I understand it the project has been submitted and will require a use permit and a public hearing. You spoke to the architect about code requirements and they need to decide whether to proceed. If so, an invoice will be sent and after payment it will become official. Just to clarify, the work currently being done illegally is on the lower level of the ADU, which was not a part of the submitted plans. You will notice it is labeled as 'storage' on the plan, but is being advertised as a 2 bedroom. It is very disappointing that this owner would flagrantly disobey the law while pretending to abide by it. I hope someone in the enforcement department will be able to take a look tomorrow and put a restraint on construction until proper permits are obtained.

One of our big concerns, and maybe you can help us determine this, is that we believe the property was converted to 4 units after the R-1A zoning change. We have evidence from a former tenant who said the main building was only one unit when they moved out, which was post rezoning. We know for a fact there have never been any city postings for construction, and we checked zoning files and there is nothing on file. Yet there are 4 units with a total of at least 7 bedrooms. The proposed project presupposes there are 3 existing bedrooms, yet we know these were added without a permit and that there was a single person living there for many years and who died there. The place was filthy and attracted rats.

If as we suspect, the property is in violation of the number of allowed dwelling units, is there anything the city can do about this? You mentioned that neighbors did not sign the plans, and have a negative view of this project. I have lived next to this property for 28 years and can attest to the poor quality of the property, the excess noise and cars and the difficulty of communicating with the absentee landlord and property managers. Our street is all owner occupied and we take pride in our property and in our relationships. This property owner, now deceased but his daughter has inherited, has never had any concern for the impact on the neighborhood. This is one of the reasons why there is no support for the project.

I would be happy to speak with you tomorrow at your convenience.

All the best  
Karen

**Karen Fiene, FAIA, LEED AP**  
Director of Construction, Compliance and Sustainability  
*pronouns: she, her*

**Karimzadegan, Niloufar**

---

**Subject:** FW: Signed Form - Reporting Illegal Construction Activity at 1205 Peralta Ave - URGENT  
**Attachments:** Request for Service.jpg

On Wed, May 13, 2020 at 12:14 PM Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)> wrote:

Hello,

I am reporting illegal construction **going on right now at 1205 Peralta Ave**. There are walls and a header being installed without a permit or structural design. When we inquired about the work we were told they were just replacing carpet with a wood floor. But we have seen truckloads of drywall being removed.

This property is a repeat offender and we believe is illegally renting 4 units where only 2 are allowed. The work may be complete by tomorrow so we urge that an inspector come to the site as quickly as possible. I need to find a place to print this form so I can sign it but please review as soon as possible and please call with any questions.





The request for inspection of illegal construction is in the link below. Please call if you have any trouble viewing.

<https://drive.google.com/file/d/1rTGwxfZKkZAdhsKtzdul8Y9d7UNk3-GR/view?usp=sharing>

510-708-1347

1207 Peralta Ave

Best regards,  
Karen

**Karen Fiene, FAIA, LEED AP**

Director of Construction, Compliance and Sustainability

*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323*

*cell: 510-708-1347*



**Building and Safety  
Permit Service Center**

**Please Note:**

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This form is for illegal construction/code concerns only. Any noise concerns should be directed to the Environmental Health Division.

For unsafe work practices, complete a **Complaint to Investigate Unsafe Work Practices** form.

**Building and Safety**  
1947 Center St. 3<sup>rd</sup>  
Berkeley, CA 94704  
510-981-7440 TTY 6903  
[buildingandsafety@cityofberkeley.info](mailto:buildingandsafety@cityofberkeley.info)

# REQUEST FOR SERVICE

## Inspection for Illegal Construction

**Request Details**

Address: 1205 Peralta Ave  
Concern: Illegal construction activity without a permit. We have photo documentation of structural wall and header being installed at this moment. We were told that they were only replacing carlpet with a wood floor. The job might be done by tomorrow so time is of the essence. This property has done numerous remodels without permits in the past. I am trying to find a place to print out to sign and

**Owner Information**

Name: Cathy Nason Phone: 530-913-1584  
Address: PO Box 142 City/ST/Zip: Inverness,CA 94937  
Email: cathynason@gmail.com

**Complainant Information**

Name: Karen Fiene Phone: 510-708-1347  
Address: 1207 Peralta Ave City/ST/Zip: Berkeley, CA 94706  
Email: kfiene@mills.edu

**Relationship to the Address of Concern:**  Neighbor  Tenant  Owner  
 Fire Department  Health Department  Other:

Complainant Signature \_\_\_\_\_ Date May 13, 2020

**y**  
Inspector: \_\_\_\_\_ Priority: \_\_\_\_\_ Due: \_\_\_\_\_  
Action:  Posted NOV  Posted 2<sup>nd</sup> NOV  NFA  Other: \_\_\_\_\_

Notes: \_\_\_\_\_

Building Inspector Signature \_\_\_\_\_ Date \_\_\_\_\_

Supervising Building Inspector Signature \_\_\_\_\_ Date \_\_\_\_\_ Last Revised 07/01/19

**Karimzadegan, Niloufar**

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**Subject:** FW: REPORT OF ILLEGAL CONSTRUCTION AT 1205 PERALTA- URGENT

**From:** Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>

**Sent:** Wednesday, May 13, 2020 11:46 AM

**To:** Schlepp, Victoria <[VSchlepp@cityofberkeley.info](mailto:VSchlepp@cityofberkeley.info)>

**Cc:** Tiana Wages <[wtiana@gmail.com](mailto:wtiana@gmail.com)>; Karen Fiene I. <[kfiene@mills.edu](mailto:kfiene@mills.edu)>; Joan Sprinson <[jsprinson@gmail.com](mailto:jsprinson@gmail.com)>

**Subject:** REPORT OF ILLEGAL CONSTRUCTION AT 1205 PERALTA- URGENT

Hi Vicki,

I'm attaching photos of construction taking place at 1205 Peralta, the property you and I have been in conversation about. Yesterday morning they started working on the lower unit in the ADU. We asked about the work and were told they were just putting in a wood floor. A neighbor went inside and took these photos clearly showing structural work going on. There was no posting from the city that this work is being proposed, so presumably no permit. The contractor said they would be done tomorrow so I strongly recommend someone from the city come today to shut them down.

This is the property with 4 units that we believe was not done legally. They are in the process of submitting a permit, maybe just submitted, to add a second floor onto an existing 3 bedroom unit, one of two, in the main house. We know for a fact that it was only one unit at a time after the R-1A zoning went into effect in our neighborhood so we're pretty sure the work was done illegally.

Please don't hesitate to call. 510-708-1347.

Best

Karen

**Karen Fiene, FAIA, LEED AP**

Director of Construction, Compliance and Sustainability

*pronouns: she, her*

Mills College  
5000 MacArthur Blvd  
Oakland CA 94613

*work: 510-430-2323*

*cell: 510-708-1347*

----- Forwarded message -----

**From:** Tiana Wages <[wtiana@gmail.com](mailto:wtiana@gmail.com)>

**Date:** Wed, May 13, 2020 at 10:31 AM

**Subject:** 1205 improvements

**To:** Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>

Hi Karen,

You were talking to the foreman this morning who has told you that "the renters wanted the carpet removed, that is all they were doing"... Well, here are the photos of what they Are Doing.

The workers told me that they are putting the carpet down, among other things.

It looks to me, and you can see it better with your professional eyes, that they are making One Room out of the 2 that

they made earlier. Maybe to be compliant with the number of bedrooms on the property??  
Also, other code restrictions...

Please give me a call when you can,  
Tiana

Sent from my iPhone











**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta Ave APN 060-241603100 Duplex Renovation/Expansion**From:** Karen Fiene <[kfiene@mills.edu](mailto:kfiene@mills.edu)>**Sent:** Monday, April 27, 2020 5:26 PM**To:** ZoningCounter <[ZoningCounter@cityofberkeley.info](mailto:ZoningCounter@cityofberkeley.info)>**Cc:** Tiana Wages <[wtiana@gmail.com](mailto:wtiana@gmail.com)>; Joan Sprinson <[jsprinson@gmail.com](mailto:jsprinson@gmail.com)>; Helen Degenhardt <[helen@jswdarch.com](mailto:helen@jswdarch.com)>; Mel Lyons <[mlyons@lmi.net](mailto:mlyons@lmi.net)>; Karen Fiene I. <[kfiene@mills.edu](mailto:kfiene@mills.edu)>**Subject:** 1205 Peralta Ave APN 060-241603100 Duplex Renovation/Expansion

Dear City Planner, (I believe one of our neighbors has recently reached out to Fatima Gray so she may already know about this project)

I am the resident in the adjacent property at 1207 Peralta and have some questions about the planning process. I am an architect and have familiarized myself with the planning code but seek clarification on a few things.

In order to facilitate the call I will outline the issues. The owner, Cathy Nason, has procured an architect, Cambare Designs, to prepare permit documents, attached. The plan describes the addition of a second floor over the rear unit of an existing duplex on a site that has a total of 4 units. Neighbors have been given the plans for review, a zoning permit is not on record as having been filed yet. Of note is that this neighborhood is all owner occupied with a max of 2 units. This parcel is owned by an absentee landlord, with 4 units, and we are aware of upgrades that have been done without permits in past years. The general condition of the property has been poor, and there has been no sense of contributing to the scale and character of the neighborhood.

## Questions and Clarifications:

1. The occupancy is listed as R2 on the permit drawings, but city records call out R-1A. What are the major differences? How can I get a complete copy of regulations for R2 and R-1A designation?
2. Can you confirm which type of AUP will be required? The property has more than 4 bedrooms, the expansion is over 600sf and we believe there are substantial impacts to adjacent neighbors.
3. Would a project like this be subject to design review?
4. Is there any requirement that one of the units be owner occupied?
5. Is it legal to have 4 units in an R-1A?
6. What are the off street parking requirements? My reading of the code is that 2 are required. The existing conditions do not allow for 2 cars, assuming the ADU is exempt. And the proposed plans also do not address off street parking.
7. The required open space of 400 sf per unit = 1600 sf cannot be met given the small open area available, are there exemptions that apply? Otherwise is this proposal legitimate?
8. Proximity to existing house. Plans show a cantilevered second floor will come within 4'-0" of our house.
9. Expanding footprint on second level. The upper level is being cantilevered 3'-0" over existing driveway and over a newly built porch that is an extension of the main floor. Is this considered enlarging the footprint? The drawings say all work is within the existing footprint but this is does not look to be the case. Does the new footprint exceed the maximum lot coverage?
10. What is considered a 'detriment' and how does the city react to excessive impact to adjacent properties? In this case one dwelling will lose all of the natural light into the living spaces, and on the other side a balcony will intrude on the privacy of a back garden with a 9'-0" wall looming 4'-0" away. The issue is that the property already feels overbuilt and like a drag on the neighborhood. There are excess cars on the street, four or more, and the noise and activity of four families, versus one family in almost every other case on the block, feels like too much.

11. Can doing past work without a permit be a consideration in refusing new work to take place until remedied?  
Two units have had substantial work conducted without any posting of city permits.

Process- can you please confirm if the next steps I have outlined are correct?

1. Owner supplies plans to neighbors, which they have done. Do neighbors legally have to sign off on having received the plans? They have asked that we sign in advance of receiving official notice from the planning department and we don't think this is required. We also noticed the sign they posted is not yellow and only has one elevation, no plan or other supporting information, is that supported by the city?
2. Owner submits plans for zoning approval.
3. Notice of zoning permit request is posted- by who?
4. Neighbors have a chance to comment, how long do we have?
5. What if the planning permit is granted, can we appeal to the ZAB and City Council?
6. Can you give us an idea of how long all of this will take given the Covid-19 conditions?

Thank you very much for your time and assistance

Best regards,

Karen Fiene

1207 Peralta Ave

**Karen Fiene, FAIA, LEED AP**

Director of Construction, Compliance and Sustainability

*pronouns: she, her*

*cell: 510-708-1347*

**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta, needs zoning information on this address**From:** Sanford, David**Sent:** Monday, April 27, 2020 3:45 PM**To:** ZoningCounter <[ZoningCounter@cityofberkeley.info](mailto:ZoningCounter@cityofberkeley.info)>**Subject:** 1205 Peralta, needs zoning information on this address

|                                      |                                                                                                   |
|--------------------------------------|---------------------------------------------------------------------------------------------------|
| Caller Name:                         | Karen Fiene (pron. Feeny), Architect                                                              |
| Caller Phone Number:                 | 510-708-1345                                                                                      |
| Caller Email Address:                | <a href="mailto:kfiene@mills.edu">kfiene@mills.edu</a>                                            |
| Property Address:<br>(if applicable) | 1205 Peralta                                                                                      |
| Question:                            | Architect needs further zoning information on this property that she wasn't able to find on line. |

|                                              |                                   |
|----------------------------------------------|-----------------------------------|
| Planner Name:                                | Vicky                             |
| First Contact:<br>(date/time)(within 24 hrs) | 4/28/20                           |
| Answer/Resolution:                           | Emailed her for more information. |

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- 1) From Outlook, select the **Tools** menu, **Options** menu item
- 2) Select the **Mail Format** tab
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- 4) Press the **OK** button.
- 5) You may need to close and re-open this email message.

**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta, needs detail on project posting

**From:** Sanford, David  
**Sent:** Tuesday, April 21, 2020 5:22 PM  
**To:** ZoningCounter <[ZoningCounter@cityofberkeley.info](mailto:ZoningCounter@cityofberkeley.info)>  
**Subject:** 1205 Peralta, needs detail on project posting

|                                      |                                                                                                                                                       |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Caller Name:                         | Joan Spinson                                                                                                                                          |
| Caller Phone Number:                 |                                                                                                                                                       |
| Caller Email Address:                |                                                                                                                                                       |
| Property Address:<br>(if applicable) | 1205 Peralta                                                                                                                                          |
| Question:                            | Says that the proposed posting is very confusingly written and would like details on the project.<br><br>I don't see the address number in G: - David |

|                                              |                                                                                                                                                                |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planner Name:                                | A. James                                                                                                                                                       |
| First Contact:<br>(date/time)(within 24 hrs) | 4/22 3:00pm                                                                                                                                                    |
| Answer/Resolution:                           | STC. She has concerns regarding prior, unpermitted work that occurred. Added her contact information to the file. This application has not yet been submitted. |

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**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta, objects to project application

**From:** Sanford, David  
**Sent:** Thursday, April 16, 2020 5:08 PM  
**To:** ZoningCounter <[ZoningCounter@cityofberkeley.info](mailto:ZoningCounter@cityofberkeley.info)>  
**Subject:** 1205 Peralta, objects to project application

|                                      |                                                                                                                                                                                                                        |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Caller Name:                         | Betternika (approximate) Cookson                                                                                                                                                                                       |
| Caller Phone Number:                 |                                                                                                                                                                                                                        |
| Caller Email Address:                |                                                                                                                                                                                                                        |
| Property Address:<br>(if applicable) | 1205 Peralta                                                                                                                                                                                                           |
| Question:                            | States that she has issues with the nature of the project application for this address.<br><br>I do not see an application for this address so she may be responding to the posted yellow proposed project sign. David |

|                                              |                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planner Name:                                | Nick                                                                                                                                                                                                                                                                                                                                                               |
| First Contact:<br>(date/time)(within 24 hrs) | 4/20/20 @ 12:30pm                                                                                                                                                                                                                                                                                                                                                  |
| Answer/Resolution:                           | <b><i>Talked to the caller. We have no record of an application yet. It appears they may have installed a Project Yellow poster before the Shelter-in-Place order went into effect. We have not received an email requesting an application at this address yet. Walked the caller through the typical processes, and the reviewd processes given COVID-19</i></b> |

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- 2) Select the **Mail Format** tab
- 3) Check the box for "**Use Microsoft Word to edit email messages**"
- 4) Press the **OK** button.
- 5) You may need to close and re-open this email message.

**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta, neighbor objects to proposed 2nd story as obstructive**From:** Sanford, David**Sent:** Thursday, April 16, 2020 9:32 AM**To:** ZoningCounter <[ZoningCounter@cityofberkeley.info](mailto:ZoningCounter@cityofberkeley.info)>**Subject:** 1205 Peralta, neighbor objects to proposed 2nd story as obstructive

|                                      |                                                                                                         |
|--------------------------------------|---------------------------------------------------------------------------------------------------------|
| Caller Name:                         | Tiana Wages (at 1203 Peralta)                                                                           |
| Caller Phone Number:                 |                                                                                                         |
| Caller Email Address:                |                                                                                                         |
| Property Address:<br>(if applicable) | 1205 Peralta                                                                                            |
| Question:                            | Neighbor objects to proposed 2 <sup>nd</sup> story at 1205 Peralta. States that it will be obstructive. |

|                                              |                                                                                                                                                                                     |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planner Name:                                | Crane                                                                                                                                                                               |
| First Contact:<br>(date/time)(within 24 hrs) | 04/16/2020                                                                                                                                                                          |
| Answer/Resolution:                           | Spoke to caller. Explained review processs, shadow studies, etc. Encouraged communication with applicant and follow up submittal of written comments after application is received. |

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- 2) Select the **Mail Format** tab
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- 4) Press the **OK** button.
- 5) You may need to close and re-open this email message.



Jacob, Melinda

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**From:** Zoning Adjustments Board (ZAB)  
**To:** Veronika; Zoning Adjustments Board (ZAB)  
**Subject:** RE: Correction to statement RE: 1205

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**From:** Veronika [mailto:veronikasf321@gmail.com]  
**Sent:** Thursday, April 1, 2021 11:15 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** Correction to statement RE: 1205

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

In my statement I confused Units 3 & 4. I have made that change in order not to confuse the Board--and that change only. I have added nothing new to the original sent on 3/31. The corrected statement is below.

RE: 1205 Peralta Avenue owned by Cathy (Lipnosky) Nason  
DATE: March 30, 2021

Even though I plan to attend the meeting on 4/8/21 along with my neighbors, I would like to raise several points which have led us to be suspicious of what happens at 1205 Peralta.

Over the years there have been a number of problems with this property, ranging from tenants dealing drugs to various projects, mostly involving the addition of walls and bedrooms, a majority of projects which I would dare say has been done without permits. All of this has taken place on a lot which is non-conforming with regard to density, parking, open space, lot coverage, and front, side and rear setbacks.

You may hear the applicant talk about the need for housing; this property furnishes quite a bit of housing and we, the neighbors, favor creating affordable housing. Our neighborhood has a number of multiple dwellings and ADU's. Over my back fence is an ADU, next door is an ADU, over the fence next-door is an ADU, five lots south of me is an ADU and several other households of neighbors are considering ADUs. On other blocks in this modest neighborhood we can see more.

Ms. Nason's father, Andy Lipnosky, was a master of self-help when it came to working without permits and it is likely that my attitude toward Ms. Nason has been affected by my experiences with her father. Additionally, months ago she submitted and then withdrew a very different application which my neighbors and I found totally unacceptable. Fortunately that is not now the case but I still find myself more than wary.

We neighbors are considering the four units on the property not in terms of Use Permits and Variances, but in terms of the original configuration of the Units, what they have become, and what we would like them to be.

— Unit 1 is not an issue.

— **Unit 2** was a comfortable one-bedroom apartment when friends of mine lived there and should **revert to one-bedroom**.

— **Unit 3** was a studio apartment during all the time the previous neighbor, now deceased, lived there. It shared a west wall with a large space which had been built as a two-car garage but used as storage space. After his death the unit magically became a one-bedroom unit when space from the adjoining storage space was appropriated. We have no problem with **converting the original studio into a one-bedroom** but are suspicious that Ms. Nason has plans to take the remaining square footage from the storage space and turn that into a **second bedroom**. In fact, prospective tenants have been told that was her plan and the unit has been **advertised** in

that way. Please note that the storage space on the plans shows a window. Why a window in a storage space? Recently there have been a number of thefts and strangers wandering into neighbors' backyards, so it seems that a solid wall minus the window will provide greater security as well as eliminate our suspicions. Therefore, **remove the window for the storage unit, replace with solid door.**

— **Unit 4** was a small one-bedroom which has become a three bedroom unit. While I would not like to live in it as a two-bedroom unit, we see no reason to oppose having Ms. Nason be granted her desire to **change it into a two-bedroom unit.**

In conclusion, I have listed what we, the neighbors, wish to see. Speaking for myself, I would like to trust Ms. Nason and her architect but do not. In fact, given recent information I have learned, I am again more suspicious than ever; I believe that they have further development plans for this property in spite of the limitations of the lot. We, the neighbors, are doing our best to keep our modest Berkeley neighborhood a place where people can still afford to live—although it has become increasingly more difficult. I wonder if Ms. Nason and her neighbors in their multi-million-dollar neighborhood struggle with that concern.

Thank you very much for considering our points of view,  
Veronika Sakowska Fukson, 1213 Peralta

**Karimzadegan, Niloufar**

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**Subject:** FW: 1205 Peralta Avenue ZP2020-0060

**From:** Tiana Wages [mailto:wtiana@gmail.com]

**Sent:** Thursday, April 1, 2021 8:41 AM

**To:** Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>

**Subject:** 1205 Peralta Avenue ZP2020-0060

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Nilu,

I was unable to submit this on time, but although belatedly, I am adding my letter to the neighborhood comments about the proposed 1205 Peralta Avenue remodel.

I am the next door neighbor, on the North side of 1205.

I fully agree with Karen Fiene's letter, sent to you yesterday. It precisely describes the sentiments and worries of the whole neighborhood and we all hope that the ZAB decision will take those into account.

Thank you for all your efforts,

Sincerely,  
Tiana Wages  
1203 Peralta

Sent from my iPhone

>> IT'S 7:00, WHERE IS EVERYBODY?

>> HEY, LESLIE, WE CAN'T HEAR YOU.

>> WELCOME BOARD MEMBER DUFFY.

DID YOU NOT GET A SPECIFIC INVITE IN THE MAIL?

IN YOUR E-MAIL?

NO?

THAT'S OKAY, WE GOT YOU.

THAT'S THE IMPORTANT THING.

>> S. O'KEEFE: MR. THOMPSON, ARE YOU THE NEW APPOINTEE FOR  
DISTRICT 3?

>> YES, YES, I AM.

>> WELCOME.

GOOD TO HAVE YOU.

>> WE SEE EACH OTHER, I WATCH YOU GUYS AND I'LL LIKE OH, WOW,  
I'M WITH CELEBRITIES.

>> S. O'KEEFE: I'LL SEND YOU MY AUTOGRAPH LATER.

WELCOME, WE'RE GLAD TO HAVE YOU.

>> IT'S GOOD TO BE HERE.

>> MAYBE AFTER WE DO ROLL CALL, WE'LL GIVE YOU A CHANCE TO  
INTRODUCE YOURSELF AND TELL US THE BRIEF BACKGROUND.

SO PREPARE.

WE'LL WAIT UNTIL EVERYBODY IS HERE.

>> AND FOR THE RECORD, I'M THE PHONE NUMBER HANGING OUT THERE.

I HAD SOME POWER PROBLEMS WITH MY COMPUTER.

IF MY COMPUTER SHUTS DOWN, I'LL SWITCH QUICKLY TO THE PHONE.

>> KEVIN: THE PHONE NUMBER IS ALWAYS OMINOUS.

>> IF THAT HAPPENS, I'LL GO AWAY AND THERE WILL BE A DISEMBODED  
VOICE.

>> S. O'KEEFE: DUFFY, ARE YOU RAISING YOUR HAND?

>> YES, I'M HERE.

>> YES.

>> HI.

>> CAN YOU SEE THAT I'M HERE?

I CAN'T SEE THAT I'M HERE.

>> BOARD MEMBER DUFFY, DID YOU GET A SPECIFIC E-MAIL INVITE? DID  
YOU LOOK AT THAT FROM JIM BONDI?

>> I DIDN'T SEE IT.

BUT I WILL LOOK FOR THAT.

THAT WILL BE THE RIGHT WAY TO GET INTO THE MEETING, RIGHT?

>> THEN WE CAN SEE YOUR FACE, BUT THIS WILL WORK.

AT LEAST WE CAN HEAR YOU.

>> LAST TIME IT WORKED.

>> I KNOW.

>> Y. DUFFY: I'LL FIND IT.

>> WAIT, I CAN PROMOTE YOU NOW.

PROMOTE YOU TO PANELIST.

>> S. O'KEEFE: CAN I BE MADE HOST, PLEASE?

>> I DID THAT ALREADY -- I THOUGHT.

>> S. O'KEEFE: BECAUSE I TRIED TO DO THAT.

INTERESTING.

>> I. TREGUB: I SAW YOU WERE PROMOTED.

>> S. O'KEEFE: I LOOKED A MINUTE AGO --

>> HOPEFULLY HE'LL COME BACK --

>> S. O'KEEFE: I THINK YOU'VE DONE IT, BUT I CAN DO IT.

WE'LL REJOIN THE WEBINAR AS AN ATTENDEE.

COOL.

COOL.

HELLO, EVERYONE ELSE.

>> HAPPY BIRTHDAY.

>> S. O'KEEFE: HAPPY THURSDAY DAY, IS THAT WHAT YOU SAID?

>> HAPPY THURSDAY, ONE DAY BEFORE FRIDAY.

>> IT'S FRIDAY EVE.

THAT'S WHAT MY FRIENDS CALL IT.

FRIDAY EVE.

>> IT MAY NOT FEEL LIKE THURSDAY EVE, BUT IT IS.

>> S. O'KEEFE: FRIDAY EVE.

>> IT SEEMS LIKE TIME CHANGE IS WE STARTED IN LIKE ACTUALLY THE  
DAYTIME SOMETIMES.

I HAVE A WINDOW IN FRONT OF ME.

MY SANITY.

THIS IS MY WORK DESK TOO.

>> S. O'KEEFE: I'VE BEEN FOLLOWING A ACCOUNT ON TWITTER CALLED "ROOM RAIDER" AND THEY TAKE ROOMS LIKE PEOPLE WHO ARE APPEARING ON TELEVISION AND THEY RATE THEIR ROOM.

IT'S MADE ME FEEL SELF-CONSCIOUS ABOUT MY ROOM.

I DON'T THINK I WOULD GET A NICE SCORE.

>> I WOULD BE BANNED.

>> S. O'KEEFE: TWO OUT OF 10 FOR ME.

>> IF YOU CLEANED UP, MAYBE HOARDERS COULD DO AN EPISODE, AND I'M LIKE I HAVE TO CLEAN UP FIRST?

THAT'S TERRIBLE.

>> S. O'KEEFE: WE CAN'T SEE WHATEVER MESS IS ON FLOOR.

>> THIS ROOM IS FINE.

>> SOMEHOW WE LOST BOARD MEMBER DUFFY WHEN WE PROMOTED HIM.

>> WAS HE TRYING TO CONNECT TO THE OTHER?

>> S. O'KEEFE: HE'S AN ATTENDEE NOW.

I THINK I DID THAT.

I THINK I --

>> I'M GOING TO PROMOTE HIM.

YOU DON'T TOUCH ANYTHING.

>> S. O'KEEFE: I THINK I ACCIDENTALLY DEMOTED HIM.

>> WE'LL SEE IF HE COMES NOW.

THERE YOU HAVE.

YEA!

>> I CAN JOIN YOU GUYS NOW, THANK YOU.

I APPRECIATE YOU LETTING ME IN.

YOU CAN CALL ME "YES", BY THE WAY.

IT SOUNDS YES, CAN YOU YOU CAN CALL ME "YES.

>> IT LOOKS LIKE BOARD MEMBER KIM IS HAVING AN ISSUE CONNECTING.

OTHERWISE WE'RE A FULL HOUSE WHEN SHE'S UP AND RUNNING.

>> S. O'KEEFE: BY THE WAY, CHARLES ISN'T COMING.

SO I'M GOING TO BE CHAIRING.

IN CASE YOU'RE WONDERING WHY I WAS TALKING SO MUCH.

WE CAN START -- IS COMMISSIONER KIM ABOUT TO JOIN?

DO YOU THINK?

>> IT SAYS CONNECTING TO AUDIO.

>> S. O'KEEFE: I SEE HER.

OKAY.

THERE WE GO.

>> SORRY ABOUT THAT.

HELLO.

CAN YOU HEAR ME?

>> S. O'KEEFE: YES.

>> D. KIM: MY AUDIO WASN'T WORKING WITH MY COMPUTER, SO I HAD TO

CALL IN.

>> S. O'KEEFE: WE CAN START.



I THINK WE HAVE EVERYONE WHO IS GOING TO COME.

LET'S DO ROLL CALL AND EX-PARTE CLOSURES THEN WE'LL INTRODUCE  
OUR NEW BOARD MEMBER.

>> ALL RIGHT.

SO FOR THE NEW FOLKS ON THE BOARD, IF YOU HAVE ANY EX PARTE  
DISCLOSURES WHICH IS A CONFLICT OF INTEREST FOR ANY OF THE  
ITEMS, BEING SAY IT AT THE TIME AFTER I CALL YOUR NAME FOR ROLL  
CALLED.

BOARD MEMBER TREGUB.

>> I. TREGUB: PRESENT NO EX PARTE.

>> BOARD MEMBER DUFFY.

>> PRESENT NO EX PARTE.

>> BOARD MEMBER GAFFNEY.

>> PRESENT NO EX PARTE.

>> BOARD MEMBER THOMPSON.

>> PRESENT NO EX PARTE.

>> BOARD MEMBER OLSON.

>> PRESENT NO EX PARTE.

>> BOARD MEMBER KIM.

YOU'RE ON MUTE.

IF YOU'RE PHONING IN, WAS IT STAR 6 TO UNMUTE?

>> D. KIM: THANK YOU, STAR 6 IS CORRECT.

PRESENT NO EX PARTE.

>> BOARD MEMBER HAUSER.

>> PRESENT NO EX PARTE.

>> AND VICE CHAIR O'KEEFE.

>> S. O'KEEFE: PRESENT NO EX PARTE.

WE HAVE A QUORUM.

I WANT TO TACK A MOMENT BEFORE WE BEGIN THE FULL AGENDA TO  
WELCOME COMMISSIONER THOMPSON.

AND ALSO COMMISSIONER HAUSER WHO IS SUBBING FOR PINKSTON, IS  
THAT CORRECT?

>> THAT'S RIGHT.

THAT'S MY UNDERSTANDING.

>> S. O'KEEFE: SHE'S BEEN ON THE BOARD BEFORE.

SHE KNOWS THE RULES.

COMMISSIONER THOMPSON, WELCOME.

DO YOU WANT TO TELL US ABOUT YOURSELF?

>> DISTRICT 3.

IT'S SO FUNNY, I THINK I'VE LIVED IN BERKELEY A LONG TIME, BUT I  
HAVEN'T COMPARED TO ALL OTHER BERKELEY RESIDENTS.

I LIVED IN THE DISTRICT SINCE 2006.

AND I'VE WORKED AT CAMPUS SINCE '93.

I SPENT MOST OF MY DAYS IN BERKELEY, BUT IN '06 I SPENT MY  
NIGHTS.

I'M A A BERKELEY EMPLOYEE, I MANAGE 56TH FOURTH STREET.

ON THE CORNER OF FOURTH AND CEDAR.

THAT'S MY DAY JOB.

AND I ALSO -- TUESDAY MORNINGS I'M OUT AT PEOPLE'S PARK AND I WORK WITH CLEANUP CREWS AND WE PICK UP ALL OF OUR NEIGHBOR'S FURNITURE AND ENTERTAINMENT CENTERS THAT HAVE BEEN DROPPED OFF AND PICK THOSE UP ON TUESDAY MORNING.

AND YEAH, I'M EXCITED.

GLAD TO BE HERE.

TODAY I WATCHED BERKELEY PAST AND PRESENT WHICH IS FANTASTIC IF YOU HAVEN'T SEEN THE VIDEO YET.

THE MUSIC GOOD AND IT SHOWS DIFFERENT CLIPS AROUND THE CITY OF BERKELEY FROM THE EARLY DAYS AND A LOT OF SHOTS DURING THE '60S AND HOW THE SAME IMAGES HAVE CHANGED.

YOU KNOW, I'M VERY MUCH CONCERNED WITH THE HOMELESS AND WHERE OUR CITY IS GOING.

AND DEVELOPMENT AND ALL THE INTERSECTIONS OF THAT.

THANK YOU FOR HAVING ME.

>> S. O'KEEFE: WELCOME.

WE'RE GLAD TO HAVE YOU.

SOUNDS LIKE YOU'RE PRETTY INVOLVED IN THE COMMUNITY.

THIS IS ANOTHER WAY TO DO THAT.

IT'S WONDERFUL.

AND IN TERMS OF OUR PROCEDURE, FEEL FREE TO ASK ANY QUESTIONS IF YOU AREN'T SURE WHAT TO DO OR WHAT IS GOING ON.

WE WANT TO MAKE SURE YOU GET THE HANG OF THINGS.

OTHERWISE, FOLLOW ALONG.

WELCOME.

AND --

>> MY BACKGROUND IS ARCHITECTURE BUT CURRENTLY A NON-PROFIT DIRECTOR OF THE COMMUNITY DEVELOPMENT DISTRICT IN OAKLAND, BUT I LIVE IN BERKELEY.

AND I'M A CURRENT PLANNING COMMISSIONER BUT PRIOR TO THAT SERVED ON ZAB.

SO ALSO, VERY INTERESTED IN CITIES AND MAKING THEM WELCOMING FOR ALL.

>> S. O'KEEFE: GREAT.

GLAD TO HAVE YOU BACK.

OKAY, SO NEXT ON THE AGENDA IS PUBLIC COMMENT ON NON-AGENDIZED ITEMS.

MEMBERS OF THE PUBLIC WHO ARE HERE, WELCOME.

GLAD TO HAVE YOU.

IF YOU ARE HERE TO SPEAK ON SOMETHING ON AGENDA, THIS IS NOT YOUR MOMENT.

IF YOU ARE HERE TO SPEAK ON SOMETHING NOT LISTED ANYWHERE ON THIS AGENDA, PLEASE RAISE YOUR HAND OR PRESS STAR 9.

I ANY OF READ THE THING!

COMMISSIONERS THOMPSON AND HAUSER, I AM NOT USED TO BEING CHAIR AND I'M SORRY TO SUCK AT IT SO MUCH.

THERE IS SOMETHING I'M SUPPOSED TO READ.

IF YOU HAVE A COMMENT THAT'S NOT ON THE AGENDA.

WAIT A MINUTE.

THERE IS A THING I'M SUPPOSED TO READ AT THE BEGINNING OF THE MEETING.

SORRY, EVERYONE.

WHERE IS CHARLES, ANYWAY?

>> I DO NOT KNOW BUT HE'S OUT FOR THE NEXT MEETING AS WELL.

>> S. O'KEEFE: I FOUND IT.

SO I'M GOING TO READ THE THING.

PURSUANT TO SECTION 3 OF N-29-20 ISSUED ON GOVERNOR NEWSOM THIS MEET BEEN CONDUCTED EXCLUSIVELY THROUGH TELECONFERENCE AND ZOOM.

PER STUDENT TO THE SHELTER-IN-PLACE ORDER AND TO ENSURE THE HEALTH AND SAFETY OF THE PUBLIC THERE WILL NOT BE A PHYSICAL MEETING LOCATION AVAILABLE.

PERSONS ATTENDING THIS ZOOM VIDEO MEETING HAVE DISPLAYED NAMES WHICH ARE VISIBLE TO COMMISSIONERS AND STAFF.

IF YOU WISH TO BE ANONYMOUS, USE THE DROP DOWN MENU TO CHANGE YOUR NAME.

WE DETERMINED THAT IS NOT ACCURATE.

IF YOU WANT TO RENAME YOURSELF, YOU HAVE TO LEAVE THE MEETING, CHANGE YOUR NAME ON ZOOM AND THEN COME BACK, I BELIEVE.

THAT'S THE ACTUAL INFORMATION AS OPPOSED TO WHAT I JUST READ.

SORRY.

FOR COMMISSIONERS WISHING TO SPEAK DURING DELIBERATIONS USING RAISE HAND ICON AND WAIT TO BE CALLED ON BY THE CHAIR.

MEMBERS OF THE PUBLIC SHOULD USE THE RAISE HAND ICON AT THE BOTTOM OF THE SCREEN.

IF YOU WISH TO COMMENT PRESS STAR 9 AND WAIT TO BE RECOGNIZED BY THE CHAIR.

PLEASE BE MINDFUL ALL RULES OF PROCEDURE AND DAY QUORUM APPLY TO ALL MEETINGS ON TELECONFERENCE OR ZOOM AND IT IS PARTICULARLY IMPORTANT TO GIVE EACH SPEAKER A CHANCE TO COMPLETE THEIR REMARKS BEFORE THE NEXT SPEAKER STARTS.

ON WITH THE SHOW.

PUBLIC, IF YOU ARE HERE TO SPEAK ON SOMETHING NOT LISTED ON THE AGENDA, MEANING, NOT 1175 UNIVERSITY.

1241 ASHBY OR PERALTA.

PLEASE RAISE YOUR HAND OR PRESS STAR 9.

I'M GOING TO RECOGNIZE KAREN CANER.

KAREN.

YOU HAVE THREE MINUTES.

SPEAK ON SOMETHING NOT ON THE AGENDA.

>> I'M JONATHAN CANER, I'M KAREN'S HUSBAND.

I WANT TO TALK ABOUT THE DEVELOPMENT ON GRIZZLY PEAK 1028 GRIZZLY PEAK.

I LIVE ABOVE THE DEVELOPMENT OF SIX LARGE HOMES.

THREE OF THEM HAVE BEEN APPROVED, CONSTRUCTION STARTED ON ONE.

AND THREE ARE UP FOR APPROVAL AT YOUR NEXT MEETING.

I RECENTLY LEARNED THAT THE ROOF THAT WENT ON TO 1028 GRIZZLY

PEAK IS THE FINAL PRODUCT.

I SPOKE TO THE CONTRACTOR WHO TOLD ME THAT IT WAS FINAL AND THAT HE WAS PLANNING ON USING THE SAME ROOF FOR ALL SIX HOMES.

HE SAID THERE WAS NOTHING THAT COULD BE DONE ABOUT IT.

I SPOKE TO THE OWNER AND TOLD HIM ABOUT MY CONCERNS ABOUT THE APPEARANCE OF THE ROOF.

HE SAID HE WOULD TALK TO THE CONTRACTOR AND THEN GET BACK TO ME.

I HAVEN'T HEARD BACK FROM HIM.

THE SITUATION IS THIS A LARGE HOME AND THEY HAVE PLACED A HIGHLY REFLECTIVE LARGE WHITE ROOF THAT IS OBVIOUS EYESORE IN THE FIELD OF THE VIEW OF THE SEVEN HOMES ON THE RIDGE ABOVE THIS.

SO I'VE SPOKEN TO EVERY NEIGHBOR WHO LIVES ABOVE IT.

THERE ARE SEVEN HOMES.

THEY'VE SIGNED A PETITION WHICH I'VE NOT TURNED IN YET, BUT IT IS AN EXTREME EYESORE, DAMAGING TO THE VIEW OF EVERY HOME.

IT'S UGLY.

IT'S TOTALLY OUT OF CHARACTER WITH THE NEIGHBORHOOD.

THE VIEW FROM THIS POINT IS A NATURAL PEAK.

THE HOMES ARE FOREST HOMES AND YOU HAVE A GLARING WHITE FLAT OBJECT RIGHT IN THE CENTER.

SO IN LOOKING AT THE -- THIS HOME WAS APPROVED AND BUILDING HAS NOT STARTED ON TWO MORE AND THREE MORE HAVE YET TO BE APPROVED.

IN LOOKING AT THE FINDINGS FOR APPROVAL OF THIS, YOU KNOW, IT REFERS TO A NUMBER OF POLICIES FROM THE ZONING BOARD WHICH IT

WAS FELT TO BE CONSISTENT WITH.

THIS ROOF IS CLEARLY OUT OF CHARACTER WITH THE FINDINGS.

THE ZONING BOARD REQUIRES THAT THE APPLICATION NOT BE  
DETRIMENTAL TO THE HEALTH, SAFETY, PEACE, MORALS, COMFORT  
GENERAL WELFARE OF PEOPLE IN THE NEIGHBORHOOD.

AND NOT BE DETRIMENTAL AND INJURIOUS TO PROPERTY AND  
IMPROVEMENT.

IT'S CLEARLY DETRIMENTAL TO THE COMFORT AND GENERAL WELFARE OF  
THE PEOPLE LIVING HERE AND INTERFERES WITH THE VALUE OF THE  
HOMES BECAUSE OF THE DAMAGE.

SO I WILL -- AND THE PEOPLE HERE WILL OPPOSE APPROVAL OF THE UP  
COMING PROJECTS UNLESS THERE CAN BE AN AGREEMENT THAT THIS ROOF  
BE CHANGED AND THAT THIS TYPE OF ROOF NOT BE USED ON THE OTHER  
FIVE HOMES IN THE DEVELOPMENT.

>> S. O'KEEFE: ALL RIGHT.

YOUR TIME IS UP.

I'M GOING TO HAVE TO SAY THANK YOU VERY MUCH AND IT SOUNDS LIKE  
WE'LL HAVE A CHANCE TO DISCUSS THIS AGAIN.

WELCOME BACK.

WHEN THAT IS ON ITEM.

NEXT UP WE HAVE EDWARD STRESS.

>> YES, HI.

I'M CONFUSED BECAUSE -- THAT'S THE TIMER.

>> S. O'KEEFE: YES, WE GOT IT WORKING.



>> THANK YOU FOR BEING HERE.

AND GIVING YOUR EVENING.

I JUST WANT TO COMMENT THAT I WOULD APPRECIATE IT IF YOU MADE IT EASIER FOR THE PUBLIC TO FIND THE MINUTES.

I CAN SEE FINALLY AFTER 15 MINUTES WORTH OF STRUGGLE, IT SAYS MEETING DATE A AND AGENDA.

IT SHOULD PROBABLY SAY "AGENDA" AT THE TOP THERE TO LET MEME KNOW.

YOU KNOW, I WASN'T CLEVER ENOUGH TO REALIZE THAT THE BLUE MEANS YOU WANT TO CLICK ON IT.

FINALLY I FOUND OUT IF YOU CLICK ON THE BLUE, THE PART THAT IS LIT UP, IT'S PRETTY COMMON IN COMPUTERS THAT YOU HAVE THAT KIND OF THING.

CAN YOU I DIDN'T SEE THE WORD "AGENDA" AND IF I SAW IT, MAYBE UNCONSCIOUSLY I WOULD THINK THERE IS NO AGENDA HERE NOT REALIZE RISING YOU HAVE TO CLICK ON IT.

I CALLED 3-1-1 AND THE CITY.

IT WOULD BE NICE -- IF YOU WANT PEOPLE TO PARTICIPATE, IF YOU DO, MAKE IT EASIER FOR FOR THEM.

ALL RIGHT, THANK YOU SO MUCH.

>> S. O'KEEFE: LESLIE, IS IT POSSIBLE TO GET THAT FEEDBACK TRANSMITTED TO THE PEOPLE WHO DO THE WEBSITE?

>> BOARD SECRETARY: YES, I WILL DO THAT.

>> S. O'KEEFE: THANK YOU VERY MUCH.

>> I'VE HAD A LITTLE TROUBLE BEFORE LEAVING COMMENTS BECAUSE I  
COULDN'T FIND A HAND RAISED.

IT DIDN'T SEEM TO WORK FOR ME.

BUT THE TIME I FOUND IT -- WHEN IT CAME TO MY TURN, I COULDN'T  
FIND IT AND I THOUGHT I HAD TO GET OFF ZOOM AND GET A NEW ZOOM  
THAT MY ZOOM WAS JAMMED SO I DIDN'T LEAVE A COMMENT TWO MONTHS  
AGO AT AN IMPORTANT MEETING AND I'VE BEEN TURNED WAY OFF IN  
TRYING TO PARTICIPATE IN OUR TOWN FROM THAT THING.

I'M TRYING RECOVER FROM IT.

>> S. O'KEEFE: SO SORRY TO HEAR THAT SIR.

THANKS SO MUCH FOR SHARING THAT TO US.

>> GO THE EXTRA MILE TO GET US IN -- THE OLDER PEOPLE.

I APPRECIATE YOU.

>> S. O'KEEFE: HAVE A GOOD NIGHT, SIR.

GREAT.

THAT'S REALLY GOOD TO HEAR.

I WAS WONDER WHAT THE USER EXPERIENCE IS.

LAST UP, WE HAVE THOMAS YANG.

>> THANK YOU.

SO THIS IS THOMAS YUNG.

WE'RE NEXT DOOR NEIGHBORS TO JONATHAN THAT SPOKE EARLIER WITH  
RESPECT TO THE PROJECT IN GRIZZLY PEAK.

I WANTED IT TO SAY THAT THE CHARACTERISTIC OF THE ROOF IS  
COMPLETELY NOT IN KEEPING WITH THE NEIGHBORHOOD AND I WOULD

REITERATE THAT BOTH OURSELVES AND OTHER NEIGHBORS THINK THAT IT WILL WOULD BE MOST BENEFICIAL IF YOU AT THE FUTURE MEETINGS WHERE THIS IS -- WHERE THE MATTER WOULD BE BROUGHT UP, IF YOU COULD HAVE ATTENTION TO THIS IN THAT IF WE WERE IN A GREEK ISLAND IT WOULD BE OKAY TO HAVE A WHITE ROOF BUT NOT IN BERKELEY HILLS.

I WANT TO THANK YOU AND THE REST OF YOU ON THE BOARD FOR YOUR ATTENTION TO THIS MATTER.

>> S. O'KEEFE: THANK YOU VERY MUCH.

SO LAST CALL FOR NON-AGENDIZED ITEMS.

SEEING NONE, IGOR, DID YOU HAVE YOUR HAND UP?

>> I. TREGUB: I'M READY TO MAKE A MOTION AND I HAVE A QUESTION.

>> S. O'KEEFE: A MOTION ON WHAT?

>> I. TREGUB: ON THE AGENDA.

>> S. O'KEEFE: OKAY WE'LL DISCUSS THE AGENDA.

IGOR, WHAT DO YOU WANT TO SAY?

I WAS GOING TO SEE IF ANYONE FROM THE PUBLIC HAD COMMENTS ON THE CONSENT CALENDAR.

>> I. TREGUB: GREAT.

CAN YOU ALSO CHECK, THEN, IF ANYONE IN THE PUBLIC WISHES TO SPEAK IN ANYTHING OTHER THAN SUPPORT OF ITEM 5 2943 PINE AVENUE?

>> S. O'KEEFE: I WAS ALREADY PLANNING TO ASK THAT.

SO IF YOU HAVE SOMETHING MORE TO SAY, THE AGENDA WILL WAIT BUT FIRST I WANT TO ADDRESS THE PUBLIC.

I SEE ONE MEMBER HAS THEIR HAND UP.

WOULD YOU MIND PUTTING IT DOWN FOR A MOMENT.

AND GEORGE, PUT YOUR HANDS DOWN, PUBLIC.

PUT YOUR HAND DOWN, NOT UP, DOWN.

JUST FOR A SECOND.

I HAVE TO DO SOMETHING THAT I NEED TO KNOW -- OKAY.

THANK YOU.

LISTEN CAREFULLY.

FOR THE CONSENT CALENDAR, WHICH WE'RE NOT VOTING ON YET, WE'LL DISCUSS WHAT IS ON THE CONSENT CALENDAR FIRST, THEN THERE WILL BE A TIME WHEN WE VOTE.

ON THE CONSENT CALENDAR THERE ARE TWO ITEMS, THE MINUTES FROM LAST WEEK, LAST SESSION, AND 1175 UNIVERSITY.

THIS IS MY QUESTION FOR PUBLIC: IS THERE ANYBODY IN THE PUBLIC WHO WOULD LIKE TO SPEAK AGAINST 1175 UNIVERSITY?

AND I SAY AGAINST BECAUSE IF NO ONE IS HERE TO OBJECT TO IT, THEN WE'RE GOING TO LEAVE IT ON THE CONSENT CALENDAR AND IT'S RECOMMENDED FOR APPROVAL.

IF NOBODY IS HERE TO OBJECT TO IT, I'M GUESSING IT WILL STAY ON.

IS ANYONE FROM THE PUBLIC HERE TO SPEAK ON 1175 UNIVERSITY?

PRESS STAR 9 IF YOU'RE JOINING US BY PHONE.

MY NEXT QUESTION IS, IT SEEMS AS THOUGH 8943 PINE STREET IS A CONTENDER FOR BEING MOVED ON TO THE CONSENT CALENDAR.

IS THERE ANYONE HERE TO SPEAK AGAINST 2943 PINE?

WE HAVE ONE.

WE HAVE QUITE A FEW.

MEMBERS OF THE PUBLIC, YOU CAN PUT YOUR HANDS DOWN.

YOU'LL HAVE A CHANCE TO SPEAK ABOUT THAT ITEM.

WE'LL HAVE A HEARING ON IT.

IT WILL STAY AS ITEM 5 ON THE ACTION CALENDAR.

IGOR.

>> I. TREGUB: I MOVE THE CONSENT CALENDAR WHICH INCLUDES THE  
ACTIONS FROM MARCH 25TH.

>> S. O'KEEFE: OKAY.

WE HAVE A MOTION TO APPROVE THE CONSENT CALENDAR.

COMMISSIONER OLSON.

>> C. OLSON: I WILL SECOND THAT, BUT I HAVE AN IDEA FOR A  
FRIENDLY AMENDMENT.

ITEM NUMBER 4, 1205 PERALTA, THE STAFF RECOMMENDATION IS TO  
DENY.

DO WE WANT TO PUT THAT ON TO CONSENT?

JUST THROWING IT OUT THERE.

>> I. TREGUB: I DON'T THINK WE CAN.

>> C. OLSON: THEN I'LL SECOND YOUR MOTION, IGOR.

>> S. O'KEEFE: I THINK WE COULD, BUT I WOULDN'T SUPPORT IT.  
WE WOULD BE ALLOWED, BUT I THINK WE SHOULD GIVE THAT ONE A  
HEARING.

THERE IS A MOTION AND A SECOND.

ANY FURTHER COMMENTS ON THE CONSENT CALENDAR BEFORE WE VOTE?

SEEING NONE, LET'S DO A ROLL CALL VOTE ON THE CONSENT CALENDAR WHICH IS UNCHANGED.

IT'S THE MINUTES AND UNIVERSITY AVENUE.

>> BOARD SECRETARY: BOARD MEMBER KIM.

>> YES.

>> BOARD SECRETARY: BOARD MEMBER DUFFY.

>> YES.

>> BOARD MEMBER GAFFNEY.

>> YES.

>> BOARD MEMBER THOMPSON.

>> YES.

>> BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER HAUSER.

>> YES.

>> BOARD MEMBER OLSON.

>> YES.

>> AND VICE CHAIR O'KEEFE.

>> S. O'KEEFE: YES.

SO THE CONSENT CALENDAR PASSES AND THE MINUTES APPROVED AND 1175 UNIVERSITY HAS YOUR USE PERMIT.

BEFORE WE MOVE ON, CAN I ASK COMMISSIONER OLSON, IS THERE A REASON YOU HAVE YOUR CAMERA OFF?

BECAUSE WE PREFER TO HAVE BOARD MEMBERS HAVE THEIR CAMERAS ON IF POSSIBLE.

>> C. OLSON: I APPRECIATE THAT.

IT'S ACTUALLY -- THERE IS A REASON I HAVE IT OFF.

I'M HAPPY TO TALK WITH YOU ABOUT IT LATER.

>> S. O'KEEFE: I JUST WANTED TO CHECK.

KEEP IT OFF AND WE CAN CHECK YOU LATER IF YOU WANT.

ALL RIGHT.

LET'S MOVE ON TO 1241 ASHBY.

WE'LL BEGIN WAY STAFF REPORT.

>> BOARD SECRETARY: SHE'S JOINING US.

>> S. O'KEEFE: ALL RIGHT.

>> GOOD EVENING, CAN YOU HEAR ME?

>> S. O'KEEFE: YES.

>> PERFECT.

SO, I'M GOING TO SHARE MY SCREEN SO I CAN PUT THE PLANS UP.

HOPEFULLY YOU CAN SEE THAT NOW.

GREAT.

I'M GOING TO START WITH JUST A GOOGLE MAP OF THE LOCATION.

THE ITEM THAT IS BEFORE YOU IS 1241 ASHBY AVENUE.

THIS IS USE PERMIT ZP2018-0178.

THIS PROPERTY IS LOCATED IN THE MEDIUM DENSITY AREA OF THE GENERAL PLAN.

AND I CAN SHOW YOU -- THE ZONING MAP.

SO THE SUBJECT PROPERTY IS WITHIN THE R-3 ZONING DISTRICT.  
ONCE AGAIN ALONG ASHBY AVENUE ON THE NORTH SIDE OF ASHBY, THE  
AREA IS SURROUNDED BY R-3 AND R-2A PROPERTIES.  
THE SUBJECT PROPERTY IS APPROXIMATELY 41-SQUARE FEET IN AREA.  
WIDTH OF 35 FEET AND DEPTH OF 130 FEET.  
THERE IS AN EXISTING TWO-STOREY DUPLEX APPROXIMATELY 2,000  
SQUARE FEET IN AREA AND A CURB CUT WITH A DRIVEWAY ON THE LEFT  
WHICH IS THE WEST SIDE OF THE PROPERTY THIS SITE PLAN BEFORE YOU  
ON THE SCREEN ALTHOUGH YOU YOU HAVE UP WITH IN YOUR PACKET SHOWS  
NORTH.

THE PROJECT PROPOSES TO CONSTRUCT A NEW DETACHED RESIDENTIAL  
BUILDING TOWARDS THE REAR OF THE LOT CONSISTING OF A TWO-STOREY  
DWELLING UNIT 1900 SQUARE FEET IN AREA.

WITH AN ATTACHED THREE-CAR GARAGE TO SERVE PROPOSED DWELLING  
UNIT AS WELL AS THE TWO IN THE FRONT DUPLEX.

THE FRONT DUPLEX WOULD REMAIN UNCHANGED AND CURB CUT ALONG ASHBY  
AVENUE.

DUE TO THE PROJECT'S CONSISTENCY, THE STAFF RECOMMENDS THAT THE  
ZAB APPROVE THE USE PERMIT PURSUANT TO BERKELEY MUNICIPAL CODE  
AND PROPOSED FINDINGS AND CONDITIONS.

I BELIEVE THE APPLICANT IS ABLE TO ANSWER QUESTIONS AND THAT  
CONCLUDES MY PRESENTATION.

LET ME KNOW IF YOU HAVE ANY QUESTIONS.

>> S. O'KEEFE: THANK YOU.



QUESTIONS FOR STAFF.

IGOR.

>> I. TREGUB: YES, THANK YOU SO MUCH.

I DID HAVE A QUESTION AND I THINK THERE WAS A COMMUNICATION THAT CAME IN AS A SUPPLEMENTAL WITH THE SAME QUESTIONS.

I WAS A LITTLE BIT UNCLEAR UNDER ANALYSIS, HOUSING ACCOUNTABILITY ANALYSIS, IT WAS INCLUDED IN ONE OF THE FINDINGS AND I WOULDN'T CARE AS MUCH IF IT WASN'T ACTUALLY A BINDING THING.

THE QUESTION IS, IT SAYS SECTION 65589.5 J DOES NOT APPLY TO THIS PROJECT CURRENTLY PROPOSED.

BUT IT ALSO SAYS LATER, THAT THE HOUSING ACCOUNTABILITY ACT DOES APPLY.

SO I WAS A LITTLE BIT UNCLEAR ABOUT WHICH ONE IT IS.

>> I APOLOGIZE FOR THAT, THAT WAS A TYPO.

THE HOUSING ACCOUNTABILITY ACT DOES APPLY TO THIS PROJECT.

>> I. TREGUB: AND IS THAT BECAUSE THE REDUCTION IN THE SETBACK IS NOT AN OBJECTIVE STANDARD AT THIS TIME?

>> YES.

>> I. TREGUB: OKAY.

AND WOULD YOU BE OPEN TO AMENDING THE FINDING TO CORRECT THAT TYPO?

>> OF COURSE.

>> I. TREGUB: THANK YOU VERY MUCH.

>> S. O'KEEFE: COMMISSIONER OLSON.

>> C. OLSON: I WANTED TO ASK, THERE IS AN INTERESTING IMAGE OF THIS PROPERTY ON GOOGLE EARTH THAT I'M LOOKING AT.

AND IT SEEMS LIKE THE PROPERTY IT'S TO EITHER SIDE IN THE REAR YARD HAVE NONCONFORMING SETBACKS.

DO YOU KNOW IF THAT'S TRUE?

>> I CANNOT CONFIDENTLY SAY WHETHER THAT'S TRUE.

I HAVE ALSO SEEN THOSE GOOGLE IMAGES AS WELL.

IT APPEARS THAT IT'S LESS THAN 15 FEET.

BUT I CAN'T CHANGE THAT IN DISTANCE.

>> C. OLSON: I'M TALKING ABOUT THE SIDE YARD.

>> I THOUGHT YOU MEANT THE REAR YARD.

>> THE TWO ALONGSIDE THIS.

>> YES, I MEAN --

>> C. OLSON: THEY LOOK LIKE THEY WERE BUILT NEAR THE PROPERTY LINE.

>> THAT'S WHAT SEEMS QUITE EVIDENT FROM THE STREET VIEW AND GOOGLE EARTH CONSIDERING THE SETBACK REQUIREMENT IS FOR FEET MINIMUM PERHAPS THREE IF THEY'RE LESS THAN 40 FEET IN WIDTH. IT DOES APPEAR THEY'RE LESS THAN THAT.

>> C. OLSON: OKAY, THANK YOU.

>> SURE.

>> S. O'KEEFE: ANY MORE QUESTIONS FOR STAFF BEFORE WE HEAR FROM THE APPLICANT?

SEEING NONE, APPLICANT.

ARE YOU HERE?

>> I BELIEVE THAT WOULD BE WILSON OR HELEN.

THERE IS WILSON.

MAYBE I'M NOT -- I'M NOT A CO-HOST.

>> S. O'KEEFE: ENTER CO-HOST POWER.

>> BOARD SECRETARY: WILSON.

>> S. O'KEEFE: THE CO-HOST THING IS NOT WORKING WELL.

>> HOLD ON WILSON AND LET ME PROMOTE YOU AND THEN I WILL --

>> S. O'KEEFE: WHAT ABOUT YANG WA?

THAT'S GOOD.

>> LAYAL, CAN YOU SHUT DOWN YOUR SCREEN SHARE.

>> YES, AS SOON AS I FIGURE OUT HOW TO DO THAT.

HOLD ON.

>> S. O'KEEFE: GREAT.

ALL RIGHT, APPLICANT TELL US ABOUT YOUR PROJECT.

YOU HAVE FIVE MINUTES.

>> JUST IN CASE, WILSON, YOU NEED TO UNMUTE.

>> CAN YOU HEAR ME?

OKAY.

THIS IS -- THIS PROJECT IS FOR A NEW RESIDENCE, DETACHED  
TWO-STORY SINGLE-FAMILY DWELLING AT THE REAR OF THE LOT.

OUR APPLICANT, HELEN, IS GOING TO BE ONE OF THE PEOPLE LIVING IN  
THE COMPLEX.

SHE'S THE OWNER AND SHE HAS A FAMILY -- A VERY LARGE FAMILY OF MOTHER AND FATHER AND ALSO HER DAUGHTER WHICH IS FINISHING UP ON UNIVERSITY AND ALSO GETTING READY TO GRADUATE AND ENGAGED TO BE MARRIED AND THEY WOULD LIKE TO LIVE IN THE HOUSE.

SO THEY HAVE A NICE FAMILY PUT TOGETHER AND THE PARENTS ARE OLDER NOW AND THEY WOULD LIKE TO STAY CLOSE TO THE DAUGHTER AND GRANDDAUGHTERS.

THAT'S ONE OF THE THINGS THAT WE HAVE.

THAT'S THE REASON WHY WE HAVE OVER FOUR BEDROOMS AND TWO BATHS. DOWNSTAIRS CAN BE THE ELDER AND THE UPSTAIRS CAN BE THE YOUNGER GENERATION.

PARKING.

YEAH, WE HAVE A TWO-CAR GARAGE FOR PARKING SO JUST THERE IS MORE THAN ENOUGH PARKING SPACE FOR THE RESIDENTS FOR EACH UNIT.

WE'RE PLANNING TO HAVE, YOU KNOW, JUST A LOW COVERAGE LANDSCAPING SO LOW MAINTENANCE AND THINGS LIKE THAT.

WE WANT TO MAKE SURE WE CAN SHARE THE LANDSCAPING WITH OTHER PEOPLE AND NOT TO OVER-BURDEN THE SITE OR ANYTHING ELSE IN THE BACKYARD.

THE EXISTING HOUSE THAT WE HAVE, WE'RE GOING TO LEAVE IT WHAT IT IS NOW.

EVERYTHING IS SETBACK ACCORDINGLY TO WHAT THEY HAVE NOW.

SO I'M WILLING TO ANSWER ANY QUESTIONS THAT YOU PEOPLE HAVE.

SO I HAVE NO PROBLEM WITH THAT.

WHILE I'M THE ARCHITECT ON THIS PROJECT.

I GRADUATED FROM UC BERKELEY IN THE SCHOOL OF ARCHITECTURE ENVIRONMENTAL DESIGN.

SO I'M LIKE YOU FROM THE BERKELEY AREA.

>> S. O'KEEFE: DOES THAT CONCLUDE YOUR PRESENTATION?

>> YES I'M WAITING FOR QUESTIONS.

>> S. O'KEEFE: ANY QUESTIONS FOR THE APPLICANT AT THIS TIME? COMMISSIONER TREGUB.

>> I. TREGUB: THANK YOU SO MUCH AND GO BEARS.

I JUST HAD A SMALL QUESTION OBVIOUSLY UNTIL THE -- WE RECENTLY CHANGED THE ORDINANCE TO REMOVE PARKING MINIMUM STANDARDS FROM MOST PARTS OF BERKELEY.

I KNOW THIS WAS PUT IN AHEAD OF THAT.

BUT LOTS ARE REQUIRED [INDISCERNIBLE]

I'M NOT SURE WHAT THE THINKING WAS BEHIND THAT.

WERE THERE OTHER THINGS YOU COULD DO WITH SPACE LEFT OVER?

IT COULD BECOME LIVING SPACE IF YOU DID FEWER SPOT OF PARKING.

WE CAN APPROVE IT WITH THREE.

BUT I'M JUST CURIOUS.

>> CAN I SPEAK?

>> S. O'KEEFE: PLEASE.

ANSWER THE QUESTION.

>> WELL, YOU KNOW, 1241 ASHBY IS A VERY GOOD SITE.

WE'RE CLOSE TO TRANSPORTATION.

WE'RE CLOSE TO SAN PABLO AVENUE.

THERE ARE FOUR OR FIVE BUSES AND WE HAVE BUS 80 THAT GOES UP AND DOWN ASHBY AND WE HAVE BART STATION ON ADELINE OR EVEN MACARTHUR IS CLOSE WITHIN WALKING DISTANCE.

MAYBE FIVE OR 10 MINUTES.

YOU ARE RIGHT, IF WE CAN COMBINE AND MAKE OUR SUBJECT HOUSE A BIT LARGER OR MORE SPACE FOR RESIDENTIAL, I THINK THAT'S A VERY GOOD IDEA.

>> I. TREGUB: IS THAT SOMETHING IS THAT -- I'M NOT TRYING TO REDESIGN THIS PROJECT.

WOULD YOU BE OPEN TO CONSIDERING TWO PARKING SPACES AND IF FEASIBLE ADDITIONAL BUILDING LIVABLE AREAS?

>> YES.

I'M ALL FOR THAT.

I BELIEVE IN THAT.

LIVING SPACES ARE THERE NOW.

I'LL HAVE A LOT OF STUDENTS THAT IS AROUND THE AREA AND WE ALL TAKE BUSES.

WHEN I WAS HOME TO BERKELEY, I WAS -- WHEN I WAS GOING TO BERKELEY, I WAS RIDING A BICYCLE AND GOING BACK AND FORTH TO UNIVERSITY.

AND I THINK THAT'S FANTASTIC.

A LOT OF PEOPLE HAVE THAT SIMILAR IDEA.

TO KEEP THE TRANSPORTATION GOING AND EVERYTHING ELSE IS SAFER

AND IS MUCH MORE PRODUCTIVE.

>> S. O'KEEFE: I'M GOING TO FOLLOW-UP ON IGOR'S EXCELLENT QUESTION WHICH IS, SIR, MY UNDERSTANDING IS YOU DESIGNED IT WITH THREE PARKING SPACES BECAUSE THAT WAS THE REQUIREMENT AT THE TIME.

HOWEVER, THAT REQUIREMENT IS NO LONG THERE ARE.

SO HOW MANY PARKS SPACES WOULD YOU LIKE?

IF YOU DIDN'T HAVE A REQUIREMENT, IS TWO IDEAL?

OR NONE?

>> WELL, I WOULD LIKE TO HAVE AT LEAST ONE PARKING SPACE POSSIBLY HERE AND THERE.

BUT I LOOK AT -- IF YOU LOOK AT THE SITE PLANS, I HAVE AN AREA THAT IS OPEN BETWEEN BOTH BUILDINGS.

AND I CAN EASILY FIT TWO PARKING SPACES THERE.

BECAUSE IT HAS MORE THAN 18 FEET OR SOMEWHERE -- 19 FEET OR SO THAT YOU CAN FIT TWO PARKING SPACES NO PROBLEM.

BACKUP DISTANCE IS VERY GOOD.

>> S. O'KEEFE: OKAY.

LESLIE WOULD LIKE TO SPEAK AND I WOULD LOVE TO HEAR WHAT SHE HAS TO SAY.

>> JUST SO THE BOARD IS AWARE, THERE IS NO NEW PARKING REQUIRED FOR NEW DWELLING UNITS BUT THIS PROPERTY DOES HAVE TWO LEGAL OFF-STREET SPACES.

THERE WAS NO ELIMINATION OF EXISTING PARKING SPACES.

IF YOU WANT TO PLAY AROUND, YOU CAN GO DOWN TO TWO.

BUT OTHERWISE, IT WOULD REQUIRE A VARIANCE WHICH IS NOT NOTICED FOR THIS MEET BEING.

>> S. O'KEEFE: ONLY ONE VARIANCE PER MEETING ANY WAY.

THAT'S HELPFUL, THANK YOU, LESLIE.

>> I CAN ALSO SPEAK TO THAT, IF YOU'D LIKE.

>> PLEASE.

>> SO, AS YOU MAY HAVE NOTICED, THIS PROJECT HAS AN APPLICATION NUMBER FROM A FEW YEARS AGO.

PART OF THE REASON FOR THAT IS WE'VE GONE THROUGH DIFFERENT ITERATIONS TO TRY TO GET THE APPLICANT SOMETHING THAT THEY WANT. AND AS LESLIE MENTIONED, A VARIANCE WOULD BE REQUIRED TO REDUCE THE PARKING.

THE WAY THE APPLICANT HAS DISCUSSED, UP WITH THING THEY MAY WANT TO CONSIDER IN THE FUTURE IS AN ADU IN SOME OF THE SPACES.

SO THAT WOULD BE SOMETHING THAT CAN BE DONE MINISTERIALLY.

IT WAS COMPLICATED TO BRING THIS TO THE BOARD AS AN ADU PROJECT AS WELL AS A NEW DWELLING UNIT SINCE ADUS ARE NOT THE PURVIEW OF THE BOARD.

THEY'RE THINKING ALONG THE LINES THAT YOU GUYS ARE THINKING.

>> S. O'KEEFE: IGOR, FOLLOW-UP QUESTION?

>> I. TREGUB: LAYAL, THANK YOU FOR THAT.

IF YOU CAN CLARIFY FOR ME BECAUSE THE CHART SAYS THERE ARE TWO REQUIRED PARKING SPACES AND THREE IS BEING PROPOSED.



SO ARE YOU SAYING THAT THEY ALREADY HAVE TWO EXISTING PARKING SPACES AND ONE ADDITIONAL IS BEING PROPOSED?

BUT LEGALLY WE DON'T HAVE TO REQUIRE THEM TO ADD ONE MORE?

>> THE ISSUE, I BELIEVE, AND GRANTED THE PARKING ORDINANCE WENT INTO EFFECT AT THE SAME TIME THIS PROJECT WAS SCHEDULED FOR FEBRUARY AND IT WAS CONTINUED TO THIS EVENING.

THERE ARE TWO SPACES FOR THESE EXISTING UNITS.

THE WAY THE PARKING ORDINANCE IS WRITTEN FROM HERE ON OUT, YOU KNOW, YOU CAN'T REQUIRE HALF A PARKING SPACE.

THAT'S ONE OF THE REASONS WHY THE THIRD SPACE HAS BEEN PROPOSED.

IF THEY WERE NOT TO MOVE FORWARD WITH THE ADU, THEY WOULD BE MEETING THE CODE REQUIREMENT.

YOU COULD HAVE A VARIANCE FOR THE PROJECT TO COME BACK TO THE BOARD.

>> I. TREGUB: SO I THOUGHT THAT AN ADU DOES NOT REQUIRE PARKING.

>> I'M SORRY, I THOUGHT YOU WERE TALKING ABOUT THE PROJECT PROPOSED.

AN ADU WILL NOT REQUIRE A PARKING SPACE.

>> I. TREGUB: SO WE COULD APPROVE IT TODAY.

IRRESPECTIVE OF WHETHER THEY BUILD AN ADU?

>> I'M SORRY, YOU WERE BREAKING UP.

CAN YOU REPEAT THAT?

>> S. O'KEEFE: IGOR, YOU'RE HAVING A BIT OF AN AUDIO ISSUE.

>> I. TREGUB: IS THIS BETTER?

>> S. O'KEEFE: SAY WHAT YOU SAID AGAIN.

>> I. TREGUB: ARE YOU SAYING WE CAN APPROVE IT WITH TWO PARKING SPACES, NOT TWO TONIGHT IRRESPECTIVE OF WHETHER THEY TRY TO MOVE FORWARD WITH AN ADU IN THE FUTURE?

>> I'D LIKE TO RUN THAT BY LESLIE.

BECAUSE THE RESTRICTIONS ARE BRAND NEW THAT WE'D HAVE TO ROUND UP TO ONE FOR THE NEW SPACE AND NOT ROUND DOWN TO ZERO FOR THE NEW UNITS, BUT I CAN LOOK THAT UP IF YOU HAVE ANY OTHER ITEMS THAT YOU NEED TO DISCUSS AND I CAN GET BACK TO YOU.

>> THESE ARE QUESTIONS FOR STAFF.

>> I STILL HAD A HARD TIME HEARING YOUR QUESTION.  
MAYBE I'LL HOPEFULLY ANSWER IT.

>> S. O'KEEFE: HE ASKED IF WE WOULD APPROVE IT WITH TWO.

>> YOU MAY PROVE IT WITH TWO, YES.

>> I. TREGUB: THANK YOU.

>> S. O'KEEFE: IF THERE IS MORE, PLEASE FEEL FREE TO JUMP IN.  
COMMISSIONER OLSON.

QUESTIONS FOR THE APPLICANT.

>> C. OLSON: WELL, I WANTED TO FOLLOW ON TO THE PARKING THING.  
WHY WOULDN'T THE TWO SPACES BE ALLOWED TO BE NECESSARY ONES FOR EXISTING BE ALLOWED TO BE TANDEM ON THE DRIVEWAY?

>> WE HAVE DISCUSSED VARIOUS ITERATIONS OF THE -- WHERE THE PARKING SPACES COULD BE WITH THE TRAFFIC ENGINEER.  
POTENTIALLY THEY COULD BE IN THE DRIVEWAY.

THE DRIVEWAY IS A LITTLE SUBSTANDARD.

I DON'T WANT TO SAY HOW MUCH I THINK, BUT CONSIDERING THEY ARE EXISTING PARKING SPACES, WE WOULD BE ABLE TO USE SOME OF THE SPACE AND DEDICATE THAT TO PARKING.

>> S. O'KEEFE: I WOULD LIKE TO REMIND THE BOARD, THIS IS AN INTERESTING ISSUE, WE'RE IN THE PRELIMINARY PART OF THIS SO WE CAN COME BACK TO THIS WHEN WE DO BOARD COMMENTS.

OTHER QUESTIONS FOR THE APPLICANT?

BEFORE WE HEAR FROM THE PUBLIC.

MEMBERS OF THE PUBLIC, IF YOU WOULD LIKE TO SPEAK ON THIS ITEM, PLEASE RAISE YOUR HAND NOW OR PRESS STAR 9 IF YOU'RE JOINING US BY PHONE.

THIS IS YOUR CHANCE, PUBLIC.

ALL RIGHT.

WE'RE NOT SEEING ANY INTEREST IN SPEAKING FROM PUBLIC SO WE'LL BRING IT BACK TO THE APPLICANT.

DO YOU WANT TO ADD ANYTHING TO YOUR ORIGINAL -- USUALLY YOU RESPOND TO COMMENTS FROM THE PUBLIC.

BUT WE'RE NOT GETTING ANY, SO DO YOU WANT TO ADD ANYTHING IT YOUR PRESENTATION?

>> NO.

THIS IS FINE.

I LIKE THE IDEA OF THE PARKING SPACES REDUCTION SO I CAN HAVE A NICER BUILDING AND MORE RESIDENTIAL THINGS.

SO THAT'S GOOD.

I APPRECIATE THAT.

THANK YOU VERY MUCH IGOR.

I'M CONTENT WITH WHAT YOU PEOPLE ARE SAYING.

AS LONG AS I FOLLOW THE CODE AND ORDINANCE AND ZONING, I'M MORE THAN HAPPY.

THANK YOU.

>> S. O'KEEFE: IGOR, DO YOU HAVE A QUESTION FOR THE APPLICANT? OR SHOULD WE CLOSE THE PUBLIC HEARING.

>> I. TREGUB: I HAVE A MOTION.

>> S. O'KEEFE: THANK YOU APPLICANT I'M CLOSING THE PUBLIC HEARING.

>> THANK YOU.

>> S. O'KEEFE: WE'RE GOING TO CLOSE IT NOW FOR BOARD COMMENTS. IGOR.

>> I. TREGUB: THANK YOU AND CAN YOU HEAR ME BETTER NOW?

>> S. O'KEEFE: YES.

>> I. TREGUB: THIS WAS A LIGHT PACKET BUT APPARENTLY WHEN I PUT THE PACKET ON TOP OF MY LAPTOP, IT MESSES WITH THE SOUND.

SO I THINK I FIGURED IT OUT.

SO I WOULD LIKE TO MOVE THIS ITEM WITH ONE AMENDMENT WHICH IS THAT SUBJECT TO FINAL DESIGN REVIEW, WE WOULD APPROVE IT WITH TWO PARKING SPACES.

>> S. O'KEEFE: COMMISSIONER OLSON.

>> C. OLSON: HE'LL SECOND THAT, BUT I HAVE A SUGGESTION TO THROW OUT THERE.

IT GOES BACK TO GETTING RID OF THE PARKING SPACES.

IF THE BALCONY WAS FLIPPED FROM THE NORTH SIDE TO THE SOUTH SIDE, IT WOULD ACTUALLY BE FUNCTIONAL.

BECAUSE IT WOULD BE IN THE SUN.

AND IF THERE AREN'T PARKING SPACES THERE, I THINK IT WOULD BE A BETTER FIT.

THAT'S MY SUGGESTION.

>> STAFF: BASED ON WHAT IGOR SAID, I WOULD ADD TO THAT AND SAY SINCE THIS IS A RESIDENTIAL PROJECT AND WE USE THE TERM "DESIGN REVIEW" IN A DIFFERENT CONTEXT AT ZAB, I WOULD SAY THIS WOULD BE THE PER THE ZONING OFFICERS AND TRAFFIC ENGINEERS APPROVAL AND WE CAN ALSO PROVIDE A CONDITION OF APPROVAL THAT SAYS THE APPLICANT CAN MOVE THE BALCONY TO THE SOUTH SIDE OF THE BUILDING.

AS LONG AS THE FOOTPRINT STAYS THE SAME.

THAT WAS A LITTLE CLUNKY BUT I'LL WRITE IT BETTER.

>> S. O'KEEFE: SO THAT'S A FRIENDLY AMENDMENT.

WHAT DOES THE MOTION-MAKER THINK ABOUT THAT?

>> I. TREGUB: I'M FRIENDLY TO THAT.

THE NEIGHBORS SAW THE PLANS WITH THE BALCONY FACING A CERTAIN WAY.

NOT AS A CONDITION, BUT I HOPE THERE WILL BE SOME ADDITIONAL

OUTREACH IF THERE IS A RECONSIDERATION OF THE BALCONY.

BUT I'M FRIENDLY TO THAT SUGGESTION.

EXCELLENT SUGGESTION, CARRIE, THANK YOU.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND.

FURTHER COMMENTS ON THE MOTION OR OTHER MOTIONS?

OKAY.

I THINK IT'S CLEAR WHAT THE MOTION IS.

AND THEN OF COURSE, CLARIFYING THE ISSUE WITH THE HOUSING

ACCOUNTABILITY ACT AS WELL.

>> BOARD SECRETARY: TWO PARK SPACES AND YES TO THE BALCONY?

>> S. O'KEEFE: YES.

>> I. TREGUB: BUT PLEASE OUTREACH TO IMPACTED NEIGHBORS.

>> BOARD SECRETARY: ALL RIGHT.

ROLL CALL.

BOARD MEMBER GAFFNEY.

>> YES.

>> BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER HAUSER.

>> YES.

>> BOARD MEMBER THOMPSON.

>> YES.

>> BOARD MEMBER OLSON.

>> YES.

>> BOARD MEMBER DUFFY.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> AND VICE CHAIR O'KEEFE.

>> S. O'KEEFE: YES.

SO MOTION PASSES.

ASHBY AVENUE YOU HAVE YOUR USE PERMIT APPEALABLE TO THE CITY  
COUNCIL.

PLEASE ENJOY IT.

NEXT UP WE HAVE 1205 PERALTA.

ALL RIGHT.

LET'S BEGIN WITH A STAFF REPORT.

>> STAFF: HELLO.

LET ME SHARE MY SCREEN.

OKAY.

GOOD EVENING ZAB MEMBERS.

THE PROJECT IN FRONT OF YOU IS AT 1205 PERALTA AVENUE.

IT'S A VARIANCE TO UTILIZE THE EXISTING REQUIRED PARKING SPACES  
ON THE LOT.

THE USE PERMIT TO LEGALIZE THE ADDITION OF THE SIX, SEVEN AND  
EIGHT BEDROOMS ON THE LEFT.

THE SUBJECT LOT IS LOCATED ON PERALTA AVENUE BETWEEN GILMAN  
STREET AND COLVIN AVENUE.

IT'S LOCATED IN THE R-1A ZONING DISTRICT.

IT'S SUBSTANDARDIZED LOT.

THERE IS OPEN SPACE AND PARKING.

IT INCLUDES FOUR UNITS WHERE ONE IS ALLOWED.

IT'S OVERLOAD COVERAGE BY 16%.

IT ONLY PROVIDES 458 LIVABLE SQUARE FEET OF LIVABLE OPEN SPACE.

THE PROJECT IS ADDING THREE BEDROOMS ON THE LOT WITH FIVE EXISTING BEDROOMS WHICH RESULT IN A TOTAL OF EIGHT BEDROOMS ON THIS LOT.

AS BEING SEE, TWO UNITS ARE LOCATED IN THE FRONT BUILDING AND TWO UNITS ARE LOCATED IN THE REAR BUILDING.

UNIT ONE AND FOUR ARE IN THE FRONT BUILDING.

NO CHANGES ARE PROPOSED FOR UNIT ONE.

INTERIOR RECONFIGURATION IS PROPOSED FOR UNIT FOUR.

UNIT FOUR'S CURRENT FLOOR PLAN HAS AN UNPERMITTED BEDROOM AND NO LIVING ROOM.

THE FLOOR PLAN INCLUDES THE LIVING ROOM AND UNIT TWO AND THREE ARE IN THE REAR TWO-STOREY BUILDING.

THE UPPER UNIT IS UNIT TWO AND LOWER UNIT IS CALLED UNIT THREE.

A VARIANCE IS TRIGGERED BECAUSE AN EXISTING 18 X 20-FOOT TWO-SPACE GARAGE WAS CONVERTED TO LIVING SPACE FOR UNIT THREE RESULTED IN ELIMINATION OF THE TWO EXISTING PARKING SPACES.

ON A LOT THAT REQUIRES FOUR SPACES FOR FOUR UNITS.

REQUIRED VARIANCE FINDS MUST BE MADE IN ORDER TO APPROVE THE



ILLEGAL CONVERSION OF GARAGE TO LIVING SPACE.

THOSE FINDINGS ARE INCLUDED IN MY STAFF REPORT IN DETAIL.

IN SUMMARY, THE REQUIRED VARIANCE FINDS TO APPROVE THIS CONVERSION CANNOT BE MADE AS THERE NO EXCEPTIONAL CIRCUMSTANCE ON THE PROPERTY.

THAT'S FINDING ONE.

THE VARIANCE IS NOT NECESSARY FOR THE PRESERVATION OF SUBSTANTIAL PROPERTY RIGHTS.

THE PROJECT WOULD BE GENERALLY DETRIMENTAL.

THAT'S FINDING THREE.

IN ORDER TO APPROVE A VARIANCE, ALL THREE FINDINGS MUST BE MADE. USE PERMITS ARE TRIGGERED BECAUSE OF THE ADDITION OF THREE BEDROOMS TO THE REAR BUILDING.

ONE TO UNITS THREE AND TWO TO UNIT TWO.

HERE I HAVE A DIAGRAM.

THIS IS A DIAGRAM TO SHOW THE EXISTING UNPERMITTED AND PROPOSED NUMBER OF BEDROOMS ON THE LOT.

ACCORDING TO THE RECORDS, THIS PROPERTY HAS FIVE LEGAL BEDROOMS. THOSE ARE SHOWN WITH THE BLUE DOTS.

THROUGHOUT THE YEARS, ADDITIONAL BEDROOMS HAVE BEEN ADDED AND REMOVED FROM THIS PROPERTY WITHOUT A PERMIT.

THOSE ARE SHOWN AS RED DOTS.

ONE BEDROOM HAS BEEN ADDED TO UNIT FOUR AND IS PROPOSED TO BE REMOVED.

TWO BEDROOMS WERE ADDED TO UNIT THREE AND ONE OF THOSE BEDROOMS WAS REMOVED FROM UNIT THREE LAST SPRING.

UNIT TWO ORIGINALLY INCLUDED ONE PERMITTED BEDROOM.

HOWEVER, SINCE THE LIVING ROOM AND THE DESIGNING ROOM WHICH IS CURRENTLY LABELED AS BEDROOM ONE ON THE PLAN HAS BEEN CLOSED OFF FROM THE REST OF THE HOUSE AND CAN BE USED FOR SLEEPING.

THEY EACH WOULD BE COUNTED AS AN ADDITIONAL BEDROOM IN THIS UNIT.

THIS APPLIES TO THE ROOM LABELED AS STORAGE IN THE LOWER UNIT THREE.

USE PERMIT FINDINGS ARE REQUIRED TO APPROVE THE ADDITIONAL RULES ABOUT SIX AND HIGHER ON A LOT.

STAFF BELIEVES THAT THE ADDITION OF 6, 7 AND 8 BEDROOMS IS SUBSTANDARD.

THEREFORE THE ADDITIONAL THREE BEDROOMS COULD BE COUNTED DETRIMENTAL.

BECAUSE OF THE PROJECT'S INCONSISTENCY ACCOUNT ZONING ORDINANCE AND GENERAL FUND, STAFF RECOMMENDS THAT THE ZAB DENY THIS VARIANCE AND USE PERMIT SUBJECT TO THE FINDINGS ATTACHED TO THE STAFF REPORT.

>> S. O'KEEFE: THANK YOU.

ARE THERE QUESTIONS FROM STAFF BEFORE WE HEAR FROM THE APPLICANT?

COMMISSIONER TREGUB.

>> I. TREGUB: THANK YOU.

THE STAFF REPORT MENTIONS THAT THE FOUR UNITS ARE SUBJECT TO THE RENT STABILIZATION ORDINANCE.

CAN YOU DESCRIBE WHAT KIND OF OUTREACH MAY HAVE BEEN DONE TO THE RENT BOARD?

>> STAFF: I HAVE CONTACTED THE RENT BOARD TO CONFIRM AND THEY CONFIRMED IT'S SUBJECT TO RENT BOARD.

IS THAT ANSWER YOUR QUESTION?

>> I. TREGUB: IT DOES ON SOME LEVEL.

I MIGHT SAY THIS FOR -- SAVE THIS FOR COMMENTS, BUT WHERE I'M GOING, IF THERE IS A PROPOSED CHANGE TO THE FLOOR PLAN, I WOULD BE INTERESTED IN MAYBE WE CAN ASK THE APPLICANT IF THE UNITS ARE CURRENTLY OCCUPIED WITH SIT BE TENANTS BECAUSE ANY CHANGE IN THE FLOOR PLAN COULD POTENTIALLY NOT ONLY TRIGGER THE RELOCATION ORDINANCE, BUT MIGHT TRIGGER A CHANGE IN THE LEVEL OF SERVICES PROVIDED TO THE TENANT WHICH WOULD IMPACT THE LEGAL RENT.

>> STAFF: RIGHT.

YES.

I THINK THAT'S A GOOD QUESTION FOR THE APPLICANT.

I THINK THAT THEY'RE OCCUPIED CURRENTLY.

AT LEAST UNIT TWO, I'M NOT SURE ABOUT UNIT THREE.

UNIT TWO, I THINK I HEARD FROM THE NEIGHBORS AND THE APPLICANT THAT IT'S CURRENTLY OCCUPIED.

>> S. O'KEEFE: OTHER QUESTIONS FOR STAFF AT THIS TIME?

SEEING NONE, LET'S BRING UP THE APPLICANT FOR THE APPLICANT  
PRESENTATION.

ARE THEY HERE?

>> I JUST PROMOTED TERESA.

>> HI.

>> S. O'KEEFE: TERESA, YOU HAVE FIVE MINUTES FOR YOUR  
PRESENTATION.

>> I'M NOT QUITE SURE HOW TO SHARE A SCREEN HERE.

ONE SECOND.

>> S. O'KEEFE: WE CAN WAIT AND START THE TIMER UNTIL YOU'RE SET  
UP.

>> LET'S SEE.

OKAY.

ALL RIGHT.

SO JUST A QUICK BACKGROUND ON THIS PROJECT.

IT'S -- WE'VE HAD A LOT OF PREEXISTING CONDITIONS ON THIS LOT.

IT MAKES IT VERY DIFFICULT TO FIGURE OUT WHAT'S THE BEST  
SOLUTION SO FAR.

AND UP TO THIS POINT, WE STARTED THIS EARLY 2019 AND WE'VE BEEN  
OVER 20 REVISIONS TRYING TO FIGURE OUT HOW TO REALLY RESOLVE THE  
SITUATION ON THIS PROJECT.

INITIALLY THE MAIN RENOVATION THAT THE OWNER IS PROPOSING IS FOR  
UNIT FOUR.

UNIT FOUR EXISTING.

SO CURRENTLY UNIT ONE, UNIT TWO, ARE OCCUPIED FOR OVER 16 YEARS.

AND THE TENANTS ARE NOT PLANNING TO LEAVE AT ALL ANY TIME SOON.

OR AT LEAST WE DON'T KNOW IF THEY'RE GOING TO LEAVE AT ALL.

THEY HAVEN'T GIVENS ANY NOTICE.

UNIT THREE HAS BEEN VACATED I THINK ABOUT A YEAR AGO PRIOR TO THE START OF COVID-19.

AND RECENTLY I BELIEVE THE PROGRESS HAS BEEN -- THERE IS A PROPOSED TENANT COMING IN HERE.

BUT THE OWNER CATHY CANNOT PLACE THEM IN YET.

JUST NOT YET UNTIL WE RESOLVE THE PARKING ISSUE WHICH IS THE REASON FOR THIS VARIANCE.

SO BACKGROUND ON THE EXISTING CONDITIONS OF THE LOT.

I'M JUST GOING TO READ OFF OF HERE.

BASICALLY THERE IS A EXISTING NONCONFORMING LOT COVERAGE.

WE'RE CURRENTLY AT 56.6% I THINK THE ALLOWED IS ONLY 40%.

SO ALL THESE CONDITIONS ARE THERE PRIOR TO THE OWNER

HAVING -- THE NEW OWNER GETTING OWNERSHIP OF THIS PROPERTY AND

THE OTHER EXISTING NON-COMPING CONDITION IS THE REAR SETBACK.

WHICH IS ONLY 3-FOOT 4 FORWARDS THE BUILDING TWO WHICH IS BACK HERE.

AND ALSO, I BELIEVE THIS IS CONSIDERED OVER-DENSITY FOR THIS LOT BECAUSE OF THE FOUR DWELLING UNITS.

UNIT ONE, TWO, THREE AND FOUR.

AND I BELIEVE THE LOT AREA RECOMMENDED FOR DEVELOPMENT IS 5,000

SQUARE FEET.

AND EXISTING CONDITION OF THE LOT IS ACTUALLY ONLY 4463.

IT IS ALREADY SMALLER THAN WHAT IS EVEN RECOMMENDED.

AND ALSO, THE PARKING CONDITION IS A BIT TROUBLESOME HERE.

YOU CAN SEE FROM THE FACE OF THE EXTERIOR WALL OF THE FRONT BUILDING TO THE LOT LINE IT'S ONLY 6-FOOT 7.

EVEN IF WE WERE TO CONVERT THIS DRIVEWAY AND USE THE PARKING AT THE REAR OF THE BUILDING, YOU CANNOT FIT A CAR IN HERE ANYWAY.

SO THAT'S BEEN ONE OF THE PROBLEMS.

AND THEN THE OTHER PROBLEM IS THE USEFUL OPEN SPACE WHICH IS CURRENTLY AS SHOWN IN THIS DIAGRAM IS A TOTAL OF 458.92 SQUARE FEET.

WITH ALL THESE EXISTING CONDITIONS, THE MAIN PROJECT REALLY ON THIS LOT IS TO RENOVATE UNIT FOUR.

AS YOU CAN SEE HERE, THESE BEDROOMS ARE VERY, VERY SMALL.

AND IN ORDER TO MOVE AWAY FROM IT BEING CONSIDERED A MINI DORM, THE OWNER IS PROPOSING TO JUST HAVE ONE BEDROOM IN THIS UNIT.

AND THEN HAVE A LIVING ROOM.

AS YOU CAN SEE THERE IS NO LIVING ROOM AND MINIMAL SPACE FOR DINING ROOM AND KITCHEN.

SHE'S PROPOSING ON THIS PLAN TO HAVE A LIVING ROOM IN THAT AREA, BEDROOM ONE AND TWO HERE.

HANG ON A SECOND.

>> S. O'KEEFE: YOU HAVE ABOUT 15 SECONDS LEFT.

LAST INTENSE.

>> BASICALLY THIS VARIANCE IS DUE TO -- FROM REVIEWING ALL THESE CHANGES FOR THE PROPOSED RENOVATION, IT HAS BEEN FOUND OUT THAT THE GARAGE ON UNIT THREE WAS ACTUALLY ILLEGAL AND SO THERE HAS BEEN A NOTICE OF VIOLATION THAT'S BEEN ISSUED TO THE OWNER TO CORRECT THIS AREA.

>> S. O'KEEFE: OKAY.

THANK YOU VERY MUCH.

THAT'S YOUR TIME.

WE MIGHT HAVE QUESTIONS FOR YOU.

ANYONE FROM THE BOARD HAVE A QUESTION FOR THE APPLICANT?

BEFORE WE HEAR FROM THE PUBLIC?

COMMISSIONER TREGUB.

>> I. TREGUB: THANK YOU.

I HAVE A QUESTION FOR THE APPLICANT AND I HAVE ONE FOR STAFF.

FOR THE APPLICANT, THANK YOU FOR LETTING US KNOW THE OCCUPANCY STATUS OF UNIT ONE AND THREE.

CAN YOU LET US KNOW WHAT THE STATUS OF UNIT TWO IS?

THAT'S THE ONE WHERE TWO ADDITIONAL BEDROOMS ARE PROPOSED.

IS IT CURRENTLY OCCUPIED?

>> SORRY, I DIDN'T HEAR THAT WELL.

>> S. O'KEEFE: IS UNIT 2 CURRENTLY OCCUPIED?

>> UNIT TWO IS OCCUPIED.

IT'S BEEN OCCUPIED FOR 16 YEARS AND THE TENANT IS NOT PLANNING

TO LEAVE AT ALL.

>> I. TREGUB: OKAY.

I JUST WANTED TO CONFIRM, IS THAT WHERE TWO ADDITIONAL  
BEDROOMS -- TWO OF THE THREE ADDITIONAL BEDROOMS ARE BEING  
PROPOSED?

OKAY.

>> I'M NOT SURE I UNDERSTAND WHAT YOUR QUESTION IS.

>> I THINK NILU IS NODDING.

>> THE DINING ROOM IS CLOSED OFF AND LIVING ROOM IS CLOSED OFF  
AND COUNTED AS TWO ADDITIONAL BEDROOMS.

>> I. TREGUB: NILU, CAN YOU HELP ME UNDERSTAND, THE VARIANCE  
REALLY IS THE PROPOSED ELIMINATION OF REQUIRED PARKING, BUT  
THERE ARE THREE USE PERMITS TO REHAB, TO REFURBISH TO MAYBE GET  
THINGS BACK INTO A LEGAL CONDITION FROM AN UNPERMITTED ONE.  
THEORETICALLY THOSE COULD ALL BE APPROVED TONIGHT, CORRECT?

>> STAFF: YES.

YES.

I MEAN UP TO ZAB.

>> S. O'KEEFE: FURTHER QUESTIONS FOR THE APPLICANT FOR FOR STAFF  
AS THEY COME UP?

OKAY.

THANK YOU APPLICANT.

WE WILL COME BACK TO YOU IN A MINUTE.

BUT FIRST WE'RE GOING TO SEE IF ANYONE FROM PUBLIC WOULD LIKE TO



SPEAK ON THIS ITEM.

PLEASE RAISE YOUR HAND OR PRESS STAR 9 IF YOU'RE A MEMBER OF THE PUBLIC AND WOULD LIKE TO SPEAK ABOUT THIS ITEM.

I SEE A COUPLE OF HANDS, I'LL CALL THEM IN THE ORDER THAT ZOOM RECEIVED YOUR REQUEST.

FIRST UP IS KAREN.

WE'LL GIVE YOU TWO MINUTES.

I'M OUT OF PRACTICE.

THERE WE GO.

KAREN.

UNMUTE YOURSELF.

>> I'M KAREN.

I LIVE AT 1207 PERALTA TO THE SOUTH OF 1205.

AS AN ARCHITECT AND PLANNER WORKING IN THE BAY AREA FOR 40 YEARS I'M AWARE OF THE NEED FOR MORE AFFORDABLE HOUSING.

>> S. O'KEEFE: CAN WE START THE TIMER, PLEASE.

SORRY.

YOU CAN START AGAIN.

>> SO, I'VE BEEN WORKING IN THE BAY AREA FOR 40 YEARS AS AN ARCHITECT.

I TOTALLY UNDERSTAND THE NEED FOR AFFORDABLE HOUSING, SUPPORT INCREASING DENSITY AND ADUS BUT I DON'T THINK THIS PROPOSAL IS THE WAY TO DO IT.

HE THINK THE STAFF HAS DONE AN EXCELLENT JOB IN DESCRIBING THE

COMPLEX ISSUES.

KEY IS THAT THERE ARE FOUR DWELLING UNITS ON A PROPERTY ZONED FOR A SINGLE-FAMILY HOME.

HAVING LIVED NEXT DOOR TO THIS PROPERTY FOR 30 YEARS, I CAN ATTEST TO THE CHALLENGES AS LIVING CLOSE TOGETHER THESE FAMILIES AS WELL AS ON A CROWDED STREET BUT WE LIVE IN RELATIVE HARMONY. TO COMPOUND THE SITUATION NUMEROUS UNPERMITTED CONVERSIONS BY THE OWNER'S FATHER AND OWNER HAVE CREATED THREE ADDITIONAL BEDROOMS BEYOND THE ORIGINAL FIVE WHICH YOU'RE NOW ASKED TO LEGALIZE.

RESIDENTS ON PERALTA ARE REASONABLE PEOPLE.

WE SUPPORT CONVERTING THREE BEDROOMS TO TWO IN UNIT FOUR IN THE HOUSE.

WE SUPPORT KEEPING ONE BEDROOM IN THE UNIT.

BUT CANNOT CONDONE A SECOND BEDROOM AS THE STORAGE UNIT WOULD BE CONSIDERED.

WE BELIEVE THAT SHOULD STAY AS STORAGE WITHOUT A WINDOW OR DOOR INTO THE LIVING ROOM.

THE UPSTAIRS UNIT TWO SHOULD BE RETURNED TO A ONE BEDROOM.

WE BELIEVE THIS IS A MORE APPROPRIATE FIT FOR AN EXISTING NONCONFORMING LOT WHICH IS OVER DENSITY AND ONLY 25% OPEN SPACE. HOWEVER, WELL-INTENDED, THE GESTURE TO UPGRADE THE PROPERTY, SEE THIS AS AN ATTEMPT TO OVER-BUILD A SUBSTANDARD LOT OUT OF CHARACTER WITH NEIGHBORHOOD DENSITY.

WE DO NOT BELIEVE THAT A VARIANCE TO REMOVE TWO OFF-STREET  
PARKING SPACES IS WARRANTED.

THANK YOU.

>> S. O'KEEFE: THANK YOU VERY MUCH.

APPRECIATE YOUR COMMENTS.

NEXT UP.

NEXT UP WE HAVE VERONICA.

I AM ALLOWING YOU TO TALK.

>> I. TREGUB: VERNICKA.

>> I'M UNMUTED NOW, CORRECT?

>> THANK YOU VERY MUCH FOR THE TIME.

MANY YEARS AGO -- DECADES AGO I WAS IN YOUR PLACE AND CHAIRED  
THE BOARD.

AT THE SAME TIME I CHAIRED THE PLANNING COMMISSION.

IT WAS GOOD EXPERIENCE, I MUST SAY.

AND THE THING THAT ALWAYS BOTHERED ME MOST THAT CAME BEFORE US  
WERE REQUESTS FOR VARIANCES WHEN IT KIND OF BROKE YOUR HEART  
BECAUSE YOU COULDN'T MAKE THE FINDINGS AND FAMILY WAS SAYING WE  
HAVE MORE CHILDREN, WE NEED MORE SPACE, ET CETERA, ET CETERA.

THOSE WERE THE HARD ONES.

I THINK THIS IS NOT A HARD ONE.

THIS TO ME IS A SIMPLE ONE.

THERE IS NO WAY THAT I CAN SEE THAT YOU CAN MAKE THE FINDINGS  
FOR A VARIANCE.

I SENT YOU SEVERAL LETTERS.

MY COMMENTS ABOUT WHAT THE PREVIOUS -- WHAT THE APPLICANT'S FATHER DID AFTER HER FATHER HAD ALREADY DIED, MORE CHANGES WERE MADE TO THE PROPERTY AND WE HAVE WATCHED THINGS GOING ON FOR YEARS AND YEARS.

IT'S JUST FINALLY REACHED AN END POINT WHERE SOME OF US ARE SAYING ENOUGH IS ENOUGH.

WE'VE HAD SCOFFLAWS IN THIS CITY AND EVERY BOARD OF ADJUSTMENTS KNOWS WHO THEY ARE.

IN THE PAST THIS WAS THE PROPERTY OWNED BY A SCOFFLAW.

THE ARCHITECT SAID AT THE VERY BEGINNING OF WHAT SHE SAID, YOU KNOW, WELL, WHAT'S THE BEST SOLUTION?

I THINK MY NEIGHBOR KAREN FEENEY JUST SAID WHAT THE BEST SOLUTION IS AND THAT IS TO GO BACK TO WHAT IT WAS.

THE UPSTAIRS APARTMENT IN UNIT TWO WAS A ONE BEDROOM.

I HAD FRIENDS WHO LIVED IN IT AND I HAD DINNER WITH THEM.

DOWNSTAIRS UNIT UNDER THAT WHICH IS UNIT THREE SHOULDN'T HAVE A WINDOW AND A GARAGE.

IN A STORAGE ROOM?

THAT DOESN'T MAKE ANY SENSE.

IT'S NOT SECURE AND WE'VE HAD THEFTS IN THE NEIGHBORHOOD.

THE THREE BEDROOMS IN THAT TYPE WITH UNIT NUMBER THREE DON'T MAKE ANY SENSE EITHER.

WE'RE PLAYING WITH NUMBERS AND I THANK YOU FOR YOUR TIME.

>> S. O'KEEFE: THANK YOU VERNICKA.

NEXT UP WE HAVE ALAN.

WE CAN HEAR YOU.

>> I'M ALAN TOBY AND MY WIFE AND I LIVED AT 1228 PERALTA FOR 23 YEARS.

FROM CENTRAL LOCATION AND MILD CLIMATE TO THE EVER INCREASING WALKABILITY.

BEST OF ALL IT'S OUR NEIGHBORS.

WITH LOTS [INDISCERNIBLE]

MIXING SINGLES AND FAMILIES IN SESSION 8 AND MILLION DOLLAR HOUSES [INDISCERNIBLE] GENERAL TREASURE OUR DIFFERENCES.

WE'VE LEARNED TO WORK TOGETHER TO IMPROVE THINGS LIKE ADDING A STOP SIGN AT THE END OF OUR BLOCK AT PERALTA AND GILMAN.

IT -- 1205 IS AN EXCEPTION TO THE NEIGHBORHOOD COHESION.

IT'S OWNED BY AN ABSENTEE LANDLADY.

IT'S A PLAN SOLELY FOCUSED ON INCREASING THE RENTAL DENSITY.

SEVERAL PROJECTS HAVE BEEN QUIETLY BUILT OUT OVER THE YEARS.

PLEASE REMEMBER THIS APPLICATION IS NOT A BLESSED CREATIVE NEW PROJECT BUT IT'S A DESPERATE ATTEMPT TO BE FORGIVEN WITHOUT PENALTY.

THE CITY ISSUED A NOTICE OF VIOLATION ON MARCH 20TH.

PLEASE DON'T WASTE TIME TONIGHT PEERING DEEP INTO THE DRAWINGS.

ATTEMPT TO ADJUST WHATEVER WORKS.

INSTEAD, ISSUE A UNANIMOUS DENIAL OF BOTH APPLICATIONS OTHERWISE

THE CITY WILL BECOME A NOTORIOUS EXAMPLE OF HOW NOT TO BUILD.  
BETTER THAT WE CREATE A POSITIVE EXAMPLE THAT NEIGHBORS CAN  
SOLVE PROBLEMS AND WORK CREATIVELY TOGETHER.

>> S. O'KEEFE: THANK YOU VERY MUCH.

NEXT UP WE HAVE JOAN.

HELLO.

JOAN, YOU HAVE TWO MINUTES.

>> I'M JOAN. I LIVED AT 1201 PERALTA A COUPLE OF HOUSES NORTH  
FOR THE LAST 24 YEARS.

I'M GOING TO HAVE TO ELIMINATE A FEW THINGS I WANTED TO SAY, BUT  
YOU HEARD FROM THE APPLICANT THAT ALL THESE PARCEL CONDITIONS  
OCCURRED PRIOR TO MISS NASON INHERITING THE PROPERTY BUT I WANT  
TO SET THE RECORD STRAIGHT, I'VE EXAMINED ALL INFORMATION AND I  
CAN TELL THAT YOU ALTHOUGH THE APPLICANT'S FATHER STARTED THE  
GARAGE CONVERSION, THE APPLICANT CONTINUED THAT PROCESS BY  
FURTHER INCORPORATING PORTIONS OF THE GARAGE INTO THE LIVING  
AREA IN UNIT THREE.

SURPRISINGLY ON PLANS SUBMITTED IN 2020 TO THE PLANNING  
DEPARTMENT FOR AN EXTENSIVE REMODEL OF UNIT FOUR, SHE CLAIMED  
THAT THE ENTIRE BOTTOM FLOOR -- ALL OF UNIT THREE WAS STORAGE.  
SHE NOW WANTS TO COMPLETELY ELIMINATE THE TWO-CAR GARAGE BY  
CONVERTING THE HALF GARAGE TO A SECOND BEDROOM IN THIS UNIT.  
IN UNIT FOUR, THE APPLICANT CLAIMS SHE INHERITED THREE BEDROOMS,  
BUT IT'S NOT THE CASE EITHER.

THIS 630 SQUARE FOOT UNIT HAD TWO BEDROOMS UNTIL THEY CREATED A THIRD.

THE APPLICANT ESSENTIALLY ASKS THE CITY IN 1205 PERALTA NEIGHBORS TO LET BYGONES BE BYGONES.

IN THE FROM OF SECURING A CLEAR RESOLUTION OF THE MESSY SITUATION, I SUPPORT LETTING BYGONES BE BYGONES BUT ONLY UP TO A POINT.

ONLY IF THE PARCEL DOES NOT EXCEED FIVE BEDROOMS.

ONLY IF PART OF THE UNIT THREE DESIGNATED STORM REMAINS STORAGE AND ONLY IF PERMISSION WITH THE ROLL-UP GARAGE DOOR INCLUDE AWE DOOR TO UNIT THREE IS DENIED.

THANK YOU FOR THIS OPPORTUNITY TO COMMENT.

>> S. O'KEEFE: IS ANYONE ELSE FROM THE PUBLIC HERE WISHING TO SPEAK ON THIS PROJECT?

OTHERWISE, I SEE ONE MORE.

SARAH.

SARAH, YOU'RE JUST IN TIME.

YOU HAVE TWO MINUTES ONCE YOU UNMUTE YOURSELF.

>> CAN YOU HEAR ME?

>> S. O'KEEFE: YES.

>> OKAY.

SO MY NAME IS SARAH.

I'M AN ARCHITECT AND PROFESSOR AT UCSD.

I ALSO HAD A PRACTICE IN OAKLAND AND BOTH TEACHING AND PRACTICE,

MY INTEREST WAS PRIMARILY IN AFFORDABLE HOUSING.

I'M INTERESTED IN ANYTHING THAT HAS TO [INDISCERNIBLE]

I OWNED AND LIVE IN THE HOUSE AT 1211 PERALTA AVENUE SINCE 1976.

I'M THE SOUTH NEIGHBOR OF CAIRNS AND THEREFORE I'M TWO HOUSES FROM THE SUBJECT PROPERTY.

SOME OF THE CHANGES IN THE PROPOSAL MAKES SENSE IT ME, ESPECIALLY THE CONVERSION OF UNIT FOUR CHANGING IT FROM A THREE BEDROOM TO A TWO BEDROOM.

THE CURRENT THREE BEDROOM PLAN IS TRULY UNDESIRABLE SINCE THERE SEEMS TO BE A TOTAL LACK OF LIVING SPACE.

I'M AGAINST ADDING BEDROOMS IN THE BACK TO ADDITIONAL PARKING PRESSURES THEY WOULD CAUSE.

I OPPOSE THE VARIANCE REQUEST BECAUSE OF THE HISTORY OF ILLEGAL CONVERSIONS AND THE ABSENCE OF ZONING COMPLIANCE WHICH SEEMS TO CONTINUE WITH THIS CURRENT REQUEST.

MY MAIN CONCERN IS WITH THE LACK OF PARKING, THE DENSE FOOTPRINT AND THE LACK OF OPEN SPACE.

THANK YOU.

>> S. O'KEEFE: ANYONE ELSE FROM THE PUBLIC WISHING TO SPEAK ON THIS ITEM?

SARAH HAS HER HAND BACK UP.

YOU HAD TIME LEFT, SARAH, DID YOU WANT TO ADD SOMETHING?

I'VE ENABLED YOU TO TALK AGAIN IF YOU WANT TO ADD SOMETHING QUICK BUT YOU'RE MUTED.



FIVE MORE SECONDS, SARAH, THEN WE'LL MOVE ON.

>> I'M SORRY.

I DON'T WANT TO ADD ANYTHING.

I'M FINE.

>> S. O'KEEFE: THANK YOU VERY MUCH.

AND I THINK -- IF NO ONE ELSE FROM THE PUBLIC WANTS TO SPEAK ON THIS ITEM, WE'LL BY IT BACK TO THE APPLICANT AND LET THEM RESPOND.

APPLICANT, YOU CAN HAVE UP TO THREE MINUTES IF YOU'D LIKE TO RESPOND TO ANYTHING THAT WAS STATED.

>> CAN YOU HEAR ME?

>> YES, WE CAN.

>> PERFECT.

SO THERE WERE SEVERAL ITEMS THAT WERE MENTIONED BY THE PUBLIC PARTICIPANTS.

THE FIRST ONE WAS THEY MENTIONED THAT FIVE TO EIGHT CARS HAD BEEN PARKING ON THE STREET WHICH IS UNTRUE.

THERE ARE ONLY FOUR UNITS THERE AND THERE ARE -- THERE IS ONLY ONE PERSON RENTING EACH ONE.

THIS WAY THERE IS ALSO A PROPOSAL TO REDUCE THE NUMBER OF BEDROOMS ON UNIT FOUR.

FIVE TO EIGHT CARS IS AN EXAGGERATION.

IN THE NEXT ONE, THE PROPOSAL FROM THE PUBLIC IS TO MAINTAIN THE GARAGE ON UNIT THREE WHICH, AS I POINTED OUT, IS GOING TO BE

IMPOSSIBLE TO DO WITH THE EXISTING CONDITIONS OF THE LOT.

THE SIZE OF THE DRIVEWAY AS YOU CAN SEE, IS ONLY 6'7" EVEN FOR THE MINIMUM DRIVING ON THE EXIST CONDITION, WE'RE NOT GOING TO BE ABLE TO MAKE THAT PART.

WE DON'T KNOW HOW THAT IS GOING TO WORK TO PUT A CAR IN THERE AND CONVERT THE GARAGE BACK TO THE REAR BUILDING BACK INTO A GARAGE.

IN ESSENCE, THAT GARAGE IS BASICALLY NOT GOING TO BE UTILIZED AS A GARAGE SO THEREFORE, THE WAY IT IS BEING USED RIGHT NOW, THERE IS A STORAGE THERE.

IT'S ACTUALLY BEING USED AS A STORAGE AND THERE IS A GARAGE DOOR THERE.

SINCE THE RECOMMENDATION FROM THE CITY IS TO CONVERT THAT STORAGE TO A BEDROOM ACCORDING TO THE DEFINITION FOR THE BEDROOMS, WITH THAT COMMENT, THE OWNER HAS PROPOSED IF IT'S GOING TO BE CONSIDERED AS A BEDROOM, THEN IN A BUSINESS PERSPECTIVE, IT MAKES MORE SENSE TO GO ON AHEAD AND CONVERT THAT AS A BEDROOM.

THAT'S WHY THE DOOR AND WINDOW IS LOCATED IN THAT.

BUT IT IS GOING TO BE USED AS STORAGE.

IT'S NOT GOING TO BE USED AS A BEDROOM.

BECAUSE THE FLOOR LEVEL ON THAT ROOM IS ACTUALLY LOWER THAN THE MAIN FLOOR IN THAT UNIT.

AND EVERYTHING ELSE REMAINS THE SAME.

WE'RE TRYING TO RESOLVE THE -- REASON FOR THE VARIANCE IS TO RESOLVE THE NOTICE OF VIOLATION TO CORRECT THE PARKING ISSUE. THE PROPOSED PLAN AT THE MOMENT IS THE BEST SOLUTION WE COULD THINK OF.

>> S. O'KEEFE: OKAY.

THANK YOU VERY MUCH.

AND ONE MORE CHANCE FOR BOARD MEMBERS TO ASK QUESTIONS OF THE APPLICANT.

AND I AM SEEING SOME MEMBERS OF THE PUBLIC WITH THEIR HANDS UP BUT WE'RE DONE WITH PUBLIC COMMENT UNFORTUNATELY.

UNLESS THERE ARE QUESTIONS FOR THE APPLICANT AND I'M NOT SEEING ANY, SO THANK YOU, APPLICANT FOR YOUR PRESENTATION.

IGOR, ARE YOU JUMPING THE GUN?

DO YOU HAVE A REQUEST FOR THE APPLICANT?

>> I. TREGUB: I DON'T HAVE ANY FURTHER QUESTIONS, MADAM CHAIR.

>> S. O'KEEFE: IGOR, WOULD YOU LIKE TO BE RECOGNIZED?

>> I. TREGUB: THANK YOU.

SO FIRST OF ALL, I WANT TO THANK THE APPLICANT AND THE NEIGHBORS FOR THEIR PARTICIPATION TONIGHT.

WE HAVE A LOT OF SITUATIONS WHERE THERE IS A LONG -- THAT SOMETIMES COME TO THE ZAB WITH A LONG HISTORY PERHAPS OF MISTRUST, OF MISUNDERSTANDING THAT ACCUMULATES OVER THE YEARS.

I WANT TO POINT OUT THAT ON THE ZONING BOARD, WE MAKE DECISIONS BASED ON THE UNDERLYING LAND USE LAW.

WE CAN'T TAKE INTO ACCOUNT WHAT SOMEONE'S INTENTIONS MAY BE IN WHAT THEY'RE PROPOSING AND CAN'T TAKE INTO ACCOUNT WHETHER SOMEONE TAKES OVER AN EXISTING CONDITION THAT'S ILLEGAL OR IF THEY WERE RESPONSIBLE.

I MAKE THE BALANCE OF MY STATEMENT AS DISPASSIONATELY AS I CAN TOWARDS THE NATURE OF THE APPLICANT WHILE ALWAYS STRIVING TO ASSUME GOOD INTENTIONS.

BUT GIVEN WHAT I HAVE HEARD, AND I FOR THOSE OF YOU WHO HAVE HAD THE PRIVILEGE OF SERVING WITH BOB ALLEN WHO WAS A LONG-TIME MEMBER OF THIS ZONING BOARD, MAY HIS MEMORY REST IN PEACE, HE WAS ONE OF THE MOST PRO HOUSING PRO DENSITY MEMBERS OF THE ZONING BOARD.

I DISTINCTLY REMEMBER THERE WAS ONE PROJECT THAT WAS PROPOSING INCREASED BEDROOMS.

AND SOME OF THOSE BEDROOMS DID NOT HAVE WINDOWS.

AND HE CALLED THEM TENEMENTS.

I HAVE TO AGREE WITH HIM AND I DON'T KNOW IF THIS STORAGE SPACE IF IT'S ACTUALLY GOING TO BE FOR STORAGE OR IF IT'S GOING TO BE A LIVING ROOM.

BUT UNIT THREE IS A VERY SMALL UNIT.

WHICH RIGHT NOW HAS A LOCATION THAT DOES NOT CONTAIN A WINDOW.

WHAT'S EVEN MORE TROUBLING TO ME IS IT SOUNDS LIKE THERE ARE TWO SITTING TENANTS, POSSIBLY MORE AND THERE IS A PROPOSAL BEING MADE.

I DON'T KNOW EVEN KNOW IF THE TENANTS HAVE BEEN CONSULTED ON THIS PROPOSAL, BUT AT LEAST OF THEM FROM WHAT WAS REPRESENTED HAS BEEN -- THIS HAS BEEN THEIR HOME FOR 16 YEARS.

AND SO FOR THOSE OF YOU WHO LIKE ME HAVE BEEN LARGELY WORKING FROM HOME FOR JUST OVER A YEAR, YOU CAN ONLY IMAGINE HOW DISRUPTIVE IT IS TO NOW HAVE TO MOVE SOMEWHERE FOR THINGS TO BE DONE WITHOUT NOTIFICATION.

I SAY THIS BECAUSE I'M GOING TO MAKE A MOTION TO APPROVE THE STAFF RECOMMENDATION AND DENY THE VARIANCE.

I DO ENCOURAGE THE APPLICANTS VERY MUCH TO WORK WITH THE NEIGHBORS AND FIX THE UNDERLYING CONDITIONS THAT CLEARLY HAVE BEEN THE SOURCE OF A LOT OF, I GUESS, JUST DISTRUST.

I DON'T THINK OF A MORE DIPLOMATIC WORD.

THERE ARE SEVERAL WAYS THAT THIS CAN BE WORKED OUT.

THERE WAS A PROPOSAL TO RETURN SOME OF THE UNITS INTO PERHAPS AN ORIGINAL CONDITION OR THAT WAS ONE OF ALTERNATIVES THAT HOPEFULLY THE APPLICANT WILL CONSIDER.

I HAVE NO PROBLEM.

I FULLY SUPPORT REHABBING THE UNITS.

I DO WANT TO MAKE SURE THAT ANYTHING THAT HAPPENS, ANY USE PERMITS THAT ARE PROPOSED IN THE FUTURE BEFORE THIS COMES BACK TO US, I WANT THE RENT BOARD TO BE INVOLVED AND I WANT THE TENANTS TO BE NOTIFIED AND I WANT TO KNOW IF THIS IS GOING TO IMPACT THEIR HABITABLE SPACE.

AND POTENTIALLY THEIR RENT CEILING.

WITH THAT, I MOVE THE STAFF RECOMMENDATION.

>> S. O'KEEFE: THANK YOU, IGOR.

COMMISSIONER OLSON.

>> C. OLSON: I ONCE AGAIN AM GOING TO SECOND IGOR'S MOTION.

BUT I WOULD LIKE TO ADD THAT WHEN THIS DOES COME BACK TO US,  
THE -- I'VE BEEN ON THESE LAND USE COMMISSIONS FOR 23 YEARS AND  
THIS IS ONE OF THE SADDEST SET OF PLANS I'VE EVER HAD TO READ.

BECAUSE THERE IS NOT WHAT IS BEING PROPOSED.

THERE IS EXISTING, BUT NOT WHAT IS BEING PROPOSED.

IF IT COMES BACK TO US, PLEASE, PLEASE.

PLEASE, IF YOU'RE GIVING US EXISTING, THEN PLEASE GIVE US THE  
EXACT SAME THING WITH THE PROPOSED.

SO THAT WE CAN APPROVE IT.

AND I JUST WANT TO SAY, IGOR, THANK YOU FOR BRINGING UP BOB  
ALLEN BECAUSE I SERVED WITH HIM FOR 14 YEARS ON THE DESIGN  
REVIEW COMMITTEE AND HE ABSOLUTELY CALLED AS HE SAW IT.

I FEEL LIKE I'M IN THE PRESENCE OF GREATNESS BECAUSE WE'VE HAD  
TWO PEOPLE SPEAK ON THIS FROM THE PUBLIC TONIGHT WHO ARE  
PERSONAL HEROES OF MINE.

TO NOSE NEIGHBORS WHO SPOKE UP -- TO THOSE NEIGHBOR WHOSE SPOKE  
UP, THANK YOU.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND.

THIS IS CLOSED TO PUBLIC HEARING.

MY APOLOGIES.

>> I WANTED TO CLARIFY IF THE BOARD APPROVES OUR RECOMMENDATION OF DENIAL FOR VARIANCE, THAT MEANS THAT PORTION OF UNIT THREE THAT WAS ORIGINALLY A GARAGE HAS TO BE CONVERTED BACK TO A GARAGE.

IT'S NOT ONLY ABOUT THE BEDROOM OR STORAGE COUNTED AS A BEDROOM, THAT WE CAN HAVE A CONDITIONAL APPROVE, BUT YOU WANT TO KEEP UNIT THREE AS IT IS, THEN THE VARIANCE HAS TO BE APPROVED. BUT THE STORAGE CAN BE RESOLVED WITH CONDITIONAL APPROVAL. AND LESLIE, IF YOU WANT TO ELABORATE.

>> BOARD SECRETARY: THAT IS CORRECT.

IF YOU CAN SHOW THE IMAGE ON PAGE THREE OF THE STAFF REPORT AT THE BOTTOM.

>> PAGE THREE.

>> IS IT SHOWING?

>> S. O'KEEFE: UH-HUH.

>> BOARD SECRETARY: SO THE AREA THAT IS IN PINK, I ALSO AM A LITTLE CONFUSED WHAT IS THERE AND WHAT IS BEING PROPOSED. BUT IT'S MY UNDERSTAND BEING AND A LOT OF THIS WORK -- IT'S MY UNDERSTANDING A LOT OF THIS WORK WAS DONE.

>> YES.

IT'S ALREADY DONE.

DENYING THE VARIANCE MEANS THAT THIS WHOLE 18 X 20 FEET WILL HAVE TO BE CONVERTED BACK TO A GARAGE.

THIS WHOLE BEDROOM, THE CLOSET, BATHROOM, ALL THIS AREA IS PART OF UNIT THREE.

THEY'RE REDUCING THAT UNIT.

I ALSO WANTED TO ADD THAT THE SITUATION ABOUT TWO ADDITIONAL BEDROOMS IN THE UPPER UNIT, UNIT TWO CAN BE SOLVED BY REMOVING THE DOOR THAT CONNECTS THE BEDROOM ONE TO LIVING ROOM.

IF THAT DOOR IS REMOVED, THEN THOSE TWO SPACES ARE NOT CLOSED OFF AND WON'T BE COUNTED AS BEDROOMS.

I JUST WANTED TO ADD THAT IN THERE TOO.

>> S. O'KEEFE: THANK YOU FOR THAT.

COMMISSIONER TREGUB.

>> I. TREGUB: THANK YOU.

I GUESS I AM NOW UNCLEAR.

NILU, DO YOU HAVE AN ALTERNATIVE IN MIND THEN?

OTHER THAN REWORDING THIS?

IT SOUNDED LIKE -- CAN YOU CLARIFY WHAT THE IMPLICATION OF THE VARIANCE ONLY?

OR WAS THERE SOME KIND OF OTHER PROPOSAL THAT YOU HAD OR THAT --

>> STAFF: STAFF COULD NOT MAKE THE FINDING FOR VARIANCE TECHNICALLY.

BUT THAT CONVERSION IS ALREADY DONE.

AND SO, IF THE NEIGHBORHOOD IS CONCERNED ABOUT THE STORAGE BEING USED AS A BEDROOM, PERHAPS, AND AGAIN, MAYBE LESLIE CAN HELP.

PERHAPS THERE COULD BE A CONDITION OF APPROVAL TO KEEP THE DOOR



OF THE STORAGE AS A GARAGE DOOR SO THAT IT WON'T BE USED AS A BEDROOM.

BUT APPROVE THE VARIANCE SO THAT THEY CAN KEEP UNIT THREE AS-IS AND NOT MAKE IT THE SMALLER AREA.

IN UNIT TWO, THE DOOR THAT IS SEPARATING CLOSING OFF THE DINING AREA ON THE LIVING ROOM CAN BE OPENED UP AND THAT WOULD TAKE CARE OF HAVING THREE BEDROOMS AND NO LIVING ROOM IN THAT UNIT.

>> I. TREGUB: OKAY.

NILU, I APPRECIATE WHAT YOU'RE SAYING.

I WOULD FEEL MORE COMFORTABLE -- LIKE THAT SOUNDS LIKE A GOOD WAY OUT.

I DON'T SEE ANY ALTERNATIVE CONDITIONS IN OUR PACKET.

ALL I SEE WITH THE FINDINGS OF DENIAL.

IF THE PAST, WHAT WE'VE DONE IS WE WOULD -- IF THERE WERE NO ALTERNATIVE FINDINGS GIVEN TO US, WE USUALLY APPROVED -- WE ACTED ON WHAT WAS BEFORE US WHICH A IS PROVE OR DENY THE VARIANCE AND THE APPLICANT COULD COME BACK AND IT COULD BE DONE AT THE NEXT MEETING OR WHENEVER FEASIBLE TO STAFF BUT THEY COULD BRING TO US ACTUAL PLANS THAT WE COULD REVIEW AND I WOULD FEEL MUCH MORE COMFORTABLE DOING THAT.

THIS SEEMS TO MINIMALISTIC THE PLANS THAT I'M LOOKING AT.

I'M GETTING INCREASINGLY CONFUSED, ACTUALLY, AS TO WHAT WE WOULD BE VOTING ON TONIGHT OTHER THAN THE VARIANCE.

BUT I ENCOURAGE THE SPIRIT OF HOW TO FIX THOSE CONDITIONS AND I

LOOK FORWARD TO SEEING SOMETHING IN THE NEAR FUTURE ON HOW WE  
CAN FIX THEM.

>> STAFF: THANK YOU.

>> S. O'KEEFE: FURTHER COMMENTS FROM THE BOARD.

WE HAVE A MOTION AND A SECOND TO UP HOLD STAFF'S RECOMMENDATION  
TO DENY.

ARE WE READY TO VOTE?

THIS SEEMS LIKE IT'S A LITTLE BIT -- PREMIER A LITTLE BIT  
CONFUSED.

I WANT TO MAKE SURE WE'RE ALL COMFORTABLE VOTING.

NO ONE HAS ANY MORE COMMENTS OR QUESTIONS?

>> I HAVE A QUESTION.

DO YOU WANT TO -- I'M GOING TO GET CONFUSED DENY WITHOUT  
PREJUDICE, SO THEY COULD COME BACK?

>> DENY WITHOUT PREJUDICE.

THANK YOU.

>> S. O'KEEFE: ARE YOU COMFORTABLE WITH THAT COMMISSIONER OLSON?

>> C. OLSON: YES.

>> S. O'KEEFE: OKAY.

GREAT.

I THINK THAT SEEMS LIKE WHAT THE INTENT OF THE MOTION-MAKER WAS.

TO DENY WITHOUT PREJUDICE SO THEY CAN COME BACK AND HOPEFULLY  
SOMETHING WE CAN WORK WITH AND MAKE SOMETHING GOOD OUT OF.

LET'S TAKE A ROLL CALL VOTE.

>> BOARD SECRETARY: BOARD MEMBER OLSON.

>> YES.

>> BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER HAUSER.

>> YES.

>> BOARD MEMBER THOMPSON.

>> YES.

>> BOARD MEMBER GAFFNEY.

>> YES.

>> BOARD SECRETARY: BOARD MEMBER DUFFY.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> AND VICE CHAIR O'KEEFE.

>> S. O'KEEFE: YES.

SO THE MOTION PASSES.

REGRET TO INFORM YOU YOUR APPLICATION IS DENIED, BUT IT IS  
APPEALABLE TO THE CITY COUNCIL.

THERE IS THAT.

AND OTHER THAN THAT, WE'LL MOVE ON.

PERHAPS WE'LL SEE YOU AGAIN.

LAST UP WE HAVE 2943 PINE AVENUE.

WE'LL BEGIN AS ALWAYS WITH THE STAFF REPORT.

WHO IS OUR PERSON?

>> MISS REIMER.

>> S. O'KEEFE: WHO IS GOING TO DO THE TIMER?

>> STAFF: I'LL TO THE TIMER.

I'LL DO THE TIMER.

>> S. O'KEEFE: YOU CAN JUGGLE THAT.

YOU CAN TAKE AS MUCH TIME AS YOU WANT.

>> STAFF: OKAY.

SO THE USE PERMIT IS TO CONSTRUCT A -- PERMIT 2349 PINE IS TO CONSTRUCT A SECOND STOREY ADDITION TO AN EXISTING ONE-STOREY WHICH AND THAT WILL BECOME 22-SQUARE FEET FAMILY DWELLING.

IT'S 4,000 [INDISCERNIBLE]

IT'S NONCONFORMING TO THE LOT SIZE AS THE MINIMUM LOT SIZE IS REQUIRED.

THE LEFT NORTH SIDE IN THE FRONT IS NONCOMPLIANT.

THE LOT HAS COVERAGE OF 42% WHERE 40% IS FURNISHED.

[INDISCERNIBLE] INCREASE THE AVERAGE SIZE OF THE EXISTING DWELLING 15 FEET 1 INCH TO 22 FEET.

ALTHOUGH THE EXISTING DWELLING [INDISCERNIBLE] SETBACKS.

IT COULD BE SETBACK 21 FEET 10-INCHES AND 11 FEET FROM THE LEFT SIDE PROPERTY LINE.

THE FIRST FLOOR WOULD LARGELY REMAIN [INDISCERNIBLE] NO PLAN FOR ANY BEDROOM AND A STUDY.

THE PROPOSED STUDY IS THE DEFINITION OF A BEDROOM

[INDISCERNIBLE]

TWO SMALL BATHROOMS WOULD BE ADDED.

[INDISCERNIBLE]

THE OTHER ON THE EAST SIDE.

NO CHANGES FOR [INDISCERNIBLE]

PURSUANT TO BEING IN [INDISCERNIBLE] USE OF THE PROPERTY

CONFORMING CONDITION AND COMPLYING WITH [INDISCERNIBLE]

PROPERTY IS NON-CONFORMING TO LOT CONFORM.

IT'S A COVERAGE OF 42%.

HOWEVER, THE PROPOSED ADDITION DOES NOT EXCEED LOT COVERAGE.

THE PROPOSE THE HEIGHT IS 23 FEET WHERE 28 FEET IS MAXIMUM

ALLOWED.

[INDISCERNIBLE]

CONFORMANCE WITH OTHER LOTS [INDISCERNIBLE]

IT'S PERMITTED BY APPLICANT TO DOCUMENT [INDISCERNIBLE]

PROJECT INVOLVES ON THE SECOND FLOOR [INDISCERNIBLE]

TWO HOURS AFTER SUNRISE ON THE EAST SIDE OF THE DWELLING 2932

PINE AVENUE [INDISCERNIBLE]

SHADOWS ON THE SOUTH SIDE AT [INDISCERNIBLE]

TWO HOURS AFTER SUNSET ON WINTER SOLSTICE, SHADOWS ON THE SOUTH

SIDE OF THE BUILDING [INDISCERNIBLE] WILL INCREASE AND COVERS

THE MAJORITY [INDISCERNIBLE]

NEW -- SHADOWS COULD REACH THE YARD OF [INDISCERNIBLE] IN THE

EVENING.

ON THE SUMMER SOLSTICE, A MAJORITY OF THE YARD WOULD NOT BE  
SHADED AND THE SHADOWS WOULD NOT REACH THAT.

[INDISCERNIBLE]

RESIDENTIAL ADDITIONS WOULD NOT RESULT IN SIGNIFICANT LOSS OF  
SUNLIGHT AND THE SHADING IMPACTS ARE NOT DEEMED DETRIMENTAL.

[INDISCERNIBLE]

IMPACT ON SURROUNDING PROPERTIES, STAFF RECOMMENDS

[INDISCERNIBLE]

THANK YOU.

>> S. O'KEEFE: THANK YOU.

QUESTIONS FOR STAFF.

SEEING NONE, WE CAN HEAR FROM THE APPLICANT NOW.

ALL RIGHT AND WHO IS THE APPLICANT?

ANN, AND YOU'RE READY, YOU HAVE FIVE MINUTES.

TO TELL US ABOUT YOUR PROJECT.

YOU'RE STILL MUTED.

ANN, ARE YOU THERE?

>> HELLO.

I BELIEVE -- ANN IS THE OWNER.

SHE IS GOING TO SPEAK.

SO, I'M WITH THE ARCHITECTS.

I'M PART OF THAT TEAM.

I BELIEVE ANNE IS SUPPOSED TO SPEAK.

I'M GOING TO -- SORRY.

>> S. O'KEEFE: ANNE.

THERE YOU ARE.

HELLO ANNE.

YOU HAVE FIVE MINUTES.

>> THIS PAST YEAR HAS SOLIDIFIED OUR DESIRE TO ADD ON TO OUR HOUSE.

I'M A EMERGENCY ROOM AND I'VE ENJOYED MY JOB FOR 10 YEARS.

I PUT MY HEAD DOWN AND HAVE GONE TO WORK FULL-TIME TO SERVE MY COMMUNITY AND FAMILY DURING THIS PANDEMIC.

WORRYING ABOUT BRINGING BACK THE VIRUS TO MY CHILDREN AND SPOUSE.

I'M NOW VACCINATED AND GRATEFUL THIS NO ONE IN MY FAMILY HAS GOTTEN SICK.

THIS PANDEMIC CAUSED OUR LIVES TO SHIFT.

LIKE A LOT OF FELLOW PARENTS TO WORK BALANCE WITH OUR CHILDREN.

IN A WAY OUR WORKWEEK IS LIKE A FINE-TUNED GAME OF TETRAS.

MY HUSBAND WORKS AT HOME AND THIS LONG WITH MY PARENTS TO HELP WITH CHILD CHAIR AND OUR CHILDREN NOW 4 AND 7 REQUESTING TO HAVE THEIR OWN HOMES ARE THE CORE REASONS FOR OUR HOUSE TO EXPAND.

THESE DESIRES REQUIRE US TO HAVE MORE ROOM FOR OURSELVES WITHIN OUR HOME.

AS A PARENT, HAVE YOU STEPPED ON A LEGO IN THE MIDDLE OF THE NIGHT OR NEEDED PEACE AND QUIET BEHIND A CLOSED DOOR?

ROB AND I BELIEVE WE NEED MORE SPACE TO CONTINUE TO MAKE OUR

HOME WORK FOR US.

THESE DESIRES TO MAKE OUR HOME BIGGER WOULD HELP US STAY IN OUR COMMUNITY.

WE LIVED ON PINE AVENUE FOR 10 YEARS.

AS VARIOUS NEIGHBOR CAN ATTEST, WE BELIEVE WE'VE ADDED TO THE WHOLESOMENESS OF OUR AREA AND LOVE OUR CHILDREN'S PUBLIC SCHOOL WITHIN WALKING DISTANCE OF THE HOUSE.

WE LOVE LIVING WHERE WE WORK AND HAVING FAMILY MEMBERS WITHIN THE AREA AND ENJOY THE COMMUNITY.

THE LIBRARIES, PARK, TRAILS, WALKABILITY OF THE NEIGHBORHOOD IS BEAUTIFUL.

WE NEED THIS PROJECT TO HAPPEN SO THAT OUR HOMEWORKS FOR US AND WE CAN CONTINUE TO ENJOY OUR NEIGHBORHOOD.

THANK YOU.

>> S. O'KEEFE: THANK YOU VERY MUCH.

ANYONE ELSE FROM THE APPLICANT TEAM GOING TO SPEAK?

OR WE CAN OPEN IT UP FOR QUESTIONS.

>> WE CAN DEFER TO ALAN OR ANNE.

>> S. O'KEEFE: IS ALAN HERE?

I ONLY SEE ANNE.

ARE THERE QUESTIONS FOR THE APPLICANT?

WE DON'T HAVE ANY QUESTIONS FOR YOU.

WHEN WE'RE GOING TO DO NOW IS HEAR FROM THE PUBLIC AND THEN APPLICANT, YOU'LL HAVE A CHANCE TO RESPOND TO ANYTHING THAT



COMES UP DURING THAT TIME.

IF THERE ARE QUESTIONS FOR THE APPLICANT, YOU'LL HAVE A CHANCE TO ASK.

WE'LL NOW HEAD OVER TO THE PUBLIC.

HELLO PUBLIC.

I SEE THREE HANDS UP.

THAT'S GREAT.

I'M GOING TO CALL ON PEOPLE IN THE ORDER RECEIVED.

THERE ARE NOW FIVE HANDS UP.

REMEMBER IT'S STAR 9 TO RAISE YOUR HAND IF JOINING US BY PHONE AND I'M GOING TO START WITH CAREY.

I'M DOING FIRST NAMES BECAUSE THAT'S EASIER NOT TO SCREW UP.

CAREY, YOU HAVE TWO MINUTES.

>> THIS IS ACTUALLY ALAN SALES I'M THE ARCHITECT.

>> S. O'KEEFE: SIR, YOU'RE PART OF THE APPLICANT TEAM?

>> YES.

>> S. O'KEEFE: SORRY.

WE SHOULD HAVE PROMOTED YOU TO A PANELIST EARLIER.

THEY HAD A MINUTE AND A HALF LEFT ON THEIR TIME ALLISON?

SOMETHING LIKE THAT.

SIR, I'LL GIVE YOU A MINUTE AND A HALF WE'LL COUNT THIS AS PART OF THE APPLICANT TIME THEN WE'LL HEAR FROM THE PUBLIC AFTER YOU SPEAK.

>> OKAY.

I'M THE ARCHITECT FOR THE PROJECT.

I WANT TO FIRST THANK THE STAFF REPORT.

FOR THEIR IN-DEPTH REPORT.

I AGREE WITH IT.

THIS IS -- THE SECOND STOREY ADDITION IS ONLY 40% OF THE FIRST FLOOR.

AND IT'S 25% UNDER THE HEIGHT -- MAXIMUM HEIGHT FOR A TWO-STOREY.

THE MASS OF THE SECOND STOREY STEPS IN ON ALL FOUR SIDES.

THE ENTIRE SECOND STOREY ADDITION AS GREATER SETBACKS AS A RESULT AND WHAT IS REQUIRED.

THE SECOND STOREY IS CONSISTENT THREE OF THE SURROUNDING PROPERTIES ARE TWO-STOREY.

THE ARCHITECTURE EXACTLY MATCHES THE HOUSE AND LOOKS LIKE IT'S ALWAYS BEEN THERE.

MY CLIENT MENTIONED AFTER A YEAR OF COVID BEING LOCKED IN ADDITION SPACE IS SORELY NEEDED.

THEY'RE LOOKING FOR THEIR MAIN BEDROOM UPSTAIRS AND ROB'S STUDY UPSTAIRS.

SO HE CAN HAVE SOME QUIET AND BE ABLE TO FUNCTION AND STILL BE AT HOME.

THANK YOU.

>> S. O'KEEFE: THANK YOU VERY MUCH.

THAT CONCLUDES THE APPLICANT'S TIME.

AND NOW WE'LL HEAR FROM THE PUBLIC.

ALL RIGHT.

GEORGE IS UP.

GEORGE, YOU HAVE TWO MINUTES.

I THOUGHT I ALLOWED YOU TO TALK, BUT I DIDN'T.

GEORGE, YOU HAVE TWO MINUTES.

AFTER YOU UNMUTE YOURSELF.

>> I'M DEBORAH AND I'M THE OWNER OF THE HOUSE AT 2918 DIRECTLY EAST OF THE PROJECT.

I THINK THERE ARE A FEW INACCURACIES OF THE STAFF REPORT AND PLANS THAT I WOULD LIKE DISCUSSED.

FIRST IS IT SAYS THERE ARE NO OAK TREES ON PROJECT SITE WHICH IS TRUE BUT THERE A LARGE MATURE OAK TREE ON MY NEIGHBOR'S PROPERTY AND THE CANOPY IS SHOWN CROSSING THE REAR OF THEIR PROPERTY.

IN VIEW OF THAT, THAT THE POSTERIOR OF THE HOUSE IS 10 FEET FROM THE PROPERTY LINE, AS IT GOES UP IT WILL ENCROACH ON THE SETBACKS OF THE OAK TREE AND I WOULD LIKE A CERTIFIED TREE SURVEY TO BE DONE.

ALSO, THERE ARE MULTIPLE TIMES IN THE REPORT THAT SAYS THERE A 10-FOOT SOLID FENCE ALONG THE REAR PROPERTY AND THE FENCE IS 6 FEET TALL AND I DON'T THINK WE SHOULD GRANDFATHER IN A 10-FOOT FENCE WITH A 6-FOOT FENCE THERE.

SINCE THE HOUSE DIRECTLY DUE WEST OF ME, 60% OF THE YARD WOULD BE IN SHADE IN THE AFTERNOON IN THE SUMMER.

AND WHILE THE SECOND FLOOR CEILING IS 7'10", THE HEIGHT OF THE HOUSE GOES TO 28 FEET -- 28 FEET AND I'M CONCERNED THAT IT APPEARS THAT THEY'RE TRYING TO GET A THREE-STOREY HOME OUT OF A SECOND FLOOR ADDITION.

I RECOMMEND THE ROOF PITCH INCREASED SIGNIFICANTLY AND AS LONG AS IT HITS MINIMUM REQUIREMENTS FOR THE APPROPRIATE DRAINAGE. IT'S NOT MY INTENTION TO STOP THEM FROM DOING THE PROJECT, BUT I HOPE THAT WE CAN MAKE IT A SUITABLE ADJUSTMENTS.

THE OTHER ISSUE IS PRIVACY.

THAT REAR WINDOW HAS SEVEN NEW WINDOWS AND A BALCONY WHICH LOOK DIRECTLY INTO MY YARD AND BEDROOMS.

I WOULD LIKE IF THE PROJECT IS APPROVED TO MAKE THESE PRIVACY WINDOWS.

>> THANK YOU VERY MUCH.

AND I BELIEVE JUST A QUICK QUESTION FOR YOU.

YOU'RE NOT GEORGE.

>> DEBORAH.

>> S. O'KEEFE: I THINK THE OAK TREE IS DEPICTED IN THE SHADOW STUDIES.

>> THAT IS THE OAK TREE, BUT THE SHADOW STUDY IS TRYING TO SHOW THAT THE OAK TREE IS GIVING ME SHADOWS BUT SHADOWS --

>> S. O'KEEFE: I UNDERSTAND.

WE UNDERSTAND.

I WANTED TO CLARIFY THAT'S THE OAK TREE THAT YOU'RE REFERRING

TO.

THANK YOU.

OKAY.

NEXT UP WE HAVE SHANNON.

SHANNON, YOU HAVE TWO MINUTES.

>> I AM UNMUTED.

CAN YOU HEAR ME?

>> YES, WE CAN.

>> WE ARE THE NEIGHBORS AT 2939 PINE.

WHICH WOULD BE MOST AFFECTED BY THE SHADE STUDY THAT WAS SHOWN.

AND WE HAVE NO PROBLEM WITH IT WHATSOEVER.

ANNE AND ROB WORKED WITH THEIR ARCHITECT TO MAKE A CONSIDERATE DESIGN TO GIVE US THE PRIVACY IN OUR BEDROOM AND SITTING ROOM WHILE KEEPING THE SHADE TO A MINIMUM AND ALLOWING THEM TO HAVE MORE SPACE WHICH THEY NEED.

THEY HAVE GREAT KIDS BUT I'M SURE THEY WOULD LOVE SOME PEACE AND QUIET PERIODICALLY.

THEY CAN ALWAYS SEND THEM HERE, BUT -- ANYWAY, WE HAVE NO PROBLEM WITH THE ADDITION THAT THEY'RE MAKING AND WE THINK IT'S GREAT.

WE WANT THEM TO BE OUR NEIGHBORS FOR A LONG TIME.

THAT'S ALL I HAVE TO SAY.

>> S. O'KEEFE: THANK YOU.

THAT BABYSITTING OFFER IS ON PUBLIC RECORD.

OKAY.

SO THAT WAS SHANNON.

NOW LET'S GO TO LINDA.

>> MY NAME IS LINDA, AND MY FAMILY OCCUPIES 2916 ELMWOOD COURT  
NEXT TO DEBORAH AND GEORGE'S.

TO THE NORTH -- WE'RE TO THE NORTH OF THE PROJECT.

MY GRAND PATIENTS BOUGHT THIS HOUSE IN 1983 AND I'VE BEEN A  
LIFELONG BERKELEY MEMBER AND I AM DEEPLY FAMILIAR WITH THE  
COMMUNITY AND STRUGGLES FOR HOUSING.

AS I'VE BEEN A RENTER FOR SEVERAL YEARS.

I ALSO LOOK AT PURCHASING A HOUSE ON PINE STREET TO BE NEARBY  
FAMILY.

I UNDERSTAND THE CHALLENGES OF THE PINE STREET PROBLEM FOR  
AFFORDABLE HOUSING AND AFFORDABLE HOUSING IN THIS AREA IN  
PARTICULAR.

I SPECIFICALLY CHOSE NOT TO PURCHASE ONE ON PINE STREET FOR THE  
SAME REASON WHY PINE AVENUE IS NOW HAVING TO ASK FOR A PERMIT TO  
EXPAND.

I RENT ON WEBSTER INSTEAD.

AND HOUSING COSTS AND CHILD CARE COSTS ARE TOO MUCH TO BEAR.

THIS PROJECT WILL DARKEN THE FIRST FLOOR.

THE ADDITION BLOCKS THE SUN'S PATH TO OUR HOUSE.

ON SUNNY DAYS CAN, THE DINING ROOM IS FLOODED WITH NATURAL  
SUNLIGHT AS SUN TAKES POSITION FROM NOON UNTIL SUNSET.

THIS IS OUR DOMINANT SOURCE OF NATURAL LIGHT.

OVER 70 TO 80% FOR OUR FIRST FLOOR.

THE PROJECT ARCHITECT CLAIMS ANY LOSS OF THE NIGHT TO THE  
NORTHERLY PROPERTY WILL BE ABSORBED BY THE COASTAL OAK TREE AND  
CANOPY.

HOWEVER, AT TREE'S BRANCHES ARE MUCH TOO LOW AS DEPICTED.

IN FACT, THE BRANCHES ARE WELL OVER 9 FEET TALL SO THEREFORE THE  
SUN'S PATH STILL IS ABLE TO ENTER OUR FIRST FLOOR.

WE ASK THAT THE SHADE STUDIES BE REDONE SO THAT IT APPROPRIATELY  
AFFECTS THE OAK'S TRUE POSITIONING IN ADDITION TO CONTRACT SUN  
AND SHADOW.

>> S. O'KEEFE: NEXT UP.

NEXT UP WE HAVE MICHAEL.

>> THANK YOU SO MUCH FOR THE TIME.

I GREW UP AT 2918 ELMWOOD COURT BEHIND THE PROPOSED PROJECT.

IN REVIEWING THE PLANS AND DRAWINGS THERE ARE SEVERAL  
INACCURACIES PRIMARILY IN THE SHADE STUDY, LOCATION OF THE  
TREES, FENCE.

I ASK THAT THE BOARD HAVE THE APPLICANT REDO THEIR DOCUMENTATION  
FOR ACCURACY BEFORE ANY APPROVALS ARE MADE.

I ALSO THINK THAT WE'VE HEARD TONIGHT THAT THE PROJECT IS BEING  
REQUESTED AT 23 FEET TALL.

BUT THE TOP OF THE ROOF PITCH IS ACTUALLY 28 FEET TALL.

IT SEEMS LIKE THEY COULD DO LESS DAMAGE IF THEY LOWERED THE ROOF

PITCH WHILE STILL MAINTAINING THE STYLE OF THE HOME.

THE BOARD SHOULD TAKE INTO CAREFUL CONVERSATION WITH THE OTHER PROJECTS THEY'VE SEEN TONIGHT WHAT A 10-FOOT ATTIC AND THEY NEED MORE SPACE BEYOND THE FOUR BEDROOMS THEY HAVE.

>> S. O'KEEFE: THANK YOU FOR KEEPING IT SUCCINCT.

ALLISON, YOU'RE DOING SO MANY THINGS.

THANK YOU AND NOW WE HAVE ONE MORE SPEAKER.

AND THAT IS ADITIA [PHONETIC].

>> CAN YOU HEAR ME?

>> YES.

>> HI, SO HI, I LIVE IN 2932 PINE AVENUE.

MY WIFE AND I PURCHASED THIS PROPERTY IN AUGUST 2019 WHEN WE STARTED AS PROFESSORS AT UC BERKELEY.

WE'RE A BIT NEW TO ALL OF THIS AND HOME OWNERSHIP.

I GUESS ONE -- WE HAVE A COUPLE OF QUESTIONS OR CONCERNS THAT WE WANT TO RAISE.

THE FIRST WAS THAT THE LETTER FROM THE ASSISTANT PLANNER

IS -- ARCHITECTING ARE OWNERS REACH OUT TO US WITH IMPACT OF THE SHADOW AND THE ARCHITECT'S LETTER DOES MENTION THE OWNER'S

CONTACTED 2932 PINE AVENUE REGARDING THE ROOMS AND GOT DETAILS FROM US.

BUT TO THE BEST OF OUR KNOWLEDGE WE WERE NOT CONTACTED AND I'M WALKING AND TEACHING FROM HOME.

I WOULD HAVE BEEN ABLE TO ANSWER THE DOOR.



WE WERE WONDERING WHY THAT HAPPENED.

BECAUSE IF THAT HAPPENED, WE WOULD BE ABLE TO ENGAGE WITH THE OWNERS DIRECTLY AND ABLE TO WORK WITH THEM TO TRY TO UNDERSTAND IF IT IS POSSIBLE TO PERFORM THIS ADDITION IF AT ALL WITHOUT HAVING SOME IMPACT ON US.

THERE IS A SUBSTANTIAL SHADOW ON OUR HOUSE AND YARD DURING THE WINTER.

WE DO USE THE ROOM QUITE A BIT IN THE MORNINGS FOR WORK AND READING.

WE COMPLETELY UNDERSTAND THE NEEDS AND WE'RE SUPPORTIVE.

BUT WE WISH WE WOULD HAVE BEEN CONTACTED AND BEEN INVOLVED EARLIER IN THE PROCESS SO WE COULD HAVE HAD STEERED IT IN THE WAY THAT IS BENEFICIAL TO US.

THAT'S ALL I HAVE TO SAY.

THANKS.

>> S. O'KEEFE: THANK YOU VERY MUCH.

ALL RIGHT.

I'M NOT SEEING ANY MORE MEMBERS OF THE PUBLIC WITH THEIR HANDS UP.

BUT I'LL WAIT ONE MORE MINUTE IF ANYBODY IS DECIDING THEY WANT TO SPEAK.

REMEMBER TO PRESS STAR 9 IF YOU'RE JOINING BY PHONE.

OKAY.

SEEING NONE, I WANT TO THANK EVERYONE WHO CAME TO SPEAK.

IT'S ALWAYS A RICHER PROCESS WHEN WE GET THE COMMUNITY INVOLVED.

THANK YOU VERY MUCH FOR TAKING THE TIME.

I WOULD LIKE TO BRING IT BACK TO THE APPLICANT NOW TO RESPOND TO ANYTHING SAID OR ADD ANYTHING YOU WOULD LIKE.

ANYONE FROM THE APPLICANT TEAM.

YOU HAVE THREE MINUTES TO USE HOWEVER YOU WOULD LIKE.

APPLICANT.

WE CAN HEAR YOU.

>> IS ALAN RAISING HIS HAND NOW?

>> S. O'KEEFE: YOU KNOW WHAT?

THAT WAS THE ARCHITECT.

LET'S MAKE HIM A PANELIST.

>> LET ME SEE --

>> S. O'KEEFE: GOOD CATCH THERE.

I MADE ALAN A PANELIST.

HE SHOULD BE ABLE TO SPEAK NOW.

>> IF HE WANTS TO SPEAK FIRST.

>> S. O'KEEFE: ALAN, YOU SHOULD BE ABLE TO UNMUTE YOURSELF AND SPEAK IF YOU'D LIKE.

APPLICANT, YOU GUYS HAVE TO START.

WE HAVE TO PICK THIS UP.

>> I'LL JUST SPEAK TO THE SIMPLE QUESTIONS.

THAT WERE BROUGHT UP.

SO CAN I SHARE MY SCREEN HERE?

>> S. O'KEEFE: SURE.

JUST LOOK FOR THE TIMER IN THE SIDE AND I'LL GIVE YOU A WARNING  
IF YOU'RE RUNNING OUT OF TIME.

BUT WE'LL -- ALLISON, CAN YOU STOP SHARING.

THERE WE GO.

LET'S START THE TIMER OVER.

WE'LL GO THREE MINUTES.

>> I'LL RESPOND TO LIKE THE INACCURACIES OF THIS.

THERE WERE QUESTIONS BY THE NEIGHBORS ABOUT THE INACCURACIES.

THE SHADOW STUDY WAS DONE IN REVIT.

YOU GET TO CHOOSE THE ACCURATE LOCATION FOR THE SHADOW STUDIES.

THIS PROGRAM IS VERY ACCURATE.

A LOT OF ARCHITECTS USE IT.

ANOTHER THING THAT WAS BROUGHT UP WAS THE INACCURACY OF THE  
PLACEMENT OF THE OAK TREE.

WE DID -- THERE IS NO SURVEY OF THE OAK TREE, BUT WE DO HAVE AN  
AERIAL PHOTO THAT WE USED TO PLACE THE OAK TREE SO THIS IS WHAT  
WE USED.

THIS WAS SENT TO THE PLANNER AND I BELIEVE THE PLANNER SENT  
IT -- THERE WAS A QUESTION ABOUT THAT AS WELL WITH THE NEIGHBOR.  
SO I THINK THAT WOULD EXPLAIN HOW WE PLACED THE TREE.

AND THEN THERE WERE ALSO COMMENTS ABOUT THE HEIGHT OF THE  
STRUCTURE.

SO WE DID DO SECTIONS.

YOU CAN SEE THE ATTIC IS NOT LIKE A 10-FOOT ATTIC THAT THEY WERE TALKING ABOUT.

THREE-STOREY ELEMENT.

THIS DOES NOT MAKE IT THREE-STOREYS.

IT'S NOT GOING TO BE POSSIBLE TO MAKE A HEIGHT HERE TO MAKE IT THREE STOREYS.

IF THAT WAS THEIR CONCERN.

SO THAT'S -- AND I DON'T KNOW ABOUT THE NEIGHBOR THAT WAS NOT CONTACTED.

THAT COULD HAVE BEEN A MISCOMMUNICATION.

SO WE COULD, YOU KNOW, I'M SORRY THAT HAPPENED.

SO WE COULD, YOU KNOW, DO BETTER NEXT TIME.

AND SO, I WOULD LIKE TO -- SO I WOULD LIKE TO STOP NOW TO SEE IF ALAN HAS ANY FURTHER INPUT.

>> S. O'KEEFE: ALAN.

DID WE GET THE RIGHT PERSON?

HE MAY NOT BE THERE.

>> S. O'KEEFE: ANNE AND ROB, DO YOU WANT TO ADD ANYTHING?

>> NO.

I TOO WANT TO SECOND THE APOLOGIES TO THE NEIGHBOR ACROSS THE STREET.

THAT WAS NEVER OUR INTENTION TO NOT INCLUDE ANYONE.

AND I THINK IT WAS A MISCOMMUNICATION.

OUR INTENTION IS TO BE INCLUSIVE AS MUCH AS WE CAN AND WE DO

WANT EVERYONE TO KNOW WHAT WE'RE UP TO.

AND JUST BE POLITE PROFESSIONALS.

>> S. O'KEEFE: OKAY.

ALL RIGHT.

ACTUALLY -- SORRY, IGOR.

COULD I ASK A QUICK QUESTION -- I'M GOING TO ASK A QUICK

QUESTION ABOUT THE NEIGHBOR CONTACT.

THEY'RE SUPPOSED TO SIGN SOMETHING.

DID YOU NOT ACQUIRE THEIR SIGNATURE?

DO WE HAVE THE SIGNATURE PAGE?

I FEEL LIKE THAT'S CHECKABLE.

>> [INDISCERNIBLE]

>> S. O'KEEFE: THAT'S RIGHT.

I THINK I WAS AWARE OF THAT.

IGOR, GO AHEAD.

>> I. TREGUB: IF THE APPLICANT COULD IN BROAD BRUSH STROKES

DESCRIBE THE LEVEL OF INTERACTION THAT THEY HAD WITH THE

NEIGHBORS.

HAS THERE BEEN ANY GIVE-AND-TAKE NEGOTIATIONS?

HAVE YOU BEEN OPEN TO RESPONDING TO THE CONCERNS THAT HAVE BEEN

RAISED?

AND HOW DID YOU RESPOND?

>> WE ACTUALLY HAD NO CONTACT WITH OUR NEIGHBORS BEHIND US.

ESPECIALLY DIRECTLY BEHIND US.

I HAVE MADE NUMEROUS ATTEMPTS IN THE PAST TO COMMUNICATE FRIENDLY THINGS.

WE'RE HAVING A PARTY, THIS IS OUR CELL PHONE NUMBER, GIVE US A CALL IF WE'RE TOO LOUD.

TEXT ME OR CALL ME.

I WOULD LIKE TO TRIM THE GREENERY BETWEEN OUR TWO HOMES AND I'VE GOTTEN NO REPLY OR RESPONSE FROM THAT NEIGHBOR.

I LEFT IT UP TO OUR ARCHITECTURE FIRM TO BE PROFESSIONAL AND INTERACT BECAUSE ANY OF NOT MAKE MUCH EFFORT TO SPEAK TO US.

>> S. O'KEEFE: ANY OTHER QUESTIONS FOR THE APPLICANT?

ALL RIGHT.

WITH THAT, WE'LL CLOSE THE PUBLIC HEARING.

THANK YOU, APPLICANT TEAM FOR PRESENTING.

THANK YOU PUBLIC FOR SPEAKING AND NOW WE'LL MOVE IT OVER TO BOARD COMMENTS.

>> S. O'KEEFE: MADAM CHAIR --

>> S. O'KEEFE: MY GOODNESS.

I'M OUT OF PRACTICE.

YES SO THAT'S A GREAT TIME FOR A CAPTIONER BREAK THAT WE'RE REQUIRED TO TAKE EVERY TWO HOURS.

PERHAPS THE BOARD -- WE'LL SPEND 10 MINUTES LETTING THE CAPTIONER REST HER FINGERS AND WE'LL THINK ABOUT THE COMMENTS WE'LL MAKE WHEN WE COME BACK.

10 MINUTES, AT 9:24 I'LL SEE EVERYONE BACK HERE.

>> S. O'KEEFE: IT'S 9:24.

I SEE SOME PEOPLE ARE BACK.

THANK YOU.

IF WE CAN COME BACK AND RESTART THE MEETING.

OKAY.

GREAT.

I'M ASSUMING CARRIE IS BACK.

WELCOME BACK.

BOARD COMMENTS.

LAST THING THAT HAPPENED WAS WE CLOSED THE PUBLIC HEARING.

SO WHO WANTS TO START US OFF?

WHO HAS THOUGHTS?

COMMISSIONER OLSON.

>> C. OLSON: I CAN START WITH AN EASY SUGGESTION.

AND THAT'S THE WINDOWS IN THE REAR.

ONE OF THEM IS A BATHROOM SO IT COULD BE TRANSLUCENT.

ANOTHER ONE IS THE STAIRCASE.

AND IT'S SET WAY BACK.

THE ONLY ONE I SUGGEST WE MAKE TRANSLUCENT IS THE BATHROOM  
WITHIN.

THAT WILL START US OFF.

>> S. O'KEEFE: THANK YOU, THAT'S HELPFUL.

ANYONE ELSE?

YOU HAVEN'T BEEN TO A ZOOM.

>> I HAVE BUT MAYBE PEOPLE WANT THE VISUAL OVERRIDE.

I THINK IT'S ACTUALLY -- I KNOW THAT STREET WELL.

I TAKE LOTS OF WALKS IN THE NEIGHBORHOOD.

AND THERE ARE A HANDFUL OF HOMES THAT HAVE A SECOND FLOOR

ADDITION THAT PROBABLY WEREN'T ORIGINAL.

AND IT'S VERY MODEST PROPOSAL.

IT'S DEFINITELY MORE IMPORTANT TO KEEP PEOPLE AND THESE

NEIGHBORS IN BERKELEY THAN IT IS POTENTIALLY A PORTION OF THE

OAK TREE CANOPY IN BERKELEY.

I THINK THE DESIGN IS VERY SENSITIVE AND MODEST.

AND I WOULD MOVE TO APPROVE THE PROJECT AS RECOMMENDED BY STAFF.

>> S. O'KEEFE: DO YOU CARE TO COMMENT ON COMMISSIONER OLSON'S  
SUGGESTION?

>> I WOULD BE RELUCTANT TO MAKE THOSE TYPES OF CONDITIONS.

I THINK IT'S A GREAT SUGGESTION.

BUT I DON'T KNOW THAT IT'S PROPER IT MAKE THAT A CONDITION OF  
APPROVAL.

IT'S OPEN TO DISCUSSION BUT I WOULD LIKE TO HEAR FROM THE  
APPLICANT.

>> THAT'S A SUGGESTION AND NOT A CONDITION OF APPROVAL.

>> S. O'KEEFE: OKAY.

THAT'S YOUR MOTION.



OTHER COMMENTS, SECONDS?

SUBSTITUTE MOTIONS?

COMMISSIONER GAFFNEY.

>> I WOULD LIKE TO SECOND THE MOTION.

>> S. O'KEEFE: OKAY.

COMMISSIONER DUFFY, WERE YOU GOING TO SECOND?

>> SURE, I CAN DO THAT.

>> S. O'KEEFE: OKAY.

WE HAVE A MOTION AND A SECOND.

COMMISSIONER OLSON.

>> C. OLSON: I JUST WANT TO STAND UP FOR THE IDEA OF THE  
TRANSLUCENT GLASS.

IT'S SOMETHING WE'VE DONE OFTEN OVER THE YEARS BECAUSE IT IS A  
NOD TO THE NEIGHBORS WHO DO MAKE COMMENT ON WHETHER OR NOT THEY  
WILL LOSE PRIVACY AND IT IS A BATHROOM AND THE BATHTUB IS RIGHT  
THERE.

SO I THINK -- I WOULDN'T WANT TO LOSE THAT -- WE HAVE A LOT OF  
NEW MEMBERS ON THE COMMISSION AND SO I JUST -- YEAH, IT'S  
SOMETHING WE ACTUALLY DO.

>> THAT'S TRUE.

I SECOND THAT STATEMENT.

COMMISSIONER TREGUB.

>> I. TREGUB: THANK YOU.

SO IN ALL THE YEARS THAT I'VE BEEN ON ZAB, IT WILL IS OUR

PREROGATIVE TO SUGGEST CONDITIONS AS LONG AS THEY'RE REASONABLE.  
TRANSLUCENT GLASS IS SOMETHING THAT WE'VE SUGGESTED IN THE PAST.  
BUT MAYBE WE CAN REOPEN THE PUBLIC HEARING SO WE CAN ASK THE  
APPLICANTS DIRECTLY IF THAT IS SOMETHING THEY WOULD BE OPEN OR  
AND/OR ANY OTHER PERHAPS ELEMENTS OF THE DESIGN THAT THEY COULD  
TWEAK IN THE SPIRIT OF TRYING TO FIND SOME COMPROMISE WITH THE  
NEIGHBORS.

>> S. O'KEEFE: WHEN I REOPEN THE PUBLIC HEARING, I WOULD LIKE TO  
HAVE IT FOR A LIMITED PURPOSE JUST TO SORT OF KEEP THINGS TIGHT.  
CAN WE OPEN IT FOR THE PURPOSE OF DISCUSSING THE PRIVACY GLASS?

>> I. TREGUB: SURE.

>> S. O'KEEFE: WE CAN REOPEN THE HEARING FOR THE LIMITED PURPOSE  
OF LETTING US KNOW -- IT HASN'T BEEN PROPOSED IN THE MOTION, BUT  
OF HAVING PRIVACY GLASS IN THE BATHROOM.

DO YOU HAVE ANY THOUGHTS ABOUT THAT?

>> NO PROBLEM WHATSOEVER TO DO THAT.

THAT WOULD MAKE SENSE AND BENEFIT US AS WELL.

>> S. O'KEEFE: GOOD TO KNOW.

THANK YOU VERY MUCH.

OKAY.

SO CLOSE THE PUBLIC HEARING BACK UP.

COMMISSIONER HAUSER, STILL YOUR MOTION.

WHAT DO YOU THINK?

>> SURE.

THEN IT SEEMS LOOK A MOOT POINT THAT YEAH.

I HESITATE TO DO THESE -- TRYING TO ORCHESTRATE THESE TYPES OF NEGOTIATIONS AT THIS POINT BUT SINCE THE APPLICANT FINDS IT TO BE A BENEFIT, THAT HOLD THINGS UP.

>> S. O'KEEFE: SO YOU WANT TO PUT THAT IN THE MOTION?

>> YES.

THANKS FOR STREAMLINING.

>> S. O'KEEFE: COMMISSIONER GAFFNEY, ARE YOU OKAY WITH THAT?

>> YES.

>> S. O'KEEFE: SO THERE WE GO.

THANK YOU FOR CLARIFYING THAT.

ANY OTHER COMMENTS?

OR ARE WE READY TO VOTE?

ALL RIGHT.

SEEING NONE, LET'S DO A ROLL CALL VOTE ON THE MOTION TO APPROVE WITH THE SMALL LIMIT OF PRIVACY GLASS ON THE BATHROOM.

>> BOARD MEMBER THOMPSON.

>> YES.

>> BOARD MEMBER TREGUB.

>> I. TREGUB: YES, WITH A COMMENT.

I'LL MAKE THE COMMENT AFTER THE VOTE.

>> S. O'KEEFE: OKAY.

>> BOARD MEMBER HAUSER.

>> YES.

>> BOARD MEMBER OLSON.

>> YES.

>> BOARD MEMBER GAFFNEY.

>> YES.

>> BOARD MEMBER DUFFY.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> AND VICE CHAIR O'KEEFE.

>> S. O'KEEFE: YES.

SO THE MOTION PASSES.

IT'S APPEALABLE TO THE CITY COUNCIL.

BUT YOU HAVE YOUR USE PERMIT UNLESS IT'S APPEALED.

COMMISSIONER TREGUB, COMMENT.

>> I. TREGUB: THANK YOU.

JUST VERY BRIEFLY.

AND I KNOW WE'VE HAD THESE SITUATIONS WITH ZAB WHERE

SOMETIMES -- FOR WHATEVER REASON THERE ARE NO OPPORTUNITIES TO

DISCUSS A PROJECT UNTIL IT GETS HERE TO ZAB.

AND WE ARE STUCK HAVING TO MAKE DECISIONS WHEN THERE WERE

MULTIPLE POINTS MADE.

THERE ARE SOME ASPECTS WHERE I DID HEAR SOME POSSIBLE CONSENSUS.

IT MIGHT NOT REQUIRE CONDITIONS.

SUCH AS TRIMMING PART OF THE CANOPY, ET CETERA.

AND SO, THERE ARE ACTUALLY -- THE PRIVACY GLASS DID NEED A  
CONDITION, BEFORE THERE ARE SOME THINGS THAT I WOULD JUST  
ENCOURAGE THE NEIGHBORS TO TRY TO COME TOGETHER AND WORK OUT,  
OUTSIDE OF THE ZONING REVIEW PROCESS.

THANKS.

>> S. O'KEEFE: THANK YOU.

COMMISSIONER KIM.

>> THANK YOU, CHAIR.

I JUST WANT TO QUICKLY SAY AT THIS TIME THAT I KNOW MY CAMERA  
HASN'T BEEN ON FOR THE PAST FEW WEEKS DUE TO WI-FI TROUBLE AT  
THE HOUSE.

I KNOW THAT THERE ARE NEW FACES ON ZAB AND I KIND OF WANTED TO  
TAKE TIME TO EXPLAIN THAT THE PUBLIC THAT I'VE BEEN PRESENT AND  
IT'S NICE TO MEET NEW BOARD MEMBERS.

I DON'T THINK I'VE HAD THE CHANCE TO SAY THAT IN THE LAST COUPLE  
OF MEETINGS AND SEEING FORMER BOARD MEMBERS AS WELL.

I WANTED TO QUICKLY SAY THAT.

AND I APPRECIATE THE SPACE FOR THAT.

>> S. O'KEEFE: COMMISSIONER OLSON.

COMMENT.

>> C. OLSON: THANKS, I WANTED TO THANK ALL THE MEMBERS OF THE  
PUBLIC FOR PARTICIPATING.

IT WAS VERY GOOD TO HEAR YOUR COMMENTS ABOUT HOW THIS -- WHAT  
YOU THINK OF THIS PROJECT -- NEW PROJECT IN YOUR NEIGHBORHOOD.

BUT I AM CONCERNED ABOUT THAT NEIGHBOR WHO DIDN'T -- WASN'T CONTACTED BEFORE -- THEY SHOULD HAVE BEEN.

SINCE WE HAVE NEW MEMBERS ON THE COMMISSION, I JUST WANT YOU ALL IT KNOW THERE IS A FORM THAT USED TO GO DOOR-TO-DOOR.

WE WOULD GET IT IN OUR PACKET SO WE WOULD KNOW THAT THE NEIGHBORS SIGNED OFF ON PROJECT.

I WOULD LIKE TO ENCOURAGE STAFF TO MAKE SURE THAT WE GET A VIRTUAL EQUIVALENT SOMEHOW.

IT SHOULD BE DOABLE.

SO THEN WE DON'T HAVE -- BECAUSE I FEEL FOR NEIGHBOR WHO IS DON'T KNOW WHAT IS COMING.

YEAH.

THANK YOU.

>> S. O'KEEFE: I THINK LESLIE HAS A RESPONSE TO THAT.

>> WE GET BETTER PROJECTS GO THERE IS MORE COMMUNICATION AHEAD OF TIME.

WE DID SUSPEND -- THERE WERE CERTAIN REQUIREMENT RULES SUSPENDED WHEN SHELTER IN PLACE CAME INTO EFFECT.

I THINK WE NEED TO START LOOKING INTO REINSTITUTING THEM.

THE FIRST THING TO GO WAS GOING FROM HOUSE TO HOUSE BECAUSE NO ONE WANTED TO GO HOUSE TO HOUSE.

WEAN SENT OUT POSTCARDS SO IT'S A PRETTY SET RADIUS, BUT A POSTCARD -- IT'S NOT THE SAME THING AS GOING HOUSE TO HOUSE AND JUST FOR THE RECORD, WE'VE HAD SUSPENDED PUTTING UP THE YELLOW

POSTERS.

SOME PEOPLE STILL ENDED UP DOING IT BUT IT WASN'T FOR REQUIREMENT DURING SHELTER-IN-PLACE.

AS PEOPLE ARE GETTING MORE VACCINATED AND THINGS ARE LOOSENING UP, IT'S TIME TO REVISIT THAT BECAUSE I WHOLEHEARTEDLY AGREE, THE MORE COMMUNICATION, THE SOONER IS BETTER FOR THE PROCESS.

THANK YOU FOR THAT, COMMISSIONER OLSON.

>> S. O'KEEFE: I HAVE MY OWN APPLICATION I'M DEALING WITH RIGHT NOW.

I DIDN'T KNOW ABOUT THE REQUIREMENT.

I DIDN'T KNOW ABOUT THE LACK OF REQUIREMENT SO I WENT AROUND TO ALL THE NEIGHBORS AND IT TURNS OUT THAT EVERYONE HAD BEEN VACCINATED.

SO THERE YOU GO.

COMMISSIONER DUFFY, COMMENT.

>> I HAD TO GET A BUNCH OF SIGNATURES FROM MY NEIGHBORS.

I GOT 18.

THE SIGNATURES ARE NOT THAT THEY'VE SEEN THE PLANS.

THERE ARE SOME NEIGHBORS THAT WERE SEWN OWNERS OF THE PROPERTY THAT DIDN'T LIVE ON THE PROPERTY AND I EVEN GOT THEIR SIGNATURES.

EVEN IN THE CONTEXT OF COVID, WE CAN GET SIGNATURES FROM OTHERS JUST THROUGH THE MAIL AND THEY JUST NEED TO SIGN SAYING THEY'VE SEEN THE PLANS AND KNOW WHAT IS HAPPENING.

>> S. O'KEEFE: ALL RIGHT.

ANY WAY, I THINK THE CITY WILL REEXAMINE THE POLICY IN THE NEXT YEAR AND ANYWAY, THANK YOU EVERYONE FOR COMMENTING.

SO, OKAY.

WE'RE DONE WITH THIS ITEM.

LAST ON OUR AGENDA IS I THINK THERE IS A DRC REPORT.

HAS THERE BE A MEETING?

-- HAS THERE BEEN A REPORT?

>> COMMISSIONER KAHN IS NOT HERE.

LAST MEETING WELD A ZAB MEETING PRIOR TO OUR LAST DRC MEETING.

ARE WE SUPPOSED TO PEEK TO IT TWICE?

BECAUSE WE TALKED ABOUT THE DRC MEETING.

LAST WEEK WAS OUR BREAK.

>> S. O'KEEFE: IT'S ALWAYS ON THE AGENDA.

>> NOTHING TO REPORT RIGHT NOW.

>> S. O'KEEFE: LAST IS STAFF COMMUNICATIONS.

ANYTHING UNDER STAFF COMMUNICATIONS?

>> A PERSONAL NOTE, I HAD A SIX-MONTH A EXCITEMENT IT HAS COME TO THE END SO I'VE HAD A LOT OF FUN BEING ZAB SECRETARY AND I'LL SEE YOU AGAIN AS A PROJECT PLANNER COMING IN ON THE OTHER END. SO THANK YOU FOR ALL OF THAT.

>> S. O'KEEFE: I THOUGHT IT WAS FOREVER.

IT'S BEEN GREAT.

THANKS FOR TELLING US THAT.



>> THANK YOU.

>> THANK YOU.

>> THANK YOU SO MUCH LESLIE.

>> S. O'KEEFE: BEFORE WE SAW HER ALL THE TIME BEFORE SHE WAS SECRETARY SO WE'LL SEE HER AGAIN.

>> THAT WAS FUN.

>> S. O'KEEFE: ALL RIGHT.

SO OKAY, THEN ANY LAST COMMENTS BEFORE WE ADJOURN THE MEETING?

>> THANK YOU SHOSHANA.

THANK YOU.

JUST SAYING THANKS.

>> THANK YOU.

>> S. O'KEEFE: I THINK I'M DOING IT NEXT TIME IS MY UNDERSTANDING.

I THINK CHARLES IS TAKING A MONTH LEAVE OF ABSENCE.

I'LL REMEMBER MORE STUFF NEXT TIME.

>> BOARD SECRETARY: WE DO TAKE A VOTE FOR ADJOURNMENT. MOTION AND A SECOND.

>> S. O'KEEFE: THAT IS NEW.

COMMISSIONER GAFFNEY.

>> MOTION TO ADJOURN.

>> S. O'KEEFE: COMMISSIONER KIM.

>> SECOND.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND.

DO WE HAVE TO DO A ROLL CALL?

>> BOARD SECRETARY: YOU CAN ALL -- I THINK WE HAVE TO VOTE.

I WOULD SAY RAISE YOUR HANDS BUT WE DON'T HAVE EVERYONE ON  
CAMERA EITHER.

WE'LL GO QUICK.

COMMISSIONER GAFFNEY.

BOARD MEMBER GAFFNEY.

>> YES.

>> BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER HAUSER.

>> YES.

>> BOARD MEMBER THOMPSON.

>> YES.

>> BOARD MEMBER OLSON.

>> YES.

>> BOARD MEMBER DUFFY.

>> YES.

>> BOARD MEMBER KIM.

>> YES AND THANK YOU AGAIN, LESLIE.

>> YOU'RE WELCOME, THANK YOU AND VICE CHAIR O'KEEFE.

>> S. O'KEEFE: YES AND THAT WAS ABSURD.

NEXT TIME WE'LL DO IT BY AFFIRMATION.

GOOD-BYE EVERYONE.

WELCOME BOARD MEMBER THOMPSON AND GOOD-BYE EVERYONE .

>> BYE , THANK YOU .

>> GOOD-BYE .

**RENA RICKLES**  
*Attorney at Law*

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1970 BROADWAY, SUITE 1200  
OAKLAND, CA 94612  
TEL: (510) 452-1600 - FAX: (510) 451-4115  
EMAIL: rena@rickleslaw.com

April 26, 2021

Mayor Jesse Arreguin  
Berkeley Councilmembers  
2180 Milvia Street  
Berkeley, CA 94704

**VIA U. S. MAIL and EMAIL Clerk (City of Berkeley) /filing**  
**<rmolina@ci.berkeley.ca.us>**

Re: 1205 Peralta: Appeal of April 8, 2021 Zoning Adjustments Board ("ZAB")  
Decision

Dear Mayor Arreguin and Councilmembers:

On behalf of Cathy Nason, owner of 1205 Peralta since October, 2019, and has since, she had ownership (inherited from her late father), has been upgrading the quality of the units and the open space for her tenants, one whom is a 26-year resident, I am appealing the ZAB decision. In sum, the ZAB voted to remove [by not legalizing existing] bedrooms and require restoration of on-site parking into a garage that has not been used since 1989. <sup>1</sup>

This decision clearly is at odds with Berkeley's current housing policies, and was based on false information,

**General Grounds for Appeal**

- The evidence does not support the Findings;
- As such the Findings do not support the decision;
- And, acting as it did, the ZAB acted without or in excess of its jurisdiction.

**Statement of Facts**

When Cathy acquired 1205 Peralta, a 4-unit, rent controlled building, it needed a lot of work. She transformed the inner courtyard from a barren concrete yard to an idyllic garden (See Exhibit A, before and after of open space); and added an attractive redwood fence to provide privacy and security for her tenants. She then embarked on remodel-upgrade and small expansion plan. That proposed

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<sup>1</sup> According to the Berkeley microfiche records obtained by the then project architect.

plan was what got her to where she is now. Neighbors complained about expansions by prior owners, including her late father. The end result: remove three "extra" bedrooms; restore an inaccessible garage.

Units 2, 3 and 4 and the inaccessible garage are the subject of this appeal.

Unit #2 (upstairs rear building) . Lisa Farmer, a tenant, has lived in that unit for 26 years. This writer visited Unit 2 and spoke with Lisa. It is clearly a 2-bedroom apartment, with a small living room and kitchen. Based on kitchen appliances and cabinets, this unit was built in the late forties. The ZAB decision requires that the living room be counted as a bedroom, and removed, essentially transforming Unit 2 into a dormitory.

Unit # 3. A one-bedroom, with a living room area and a kitchen. It has been rented since February. The living room was created out of a tiny one-bedroom and part of the unused and inaccessible garage. The ZAB decision requires that the living room be removed <sup>2</sup> and returned to a garage use by slicing off the living room to re-create a garage space. The tenant's only common area would then be an 8'4" wide corridor running from the front door to the kitchen

Unit # 4: It is now a 3-bedroom unit without any common area, except the kitchen. It is Applicant's intention to convert the second of the disallowed bedrooms into a living room to create a common space gathering area.

**The ZAB's Decisions of Denial, Based on Incorrect Information Requires the Removal of Three Existing "Bedrooms" to Reduce On-Site Density, and Restoration of a Garage. It Should Be Overturned.**

**Incorrect or Misleading Information, which was Material to the Decision was Presented to the ZAB.**

- Witnesses falsely described 1205 as the densest, with the least open space of any property on the lot. (See Exhibit B. Vicinity Map; Overhead View)
- Staff overcounted the number of existing bedrooms by 3: In Unit 2, Staff designated the living room and dining room as bedrooms. In Unit 3, Staff designated the living room as a bedroom. These rooms are being used as common area rooms and should not be counted as bedrooms unless one assumes that one enters their apartments directly into a bedroom.
- On-street parking was incorrectly described as heavily impacted. A parking study will show, even during Covid, many on-street available parking spaces
- Unit 3 was erroneously labeled as unoccupied (unfortunately by Applicant's Architect.

**The Findings to Deny the Variance to Legalize the "Conversion" of On-Site Garage Cannot Be Factually Sustained.**

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<sup>2</sup> Staff has labeled this living room as one of the three disallowed bedrooms.



True, at one time there had been a “2-car garage” on site. Part of that garage was converted to living space at least as early as 1989; the remainder, in 2020. However, based on the site plan, there no way that this structure could ever have functioned as a garage:

The driveway from the street to the garage is 6’8””; this is 2’ narrower than City of Berkley minimum allowable driveway width <sup>3</sup>, and impassable by most cars.

The curve radius for a car to enter or exit the garage, cannot be met. <sup>4</sup>

A car cannot back out of either of the spaces without running over and into the mandated “green” open space; the amount of green space on this property is already below standard.

On these facts the Variance Findings for Denial cannot be made; <sup>5</sup> Variance Findings for Approval can be made:

1. The property is unique in that the location for the proposed parking cannot be accessed by a vehicle;
2. Most of the homes on this street also do not have onsite parking (See Exhibit B, On-site parking converted to other uses);
3. The parking study will show that there is ample vacant street parking; there are many AC Transit buses within a block of this property.

## CONCLUSION

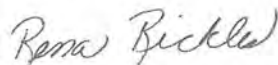
When Cathy Nason inherited 1205 Peralta Avenue, she inherited a property that had not been cared for many years, and a lot of pent-up neighborhood aggravation. Since she took ownership, she has improved the aesthetics of the open space, upgraded a unit, and but for this ZAB decision, would be upgrading three of the units.

If this ZAB decision is not overturned, there will less places for people to live, and an 18’ X 20” section of the property wasted because it cannot be used for anything but inaccessible unusable vehicular parking.

Therefore, we ask that you GRANT this appeal.

We thank you in advance for your time and courtesy in this matter.

Very truly yours,



RENA RICKLES

## Attachments:

<sup>3</sup> City of Berkeley, Parking and Driveway Design Guidelines for residential driveways over 31’ in length.

<sup>4</sup> City of Berkeley Basic Parking Requirements, 21’ minimum for backing out.

<sup>5</sup> Formal Variance Findings for Approval will be submitted by the time of the Hearing; however, the same facts that bar a finding of denial are, in fact, the findings for approval.

The following table shows the results of the analysis of the data for the period from 2010 to 2014. The results show that the number of parking spaces is generally sufficient to meet the demand for parking spaces. However, there are some areas where the number of parking spaces is insufficient. The results also show that the number of parking spaces is generally sufficient to meet the demand for parking spaces. However, there are some areas where the number of parking spaces is insufficient. The results also show that the number of parking spaces is generally sufficient to meet the demand for parking spaces. However, there are some areas where the number of parking spaces is insufficient.

# Exhibit A

## CONCLUSION

The results of the study show that the number of parking spaces is generally sufficient to meet the demand for parking spaces. However, there are some areas where the number of parking spaces is insufficient. The results also show that the number of parking spaces is generally sufficient to meet the demand for parking spaces. However, there are some areas where the number of parking spaces is insufficient. The results also show that the number of parking spaces is generally sufficient to meet the demand for parking spaces. However, there are some areas where the number of parking spaces is insufficient.



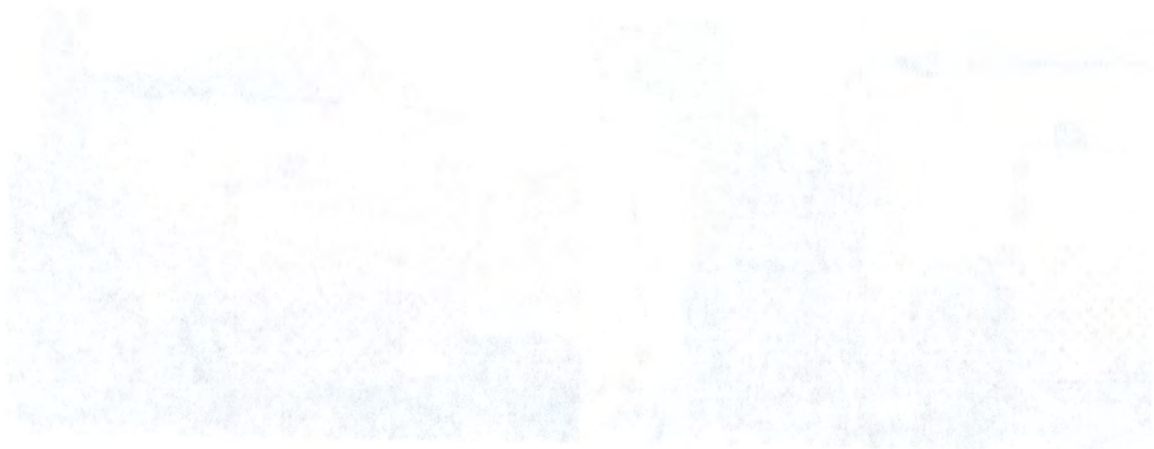


Courtyard – BEFORE

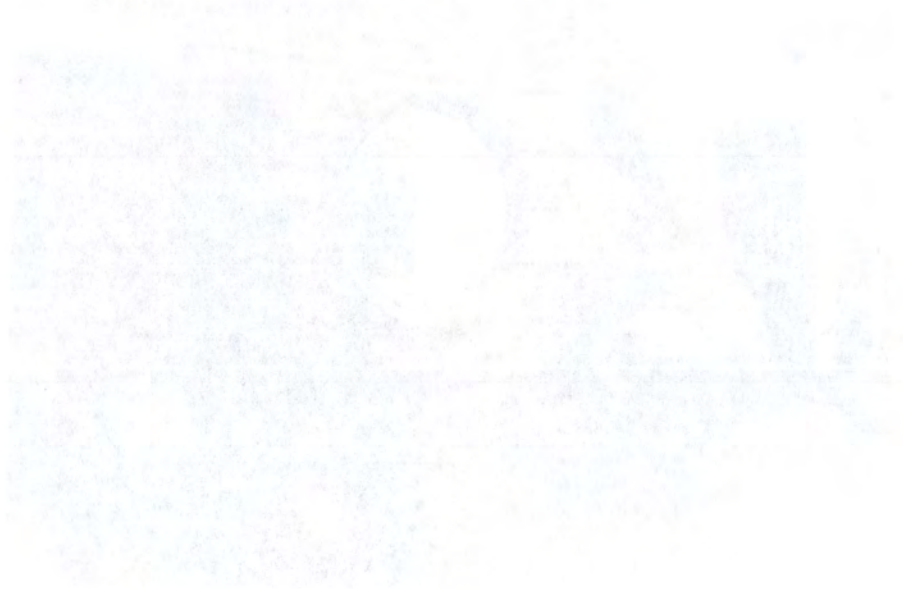


Courtyard - AFTER

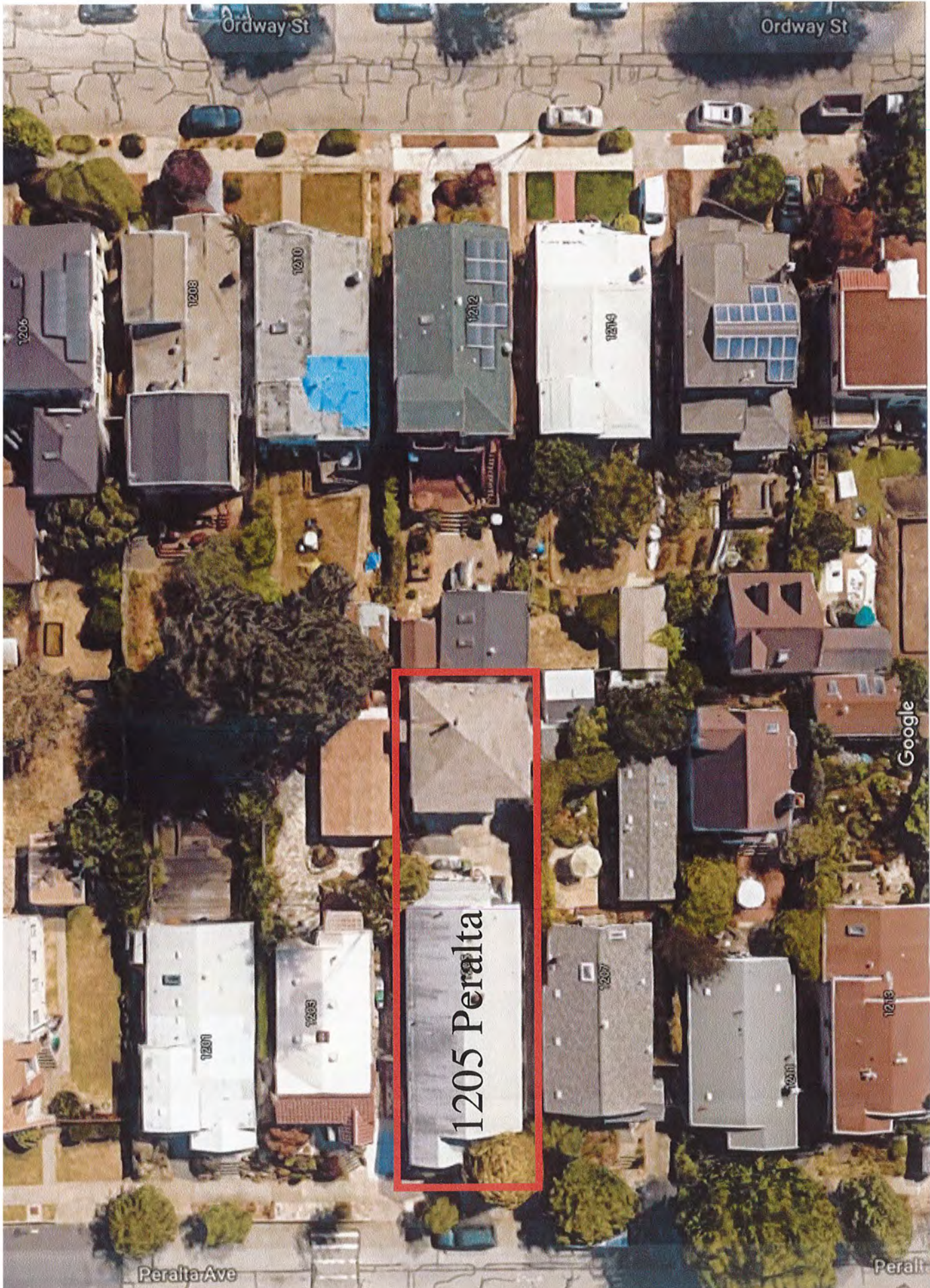




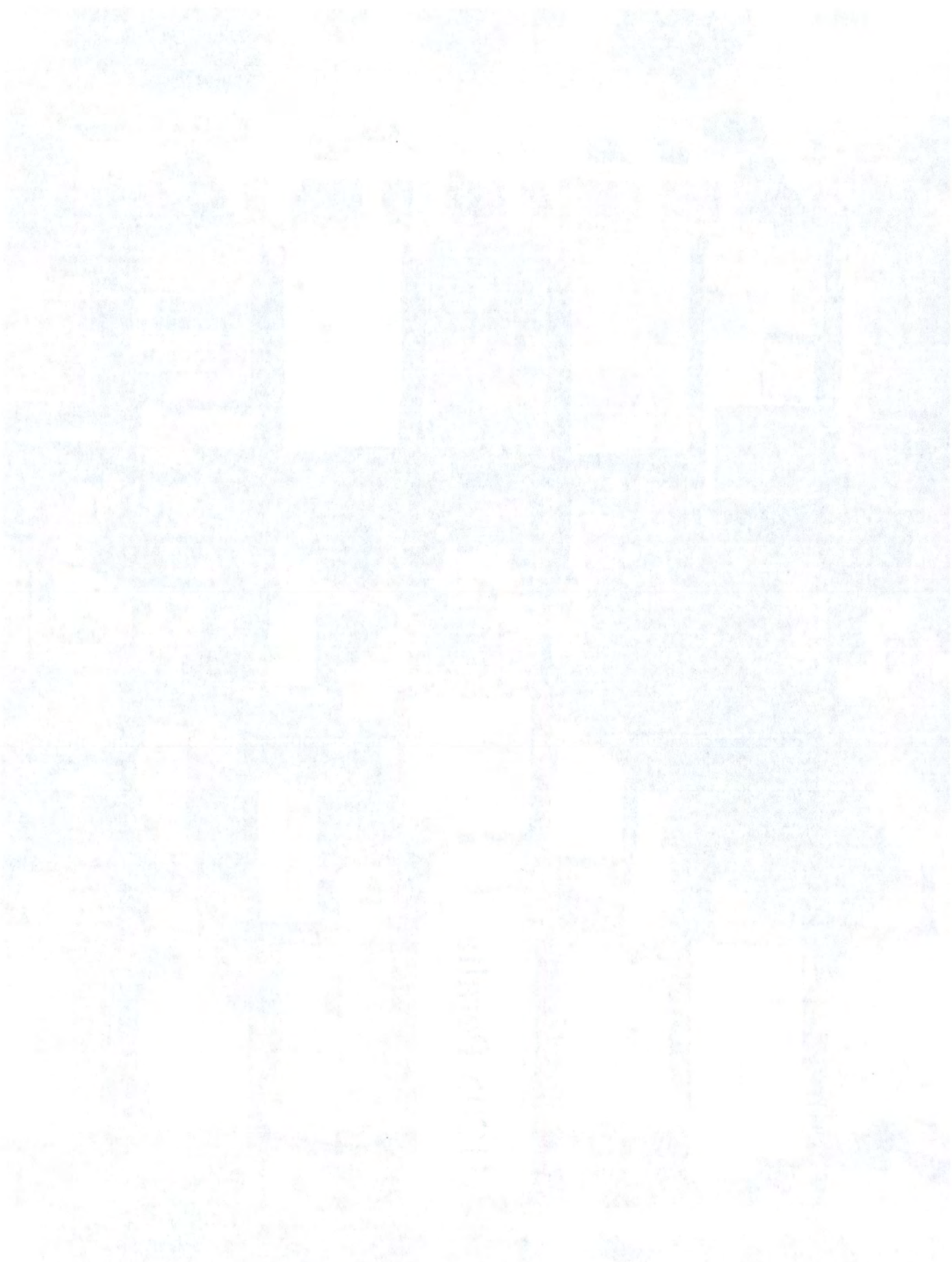
# Exhibit B

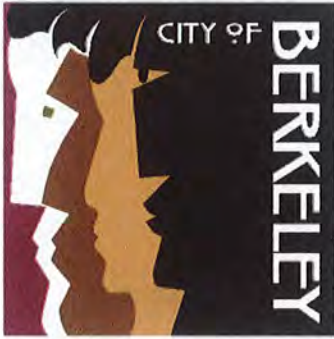












Z O N I N G  
A D J U S T M E N T S  
B O A R D  
NOTICE OF DECISION

DATE OF BOARD DECISION: April 8, 2021

DATE NOTICE MAILED: April 13, 2021

APPEAL PERIOD EXPIRATION: April 27, 2021

EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)<sup>1</sup>: May 5, 2021

## 1205 Peralta Avenue

Variance/Use Permit #ZP2020-0060 to eliminate two required off-street parking spaces by legalizing conversion of an existing 18 ft. x 20 ft. garage to habitable space and Use Permit to legalize the addition of bedrooms six through eight on a parcel that is non-conforming for density, lot coverage, setbacks, usable open space and parking.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, **DENIED WITHOUT PREJUDICE** the following permits:

- Variance under [Berkeley Municipal Code](#) (BMC) Section 23B.44.030.B to eliminate required parking.
- Use Permit, under BMC Section 23C.04.070.C, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable lot coverage.
- Use Permit, under BMC Section 23C.04.070.E, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable density.
- Use Permit under BMC Section 23D.20.050.A to legalize the sixth, seventh and eighth bedrooms on the lot.

**ZONING:** R-1A – Limited Two-Family Residential District

**APPLICANT/OWNER:** Teresa Cambare & Cathy Nason, P.O. Box 142, Inverness, CA 94937

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt pursuant to Section 15301 “Existing Facilities”) of the CEQA Guidelines.

<sup>1</sup> Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*



**FINDINGS FOR DENIAL ATTACHED**

|                    | <b>Yes</b> | <b>No</b> | <b>Abstain</b> | <b>Absent</b> |
|--------------------|------------|-----------|----------------|---------------|
| DUFFY              | X          |           |                |               |
| KAHN               |            |           |                | X             |
| KIM                | X          |           |                |               |
| O'KEEFE            | X          |           |                |               |
| OLSON              | X          |           |                |               |
| HAUSER             | X          |           |                |               |
| THOMPSON           | X          |           |                |               |
| GAFFNEY            | X          |           |                |               |
| TREGUB             | X          |           |                |               |
| <b>BOARD VOTE:</b> | <b>8</b>   | <b>0</b>  | <b>0</b>       | <b>1</b>      |



**ATTEST:**  
Leslie Mendez, Zoning Adjustments Board  
Secretary

**PUBLICATION OF NOTICE:**

Pursuant to BMC Section 23B.32.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7419 or nkarimzadegan@cityofberkeley.info. All project application materials, including full-size plans, may be viewed online at <https://aca.cityofberkeley.info/Community/> or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

**TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):**

Please note that the new method for appeal submittals described below have been put in place to comply with the requirements of the Shelter In Place Order and shall be effective for the duration of Shelter In Place requirements.

Mail your complete appeal to the City Clerk Department, 2180 Milvia Street, Berkeley, CA 94704 with payment of fees by check or money order included. Appeals submitted by mail must be



postmarked on or before the deadline date for filing the appeal.

- A. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- B. The fee for all appeals by Applicants is \$2,500.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

### **NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.



## ATTACHMENT 1

## FINDINGS FOR DENIAL

APRIL 8, 2021

**1205 Peralta Avenue**

**Variance/Use Permit #ZP2020-0060 to eliminate two required off-street parking spaces by legalizing conversion of an existing 18 ft. x 20 ft. garage to habitable space and Use Permit to legalize the addition of bedrooms six through eight on a parcel that is non-conforming for density, lot coverage, setbacks, usable open space and parking.**

**PERMITS REQUIRED**

- Variance under [Berkeley Municipal Code](#) (BMC) Section 23B.44.030.B to eliminate required parking.
- Use Permit, under BMC Section 23C.04.070.C, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable lot coverage.
- Use Permit, under BMC Section 23C.04.070.E, for additions or enlargements to lawful non-conforming structures that are non-conforming by exceeding the maximum allowable density.
- Use Permit under BMC Section 23D.20.050.A to legalize the sixth, seventh and eighth bedrooms on the lot.

**I. VARIANCE FINDINGS FOR DENIAL**

Pursuant to Berkeley Municipal Code Section 23B.44.030.B, the City cannot make the findings required by Berkeley Municipal Code Section 23B.44.030.A, and therefore must deny the Variances to eliminate the two existing required off-street parking spaces on the lot by conversion of garage to habitable space;

- i. *There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District:*

The applicant has provided no evidence, nor can staff find evidence of circumstance or conditions that apply to the land, building or use which do not generally apply to land buildings and/or uses in the same District. Neither the nonconforming use of the lot nor illegal conversion of garage is considered unique or otherwise exceptional or extraordinary. Similarly, due to the age of buildings and the various changes made over time to the Zoning Ordinance, many buildings and sites are non-conforming in this District to varying degrees, including the subject site. This finding cannot be made.

- ii. *The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner:*

The applicant has not provided evidence that the use of the property with its unpermitted condition is necessary for the preservation and enjoyment of substantial property rights. In fact, the property owners purchased, and have managed, a property with four lawful, rental dwelling units for several years. This finding cannot be made.



- iii. *The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole:*

The illegal conversion of the existing garage has eliminated the two available and required off-street parking spaces on the site. Staff has received correspondence from the neighbors stating that the lack of parking spaces on the subject lot puts an additional burden on street parking which is already strained. This finding cannot be made because eliminating the two parking spaces will adversely impact the improvements in said neighborhood as it impacts on-street parking for this over-densified site for the neighborhood and the tenants.

In conclusion, the required Variances to approve the illegal dwelling cannot be made as there is no exceptional circumstance on the property (Finding 1), the variance is not necessary for the preservation of substantial property rights (Finding 2), and the project would be generally detrimental (Finding 3).

## **II. ADDITION OF BEDROOMS FINDINGS FOR DENIAL**

Pursuant to BMC Section 23D.20.050.A, the addition of more than five bedrooms on the parcel requires the approval of a Use Permit. Specifically, the Board is unable to make the required “non-detriment” findings pursuant to BMC Section 23B.32.040 that there would not be a substantial impact to the “health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City because:

Pursuant to BMC Section 23D.20.050.A, the Zoning Adjustments Board finds that the addition of the sixth, seventh and eighth bedrooms is over intensification of this substandard size lot. Two illegal bedrooms have been added to Unit 2 leaving no common space for this unit and one bedroom is created through illegal conversion of the garage for a total of three additional bedrooms on this lot. Additionally, this property only provides about 458 sq. ft. of usable open space with no off-street parking spaces. Although staff considers residential density per dwelling, the addition of bedrooms will increase number of residents on the project and, therefore, increase the intensity of use. Therefore, the addition of three bedrooms, will not support the residential use on the parcel, is not consistent with the purposes of the R-1A District and would be considered detrimental.



The existing zoning requirements in effect at the time of the application of a building... The applicant is requesting a variance to allow for the construction of the building... The applicant is requesting a variance to allow for the construction of the building...

The final conversion of the existing garage was eliminated the two stories and required off... The applicant is requesting a variance to allow for the construction of the building... The applicant is requesting a variance to allow for the construction of the building...

In conclusion, the applicant requests to approve the illegal, existing zoning variance... The applicant is requesting a variance to allow for the construction of the building... The applicant is requesting a variance to allow for the construction of the building...

**II. ADDITION OF BEDROOMS FINDINGS FOR DENIAL**

Pursuant to BMC Section 23D.20.050 A, the addition of more than two bedrooms on the parcel... The applicant is requesting a variance to allow for the construction of the building... The applicant is requesting a variance to allow for the construction of the building...

Pursuant to BMC Section 23D.20.050 A, the zoning requirements for a three story building... The applicant is requesting a variance to allow for the construction of the building... The applicant is requesting a variance to allow for the construction of the building...



Index &  
Administrative Record  
ZAB Appeal: 1205  
Peralta Avenue

These attachments are on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL  
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

**ZAB APPEAL: 1205 PERALTA AVENUE, USE PERMIT #ZP2020-0060**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, OCTOBER 12, 2021 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to deny Zoning Permit #ZP2020-0060 for a Variance to legalize the elimination of two off-street parking spaces by conversion of an existing 18 foot x 20 foot garage to habitable space, and a Use Permit to legalize the addition of three bedrooms on a lot that is non-conforming for density, lot coverage, setbacks, usable open space and parking.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **SEPTEMBER 30, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Nilu Karimzadegan, Project Planner at (510) 981-7419, or [nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

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Mark Numainville, City Clerk

Mailed: September 28, 2021

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

*If you challenge the above in court, you may be limited to raising only those issues you or someone*

*else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*



## REVISED AGENDA MATERIAL

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

### SUMMARY

At its April 7, 2021 meeting, Planning Commission recommended that the maximum height of ADUs be increased to 18 feet. The Zoning Ordinance amendment initially submitted with this staff report would limit the maximum height of an ADU located in the Hillside Overlay or the Environmental Safety (ES-R) zoning districts to 16 feet. The supplemental material updates the draft Zoning Ordinance amendment (Attachment), permitting a maximum height of 18 feet for all new ADUs city-wide, to more accurately reflect the Planning Commission's recommendation.

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24  
Accessory Dwelling Units**

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

[23C.24.040](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.050](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.060](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.070](#) ~~Repealed by Ord. 7683-NS.~~

**23C.24.010 Applicability of Regulations**

~~The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.~~

- A. ~~The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~
- B. ~~ADUs and JADUs are allowed on lots as follows:~~
- ~~1. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.~~
  - ~~2. One ADU is allowed on a lot with multiple Single Family Dwellings.~~
  - ~~3. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:~~
    - ~~a. Up to two detached ADUs; or~~
    - ~~b. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.~~
  - ~~4. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~

### 23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

### 23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2](#) and [65852.22](#).~~

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

### 23C.24.040 Special Provisions Development Standards

~~Repealed by Ord. 7683-NS.~~

- A. Development Standards in Paragraphs B through G, below, apply as follows:
  - 1. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section [23E.04.030](#).
  - 2. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
    - a. An ADU created entirely within an existing Single Family Dwelling.
    - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
    - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
    - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
  - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
  - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
  - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
4. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the **maximum size and setback** requirements of Government Code section 65852.2(e)(1).
5. A JADU is subject to applicable Development Standards in Paragraphs B and G.

**B. Maximum Size**

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
  - a. 850 square feet for a studio or one-bedroom ADU.
  - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure that does not conform to the Development Standards in Paragraphs C and D may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
  - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
  - b. 850 square feet for a studio or one-bedroom ADU; or
  - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

**C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.**

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.



- D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.
- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.
- G. Parking
  - 1. Off-street parking is not required.
  - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- H. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- I. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

**23C.24.050 Development Standards Special Provisions**

~~Repealed by Ord. 7683-NS.~~

- A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.
- B. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- C. The property owner shall file a deed restriction with the County Recorder providing that:
  - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
  - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

~~**23C.24.060 Modification of Development Standards with an Administrative Use Permit**~~

~~Repealed by Ord. 7683-NS.~~

~~**23C.24.070 Findings**~~

~~Repealed by Ord. 7683-NS.~~

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

**Accessory Dwelling Unit (ADU):** A secondary Dwelling Unit that is located on a lot ~~with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements ~~unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22~~ and provide the following features independent of the Single Family Dwelling, ~~Duplex, Multiple Dwelling Use, or Group Living Accommodation~~: 1) exterior ~~or independent~~ access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

~~**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.~~

~~**Junior Accessory Dwelling Unit (JADU):** A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.~~

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Manager

PUBLIC HEARING

October 12, 2021

*(Continued from September 28, 2021)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jordan Klein, Director, Planning and Development Department  
Subject: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.

SUMMARY

This report responds to a City Council referral from January 26, 2021, which requested a new local ADU Ordinance to provide public safety measures as allowed by State ADU law [Government Code Sections 65852.2 and 65852.22]. This report also provides background on State ADU regulations, explains where jurisdictions have flexibility to adopt local ordinances, and outlines the proposed Zoning Ordinance amendments recommended by Planning Commission for adoption by Council.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

A local ADU Ordinance is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city. Over the past five years, Berkeley has adopted three comprehensive ADU Ordinance amendments in order to maintain compliance with changing State ADU law. The most recent round of State regulations, which came into effect on January 1, 2020, replaced Berkeley's ADU Ordinance and significantly reduced jurisdictions' abilities to regulate ADU development.

**State ADU Law**

ADUs are recognized as low cost, low impact, infill development. As such, they provide much needed housing to the community. State law mandates a streamlined, ministerial permit process that removes barriers to ADU development. State law requires all

jurisdictions to issue ministerial or “by-right” building permits for ADUs in accordance with the regulations listed below. Jurisdictions can develop more lenient local ordinances to encourage ADU development but they cannot be more restrictive nor limit ADU development.

- Issue over-the-counter building permits for ADUs that comply with State regulations.
- Apply the following development standards:
  - Maximum size of no less than 800 to 1200 square feet (allowable scenarios are discussed below);
  - Maximum height of no less than 16 feet; and
  - Rear and side setbacks of no more than 4 feet.
- Allow at least one ADU on every lot that has an existing or proposed dwelling unit. More specifically, allow:
  - One ADU and one JADU on a lot with a Single Family Dwelling.
  - One ADU on a lot with multiple Single Family Dwellings.
  - At least two detached or at least one interior ADU on a lot with a Duplex or a Multifamily Dwelling or a mixed-use project.
- Allow ADUs created by conversions or re-construction of existing buildings or structures (such as garages and sheds) on a lot, even if existing structures don't conform to maximum size, maximum height and required setback (mentioned above) for ADUs.
- Require fire sprinklers only if the primary dwelling unit(s) has or requires fire sprinklers.
- Do not require off-street parking for the ADU if within a half-mile of public transit.
- Do not require off-street parking for the primary dwelling unit if the proposed ADU requires removal of existing off-street parking.
- Do not require owner occupancy of ADUs or associated primary dwelling units except in the case of a JADU, where an owner must live in either the primary unit or the JADU.
- Do not allow short term rentals of ADUs.

There are additional regulations in State law that dictate how ADUs can be created (e.g., by conversion, by new construction, by addition to existing structures), where they can be created (e.g., attached to primary dwelling units, within the walls of an existing structure, free-standing on a lot), and when and how fees can be assessed. In order to communicate the nuances of State ADU law, the Planning Department prepared a table of State ADU regulations (see Attachment 2). In the absence of a local ADU Ordinance, Berkeley has been and will continue to issue building permits for ADUs according to the State's regulations.

## **Public Safety**

In previous versions of Berkeley's ADU Ordinance, the City took steps to ensure public safety in fire-prone areas such as the Environmental Safety Residential district (Berkeley's Fire Zone 3) and lots with frontage on narrow roads in the Hillside Overlay district (Berkeley's Fire Zone 2). See Attachment 3 for a map of Berkeley's Fire Zones.

In previous iterations of the ADU Ordinance, the City addressed safety concerns by requiring an Administrative Use Permit (AUP) in Fire Zones 2 and 3 with required findings for minimum fire safety requirements. An AUP is a discretionary permit that allows public review and evaluations by staff in the Planning Department. This involves consultation with other departments, including the Fire Department, to identify detrimental impacts of projects and require mitigation measures, such as requiring fire sprinklers, adjusting the location of the ADU on the lot, and/or requiring off-street parking.

New State ADU regulations require the City to issue over-the-counter building permits for ADUs, removing the City's authority to require discretionary permits, such as AUPs. Recognizing public safety issues in Berkeley's most severe fire hazard districts, the City prohibited ADUs in Fire Zones 2 and 3 via an Urgency Ordinance adopted in December 2019 and extended in January 2020. This prohibition was rescinded in September 2020, when the California Department of Housing and Community Development (HCD) published guidance on State ADU law (see Attachment 4) stating that geographic prohibitions for public safety reasons could not be exercised through land use regulation. Guidance from the State clarified that public safety measures are only available through local amendments to the Fire Code, which limits the range of measures that can be utilized, particularly regarding the location of the unit and the provision of off-street parking.

To address this, City Council referred to the City Manager amendments to the Zoning Ordinance and the Fire Code aimed at reducing impacts of additional density in Fire Zones 2 and 3. The Disaster and Fire Safety Commission (DFSC) made separate recommendations to City Council in a Memorandum submitted on March 24, 2021 that addresses emergency access and egress impacts of on-street parking and fire sprinkler requirement. The Planning Commission is recommending modifications to development standards to limit ADU size and ADU placement in these areas.

### **Options for a Local ADU Ordinance**

State law establishes a maximum size for all ADUs at 1,200 square feet, which can be reduced in a local ordinance to 850 square feet if designed as a studio or one-bedroom and 1,000 square feet if designed with two or more bedrooms<sup>1</sup>.

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<sup>1</sup> ADUs created by conversion of an existing building or structure (e.g. conversion of an attic or basement, conversion of a detached garage) can exceed maximum size requirements per State law. ADUs created in this manner are allowed no more than a 150 square foot addition, intended for ingress and egress.

State law also provides that the local development standards of underlying zoning districts do not apply to ADUs unless explicitly codified in a local ADU ordinance, and only for particular elements such as usable open space, lot coverage, front yard setbacks and design criteria, as long as these standards do not make ADU development “infeasible.” In other words, local ordinances must allow for an ADU of 800 square feet, with a height of 16 feet and side and rear setbacks of 4 feet, on all lots zoned for residential use with at least one proposed or existing dwelling unit, even if the project does not comply with objective development standards in the local ADU ordinance.

### **Planning Commission Recommendation**

On January 26, 2021 City Council referred to the City Manager development of Zoning Ordinance amendments and Fire Code amendments that address emergency access and egress challenges created by new State ADU laws (see Attachment 5). Requested amendments to the Zoning Ordinance involve limitations on the base maximum size of an ADU and required compliance with objective development standards such as front yard setbacks, open space and/or lot coverage.

On April 7, 2021, Planning Commission discussed amendments that responded to Council’s short-term referral. At that meeting, Planning Commission discussed State ADU regulations and focused on allowable modifications to ADU size and height limits. Planning Commission unanimously voted to recommend a set of Zoning Ordinance amendments that update BMC Chapter 23C.24 [Accessory Dwelling Units] and related definitions in BMC Chapter 23F.04 [Definitions] (see Attachment 1). The proposed Zoning Ordinance amendments provide a new ADU Ordinance that is intuitive and written with language that is clear and easy to understand. The bullets below provide rationale where elements of the proposed ordinance are more lenient than State ADU law or involve a level of complexity that benefits from explanation:

- ***The Maximum Size:*** The referral asks that Berkeley implement size restrictions on ADUs. With no local ordinance, ADUs with a maximum size of 1200 square feet are allowed by State law. **The proposed ADU Ordinance allows a maximum size of 850 square feet for studio and one-bedroom ADUs and 1000 square feet for ADUs with two or more bedrooms. Maximum size is further limited to 800 square feet if a project is located in Fire Zones 2 or 3 or if a project cannot meet front yard setbacks.**
- ***Maximum Height:*** State law allows a maximum height of 16 feet for ADUs. **The proposed ADU Ordinance allows an 18-foot maximum height** to allow flexibility in ADU design. An 18-foot structure can accommodate two stories, thereby resulting in a possible 50% reduction in building footprint. Planning Commission’s recommendation helps achieve the referral’s goals of preserving open space and minimizing lot coverage, and providing flexibility in design.

- ***Objective Development Standards:*** The referral asks that Berkeley introduce objective standards for open space and lot coverage to control the maximum size of ADUs. Size controls were requested to ensure lots with ADUs maintain space for emergency access and egress in the event of a disaster. Instead of using open space and lot coverage as metrics, **the proposed ADU Ordinance uses a limit in the number of bedrooms (as explained above) and the location of the lot in Fire Zones 2 and 3 to control ADU size.** The proposal to use the location of lots in State-designated fire-prone area as an objective standard is a simple and intuitive way to limit ADU size for public safety reasons. This eliminates the need to calculate open space and/or lot coverage for proposed projects and provides a direct connection between fire-safety concerns and infill development.
- ***Setbacks:*** The referral asks that Berkeley introduce objective standards to provide guidance on setbacks. State law explicitly states that side and rear setback requirements can be no more than 4 feet and is silent on front yard setbacks. **The proposed ADU Ordinance utilizes setbacks of the underlying zoning district as an objective standard.**
  - The proposed ADU Ordinance is more lenient than the State if the underlying zoning district has a rear or side setback of less than four feet, such as in some mixed-use districts, where comparable accessory buildings may have a reduced setback requirement.
  - Front yard setbacks are applied in the draft ordinance as they would be in the underlying zoning district. These standards will not limit the ability for a property owner to build an ADU; instead they require objective standards for placement of the ADU. If there is no other location suited to placement of the ADU, then the maximum ADU size will be limited to minimize the impacts to the front yard.
- ***ADUs on lots with Group Living Accommodations:*** **The draft Zoning Ordinance amendments allow one ADU on lots with GLAs.** The State is silent on whether or not ADU Law applies to GLAs. Over the past year, the Zoning Officer interpreted State ADU law to extend to GLAs (excluding Fraternity Houses, Sorority Houses or Dormitories) by allowing one ADU per lot with a GLA, similar to the regulations for multifamily properties. GLAs are a common residential use in Berkeley and this interpretation is consistent with the State's direction to encourage ADU development. ADUs on lots with GLAs must not be offered for rent as an extension of the GLA, but rented as an independent unit, per State ADU law.

In addition to the items listed above, the proposed amendments include modifications to the ADU and JADU definitions to comply with State law and maintain consistency with the BMC. BMC Chapter 23C.24 is re-written to reflect the requirements of Government



Code Section 65852.2 and 65852.22 in as clear and concise a manner as possible. The proposed ADU Ordinance has been developed with feedback from members of the public, the ADU Task Force, Berkeley Planning staff, and colleagues from other jurisdictions. If City Council adopts the new ADU Ordinance, Planning staff will publish updated documentation, such as FAQs, a flow chart and a table of regulations. These will explain in non-technical language the regulations in Berkeley’s local ADU Ordinance.

**BACKGROUND**

In the past six years, Berkeley’s ADU Ordinance has been modified multiple times to conform to State law and to facilitate the construction of ADUs. Prior to the latest revisions to the State’s ADU regulations, Planning Commission was considering other amendments to the local ADU Ordinance to facilitate the construction of ADUs. However, State law that came into effect on January 1, 2020 requires increased flexibility, has rescinded the AUP process for ADUs, and streamlined the ADU permitting process significantly. In addition, the number of building permits issued for ADUs in Berkeley has increased steadily over the past five years, as illustrated in Table 1. For these reasons, and because of the short-term nature of this referral, the focus of this referral response is narrow and the need for additional amendments will be assessed (and implemented) as part of the Housing Element update.

**Table 1. City of Berkeley ADU Building Permits Issued, 2016-2020**

| Year | 2016 | 2017 | 2018 | 2019 | 2020 |
|------|------|------|------|------|------|
| #    | 16   | 74   | 80   | 96   | 119  |

**ENVIRONMENTAL SUSTAINABILITY**

ADUs are generally low impact infill development that have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near various community amenities, the university campus, transit services and employment opportunities.

**RATIONALE FOR RECOMMENDATION**

State ADU law restricts the City from utilizing discretionary processes that mitigate public safety concerns associated with infill development. Ordinance amendments reduce ADU footprints, which will increase the possibility of better ingress, egress and emergency access in the event of a disaster.

**ALTERNATIVE ACTIONS CONSIDERED**

Council could take no action and continue to utilize State ADU regulations, with no local modifications.

**CONTACT PERSON**

Alene Pearson, Principal Planner, Planning & Development Department, (510) 981-7489

Katrina Lapira, Assistant Planner, Planning & Development Department, (510) 981-7488

Attachments:

- 1: Ordinance
- 2: Table of State ADU Regulations
- 3: Map of Berkeley's Fire Zones
- 4: HCD's ADU Guidance Document
- 5: Council Referral from January 26, 2021
- 6: April 7, 2021 Planning Commission Meeting Final Minutes
- 7: Public Hearing Notice

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24  
Accessory Dwelling Units**

Sections:

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[23C.24.070](#) ~~Repealed by Ord. 7683-NS.~~

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~~The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.~~

- A. ~~The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~
- B. ~~ADUs and JADUs are allowed on lots as follows:~~
- ~~1. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.~~
  - ~~2. One ADU is allowed on a lot with multiple Single Family Dwellings.~~
  - ~~3. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:~~
    - ~~a. Up to two detached ADUs; or~~
    - ~~b. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.~~
  - ~~4. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~

### 23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

### 23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2](#) and [65852.22](#).~~

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

### 23C.24.040 Special Provisions Development Standards

~~Repealed by Ord. 7683-NS.~~

- A. Development Standards in Paragraphs B through G, below, apply as follows:
  - 1. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section [23E.04.030](#).
  - 2. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
    - a. An ADU created entirely within an existing Single Family Dwelling.
    - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
    - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
    - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
  - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
  - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
  - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
4. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the requirements of Government Code section 65852.2(e)(1).
5. A JADU is subject to applicable Development Standards in Paragraphs B and G.

**B. Maximum Size**

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
  - a. 850 square feet for a studio or one-bedroom ADU.
  - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure that does not conform to the Development Standards in Paragraphs C and D may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
  - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
  - b. 850 square feet for a studio or one-bedroom ADU; or
  - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

**C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.**

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

- D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.
- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.
- G. Parking
  - 1. Off-street parking is not required.
  - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- H. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- I. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

**23C.24.050 Development Standards Special Provisions**

~~Repealed by Ord. 7683-NS.~~

- A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.
- B. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- C. The property owner shall file a deed restriction with the County Recorder providing that:
  - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
  - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

~~**23C.24.060 Modification of Development Standards with an Administrative Use Permit**~~

~~Repealed by Ord. 7683-NS.~~

~~**23C.24.070 Findings**~~

~~Repealed by Ord. 7683-NS.~~

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

**Accessory Dwelling Unit (ADU):** A secondary Dwelling Unit that is located on a lot ~~with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements ~~unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22~~ and provide the following features independent of the Single Family Dwelling, ~~Duplex, Multiple Dwelling Use, or Group Living Accommodation~~: 1) exterior ~~or independent~~ access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

~~**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.~~

~~**Junior Accessory Dwelling Unit (JADU):** A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.~~

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.











**ACCESSORY DWELLING UNIT ORDINANCE SUMMARY**

Effective December 20, 2020

**Processing + Land Use Development Standards**

Ministerial land use approval for ADUs will be issued within **60-days** of receiving a **complete** building permit application.

|                                               | JADU <sup>1</sup>                                                                                                                                                                                   | ADU on LOT WITH SINGLE FAMILY DWELLING(S)                                                                                                                                                                                                                                                                                       |                                                                                                                                          |                                                                                                                                                  | ADU on LOT WITH MULTI-FAMILY DWELLING(S)                                                                                                                                                                          |                                                                                                                                          |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ADU Type</b>                               | <br><b>Conversion JADU<sup>2</sup></b><br><i>[interior conversion of some portion of a single-family dwelling]</i> | <br><b>Conversion ADU<sup>2&amp;3</sup></b><br><i>[interior conversion of existing habitable or non-habitable area within a single-family dwelling, or conversion of a legally built detached accessory structure or accessory building]</i> | <br><b>Detached ADUs</b><br><i>[new construction]</i> | <br><b>Attached ADU</b><br><i>[addition/new construction]</i> | <br><b>Conversion ADU<sup>2</sup></b><br><i>[interior conversion of existing non-habitable area of multifamily structures]</i> | <br><b>Detached ADUs</b><br><i>[new construction]</i> |
| <b>Lot</b>                                    | A JADU may be established on a lot with one single family dwelling.                                                                                                                                 | An ADU may be established on a lot that has an existing or proposed single-family or multi-family dwelling.                                                                                                                                                                                                                     |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Number of Accessory Units</b>              | 1 <sup>4</sup>                                                                                                                                                                                      | 1 <sup>5</sup>                                                                                                                                                                                                                                                                                                                  |                                                                                                                                          |                                                                                                                                                  | <u>Interior Conversion ADU</u> : At least one and no more than 25% of the existing unit count in multifamily building. <sup>6</sup><br><b>OR</b><br><u>Detached ADU</u> : 2                                       |                                                                                                                                          |
| <b>Maximum Size (Square Feet<sup>2</sup>)</b> | 500                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 1,200                                                                                                                                    | 1,200                                                                                                                                            | N/A                                                                                                                                                                                                               | 1,200                                                                                                                                    |
| <b>Maximum Height (Feet)</b>                  | N/A                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 16                                                                                                                                       |                                                                                                                                                  | N/A                                                                                                                                                                                                               | 16                                                                                                                                       |
| <b>Side Setbacks (Feet)</b>                   | N/A                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 4                                                                                                                                        |                                                                                                                                                  | N/A                                                                                                                                                                                                               | 4                                                                                                                                        |
| <b>Rear Setbacks (Feet)</b>                   | N/A                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 4                                                                                                                                        |                                                                                                                                                  | N/A                                                                                                                                                                                                               | 4                                                                                                                                        |
| <b>Entrance(s)</b>                            | Exterior entrance required.                                                                                                                                                                         | Exterior entrance required.                                                                                                                                                                                                                                                                                                     |                                                                                                                                          |                                                                                                                                                  | Independent entrance required. <sup>7</sup>                                                                                                                                                                       |                                                                                                                                          |
| <b>Kitchen</b>                                | Efficiency kitchen required. <sup>8</sup>                                                                                                                                                           | Full kitchen required. <sup>9</sup>                                                                                                                                                                                                                                                                                             |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Parking Requirements</b>                   | JADUs created in the attached garage are not subject to the same parking protections as ADUs.                                                                                                       | No parking required for ADUs. Replacement parking for existing dwelling unit(s) not required when a garage, carport, covered parking structure, or designated uncovered parking area is physically replaced by an accessory dwelling unit.                                                                                      |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Deed Restrictions</b>                      | The owner of the property must record a deed restriction to include the requirements listed in Government Sections 65852.2 and 658582.22.                                                           | The owner of the property must record a deed restriction with Alameda County that restricts the sale of the ADU from the existing dwelling unit(s) and prohibits Short Term Rentals.                                                                                                                                            |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Owner Occupancy</b>                        | Required for either single-family dwelling or JADU.                                                                                                                                                 | Not required for ADUs permitted between January 1, 2020 and January 1, 2025.                                                                                                                                                                                                                                                    |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Natural Gas Prohibition</b>                | Does not Apply                                                                                                                                                                                      | May Apply <sup>10</sup>                                                                                                                                                                                                                                                                                                         | Applies                                                                                                                                  | Does not Apply                                                                                                                                   | Does not Apply                                                                                                                                                                                                    | Applies                                                                                                                                  |
| <b>Short Term Rentals</b>                     | Prohibited                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Impact Fees</b>                            | None                                                                                                                                                                                                | ADUs Less than 750 SF- None<br>ADUs Equal to or Greater than 750 SF- Impact fees collected must be proportional to square footage of existing dwelling unit(s).                                                                                                                                                                 |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Utility Fees and Connections</b>           | No connection fee or capacity charge and no direct line required between ADU or JADU and utility unless in conjunction with a new single-family dwelling.                                           | Connection fee or capacity charge "proportionate to the burden" of the ADU and may require new or separate utility connections.                                                                                                                                                                                                 |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |

<sup>1</sup> A Junior ADU (JADU) is a small dwelling unit created from some portion of a single family dwelling. These units can have their own bathroom facilities or share with the single family dwelling.

<sup>2</sup> Conversions do not allow modifications to building footprint/ dimensions of legally built structures or buildings, except where sufficient egress and ingress requires modifications -- in which case, an expansion of up to 150 square feet is allowed for ADUs on lots with single family dwellings.

<sup>3</sup> A Conversion ADU is permitted in an existing accessory structure on both single/multi-family lot.

<sup>4</sup> Lots with multiple detached single-family dwellings may only have one ADU.

<sup>5</sup> Both a JADU and an ADU may exist on a lot zoned with one single-family dwelling.

<sup>6</sup> When calculating, round up to the nearest integer.

<sup>7</sup> Exterior entrance not required, but independent entrance (e.g. off hallway, stairwell or other common space) is required.

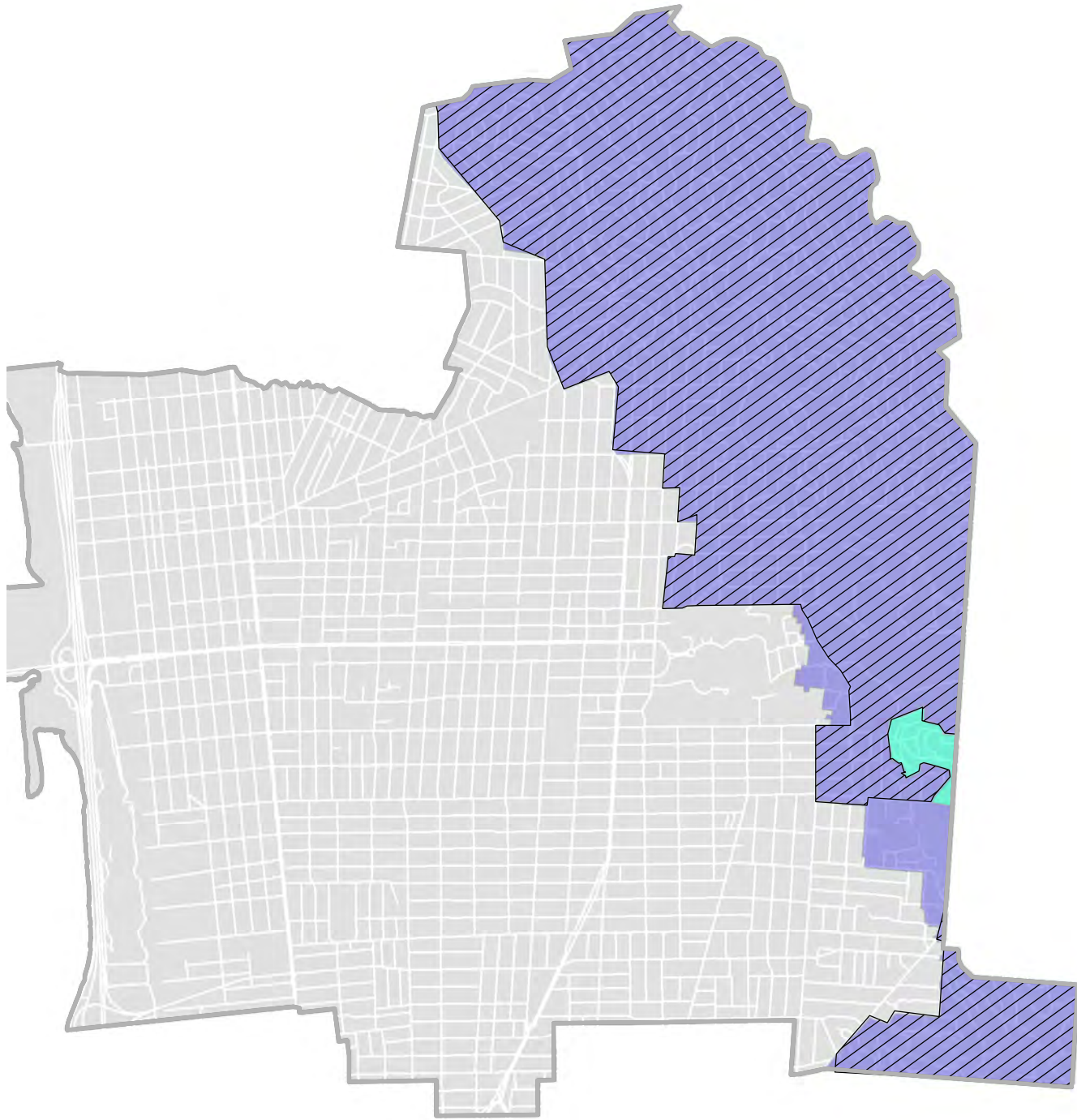
<sup>8</sup> An efficiency kitchen includes 1) a sink; 2) a cooking facility with appliances; and 3) food preparation counter and storage cabinets.

<sup>9</sup> A full kitchen requires habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.




<sup>10</sup> Conversions of detached Accessory Buildings or Accessory Structures that involve Demolition are subject to the Natural Gas Prohibition.

N/A = not applicable SF = square feet

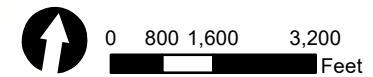
# Hillside Overlay and Fire Zones 2 and 3



## Legend

-  Hillside Overlay
-  Berkeley Fire Zone 2
-  Berkeley Fire Zone 3

Updated:  
November 14, 2019



 **CITY OF BERKELEY**  
Land Use Planning Division  
Dep.t of Planning & Development  
2120 Milvia Street, 2nd Floor  
Berkeley, CA 94704



California Department of Housing and  
Community Development

# Accessory Dwelling Unit Handbook



Where foundations begin

*Updated December 2020*





California Department of Housing and  
Community Development

# Accessory Dwelling Unit Handbook

*December 2020*



Where foundations begin

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# Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

\*\*\*\*\*

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

## **What is an ADU?**

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.



# Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

## AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.



- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

### **AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)**

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

### **AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)**

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

# Frequently Asked Questions: Accessory Dwelling Units<sup>1</sup>

## 1. Legislative Intent

### a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

### Government Code 65852.150:

(a) *The Legislature finds and declares all of the following:*

(1) *Accessory dwelling units are a valuable form of housing in California.*

(2) *Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*

(3) *Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*

(4) *Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*

(5) *California faces a severe housing crisis.*

(6) *The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*

(7) *Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*

(8) *Accessory dwelling units are, therefore, an essential component of California's housing supply.*

(b) *It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

<sup>1</sup> Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

## 2. Zoning, Development and Other Standards

### A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subs. (a)(1)(B)(i) & (a)(5).)

## B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

### C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(l) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.



- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

*Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.*

## D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

## E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

## F) Bedrooms

- **Is there a limit on the number of bedrooms?**



State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

## G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

## **H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))**

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

## I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

## J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subs. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

## K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subs. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

## L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website [www.energy.ca.gov](http://www.energy.ca.gov). You may email your questions to: [title24@energy.ca.gov](mailto:title24@energy.ca.gov), or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

### 3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

### 4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

## 5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

## 6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

## 7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

## 8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.



- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.



# Resources



**Attachment 1: Statutory Changes (Strikeout/Italics and Underline)**

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2**

**Combined changes from (AB 3182 Accessory Dwelling Units)  
and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)**

(Changes noted in ~~strikeout~~, underline/*italics*)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

**65852.2.**

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
- (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.



(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

- (i) 850 square feet.
- (ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
- (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
- (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
- (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
- (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
- (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
  - (1) The accessory dwelling unit was built before January 1, 2020.
  - (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.  
**(Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

**65852.2.**

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
  - (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
  - (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
  - (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
  - (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
  - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
  - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
  - (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
  - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
  - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
  - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
  - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
  - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
  - (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.  
(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.  
(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
  - (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
  - (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed



accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not



more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision

(b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home-~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 3182 (Ting)):

**4740.**

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

**4741.**

*(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.*

*(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.*

*(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a*

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code is was amended to read (AB 68 (Ting)):  
**65852.22.**

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

**17980.12.**

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.



**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2  
AB 587 Accessory Dwelling Units**

Effective January 1, 2020 Section 65852.26 is was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

**65852.26.**

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
  - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
  - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
  - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
  - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

- (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
- (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1  
AB 670 Accessory Dwelling Units**

Effective January 1, 2020, Section 4751 is was added to the Civil Code, to read (AB 670 (Friedman)):

**4751.**

- (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6**

**AB 671 Accessory Dwelling Units**

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

**65583(c)(7).**

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is was added to the Health and Safety Code, to read (AB 671 (Friedman)):

**50504.5.**

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

## Attachment 2: State Standards Checklist

| YES/NO | STATE STANDARD*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | GOVERNMENT CODE SECTION             |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
|        | Unit is not intended for sale separate from the primary residence and may be rented.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 65852.2(a)(1)(D)(i)                 |
|        | Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 65852.2(a)(1)(D)(ii)                |
|        | The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.                                                                                                                                                                                                                                 | 65852.2(a)(1)(D)(iii)               |
|        | Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.                                                                                                                                                                                                                                                                                                                                                                               | 65852.2(a)(1)(D)(iv), (c)(2)(B) & C |
|        | Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 65852.2(a)(1)(D)(v)                 |
|        | Passageways are not required in conjunction with the construction of an accessory dwelling unit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 65852.2(a)(1)(D)(vi)                |
|        | Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. | 65852.2(a)(1)(D)(vii)               |
|        | Local building code requirements that apply to detached dwellings are met, as appropriate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 65852.2(a)(1)(D)(viii)              |
|        | Local health officer approval where a private sewage disposal system is being used, if required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 65852.2(a)(1)(D)(ix)                |
|        | Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.                                                                                                                                                                                                                                                                                                                                                                         | 65852.2(a)(1)(D)(x)(I)              |



## Attachment 3: Bibliography

### [ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

### [THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)  
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

### [SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)  
UC Berkeley: IURD  
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

### [RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)  
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer  
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)  
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes. In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)  
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

**ANNOTATED AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, January 26, 2021**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
 DISTRICT 2 – TERRY TAPLIN  
 DISTRICT 3 – BEN BARTLETT  
 DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
 DISTRICT 6 – SUSAN WENGRAF  
 DISTRICT 7 – RIGEL ROBINSON  
 DISTRICT 8 – LORI DROSTE

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.*

*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87354849181>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 873 5484 9181. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Council Consent Items

10. **Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council** (*Continued from November 10, 2020*)  
**From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor)**  
**Recommendation:** Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.  
**Financial Implications:** \$40,000  
 Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110  
**Action:** Approved recommendation revised to be a referral to the FY 2022 budget process.
11. **Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code**  
**From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1 to the report). Recommendations to Additional Objective Development Standards in Zones 2 and 3:  
 -Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet. -Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district.  
 Recommendations to amend the Fire Code: -Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population. -Require sprinklers in new construction, consistent with local Fire Code. - Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.  
**Financial Implications:** Staff time  
 Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160  
**Action:** Approved recommendation revised to add the underlined phrase, “...and objective development standards for ADUs in all districts with expedited consideration to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.”



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
APRIL 7, 2021**

The meeting was called to order at 7:02 p.m.

**Location:** Virtual meeting via Zoom

**1. ROLL CALL:**

**Commissioners Present:** Janis Ching, Barnali Ghosh, Savlan Hauser, Robb Kapla, Shane Krpata, Christine Schildt, Jeff Vincent, and Brad Wiblin.

**Commissioners Absent:** Benjamin Beach and Mary Kay Lacey.

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, Steve Buckley, Chris Jensen, Paola Boylan, and Kieron Slaughter.

**2. ORDER OF AGENDA:** No changes.

**3. PUBLIC COMMENT PERIOD:** 1

**4. PLANNING STAFF REPORT:**

- Please refer to information items.

**Information Items:**

- City Council – Objective Standards Recommendations for Density, Design and Shadows
- City Council – Initiation of Public Process and Zoning Concepts for 2023-2031 Housing Element

**Communications:**

- March 30 – CA Department of Food and Agriculture – Cannabis Appellations Program
- March 31 – Business Owner – Berkeley Marina Kosher Market

**Late Communications:** *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

**5. CHAIR REPORT:**

- None.

**6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- BART Community Advisory Group (CAG) – Held a meeting on March 22 to further the discussion about the vision and priorities document. A draft zoning document is now available for public review on the CAG website. The next meeting will be about access planning to the respective BART sites.

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wiblin/Krpata) to approve the Planning Commission Meeting Minutes from March 17, 2021, with incorporated amendments to lines 82 and 90.

Ayes: Ghosh, Hauser, Kapla, Krpata, Schildt, and Wiblin. Noes: None. Abstain: Vincent and Ching. Absent: Beach. (6-0-2-1)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING:**

- May 5
  - Re-zone of Parcels to Commercial Adeline Corridor (C-AC)
  - Presentation on City-Wide Affordable Housing Requirements by Rick Jacobus

**AGENDA ITEMS**

**9. Action: Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety Concerns**

Staff shared the proposed amendments to the local ADU Ordinance in response to the Council's Short Term referral. The proposed amendments focused on codifying State ADU regulations and modifications to ADU size and front yard setbacks to address public safety concerns. Commission discussion focused primarily on clarification of State ADU law and options for local changes to ADU size, setbacks, height and neighbor noticing. An additional two feet of height was incorporated into the final motion for Council consideration to allow design flexibility. The rationale for a Maximum Height of 18 feet -- without an increase in Maximum Size -- is that two-story ADUs reduce the ADU footprint, increasing Open Space, decreasing Lot Coverage and allowing flexible configurations on smaller lots.

Motion/Second/Carried (Barnali/Vincent) to close the public hearing on the Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety at 8:55pm.

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)



Motion/Second/Carried (Kapla/Schildt) to adopt staff's recommendation with the following edits and a request to add neighbor notification of Building Permit issuance to the administrative process of application approval:

- Amend 23C.24.010.B.1 to read: *One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.*
- Delete 23C.24.010.B.5: *One JADU is allowed on a lot with one Single Family Dwelling.*
- Add 23C.24.040.A.6 to read: *A JADU is subject to the Development Standards in paragraph B and G.*
- Amend 23C.24.040.C to read:
  1. *Maximum Height of a ~~free-standing detached~~, new construction ADU is 16-18 feet.*
  2. *Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 16 18 feet.*

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

**Public Comments: 10**

**10. Action: Response to Support Small Businesses Referral: Amendments to the Sign Ordinance to Establish a Master Sign Program**

Staff presented proposed modifications to the Sign Ordinance, which included establishing a Master Sign Program, clarifying ordinance language, and exempting in-kind replacement of signs. The Commission discussed minor amendments the Zoning Ordinance to maintain consistency with the Sign Ordinance. Corresponding references to the Zoning Ordinance were highlighted by staffs and commission discussion centered on clarifying ordinance language to improve readability.

Motion/Second/Carried (Wiblin/Krpata) to adopt staff's recommendations with suggested edits to 23E.08.020.C [Applicability] as follows:

*C. Permits Zoning Certificates, Administrative Use Permits, Use Permits, and Variances for projects that are subject to design review ~~may not be issued without design review approval, except that they may be issued~~ may be approved conditional upon final design review such approval occurring before the issuance a building permit or for a permit for a sign permit (as set forth in BMC Chapter 20.12.010 ~~(of the Sign Ordinance)~~).*

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach (8-0-0-1)

**Public Comments: 1**

Motion/Second/Carried (Kapla/Ghosh) to adjourn the Planning Commission meeting at 10:10pm.



Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None.  
Abstain: None. Absent: Beach (8-0-0-1)

**Members in the public in attendance: 23**

**Public Speakers: 11 speakers**

**Length of the meeting: 3hr 8 minutes**

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL  
AMENDMENTS TO ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO ADDRESS  
PUBLIC SAFETY CONCERNS**

The Department of Planning and Development is proposing that the City Council adopt a local Accessory Dwelling Unit (ADU) Ordinance that complies with State ADU law. The proposed Zoning Ordinance amendments are consistent with Government Code Sections 65852.2 and 65852.22 and include local regulations for the size, location, and other development standards for ADUs. The proposed Zoning Ordinance amendments also address public safety measures to the extent they are allowable by State law.

**Public Hearing Information**

The hearing will be held on September 28, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **September 16, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

For further information, please contact Alene Pearson, Principal Planner, Planning and Development Department at (510) 981-7489.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** September 3, 2021 – The Berkeley Voice

City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on September 16, 2021.



Mark Numainville, City Clerk



Agenda & Rules Committee

ACTION CALENDAR

October 12, 2021

(Continued from September 14, 2021)

To: Honorable Members of the City Council
 From: Agenda & Rules Policy Committee: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Wengraf
 Subject: Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts

RECOMMENDATION

Take one of the following actions:

1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

Pursuant to BMC Section 2.12.051.A, BERA may be amended by the “double green light” process. This process requires that the amendment first be adopted by a two-thirds vote of the FCPC and then adopted by a two-thirds vote of the City Council, following a public hearing. This item would submit a proposal to the FCPC for its consideration. If adopted by a two-thirds vote of the FCPC, the item would return to the Council for final adoption.

POLICY COMMITTEE RECOMMENDATION

On March 29, 2021, the Agenda & Rules Policy Committee adopted the following action:¹ M/S/C (Wengraf/Arreguin) to send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts [with modifications brought forward by Committee members], and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council. Vote: All Ayes.

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf

BACKGROUND

On February 4, 2020, the Fair Campaign Practices Commission (FCPC) submitted a recommendation to Council to adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, to prohibit Officeholder Accounts.² Council took action to refer a discussion on Officeholder Accounts and Council District (D-13) Accounts to the Agenda & Rules Committee, to “consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the FCPC.”³

The Agenda & Rules Committee considered this referral with input from FCPC commissioners. The FCPC and Open Government Commission (OGC)⁴ also submitted subsequent recommendations to Council related to this process, which were included as part of the discussion regarding officeholder and D-13 accounts. The OGC submitted a recommendation that a special temporary joint advisory committee be created consisting of members of the OGC and Council to review the practice of councilmembers making donations to community organizations from their D-13 accounts. This proposal was referred directly to the Agenda & Rules Committee on August 31, 2020. On January 11, 2021, the FCPC and OGC jointly submitted a proposal to the Council clarifying the desire to create a joint subcommittee of FCPC-OGC members and members of the Council to consider both regulation of officeholder accounts as well as D-13 account grant practices and expressing willingness to consider either prohibition or regulation of officeholder accounts. D-13 account grant practices have since been addressed separately by Council.⁵

The Agenda & Rules Committee discussed the question of officeholder accounts at multiple meetings in early 2021 with input from three FCPC-OGC commissioners (Chair Brad Smith, Vice Chair Jedidiah Tsang and Commissioner Patrick O’Donnell). On March 29, 2021, the Agenda & Rules Committee took action to send this item to Council with two proposed alternatives: 1) a proposal to regulate officeholder accounts in a manner based on existing regulation of campaign committees, and 2) the Fair

² https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx

⁴ The OGC is composed of the same membership as the FCPC and the two bodies meet concurrently. The FCPC has jurisdiction over BERA while the OGC has broad authority to make recommendations to Council regarding “open and effective government.” (BMC § 2.06.190.A.2.) Therefore, proposals regarding the prohibition or regulation of officeholder accounts in BERA have been presented by the FCPC, while recommendations regarding D-13 accounts have been offered by the OGC.

⁵ On February 8, 2021, the Agenda & Rules Committee took action to make a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members. The Council approved this recommendation on March 9, 2021.

Campaign Practices Commission proposal to prohibit officeholder accounts. The Committee's action also required the Commission's analysis of regulating officeholder accounts to be included in the item that goes to the full Council.⁶

Officeholder accounts are currently allowed in the City of Berkeley, subject only to limitations provided in State Law. The Agenda & Rules Committee's proposal to regulate officeholder accounts would establish local rules that mirror and adapt Berkeley's existing, voter-approved regulations for campaign committees, including regulation of donations and reporting requirements, and narrow the uses for which officeholder account funds can be used.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.⁷ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses officeholder accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, and similar expenses. Cities can place limits on officeholder accounts, as Oakland has done.⁸ Under State law, officeholder accounts must be registered as official committees, and adhere to strict public reporting requirements, like campaign accounts. These reporting requirements provide full transparency to the public about sources and uses of funds in officeholder accounts.

The FCPC's recommendation to outlaw officeholder accounts in Berkeley was set aside by the City Council on when it referred on February 4, 2020 to the Agenda & Rules Committee to "consider a reasonable set of limitations and rules for such [officeholder] accounts and bring back recommendations to the full Council."⁹ Some members of the FCPC who participated in the Agenda & Rules Committee discussion continued to advocate for the original proposal to outlaw Officeholder Accounts, so the Committee acted to send both the Council-requested "reasonable set of limitations" and the FCPC's original recommendation back to the Council for consideration.

FISCAL IMPACTS

Regulating the maintenance of officeholder accounts by councilmembers and the Mayor would have a moderate impact on staff time.

CONTACT INFORMATION

Agenda & Rules Policy Committee: Jesse Arreguin, Mayor, (510) 981-7100;
Councilmember Sophie Hahn, District 5, 510-682-5905 (cell); and Susan Wengraf,
Councilmember, District 6, (510) 981-7160.

⁶ https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf

⁷ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

⁸ <http://www2.oaklandnet.com/w/OAK052051>

⁹ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx

ATTACHMENTS

1. Officeholder Accounts Proposal As Forwarded to the City Council by the Agenda Committee on March 29, 2021
2. Proposed Ordinance Amending the Berkeley Election Reform Act and Lobbyist Registration Act to Regulate Officeholder Committees
3. Fair Campaign Practices Commission Proposal to Prohibit Officeholder Accounts,
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/03-29_Agenda_Committee_Agenda_Packet.aspx

Officeholder Accounts As Forwarded to the City Council by the Agenda Committee on March 29, 2021

This set of terms is presented as a basis to discuss a potential amendments to the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12) to regulate the maintenance of officeholder accounts by elected officials in Berkeley. The proposal following elements are proposed for discussion by the Agenda Committee:

General Requirements and Donation Limits

1. **Amend BERA to expressly permit the creation of officeholder accounts** by elected officials in Berkeley
2. Officeholder accounts would **be subject to the same donor requirements as campaign accounts under BERA:**
 - a. May only receive donations from natural persons.
 - b. Per-person donation limit set the same as the contribution limit under BERA (currently \$250; if BERA changes, so would these limits – idea is for them to always be parallel)
 - c. Etc. – All requirements and limitations on who can give, how much, and how donations can be made would be “by reference” to BERA and thus identical over time.
3. Officeholder accounts would be **subject to the same registration and reporting regime as campaign accounts under BERA**. State law currently requires Officeholder Accounts to report using the same forms as campaign accounts; this proposal would also incorporate the reporting requirements of BERA – for example lower thresholds for initial reporting, lower amounts reported, etc.
4. **Cumulative annual donations, not including an officeholder’s own donations to their officeholder account would be capped at fixed amounts**. Suggest the amount be set at the approximate cost of producing and mailing one newsletter to constituents, although use of funds would not be limited to that use (see below). Amount should be indexed.
5. As with campaign accounts, **an officeholder’s own donations to their officeholder account would not be subject to any limits** but would be reported. An officeholder would also still be allowed to spend their own money on officeholder expenses without using an officeholder account. This is a First Amendment issue that can’t be infringed upon.

Complete Separation from Campaign Accounts and Expenditures

1. An officeholder would **not be allowed to simultaneously maintain an officeholder account and a campaign account of any kind:**
 - a. A winning candidate taking office would be required to close their campaign account before opening an officeholder account.

- b. An incumbent officeholder running for re-election or running for any other elected position – local, state, or federal – would be required to close their officeholder account before opening a campaign account.
- 2. An officeholder could not redesignate their officeholder account as a campaign account or use any officeholder funds to pay campaign expenses, ever.
- 3. Officeholder account funds could not be transferred to or from a candidate committee account for any elective office, local, state or federal.
- 4. “Extra” funds in an officeholder account could be used only for a legitimate officeholder expense, refunded to donors on a pro rata basis, or donated to the City’s General Fund.

Impermissible and Permissible Uses of Officeholder Funds

- 5. **Officeholder accounts would not be used for the following** expenditures:
 - a. Expenditures in connection with an election for any city, county, regional, state, or federal elective office or ballot measure
 - b. Campaign consulting, research, polling, and similar expenditures related to any campaign
 - c. Membership in athletic, social, fraternal, veteran, or religious organizations
 - d. Supplemental compensation for employees for performance of their ordinary duties
 - e. Any expenditure that would violate BERA or state law
- 6. **Officeholder accounts would only be used for the following** expenditures (list likely needs to be honed/expanded – this list reflects narrowing and adaptation of the Oakland ordinance, which is overly broad):
 - f. Office equipment, furnishings, and office supplies
 - g. Officeholder communications not related to a campaign, including but not limited to:
 - i. Mailings, newsletters, and other communications, whether by electronic or traditional media
 - ii. Websites and communications by all media including email, publication, and social media
 - iii. Email and address management
 - iv. Professional/consulting services and/or staff time related to communications.
 - h. Registration, travel, lodging, meals, and related expenses for attending an activity which supports a legislative or governmental purpose, including activities which involve international travel, including but not limited to:
 - i. Conferences, meetings, receptions, sister-city visits, and other events
 - ii. Membership and participation in programs for civic, service, or professional organizations
 - iii. Educational, training, and professional development courses and events

when incurred by the officeholder, their staff, or a community representative of the officeholder (but not a family member or an individual whose organization or who themselves is subject to registration under the City's Lobbyist Ordinance)

- i. Fundraising for the officeholder account.
- j. Consulting, research, surveys, photographic or similar services not related to a campaign.
- k. Expressions of congratulations, appreciation or condolences to constituents or other persons the officeholder communicates/works with in their official capacity.
- l. Salaries or other compensation for consultants/staff working on officeholder activities, including for time spent by regular staff on officeholder activities separate/different from their ordinary duties.
- m. Tax liabilities and other official fees/costs incurred by the officeholder account.
- n. Accounting, legal, and other professional services provided to the officeholder account.
- o. Attorneys' fees and other costs related to administrative procedures, litigation, or other processes arising from the officeholder's activities, duties, or status as an elected officer.

Termination of Account on Leaving Office (+ Not running for any office)

- 1. An officeholder would be **required to terminate their account within 90 days after leaving office.**
- 2. An officeholder **could not make expenditures after their last day in office** except to pay outstanding officeholder debts, repay donations on a pro rata basis, or donate remaining funds to the City's general fund.
- 3. Officeholders running for another office, local, state, or federal, would be required to close their officeholder account before opening a campaign account (see above).

Enforcement

- 1. Violations of the officeholder account rules **would be subject to all enforcement provisions under BERA**, including enforcement by the Fair Campaign Practices Commission ("FCPC").

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT AND
LOBBYIST REGISTRATION ACT TO REGULATE OFFICEHOLDER
COMMITTEES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code section 2.09.220 is amended to read as follows:

2.09.220 Restrictions on payments and expenses benefiting local public officials.

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign or officeholder contributions not to exceed the limits imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained

for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

Section 2. That Berkeley Municipal Code section 2.12.100 is amended to read as follows:

Section 2.12.100 Contribution.

A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a

committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.

B. In the case of an officeholder committee, "contribution" means a monetary payment to an officeholder committee to be used for expenses associated with holding City office as provided in Article 9 of this Chapter.

Section 3. That Berkeley Municipal Code section 2.12.130 is amended to read as follows:

Section 2.12.130 Expenditure.

A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

B. In the case of an officeholder committee, "expenditure" means payment of money by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.

Section 4. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder committee.

"Officeholder committee" means a committee established by an Elective Officer of the City of Berkeley, as defined in Article V Section 8 of the Charter of the City of Berkeley, to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this chapter.

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

Section 2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.3.b and 2.12.602 for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.

Section 6. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Committees

Section. 2.12.600 Regulation of officeholder committees.

- A. Elective Officers (the “officeholder” or “officeholders”) shall each be permitted to establish one officeholder committee, as defined in Section 2.12.157.
- B. Nothing in this section shall require an officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee to spend personal funds on their own officeholder expenses.
- C. Expenditures of an officeholder’s personal funds for their own officeholder expenses which are not contributed to an officeholder committee are not reportable under this chapter.

Section 2.12.602 Cumulative contribution limits

- A. For each Elected Officer representing a district within the City of Berkeley, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed five thousand dollars (\$5,000) in the aggregate per calendar year.
- B. For citywide Elected Officers, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed in the aggregate per calendar year an amount equal to four times the maximum allowed for elected officers representing districts, as provided in Section 2.12.602.A

Section 2.12.604 Prohibited officeholder expenditures

An officeholder committee shall not make expenditures for the following purposes:

- A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure.
- B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office.
- C. Membership in any athletic, social, fraternal, veterans or religious organization.
- D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.
- E. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506 and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.

Section 2.12.606 Permissible officeholder expenditures

An officeholder committee may make expenditures only for the following purposes:

- A. Expenditures for fundraising for the officeholder committee.
- B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.
- C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.604.D.
- D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.
- E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include but not be limited to:
 - 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including but not limited to registration or other attendance fees, travel, lodging, food, and

incidentals;

2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and
 3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose.
- F. Expenditures for constituent and community communications, including but not limited to:
1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;
 2. An officeholder's website and social media;
 3. Email and address list management.
- G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.
- H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.
- I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.
- J. Expenditures for attorneys' fees and other costs related to litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status as an elected officer.

Section 2.12.608 Prohibitions on transfer or reallocation of funds

The following restrictions apply to the transfer or reallocation of officeholder funds:

- A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.
- B. No funds may be contributed, redesignated, or transferred from an officeholder

committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

- C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.
- D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.

Section 2.12.610 Prohibition on simultaneously maintaining officeholder and campaign committees

- A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state or federal elective office.
- B. A candidate who is elected to any elective office in Berkeley must terminate their campaign committee before opening an officeholder committee.
- C. An officeholder must terminate any open officeholder committee prior to filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.

For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee prior to accepting the campaign committee Statement of Organization.

Section 2.12.612 Termination of officeholder committees upon leaving office

- A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office.
- B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:
 - 1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.
 - 2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.
 - 3. Donating funds to the City's general fund.

2.12.615 Limits and requirements for contributions and expenditures

- A. The limit on cumulative contributions to an officeholder committee by a person other than the officeholder in a calendar year shall be the same as the limit on contributions to a candidate with respect to a single election under Section 2.12.415. Contributions to a candidate shall not be counted against the limit on contributions to an officeholder committee in the same calendar year.
- B. Officeholder committees shall be subject to the limits on contributions from organizations and entities to candidates and committees under Section 2.12.440.
- C. Nothing in this Article shall limit the amount an officeholder may contribute to their own officeholder committee or spend on officeholder expenses either through or not through an officeholder committee.
- D. All requirements and prohibitions for campaign contributions and expenditures under Sections 2.12.300, 2.12.305, 2.12.310, 2.12.315, and 2.12.320 shall apply to officeholder committees.

2.12.645 Officeholder Committee Treasurer

Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.

2.12.650 Officeholder expenditure and contribution account – Establishment required – Procedure for use

An officeholder committee treasurer shall establish and manage a checking account. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article.

2.12.655 Statement of organization – Committee required to file.

- A. Every officeholder committee shall file with the City Clerk a statement of organization before accepting contributions.
- B. The date on which an officeholder committee is formed by filing a statement of organization shall determine the officeholder committee's obligation to file statements and reports required by this chapter.

2.12.660 Statement of organization – information required

The statement of organization required by Section 2.12.655 shall include:

- A. The name, street address and telephone number of the officeholder committee;
- B. The name of the officeholder;
- C. The full name, street address and telephone number of the treasurer and other principal officers;
- D. The elected office held by the officeholder;
- E. The account number and name of the bank at which the checking account, required by Section 2.12.650, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- F. The cash on hand at the time of filing the statement of organization;
- G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.

Section 2.12.665 Statement of organization--Change of information--Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.

Section 2.12.670 Officeholder statements – filing requirements

- A. Each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for campaign committee statements. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

Section 2.12.675 Officeholder statements - Verification

- A. Reports and statements required by this Article shall be subject to the filing requirement of Sections 2.12.025, 2.12.030, 2.12.032, 2.12.033, 2.12.035, 2.12.040, 2.12.045 and 2.12.050.
- B. An officeholder shall verify his or her officeholder statement. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that they have made reasonable inquiry into the truthfulness and completeness of such officeholder statement and that to the best of their knowledge, the treasurer of the officeholder committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any officeholder committee from the obligation to verify each officeholder statement filed pursuant to Section 2.12.025.

Section 2.12.680 Officeholder Statement – Information required

Officeholder committee statements required by this article shall include all applicable information required for campaign committee statements by Section 2.12.280.

Section 2.12.685 Enforcement

Violations of this article involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of this chapter.

MEMORANDUM

DATE: March 29, 2021

TO: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Weingraf, Members of the Council Agenda and Rules Committee

FROM: Brad Smith, Patrick O'Donnell and Jedidiah Tsang, Delegation from the Fair Campaign Practices and Open Government Commissions

SUBJECT: Officeholder Accounts

Two main approaches have been considered regarding local Officeholder Accounts in California. The first, adopted by the City of San Jose, would prohibit these accounts. The second, adopted by the city of Oakland, would permit these accounts but regulate them.

For the reasons discussed below, the FCPC previously recommended that Officeholder Accounts be prohibited (Exhibit 3). However, the Council decided in February 2020 not to approve the FCPC's recommendation and referred the issue of Officeholder Accounts, along with concomitant issues related to D-13 accounts, to the Council's Agenda and Rules Committee.

The Fair Campaign Practices and Open Government Commissions have been studying Officeholder and D-13 Accounts since 2019. At its regular meeting on November 21, 2019, the FCPC voted without opposition to recommend amendments to the Berkeley Election Reform Act (BERA) that would prohibit Officeholder Accounts. The FCPC's recommendation was presented to the City Council at a February 4, 2020 special meeting. (A copy of the Report to Council is attached as Exhibit 3.)

Although the Council did not approve the FCPC's recommendations at that time and is considering alternatives that would allow for regulated Officeholder Accounts, a discussion in which the FCPC is glad to participate, the FCPC continues to believe that the prohibition of such accounts may ultimately be the preferable solution.

Briefly, our reasons for recommending prohibiting Officeholder Accounts are as follows:

1. Donations to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.
2. The City of San Jose has prohibited Officeholder Accounts (Section 12.06.810) since January 2008, providing as a rationale "to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials" (Section 12.06.1100).

3. There are a number of permissible expenditures that could be made from Officeholder Accounts, now made from the Councilmember's discretionary council office budget (D-13 account), that put the elected official in a favorable light. Such expenditures include contributions to nonprofit organizations and newsletters mailed to constituents related to events, information or an officeholder's position on matters before the Council. We are not arguing these expenditures should be prohibited, only not paid for by funds collected in Officeholder Accounts.

4. As evidenced by contributions to nonprofit organizations from the Councilmember's D-13 accounts, which in total increased from \$50,938 in FY 2017 to \$113,526 in FY2018, enough funds are now available to Councilmembers to cover office expenses. It stretches the imagination to see donations to nonprofit organizations as an "office expense." If not enough funds are available for office expenses, the allocation to the D-13 accounts should be increased by the Council rather than relying on funds solicited from donors for an Officeholder Account.

5. Members of the FCPC are concerned about the amount of staff time required to track paperwork required for the administration of Officeholder Accounts and to assist in the enforcement process.

6. Members of the FCPC have discussed concerns that Councilmembers from wealthier areas of the City will have an easier time of raising funds for Officeholder Accounts.

7. Finally, we note the Officeholder Account has been rarely used in Berkeley, only once in the last several years that we are aware of.

While we look forward to a good, frank discussions and careful consideration of the alternative of permitting and regulating Officeholder Accounts, we respectfully request that Council members continue to consider that a prohibition of these accounts may, in the end, be the preferable approach.

Exhibit 1. Although the FCPC continues to support prohibition, it has prepared a draft version of an ordinance that would allow for regulated Officeholder Accounts. This draft identifies the issues that a regulated approach, if pursued, would need to address.

Exhibit 2. RESOLUTION NO. 67,992-N.S. (City Council Expenditures and Reimbursement Policies), referred to in the proposed language for changes to BERA to regulate Officeholder Accounts.

Exhibit 3. Language for amending the Berkeley Election Reform Act to prohibit Officeholder Accounts included in the FCPC submission to the City Council of February 4, 2020.

[DRAFT]

[Annotations are in RED. These include ISSUES for discussion and RECOMMENDATIONS of the three FCPC members participating in the joint meetings.]

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE OFFICEHOLDER ACCOUNTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder Account.

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Accounts

Section. 2.12.600 Regulation of Officeholder Accounts.

A. The Mayor and Council members (the “officeholder” or “office holders”) shall each be permitted to establish one Officeholder Account, as defined in section 2.12.157.

ISSUE: What limitations should be placed on which public officials may be authorized to open Officeholder Accounts? Currently, Berkeley law is silent on this issue, as it is generally with respect to matters relating to Officeholder Accounts. Should the authorization to have Officeholder Accounts be limited to the Mayor and Council members?

State law applies to “elected state officeholder[s],” which includes the Governor, members of the state senate and assembly, and “other statewide elected official[s] other than the Governor.” (Gov. Code sec.85316(b)(1).)

RECOMMENDATION: Amendments to BERA authorizing Officeholder Accounts should be limited to the offices of Mayor and members of the City Council. Extending the authorization more broadly appears to other city officeholders at this time appears to be fiscally unnecessary and would impose significant burdens on the clerk’s office and the FCPC, which would be responsible for compliance with reporting requirements and the enforcement of the laws relating to Officeholder Accounts. If Berkeley’s experience with Officeholder Accounts proves to be positive, BERA could be amended in the future to expand the categories of elected officials authorized to establish Officeholder Accounts.

B. All donations deposited into an Officeholder Account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city

officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.

ISSUE: This draft uses the term “donation” throughout new section 2.12.600 instead of “contribution.” The use of the term “donation” in the proposed new section of the BERA reflects that funds made for Officeholder Accounts are different from campaign contributions; prevents making all the legal provisions applicable to campaign fund arguably applicable to officeholder donations; and avoids confusion in how the funds for this specific purpose are treated.

RECOMMENDATION: Include the new definition of “donation” in this section and use it – and related terms such as “donor” – consistently throughout, instead of using the term “contribution” in the new section on Officeholder Accounts.

C. Only a natural person who is a resident of the City may make a donation to an Officeholder Account.

ISSUE: To prevent undue influence in election campaigns, BERA currently contains limitations on who may make contributions to such campaigns. Proposed new paragraph C. would provide a similar limitation for donations to Officeholder Accounts. Specifically, like the limitation similar in the Berkeley Elections Reform Act (BERA sec. 2.12.167.), it would limit donations to Officeholder Accounts to natural persons residing in Berkeley.

There is a need for an express provision on this subject to be included in the proposed amendments. As currently written, neither of the BERA limitations relating to campaign contributions would apply by their own terms to donations to Officeholder Accounts nor would a cross-reference work.

The limitation in the Berkeley Election Reform Act to natural person residing in Berkeley is part of the definition of “qualifying contribution” to be eligible for public financing (BERA sec. 2.12.167); and so would not apply to Officeholder Accounts. The limitation in BERA section 2.12.440 prohibits “contributions” by any “proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union”; but such contributions are prohibited only to “any candidate or committee (supporting or opposing any candidate)” and so would not apply to Officeholder Accounts. Cross-references to these sections would be confusing since by their own terms the referenced sections apply only to campaign contributions, and not to donations to Officeholder Accounts.

RECOMMENDATION: The proposed language that would expressly limit the persons eligible to make donations to “natural persons who are residents of the City of Berkeley” should be adopted. This will avoid undue influence by entities and persons outside Berkeley whose donations might improperly influence officeholders.

D. Donations to an Officeholder Account must be made by a separate check or other separate written instrument. Single donations may not be divided between the Officeholder Account and any candidate committee or other entity.

E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. "Donor" means a natural person who is a resident of the City who makes a donation as defined in paragraph B.

ISSUE: Any regulated scheme for Officeholder Accounts should include a limit on the amount of that each individual is permitted to donate each year. The amount of the individual donations permitted each year is an issue that the Council and the FCPC need to decide, as well as the manner in which this limit is prescribed.

The California state statute on Officeholder Accounts provides explicit limits on the amount that a person is permitted to make for each officeholder per calendar year (e.g., \$3,000 for Senate and Assembly members and \$20,000 for Governor). (Gov. Code sec. 85316(b)(1)(A)-(B).)

The proposed draft amendments to the BERA, above, currently provide for a limit on donations in the range of \$50-\$250; the exact amount is an issue to be determined. Assuming the amount chosen is \$250, this amount could be explicitly placed in the ordinance, as the draft does. Alternatively, the amount might be specified by cross-reference to the maximum campaign amount permitted under BERA (e.g., by a cross-reference stating the amounts of any individual annual donation shall not exceed the amount of a campaign contribution permitted for a single election under BERA section 2.12.415).]

RECOMMENDATION: An explicit amount should be included in the new section of BERA on Officeholder Accounts. This will make the officeholder section—including the exact amount of the donation limit—clear and easy to understand. If in the future the campaign limits under BERA are increased and it makes sense also to increase the amount of the permitted annual individual donations to Officeholder Accounts to a similar (or other) amount, the permissible amount of the donations can be revised at that time.

F. For the office of Mayor, total donations to an Officeholder Account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the City Council, total donations to an Officeholder Account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

ISSUE: Any regulated scheme for Officeholder Accounts should also include a limit on the total amount of donations from all donors that can be contributed to an officeholder each year. The amount of the total "cap" is an issue that the Council and the FCPC need to decide.

RECOMMENDATION: The total aggregate donations permitted to be made to specific officeholders in Berkeley should be proportional to their offices' size, scope, and needs.

G. All donations received for, and expenditures made from, an Officeholder Account during a calendar year shall be reported at least annually on the date or dates prescribed by the FCPC and the report shall be made available to the public promptly thereafter. The FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the Officeholder Account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with their street address, occupation, and the name of their employer, if any, or the principal place of business if they are self-employed; the amount which they donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

ISSUE: The amended BERA provisions on Officeholder Accounts (Section 2.12.600.G.1-7, above), like those for campaign statements (see BERA sec. 2.12.200 A.-K.), would specify the information that must be disclosed. In new section 2.12.600, the provisions have been tailored to address donations, donors, donors' names and addresses, and so forth. Having these requirements specified in the ordinance will provide the legal foundation for the information requested about Officeholder Accounts on statements or forms. Also, having these requirements in the ordinance will make it possible for the City more easily to add or modify the information required on statements.

Subsection G. also provides that the FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. This would permit, but not require, the City to require officeholders to use California Form 460 or 470 to comply with the reporting requirements. This flexibility is important so that the City will be able to exercise its discretion as to what information needs to be reported about donations to, and expenditures from, Officeholder Accounts.

Finally, this section provides that the commission shall prescribe the time for filing the forms and that the forms shall be verified and filed electronically. These provisions will improve the effectiveness of the reporting on Officeholder Accounts.

RECOMMENDATION: Section G. should be adopted as proposed for the reasons stated above.

purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

ISSUE: This provision clarifies the intent of these amendments—that they authorize “true” Officeholder Accounts whose purpose is strictly limited to lawful officeholder purposes—and are not intended for any other broader purposes. This approach should help officeholders avoid the pitfalls of running afoul of campaign finance laws (as warned against in past opinions by the Berkeley City Attorney).

RECOMMENDATION: Section H. should be adopted as proposed for the reasons stated above.

I. Allowable expenses from an Officeholder Account are limited to expenses for travel, meals, and lodging incurred in connection with the following types of activities:

1. Communicating with representatives of local, regional, state and national governments on City policy positions;
2. Attending educational seminars designed to improve officials’ skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City’s interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of normal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City’s interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies; and
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum set forth in city, state, and federal standards for when meal reimbursement may be allowed.

J. Expenditures from an Officeholder Account shall not be used for any of the following types of activities:

- 1 The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner’s expenses when accompanying the official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage, and or golf related expenses); or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic, citations, insurance or gasoline; and
7. Personal losses incurred while on City Business.

RECOMMENDATION: Sections I. and J. should be based on the list of Authorized Activities and Unauthorized Expenses in Sections IIA. and B. of the City Council Expenditure and Reimbursement Policies, Resolution No. 67,992—N.S. (“Policies”). The lists identified in the Policies are thoughtful, carefully prepared lists of which expenses are permissible or impermissible for officeholders under current law. The policies were unanimously adopted 1036

by the Berkeley City Council on May 30, 2017. For the purposes of the proposed ordinance on Officeholder Accounts, the lists in the Policies are more appropriate for adoption than the lists developed by the Oakland City Council that appear to be based largely on state laws relating to on campaign expenditures.

I. Prohibitions:

1. No funds may be contributed or transferred from an Officeholder Account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her Officeholder Account as a committee for a future term of the same office or redesignate his or her Officeholder Account funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an Officeholder Account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the Officeholder Account.

ISSUE: These prohibitions make it clear that funds from an Officeholder Account may never be used for any type of campaign purposes. This is consistent with the ordinance's intent that Officeholder Accounts be strictly limited to officeholder purposes. The provision also makes it explicit that these strictly officeholder funds cannot be redesignated as funds for a future campaign.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her Officeholder Account funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to donors to the Officeholder Accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the Officeholder Account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The FCPC may for good cause extend the termination date. The disposition of all funds from the closed Officeholder Account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the FCPC. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the Officeholder Account or an approved extension thereof.

N. All funds from a closed Officeholder Account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's General Fund.

ISSUES: Several issues exist with respect to the termination of Officeholder Accounts.

Draft sections 2.12.600 L.-N., above, propose procedures for terminating Officeholder Accounts in Berkeley based, in large part, on the state regulations on terminating Officeholder Accounts and committees (see Regulations of the Fair Political Practices Commission, Cal. Code of Reg., sec. 18531.63(g)).

The proposed provisions include the main options for disposing of Officeholder Account funds listed in the regulations (i.e., paying legitimate expenses, returning funds to donors, and making donations to bona fide organizations). However, the provision in the state regulations (sec. 18531.63(g)(2)) allowing for redesignation of Officeholder Accounts as accounts for a future campaign has been omitted because the Berkeley ordinance would authorize only strict Officeholder Accounts, prohibit the use of those accounts for any campaign purposes, and prohibit the redesignation of those accounts for use by campaign committees.

The proposed provisions, though, are incomplete: they do not address what should happen to an Officeholder Account if an incumbent wins re-election? Maybe it would be appropriate, under certain circumstances, for an incumbent who is elected to a new term of office, to redesignate a previous Officeholder Account for use in the officeholder's new term of office (as envisaged in the state regulations (see sec. 18531.63(g)(3)). Alternatively, as suggested at a previous joint meeting, perhaps it might be better for incumbents to terminate their Officeholder Accounts completely by a certain time before an election; and, if successful, they could open up a new Officeholder Account after their re-election.

The issues around the termination of Officeholder Accounts should be discussed by the joint committee and decisions made about what additions or modifications to the proposed ordinance are warranted.

M. Violations of this article involving the unlawful use of Officeholder Accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

ISSUE: Are there any other issues on enforcement besides this general provision that need to be addressed?

* * *

OTHER ISSUES TO BE CONSIDERED:

Some of the other issues not yet incorporated into the draft, but which merit consideration, include:

1. Establishment of an Officeholder Committee. State law requires an officeholder to create an Officeholder Controlled Committee if the officeholder receives more than \$2,000; and it provides guidance on the procedures for establishing such a committee, the committee's name, and other requirements. (Cal. Code of Reg., sec. 18531.63(c).) The Berkeley ordinance should probably include similar provisions.

2. Return of Excess Contributions/Donations. State law requires that an excess contribution to an officeholder be returned. (Gov. Code sec.85316(b)(3).) The regulations prescribe that the officeholder return the contribution within 14 days. (Cal. Code of Reg., sec. 18531.63(f).) The Berkeley ordinance should probably include similar provisions.

3. Conforming Amendments to BERA. A BERA section on the disposition of excess

campaign funds will probably need to be amended to be consistent with the new section 2.12.600 on Officeholder Accounts (see BERA sec. 2.12.245.C.). There may be other sections to BERA that require similar conforming changes.

RESOLUTION NO. 67,992-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, on September 10, 2103, the City Council rescinded Resolution No. 63,412-N.S. and replaced it with Resolution No. 66,295-N.S., which revised the expenditure and reimbursement policy required by state law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 66,295-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. Most frequently, prior approval by the City Council is given in items to authorize relinquishment of Council office budget fund to general fund and grant of such funds for charitable events, which would be unauthorized expenses if not pre-approved by Council. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, www.dgs.ca.gov/travel¹, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for airfare must not exceed 110% of either the state DGS rates or the Federal rates published by the U.S. General Services Administration (GSA) rates, www.gsa.gov², whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

¹ California Department of General Services Statewide Travel Program (DGS): www.dgs.ca.gov/travel

² U.S. General Services Administration (GSA): www.gsa.gov

ITEM 14
ATTACHMENT 2

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services (DGS) Statewide Travel Program available through the League of California Cities shall be considered the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for car rental must not exceed 110% of either the state DGS rates or the Federal GSA rates, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.
6. **Taxis/Ride Shares/Shuttles.** Taxis, ride shares, or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. ~~7.~~ **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Council member at the time of booking. If lodging at the group rate is not available, or if travel is not in connection with a conference, rates that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for lodging must not exceed 120% of the state DGS rates or 100% of the Federal rates published by the GSA, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9. "Meals which are served at regular meetings of associations to which the city belongs (i.e. Alameda County Mayors' Conference, league of California Cities, or ABAG) shall be exempt from this policy.
8. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus

- long-distances charges for those calls.
9. **Airport Parking.** Short-term airport parking may not be used for travel exceeding 24-hours.
 10. **Other Travel Related Expenses.** Reasonable baggage fees given the duration of the travel will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
 11. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. In accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds, the City may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R. 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity;
3. The benefit to the residents of the City;
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A statement of expense must be completed, signed and submitted to the City Auditor for review and forwarded to the Finance Department for payment. The statement of expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their statement of expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Itemized restaurant receipts, including number of individuals served, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

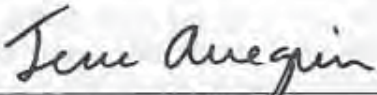
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on May 30, 2017 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.



 Jesse Arreguin, Mayor

Attest: 

 Mark Numalville, City Clerk

Exhibit A

Councilmember Office Budget Relinquishment and Grant PolicyIntroduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (<i>e.g.</i> , the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (<i>e.g.</i> , Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (<i>e.g.</i> , affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.



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Å%#!&Å (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

- (A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.
- (B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.
- (C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

- (A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.
- (B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.
- (C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

- (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
- (4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.



HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1 and IILG

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember’s discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

BACKGROUND

Officeholder Accounts

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.”

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

Proposed Changes to City Council Expenditure and Reimbursement Policies

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions,
(510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open
Government Commissions, (510) 981-6998



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder accounts

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O’Donnell to return at the Commission’s September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

Background

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or

(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Alternative Proposal for Legislation on Officeholder Accounts

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

Attachments:

1. New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements (“Proposal”)
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)



Fair Campaign Practices Commission

PUBLIC HEARING
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council
From: Brad Smith, Chair, Open Government Commission
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

Action:

Vote:

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

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by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

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Alternative Proposal for Legislation on Officeholder Accounts

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political

campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

Attachments:

1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE
OFFICEHOLDER ACCOUNTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:**Section 2.12.157 Officeholder account.**“Officeholder account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as followsArticle 9. Officeholder Accounts**Section. 2.12.600 Regulation of officeholder accounts.**A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.C. Only a natural person who is a resident of the City may make a donation to an officeholder account.D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of [date of agenda posting].

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

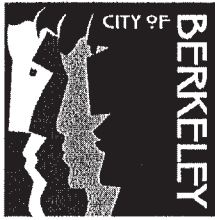
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: [Publication Date in Newspaper]

Pursuant to Berkeley Municipal Code section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on [Enter Date].

\_\_\_\_\_  
Mark Numainville, City Clerk



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
 From: Fair Campaign Practices Commission  
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
 Subject: Amendments to the Berkeley Election Reform Act to prohibit  
 Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder AccountsPUBLIC HEARING  
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

**Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

**Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

#### Part 8 - OFFICEHOLDER ACCOUNTS

##### 12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### 2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

<sup>1</sup>Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation



10/8/2019

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California  
LEGISLATIVE INFORMATION[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)Code:  Section: [Up^](#) [<< Previous](#) [Next >>](#)[cross-reference chaptered bills](#)[PDF](#) | [Add To My Favorites](#)Search Phrase: **GOVERNMENT CODE - GOV****TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder



account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

#### Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

PAUSERS\BBL2\ofhldr.mam.doc

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)



## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.



**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

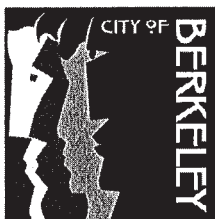
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

Mark Numainville, City Clerk



[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

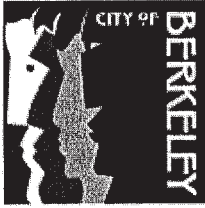
Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**SOPHIE HAHN**

Berkeley City Council, District 5
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 (510) 981-7150
 shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
 From: Vice Mayor Sophie Hahn
 Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [] delivered, by any means [] to a person's residence, place of employment or business, or post office box."³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

⁶ <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

Date: February 12, 2020
To: FAIR CAMPAIGN PRACTICES COMMISSION
From: Dean Metzger, Commission Chair
Subject: Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

Attachments:

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member

MAYOR AND CITY COUNCIL FINA

| | FY 2015
Actual | FY 2016
Actual | FY 2017
Adopted | FY 2018
Proposed | FY 2019
Proposed |
|------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| EXPENDITURES | | | | | |
| By Type: | | | | | |
| Salaries and Benefits | 1,660,661 | 1,760,619 | 1,723,617 | 1,833,734 | 1,880,031 |
| Services and Materials | 36,942 | 43,407 | 113,526 | 113,526 | 113,526 |
| Capital Outlay | 1,953 | 7,674 | | | |
| Internal Services | 89,100 | 81,181 | 81,181 | 81,181 | 81,181 |
| Indirect Cost Transfer | | | | | |
| | <u>1,788,656</u> | <u>1,892,881</u> | <u>1,918,324</u> | <u>2,028,441</u> | <u>2,074,738</u> |
| By Division: | | | | | |
| Mayor's Office | 515,095 | 558,137 | 584,877 | 554,389 | 566,917 |
| Council Offices | 1,273,561 | 1,334,744 | 1,333,447 | 1,474,052 | 1,507,821 |
| Exiting Officials | | | | | |
| | <u>1,788,656</u> | <u>1,892,881</u> | <u>1,918,324</u> | <u>2,028,441</u> | <u>2,074,738</u> |
| By Fund: | | | | | |
| General Fund | 1,788,656 | 1,892,881 | 1,918,324 | 2,028,441 | 2,074,738 |
| | <u>1,788,656</u> | <u>1,892,881</u> | <u>1,918,324</u> | <u>2,028,441</u> | <u>2,074,738</u> |

| | | | | | |
|-------------------------|-------|-------|-------|-------|-------|
| General Fund FTE | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| Total FTE | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |

DRAFT**DRAFT****DRAFT**

Date: February 20, 2020

To: Dee Williams-Riley
City Manager

From: Fair Campaign Practices Commission

Subject: Request for budget details of the Mayor and each individual Council Member.

At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

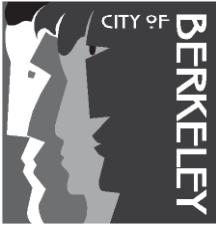
The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

Fair Campaign Practices Commission



Fair Campaign Practices Commission
Open Government Commission

ACTION CALENDAR
January 26, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action: Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies

Vote: M/S/C: Blome/Metzger; Ayes: O'Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

BACKGROUND

Officeholder Accounts

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FCPC considered three options:

- (1) leaving the law on officeholder accounts unchanged;
- (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or
- (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D- 13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

Proposed Changes to City Council Expenditure and Reimbursement Policies

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D- 13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

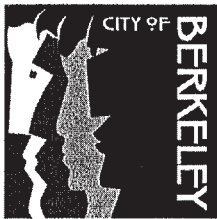
CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Attachments:

1. FCPC February 4, 2020 report to Council and attachments
2. Mayor and City Council Financial Summary



Fair Campaign Practices Commission

PUBLIC HEARING
February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹ Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation



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GOVERNMENT CODE - GOV

TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321] (Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

- (A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.
- (B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.
- (C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

- (A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.
- (B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.
- (C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991 Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS

December 9, 1991

Page 2

in opposition to the nomination or election of one or more candidates (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

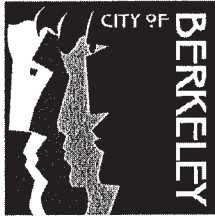
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



[First Last name]  
Councilmember District [District No.]

## **SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

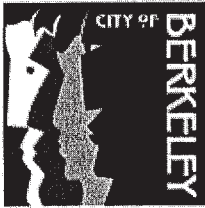
**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.





**SOPHIE HAHN**

Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Sophie Hahn  
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

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<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



**MAYOR AND CITY COUNCIL FINANCIAL SUMMARY**

|                         | FY 2015<br>Actual | FY 2016<br>Actual | FY 2017<br>Adopted | FY 2018<br>Proposed | FY 2019<br>Proposed |
|-------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| <b>EXPENDITURES</b>     |                   |                   |                    |                     |                     |
| <b>By Type:</b>         |                   |                   |                    |                     |                     |
| Salaries and Benefits   | 1,660,661         | 1,760,619         | 1,723,617          | 1,833,734           | 1,880,031           |
| Services and Materials  | 36,942            | 43,407            | 113,526            | 113,526             | 113,526             |
| Capital Outlay          | 1,953             | 7,674             |                    |                     |                     |
| Internal Services       | 89,100            | 81,181            | 81,181             | 81,181              | 81,181              |
| Indirect Cost Transfer  |                   |                   |                    |                     |                     |
|                         | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Division:</b>     |                   |                   |                    |                     |                     |
| Mayor's Office          | 515,095           | 558,137           | 584,877            | 554,389             | 566,917             |
| Council Offices         | 1,273,561         | 1,334,744         | 1,333,447          | 1,474,052           | 1,507,821           |
| Exiting Officials       |                   |                   |                    |                     |                     |
|                         | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Fund:</b>         |                   |                   |                    |                     |                     |
| General Fund            | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                         | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>General Fund FTE</b> | 12.00             | 12.00             | 12.00              | 12.00               | 12.00               |
| <b>Total FTE</b>        | 12.00             | 12.00             | 12.00              | 12.00               | 12.00               |





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR

October 12, 2021

*(Continued from September 14, 2021)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

RECOMMENDATION

Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags by December 31, 2021.

As part of the series of meetings, the Commissions should:

1. strive to conduct community/business outreach and education events to include, but not limited to the following entities:
  - a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors);
  - b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and
2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

POLICY COMMITTEE RECOMMENDATION

On July 21, 2021 the FITES Committee took the following action:

Action: M/S/C (Harrison/Robinson) to make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR  
October 12, 2021

successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the FITES Committee.

Vote: All Ayes

### BACKGROUND

On December 10, 2019, Councilmember Harrison and cosponsor Councilmember Hahn submitted a draft Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags. The Agenda Committee referred the item to the FITES Committee on November 25, 2019.

By closing loopholes in state and county law, the ordinance is aimed at avoiding unnecessary waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

Committee consideration of the item was initially delayed due to examination of statewide preemption issues and the COVID-19 pandemic. Subsequently, the item has gone through a number of revisions.

The latest draft of the ordinance has been crafted to consider and complement existing regulations at the state and county levels. With respect to the regulation of carryout bags, this ordinance is intended to *only* regulate entities for which the City is not preempted by the state. Neither the state nor county regulate pre-checkout bags, however, the proposed ordinance would. This ordinance does not regulate bags that are integral to the manufacturing of products, i.e., product bags, and provides and provides a limited exemption process.

As currently drafted, the ordinance does the following across the following bag types and entities:

#### **Carryout bags:**

- Bans thicker plastic film carryout bags, except for bags that contain hot liquids, for:
  - restaurants, take-out food stores, and food trucks.
  - permitted events and city-sponsored events
  - any other commercial establishment not regulated by the state<sup>1</sup>
- Defines reusable carryout bags as non-plastic film across:
  - restaurants, take-out food stores, and food trucks.
  - permitted events and city-sponsored events
  - any other commercial establishment not regulated by the state

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<sup>1</sup> e.g., smaller clothing stores/book/furniture/electronic/gift stores, clothing stores/book/furniture/electronic/gift stores that don't sell perishable goods and have < \$2 million revenue, grocery stores under \$2 million that don't sell alcohol, convenience stores that don't sell alcohol, small pharmacies < 10k square feet etc.



Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR  
October 12, 2021

- Charges \$0.10 for paper bags at:
  - restaurants, take-out food stores, and food trucks.
- *Second phase 2023*: requires any paper carryout bag provided by the following be 100% recycled material:
  - restaurants, take-out food stores, and food trucks.
  - permitted events and city-sponsored events
  - any other commercial establishment not regulated by the state

### **Pre-Checkout Bags:**

- Bans all but paper pre-checkout bags, except upon request for meat/seafood, across:
  - all stores & events
- Charges \$ 0.10 min. for any paper pre-checkout bag; *Second phase in 2023*: requires any paper pre-checkout bag to be 100% recycled across:
  - all stores & events
- Defines pre-checkout bags as non-plastic film:
  - all stores & events

In addition, the ordinance prevents stores from unreasonably denying customers from bringing their own reusable bags and containers.

As part of its consideration of the proposed ordinance, the FITES Committee provided direction at its July 21, 2021 meeting that the Zero Waste and Energy Commissions (or successor Commission) should hold joint meetings with respect to the ordinance aimed at conducting community/business outreach and education events to include the people and entities regulated by the ordinance and to make recommendations regarding any amendments and appropriate phasing of the law to FITES.

The Zero Waste and Energy Commissions respectively focus on issues ranging from City solid waste policy and goals to climate protection and energy conservation. It is in the public interest for the Council to engage its citizen-led commissions to assist in the outreach process to community members and businesses that may be impacted by the proposed ordinance.

### FISCAL IMPACTS

Noticing and providing assistance to Commissioners to conduct a series of community outreach meetings will require staff time.

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR  
October 12, 2021

ENVIRONMENTAL SUSTAINABILITY

By closing loopholes in state and county law, the ordinance is aimed at avoiding waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS:

1. Infographic Comparing State and County Laws to the Proposed Berkeley Ordinance
2. Proposed Ordinance Adding BMC Chapter 11.63 and Regulating the Use of Carryout and Pre-checkout Bags and Promoting the Use of Reusable Bags

# COMPARISON OF STATE & COUNTY LAW TO PROPOSED BERKELEY ORDINANCE



Law: Public Resources Code Sections 42281 et seq., Senate Bill 270, Proposition 67,

### Applicability:



Retail/grocery stores with annual sales > \$2 million that sell some perishable items



Large retail stores with a pharmacy > 10,000 sq. ft. of retail space



Convenience stores, food marts, or liquor stores that sell e.g. milk, bread, soda, & snack foods, and that have a Type 20 or Type 21 alcohol license

### Regulation:



Bans flimsy plastic film carryout bags: **X**



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags: **\$0.10 min + 20-40% Recycled Material**



Law: Alameda County Waste Management Authority Ord. 2016-2

### Applicability:



Restaurant, take-out food & food-trucks



All other stores w/ enclosed structure selling goods e.g., clothing, food & personal items

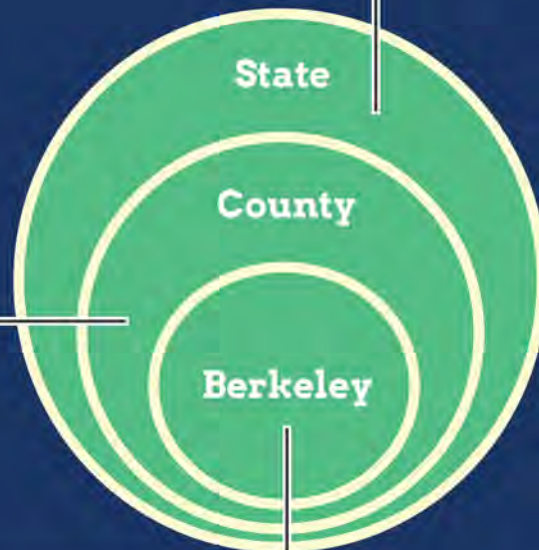
### Regulation:



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags **\$0.10 min (except for restaurants) + 40% Recycled Material**



Law: Proposed Ordinance BMC 11.63

### Applicability:



Restaurant, take-out food and food-truck establishments



All other stores selling goods e.g., clothing, food & personal items



Events requiring a street permit



City of Berkeley sponsored events

### Regulation:



Bans thicker film bags **X**



Paper carryout bags **\$0.10 min & Starting in 2023: 100% Recycled Paper**



Pre-checkout bags (e.g. produce) **100% Recycled Paper**



Bans compostable plastic

Reusable non-film Bags

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.63 TO THE BERKELEY MUNICIPAL CODE TO REGULATE THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 11.63 of the Berkeley Municipal Code is added to read as follows:

**Chapter 11.63**

**REGULATING THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS**

**Sections:**

**11.63.010 Findings and purpose.**

**11.63.020 Definitions.**

**11.63.030 Carryout Bag restrictions for Covered Entities.**

**11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.**

**11.63.050 Unreasonable denial of customer bags or containers.**

**11.63.060 General exemptions.**

**11.63.070 Waivers—applicability and process to obtain.**

**11.63.080 City of Berkeley—purchases prohibited.**

**11.63.090 Duties, responsibilities and authority of the City of Berkeley.**

**11.63.100 Liability and enforcement.**

**11.63.110 Severability.**

**11.63.120 Construction.**

**11.63.130 Effective date.**

**11.63.010 Findings and purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags and plastic produce bags are a significant contributor to street litter, ocean pollution, marine and other wildlife harm and their production creates greenhouse gas emissions.
- B. The production, consumption and disposal of plastic based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to the global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which indirectly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California and Alameda County Waste Management Authority both regulate single-use, paper, and reusable carryout bags respectively under SB 270/Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address all establishments or pre-checkout (e.g., produce) bags to carry fruits, vegetables, and other loose or bulky items while shopping before reaching the checkout area. These bags, which are often plastic, share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle, reuse or compost.
- G. The State also does not regulate the price of bags provided at the point of sale by restaurants and streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, it allows thicker film plastic.
- H. The City of Berkeley currently regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations with respect to bags. It is in the public interest to reduce plastic and paper waste in areas not preempted by the State of California.
- I. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.63.020 Definitions.**

- A. "Carryout Bag" means a bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Covered Entity. Carryout Bags do not include Pre-checkout or Product Bags.
- B. "Covered Entity" means any of the following:
  - (1) any restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that

receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public and is not subject to the requirements of Public Resources Code Section 42281; and

(2) any event, or Person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to the requirements of Public Resources Code Section 42281; and

(3) any other commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer and not subject to the requirements of Public Resources Code Section 42281.

C. "Customer" means any Person obtaining goods from a Covered Entity or Grocery Store.

D. "Grocery Store" means a supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable and nonperishable food items;

E. "100% Recycled Content Paper Bag" means either a Carryout Bag provided by a covered Entity or a Pre-checkout Bag provided by a Grocery Store that contains no old growth fiber and one hundred percent (100%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words; "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content;

F. "Reusable Carryout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) has a minimum volume of 15 liters;

(3) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and

(6) is not primarily made of plastic film, regardless of thickness.

G. "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.

H. "Pre-checkout Bag" means a 100% Recycled Content Paper Bag provided to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.

I. "Product Bags" are bags that are integral to the packaging of a product such as film or other bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

**11.63.030 Carryout Bag restrictions for Covered Entities.**

- A. No Covered Entity shall provide or sell a Carryout Bag other than 100% Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.
- B. A Covered Entity may provide or make available for sale to a Customer a 100% Recycled Content Paper Bags for a minimum price of ten cents (\$0.10).

**11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.**

- A. No Grocery Store or Covered Entity shall provide Pre-checkout Bags other than 100% Recycled Content Paper Bags.
- B. Notwithstanding subsection A, Covered Entities and Grocery Stores may provide plastic film bags as Pre-checkout Bags to Customers for the sole purpose of separating meats and seafood only upon the specific request of a Customer. Covered Entities shall not solicit Customers with respect to this exception.
- C. A Grocery Store or Covered Entity may make available for sale to a Customer Pre-checkout Bags for a minimum price of ten cents (\$0.10).

**11.63.050 Unreasonable denial of customer bags or containers.**

Any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this Chapter, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves, including in lieu of using bags or containers provided by the establishment. However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts a store-provided bags or containers in lieu, any charge required pursuant to this ordinance, other applicable law, or the establishment's policy will apply.

**11.63.060 General exemptions.**

- A. Bags exempt from the Chapter include Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away merchandise or materials that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.
- C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Grocery Stores, except as subject to the requirements of Public Resources Code Section 42281, providing 100% Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to



Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

**11.63.070 Waivers—applicability and process to obtain.**

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or Grocery Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a waiver application no later than 90 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified term of up to x [x months]. During the waiver term, the Covered Entities or Grocery Store shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Covered Entities or Grocery Store demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to x (x) months each may be granted. It shall be the Covered Entities or Grocery Store's responsibility to apply for any subsequent waivers in a timely manner.
- E. Notwithstanding the x (x) month maximum term for waivers set forth in Section 11.63.070 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Covered Entities or Grocery Store demonstrates diligent efforts to comply but, due to insurmountable unique circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.

**11.63.080 City of Berkeley—purchases prohibited.**

The City of Berkeley and any City-sponsored event shall only provide or sell to a Customer 100% Recycled Content Paper Bags or Reusable Carry-out Bags for the purpose of carrying away goods or other materials from the point of sale or event.

**11.63.090 Duties, responsibilities and authority of the City of Berkeley.**

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Covered Entity or Grocery Store's premises to verify compliance.

**11.63.100 Liability and enforcement.**

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a



requirement of this Chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.63.060.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.63.110 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.63.120 Construction.**

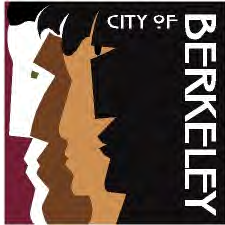
This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**11.63.130 Effective date.**

The provisions in this ordinance are effective [ ], 2022.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** March 23, 2021

**Item Number:** 17

**Item Description:** Objective Standard Recommendations for Density, Design and Shadows

**Supplemental/Revision Submitted By:** Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

*[from page two of the staff report]*

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.***

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

| Objective Standards for Design Guidelines |                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                  | Row # |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Section                                   | Subsection                                                                                                                                            | Proposed Objective Design Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Definitions                                                                                                                                                                                                                                                                                      |       |
| 1. Neighborhood Context                   | <p><b>Massing</b></p> <p>Goal: Promote harmony in scale and massing.</p>                                                                              | <p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p> | Base - a plane or material change between the ground floor and the upper floors                                                                                                                                                                                                                  | 1     |
|                                           | <p><b>Materials</b></p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>                                                      | <p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                  | 2     |
| 2. Building Design                        | <p><b>Rooflines</b></p> <p>Goal: Vertically break up building mass at the roofline.</p>                                                               | Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Roofline - Top termination of the massing.                                                                                                                                                                                                                                                       | 3     |
|                                           | <p><b>Façade Design</b></p> <p>Goal: Give depth to the building façade.</p>                                                                           | <p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p> | 4     |
|                                           | <p><b>Windows</b></p> <p>Goal: Give depth to the building façade.</p>                                                                                 | <p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                  | 5     |
| 3. Ground Floor Design                    | <p><b>Residential Lobbies</b></p> <p>Goal: Create a focal point for residents and pedestrians.</p>                                                    | <p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage.</i></p>                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                  | 6     |
|                                           | <p><b>Ground Floor Height</b></p> <p>Goal: Enhance ground floor experience.</p>                                                                       | Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                  | 7     |
|                                           | <p><b>Storefronts</b></p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p> | <p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:</p> <p>A) awnings<br/>B) canopies<br/>C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>                                                                                                    |                                                                                                                                                                                                                                                                                                  | 8     |



| Objective Standards for Design Guidelines |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |             | Row # |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------|
| Section                                   | Subsection                                                                                                                 | Proposed Objective Design Standards                                                                                                                                                                                                                                                                                                                                                                                                              | Definitions |       |
| 3. Ground Floor Design                    | <p><b>Public Service Street Frontages</b></p> <p>Goal: Activate the public street.</p>                                     | <p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p> |             | 9     |
| 4. Parking Lots, Garages and Driveways    | <p><b>General Guidelines</b></p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>                      | Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.                                                                                                                                                                                                                                                                                       |             | 10    |
|                                           | <p><b>Surface Lots</b></p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p> | Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.                                                                                                                                                                                                                                                       |             | 11    |
|                                           | <p><b>Garage Lighting and Ventilation</b></p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>                | All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.                                                                                                                                                         |             | 12    |
| 5. Building Accessories                   | <p><b>Lighting</b></p> <p>Goal: Prevent glare on public right of way.</p>                                                  | All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.                                                                                                                                                                                                                                                                                                                                            |             | 13    |
|                                           | <p><b>Security and Fences</b></p> <p>Goal: Reduce visual impact.</p>                                                       | <p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>                                                                                                                                                                            |             | 14    |
|                                           | <p><b>Trash Service, Mechanical and Utilities</b></p> <p>Goal: Reduce visual impact.</p>                                   | Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.                                                                                                                                                                                                                                                                                                |             | 15    |
| 6. Street Trees                           | <p>Goal: Preserve and/or add street trees.</p>                                                                             | Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.                                                                                                                                                                                                          |             | 16    |
| 7. Signs and Awnings                      | <p>Goal: Cohesive sign program that is in keeping with the building design</p>                                             | <p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>                                                                                                                   |             | 17    |



Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR

October 12, 2021

*(Continued from  
September 28, 2021)*

To: Honorable Mayor and Members of the City Council

From: Joint Subcommittee for the Implementation of State Housing Laws  
(JSISHL)

Submitted by: Igor Tregub, Chairperson

Subject: Objective Standards Recommendations for Density, Design and Shadows

RECOMMENDATION

Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code<sup>1</sup>, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

#### Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

#### Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).*”
- Section 23B.34.070(C): Green Pathway Projects<sup>2</sup> within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

<sup>1</sup> <https://formbasedcodes.org/standards-of-practice/>

<sup>2</sup> As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

1. *The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements; and*
2. *Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

#### BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that often underlie detriment findings.

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of



these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

#### ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

#### RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

#### ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

#### Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL  
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

**July 22, 2020**

The meeting was called to order at 7:02 p.m.

**Location: N/A** (This meeting was conducted exclusively through videoconference and teleconference)

**Commissioners Present:** Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O’Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

**Commissioners Absent:** None

**Staff Present:** Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

**ORDER OF AGENDA:** No Change

**CONSENT CALENDAR:** N/A

**PUBLIC COMMENT:** 1 speaker

**PLANNING STAFF REPORT:** Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received “At the Meeting” will be posted by the end of Friday.

**COMMUNICATIONS IN PACKET:**

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

**COMMISSIONER ATTACHMENTS IN PACKET:**

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom

- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

**LATE COMMUNICATIONS** (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

**LATE COMMUNICATIONS** (Received and distributed at the meeting):

- Supplemental Communication 4

**CHAIR REPORT:** None

**COMMITTEE REPORT:** None

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None

**AGENDA ITEMS**

**9. Action: Objective Standards for Density**

**PUBLIC COMMENT:** 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None  
Absent: None  
(5-4-0-0)

**10. Action: Objective Standards for Design**

**PUBLIC COMMENT:** 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu. Absent: None  
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None. Absent: None  
(2-7-0-0)

**11. Action: Objective Standards for Shadows**

**PUBLIC COMMENT:** 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.

JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

1. Applicability of Shadow Impacts:
  - a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
  - b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.
  - c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
  - d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
  - e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.

2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should be completed prior to building permit issuance, if possible.

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O’Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

**The meeting was adjourned at 11: 01 p.m.**

**Commissioners in attendance: 9 of 9**

**Members in the public in attendance: 7**

**Public Speakers: 7**

**Length of the meeting: 2 hours and 59 minutes**

**APPROVED:**

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Alene Pearson

Page 6 of 6

Secretary to the JSISHL

DRAFT

RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF  
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk



RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

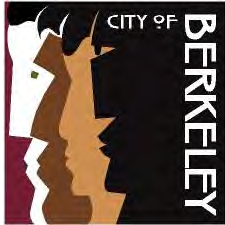
Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numalville, City Clerk



Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

## **SUPPLEMENTAL AGENDA MATERIAL**

**Meeting Date:** June 13, 2017

**Item Number:** # 59

**Item Description:** Housing Accountability Act

**Submitted by:** Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.

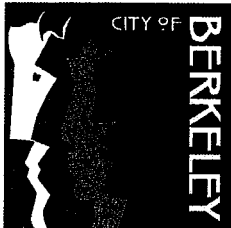


Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

### **Motion, Item # 59: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.



Office of the Mayor

RECEIVED AT  
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

**Motion, Item # 46: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

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## Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

**Mission:** Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

### Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

## Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

**Proposal:**

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2018-12-21\\_Attachment%20C\\_SB35\\_Objective%20Standards\\_1601%20Oxford.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf)

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

**Questions for discussion:**

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**  
2                   **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3  
4                   **January 17, 2019**

5                   The meeting was called to order at 7:05 p.m.

6                   **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7                   **Commissioners Present:** Thomas Lord, Shoshana O'Keefe (arrived at 7:16), Christine Schildt  
8                   Igor Tregub, Marian Wolfe, Rob Wrenn.

9                   **Commissioners Absent:** None

10                  **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11                  **ORDER OF AGENDA:** Order of Agenda was changed to:

12                  Discussion Item 9 (Adopt 2019 JSISHL Work Plan ), Discussion Item 10 (Renewing  
13                  Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)  
14                  and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15                  Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote  
16                  on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O'Keefe, Schildt, Tregub,  
17                  Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18  
19                  **CONSENT CALENDAR:** N/A.

20                  **PUBLIC COMMENT:** 1 speaker

21                  **PLANNING STAFF REPORT:**

22                  Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future  
23                  meeting location will depend upon room availability.

24                  **COMMUNICATIONS IN PACKET:**

- 25                  • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).  
26                  • 2019-01-08\_Communication\_BNC\_Support of White Paper by Dean Metzger (January 8,  
27                  2019)

28  
29                  **LATE COMMUNICATIONS** (Received after the Packet deadline): None

30



31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,  
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:  
37 None (5-0-1-0)

38  
39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with  
43 meeting dates and topics that focus on objective standards for the implementation of State  
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and  
52 research related to future meeting topics. This work plan will result in a set of recommendations  
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan  
57 developed during discussion of Agenda Item 9. The Commission added the topic of local  
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,  
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)

62  
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,  
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None  
73 (6-0-0-0)

74  
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as  
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.  
78 Abstain: None. Absent: None (6-0-0-0)

79  
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**



Office of the City Manager

## ACTION CALENDAR

October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Dee Williams-Ridley, City Manager  
 Subject: Identifying City Council Referrals for Removal

### RECOMMENDATION

1. Review the referrals marked as rescinded by the sponsoring Councilmember or District; 2. Consider the referrals identified by Councilmembers for further discussion; and 3. Approve the removal of referrals that have been marked as rescinded by the sponsoring Councilmember or District.

### FISCAL IMPACTS OF RECOMMENDATION

There are no direct financial implications related to the review and approval of the referrals for removal.

### CURRENT SITUATION AND ITS EFFECTS

Currently there are over 200 active City Council referrals pending. These referrals have been adopted over several years, some dating back five years or more. After the onset of the COVID-19 pandemic, there have been many changes and shifts that occurred locally, nationally, and globally, including City Council and community priorities. In order to ensure that the work of the City best reflects those shifts, staff suggested a review of outstanding referrals.

During July and August 2021, Councilmembers had the opportunity to review outstanding referrals with the option to mark the referrals sponsored by their District to indicate that the referral should be removed. In total, the Mayor and Council identified 61 referrals that should be removed from the referrals list (see attachment 1). In addition to 61 marked for removal, there were 24 referrals where Councilmembers had questions or comments that may affect whether they wish to consider these referrals for removal (see attachment 2). The full Council will have an opportunity to vote to remove or retain the referrals that were marked for removal.

### BACKGROUND

As stated above, changing conditions and priorities may result in certain referrals being outdated, superseded, or resolved through other programs and projects. This review by the Mayor and Council supports the Strategic Plan goal to provide an efficient and

financially-healthy government and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

The City Manager provides a quarterly update to the Council regarding the status of short term referrals through an Information Report on the Council agenda. In addition, during the spring 2021 budget process, staff provided a memo to both the Budget and Finance and the Agenda and Rules Policy Committees updating progress on referrals, projects, and responses to audits. Staff continues to work through the existing open referrals and has completed 86 since the start of the pandemic in March 2020.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

This recommendation will assist staff in focusing on Council priorities as well as decreasing efforts spent on items that are no longer as pressing or which have been superseded.

#### ALTERNATIVE ACTIONS CONSIDERED

Council may decide to forgo removing referrals that have been marked as rescinded.

#### CONTACT PERSON

Melissa McDonough, Senior Management Analyst, City Manager's Office, 510-833-3588

#### Attachments:

- 1: Referrals Marked for Removal
- 2: Responses to Councilmember Questions

## Attachment 1 - Referrals Marked for Removal

| Number      | Name                                                                                             | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Meeting Date | Referral District | Referral Member | Sponsor                                                | Lead City Department           | Status                                                                                              | Funded?                                        |
|-------------|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------|-----------------|--------------------------------------------------------|--------------------------------|-----------------------------------------------------------------------------------------------------|------------------------------------------------|
| DMND0002606 | Farmers' Markets Investments                                                                     | Refer to the City Manager to initiate improvements and changes to support the Berkeley Farmers' Markets that would address growing public safety and access concerns while enhancing the shopping experience and benefit the markets.                                                                                                                                                                                                                               | 2018-09-25   | 1                 |                 | Linda Maio, Kate Harrison, Sophie Hahn, Jesse Arreguin | Public Works                   | Not Started                                                                                         | Information unavailable at time of preparation |
| PRJ0016259  | Managing RV Parking Via Permit Process                                                           | Refer to the City Manager to look into how other cities use permitting to manage RV parking and suggest a permit process that Council can consider to enable RV parking but place some sensible limits.                                                                                                                                                                                                                                                             | 2018-09-25   | 1                 |                 | Linda Maio, Sophie Hahn, Jesse Arreguin                | CITY MANAGER'S OFFICE          | Work in Progress                                                                                    | Information unavailable at time of preparation |
| DMND0002541 | Referral to Planning Commission: Guiding Development on San Pablo Avenue                         | Refer to the Planning Commission the development of a Plan to guide development on San Pablo Avenue.                                                                                                                                                                                                                                                                                                                                                                | 2015-07-14   | 1                 | Linda Maio      | Linda Maio                                             | PLANNING & DEVELOPMENT         | Not Started                                                                                         | No                                             |
| PRJ0012416  | Replacement Mural for Center for Independent Living (CIL)                                        | Request the Arts Commission to consider, with CIL representatives, potential locations and suggestions for a new mural to replace that which was at the CIL Telegraph site.                                                                                                                                                                                                                                                                                         | 2017-06-13   | 1                 | Maiao, Davila   |                                                        | Office of Economic Development | Not Started                                                                                         | No                                             |
| PRJ0012436  | Restricting the Number of Vehicles Being Parked on Our Streets                                   | Refer to the Transportation Commission to establish an ordinance that would prevent the parking of many multiples of vehicles on any given Berkeley street, or contiguous streets, by an individual owner.                                                                                                                                                                                                                                                          | 2018-02-27   | 1                 |                 | Linda Maio, Kate Harrison                              | Public Works                   | On hold, pending scheduling by the Transportation Commission                                        | Information unavailable at time of preparation |
| PRJ0013071  | Special RPP Designation, Grant Street between Ohlone Park and Delaware Street                    | Request the City Manager to designate a special "no 2-hour parking grace period" residential permit parking zone for the one cul-de-sac block of Grant Street between Ohlone Park and Delaware Street. Also, request to provide Council with an Info Report on the process and perform increased enforcement.                                                                                                                                                       | 2017-01-24   | 1                 | Linda Maio      | Linda Maio                                             | Public Works                   | On hold, no solution found that does not privatize the street or which does not prohibit parking in | Information unavailable at time of preparation |
| PRJ0013083  | Treatment of women in custody at Santa Rita Jail                                                 | Refer to the Commission on the Status of Women the alleged offensive treatment of women in custody at Santa Rita Jail, as reported below with the aim of ensuring that searches of women not be conducted in the presence of men (be they male officers or inmates) and any other changes in protocol that might be needed to ensure appropriate policies are followed during searches of women in custody.                                                         | 2012-01-17   | 1                 | Linda Maio      | Linda Maio                                             | CITY MANAGER'S OFFICE          | Work in Progress                                                                                    | No                                             |
| DMND0002499 | Vitality of University Avenue                                                                    | Refer to the City Manager and Economic Development to analyze storefront vacancies on University Avenue and make recommendations on how to create a more vibrant streetscape on our main boulevard.                                                                                                                                                                                                                                                                 | 2017-07-11   | 1                 |                 | Linda Maio, Cheryl Davila, Kate Harrison               | Office of Economic Development | Not Started                                                                                         | No                                             |
| PRJ0017865  | Budget Referral: Remediation of Lawn Bowling, North Green and Santa Fe Right-of-Way, FY2020-2021 | Refer to the November 2019 AAO consideration of at least \$150,000 and up to remediate the Lawn Bowlers, North Green and Santa Fe Right-of-Way in advance of Request for Proposal (RFP) for these areas that potentially could provide much needed affordable alternative housing.<br>Refer to the Homeless Services Panel of Experts to consider Measure P funds for remediation purposes for these properties.                                                    | 2019-06-25   | 2                 |                 | Cheryl Davila                                          | HEALTH, HSG & COMMUNITY SVC    | Not Started                                                                                         | Information unavailable at time of preparation |
| DMND0002960 | Budget Referral: Increasing Safety at San Pablo Park                                             | 3. Re-initiate classes for daycare providers who use San Pablo Park out of the Frances Albrier Community Center: Historically, the City provided a variety of classes on safety and recreation for daycare providers who use San Pablo Park. This referral includes re-establishing a series of courses that daycare providers find useful based on gathering their input. One such course requested was sheltering in place in the situation of an active shooter. | 2018-11-13   | 2                 |                 | Cheryl Davila                                          | Parks, Recreation & Waterfront | Not Started                                                                                         | No                                             |

## Attachment 1 - Referrals Marked for Removal

| Number      | Name                                                                                                                                                                                                                                                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Meeting Date | Referral District | Referral Member  | Sponsor                                                  | Lead City Department                   | Status                  | Funded?                                        |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------|------------------|----------------------------------------------------------|----------------------------------------|-------------------------|------------------------------------------------|
| DMND0002444 | Budget Referral: Youth Listening Campaign & Citywide Master Plan                                                                                                                                                                                     | Amended to include Youth Commission. In support of the 2020 Vision process and as part of the larger commitment of the City of Berkeley to its young people, we are proposing a planning process that centers the voices and needs of young people, their families and the people who support them day-in and day-out. The process would include: 1) A Listening Campaign that would include focus groups, surveys and one-on-one interviews to identify the experiences of, perspectives of, needs of and barriers      | 2017-05-30   | 2                 |                  | Cheryl Davila, Jesse Arreguin                            | CITY MANAGER'S OFFICE                  | Not Started             | Information unavailable at time of preparation |
| DMND0003923 | Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley                                                                                                                                                          | City Council to take the following action:<br>1. Make the following statement:                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2021-01-19   | 2                 |                  | Cheryl Davila                                            | CITY MANAGER'S OFFICE                  | Not Started             | Information unavailable at                     |
| DMND0003922 | Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025                                                                                                           | 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle | 2021-01-19   | 2                 |                  | Cheryl Davila                                            | PLANNING & DEVELOPMENT                 | Not Started             | No                                             |
| DMND0002969 | Item E - Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations                | Six-month referral to the Planning Commission to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new construction, excluding single-family homes and ADUs, as well as construction in High Hazard Fire Zones. The Planning Commission should consider the following:<br>• Appropriate tree planting requirements for new construction, with the goal of increasing the tree canopy in Berkeley.<br>• Appropriate species requirements.                                         | 2018-12-11   | 2                 |                  | Cheryl Davila, Kate Harrison                             | PLANNING & DEVELOPMENT                 | Not Started             | No                                             |
| PRJ0013095  | Private Parking Lot Regulations                                                                                                                                                                                                                      | Refer to the City Manager the development of an ordinance that would allow parking lot operators to manage their parking facilities so as to meet the needs of local businesses and their customers.                                                                                                                                                                                                                                                                                                                     | 2015-10-27   | 2                 | Cheryl Davila    | Cheryl Davila                                            | City Attorney                          | Not Started             | No                                             |
| PRJ0027028  | Providing our Unhoused Community in the City of Berkeley with Menstrual Products                                                                                                                                                                     | 3. Direct the City Manager to use existing homeless services funding to develop and deploy a program to provide a broad spectrum of menstrual products, including but not limited to, feminine hygiene, pads, tampons, underwear, and other related products, both through the City's outreach direct services, as well as through the community based homeless services providers. Additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.       | 2020-07-28   | 2                 |                  | Cheryl Davila, Ben Bartlett, Lori Droste                 | HEALTH, HSG & COMMUNITY SVC            | Not Started             | No                                             |
| DMND0003939 | Recognize the Rights of Nature                                                                                                                                                                                                                       | Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity. Referred Item 31 to the Peace and Justice Commission for further analysis, and that the Commission is to return to Council with the results of its analysis.                                               | 2021-03-30   | 2                 |                  | Cheryl Davila                                            | CITY MANAGER'S OFFICE                  | Not Started             | Information unavailable at time of preparation |
| PRJ0019829  | Refer to the Planning Commission and Housing Advisory Commission to Research and Recommend Policies to Prevent Displacement and Referral Response: Expanding community engagement within work to address Climate Impacts                             | Refer to the Planning Commission and Housing Advisory Commission to research and recommend policies to prevent displacement and gentrification of Berkeley residents of color. Recommended policies should include real solutions. The Commission should do the following: - Develop a policy to address the erosion of People of Color (POC), including the African                                                                                                                                                     | 2019-04-30   | 2                 | Cheryl Davila    | Cheryl Davila, Ben Bartlett, Kate Harrison               | Health, Housing and Community Services | Work in Progress        | No                                             |
| DMND0003875 | Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions | Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions                                                                                                                                                                                                                                                                     | 2020-07-21   | 2                 | Davila, Bartlett |                                                          | PLANNING & DEVELOPMENT                 | Work in Progress        | No                                             |
| PRJ0013209  | Referral to the City Manager: Adopt Section 8 Landlord Incentives [Housing Action Plan]                                                                                                                                                              | Refer to the City Manager the adoption of the following measures to encourage landlords to accept Section 8 and Shelter + Care vouchers: 1. Create a list of qualified, efficient and affordable contractors vetted by the City, and a discount or waiver of                                                                                                                                                                                                                                                             | 2017-04-25   | 2                 | Cheryl Davila    | Cheryl Davila                                            | HEALTH, HSG & COMMUNITY SVC            | Not Started             | No                                             |
| DMND0003935 | Support Vision 2025 for Sustainable for Sustainable Food Policies                                                                                                                                                                                    | Adopt Vision 2025 for establishing sustainable food systems and sign the Milan Urban Food Policy Pact (MUFPP) 2. Refer aspects of the original item to the Community Health Commission (or future commission addressing public health) to take the following actions: a) Consult with appropriate City staff to evaluate the feasibility of altering food sources within the City's                                                                                                                                      | 2021-03-09   | 2                 | Davila           |                                                          | HEALTH, HSG & COMMUNITY SVC            | Not Started             | No                                             |
| DMND0003744 | Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay                                                                                                                                                                                     | Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job                 | 2019-06-11   | 3                 | Ben Bartlett     | Ben Bartlett, Jesse Arreguin, Kate Harrison, Sophie Hahn | PLANNING & DEVELOPMENT                 | Not Started             | No                                             |
| PRJ0012337  | Develop Ordinance Prohibiting Companies Participating in the Construction of a Border Wall                                                                                                                                                           | Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days.                                                                                                                                                                                                                                                                                            | 2017-12-19   | 3                 |                  | Ben Bartlett, Sophie Hahn, Cheryl Davila                 | Finance                                | Pending Not On Schedule | Staff time                                     |
| PRJ0016099  | Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave                                                                                                                                                                 | That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex                                                                                                                                                                                                                                                                             | 2019-03-26   | 3                 |                  | Ben Bartlett                                             | City Attorney                          | Work in Progress        | Information unavailable at                     |

## Attachment 1 - Referrals Marked for Removal

| Number      | Name                                                                                                                                       | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Meeting Date | Referral District | Referral Member            | Sponsor                                                 | Lead City Department        | Status           | Funded?                                        |
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| PRJ0012428  | Homeless Youth Policy                                                                                                                      | Refer to the City Manager, the Homelessness Commission, and the Labor Commission to develop a Homeless Youth Policy for the City of Berkeley.                                                                                                                                                                                                                                                                                                                                                                                                                                   | 2017-10-31   | 3                 |                            | Ben Bartlett, Sophie Hahn, Kate Harrison                | HEALTH, HSG & COMMUNITY SVC | Not Started      | No                                             |
| DMND0003731 | Paid Family Leave Policy in Berkeley to Supplement California Paid Family Leave Program                                                    | That the City Council adopt this policy and refer to the City Manager and City Attorney to amend the proposed ordinance based on the recommendations of the Paid Family Leave (PFL) Subcommittee and to conform to legal and code consistency requirements.                                                                                                                                                                                                                                                                                                                     | 2019-04-23   | 3                 |                            | Ben Bartlett, Sophie Hahn, Kate Harrison, Cheryl Davila | Human Resources             | Not Started      | Information unavailable at time of preparation |
| DMND0002587 | Personal Delivery Service Franchise Agreements                                                                                             | Referral to the City Manager's Office to develop a program that would enable the City to consider franchise applications for personal delivery service companies involving personal delivery devices.                                                                                                                                                                                                                                                                                                                                                                           | 2017-12-19   | 3                 | Ben Bartlett               | Ben Bartlett                                            | CITY MANAGER'S OFFICE       | Not Started      | No                                             |
| PRJ0012330  | Public Toilet Policy                                                                                                                       | Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall                                               | 2017-07-25   | 3                 | Bartlett                   |                                                         | CITY MANAGER'S OFFICE       | Work in Progress | No                                             |
| PRJ0012429  | Referral to Peace and Justice Commission to Further Protections for Immigrants and Religious Minorities                                    | Adopt a Resolution referring to the Peace and Justice Commission to: 1. Identify entities involved in attempts to create databases and registries used to target immigrants and religious minorities, and make recommendations to the City Council on divesting from such entities; and 2. Identify all service providers to US Immigration and Customs Enforcement, and make recommendations to the City Council on prohibiting city investment in such service providers.                                                                                                     | 2017-10-31   | 3                 |                            | Ben Bartlett, Kate Harrison                             | CITY MANAGER'S OFFICE       | Not Started      | Information unavailable at time of preparation |
| DMND0002726 | Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages                                                 | Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.                                                                                                                                                                                                                                                                                                                           | 2018-09-13   | 4                 | Kate Harrison              | Kate Harrison                                           | PLANNING & DEVELOPMENT      | Work in Progress | Staff time                                     |
| PRJ0012426  | Ban on Receipts Made with BPA and Other Phenols                                                                                            | Refer to the Health Commission and the Community Environmental Advisory Commission to consider an Ordinance to ban the manufacture, distribution, sale, or use of receipt paper that contains BPA or other phenols, and request that the commissions conduct at least one public hearing that includes invitations to local business associations.                                                                                                                                                                                                                              | 2017-10-17   | 4                 | Harrison, Davila, Bartlett |                                                         | PLANNING & DEVELOPMENT      | Work in Progress | No                                             |
| PRJ0012442  | Referral to the Health Commission to Consider a "Deemed Approved Ordinance"                                                                | Refer to the Health Commission to consider a Concurrent Sales of Gasoline and Alcoholic Beverages Law regulating the concurrent sales of gasoline and alcoholic beverages. Deem such establishments approved, subject to their adherence to                                                                                                                                                                                                                                                                                                                                     | 2018-04-03   | 4                 |                            | Kate Harrison, Linda Maio                               | HEALTH, HSG & COMMUNITY SVC | Not Started      | No                                             |
| PRJ0013189  | Administrative Changes Related to Taxicabs                                                                                                 | Request the City Manager consider the following administrative changes, in order to increase the competitiveness of the taxi industry: 1. Reduce the annual vehicle inspection fee from \$88 to \$45 and the re-inspection fee from \$45 to \$25.; 2. Increase the maximum amount of free taxi scrip that drivers are able to redeem each week from the current limit of \$400 to \$800 (if taxi scrip is redeemed twice per week, the maximum amount redeemed at once should be raised to \$400 from \$200).; 3.                                                               | 2017-10-17   | 7                 |                            | Kriss Worthington, Kate Harrison                        | CITY MANAGER'S OFFICE       | Work in Progress | No                                             |
| DMND0002599 | Campus-City National Night Out. Revised to be a Referral with no specific date - Revised materials                                         | Adopting a Resolution to refer the campus-city National Night Out event to the City Manager to help reduce crime in the campus area.                                                                                                                                                                                                                                                                                                                                                                                                                                            | 2018-07-24   | 7                 | Kriss Worthington          | Kriss Worthington                                       | Police                      | Not Started      | Information unavailable at                     |
| PRJ0013215  | City Manager Referral: Facilitate the Local Implementation of Senate Bill 1413 and Expedite the Development of Teacher and School Employee | Refer to the City Manager to work with the Planning Department to facilitate the local implementation of Senate Bill 1413 in an effort to expedite the development of housing for teacher and school employees in Berkeley.                                                                                                                                                                                                                                                                                                                                                     | 2016-09-27   | 7                 | Kriss Worthington          | Kriss Worthington                                       | PLANNING & DEVELOPMENT      | Not Started      | No                                             |
| DMND0002688 | City Manager Referral: Increasing Transparency in City Public Record Act Responses                                                         | Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.                                                                                                                                                                                                                                                                                                                                                                                                          | 2016-11-01   | 7                 | Kriss Worthington          | Kriss Worthington                                       | City Attorney               | Incomplete       | No                                             |
| DMND0002589 | City Manager Referral: Updating Graffiti Ordinance and Policies Based on a Review of San Francisco's New Ordinance                         | Refer to the City Manager and the Public Works and Parks and Recreation Commissions to create an ordinance that revises Berkeley's policies regarding graffiti, focusing on prevention and enforcement of regulations.                                                                                                                                                                                                                                                                                                                                                          | 2014-07-01   | 7                 | Kriss Worthington          |                                                         | Public Works                | Submitted        | Information unavailable at time of preparation |
| DMND0002954 | Construct Additional Taxi Stands and Relocate One Stand Within the City                                                                    | That the Council refer to the City Manager the construction of seven taxi stands in total and the relocation of one stand in the City to improve accessibility for pedestrians, create visibility, and increase profits for taxi drivers. These taxi stands should be constructed at the following sites: Two stands at Hotel Shattuck; Two stands at the Doubletree Hotel; Two stands at Telegraph & Bancroft or Durant & Telegraph; and One stand at Bancroft Hotel. In addition, the Ashby BART taxi stand shall be relocated closer to the station entrance on MLK Jr. Way. | 2018-11-13   | 7                 |                            | Kriss Worthington, Cheryl Davila, Sophie Hahn           | CITY MANAGER'S OFFICE       | Not Started      | No                                             |

## Attachment 1 - Referrals Marked for Removal

| Number      | Name                                                                                                                                                                                                            | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Meeting Date | Referral District | Referral Member   | Sponsor                                                  | Lead City Department           | Status                                                               | Funded?                                        |
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| DMND0002953 | Create and Implement Additional Sensitivity Training Options for Taxi Drivers                                                                                                                                   | That the Council refer to the City Manager the creation and implementation of one of the following two additional options for sensitivity trainings to allow for more accessibility for new and continuous taxi drivers. Firstly, an online sensitivity training course should be created and implemented in the City's current taxi checklist. Secondly, there should be a designated sensitivity training site readily accessible within the City.                       | 2018-11-13   | 7                 |                   | Kriss Worthington, Cheryl Davila, Kate Harrison          | CITY MANAGER'S OFFICE          | Not Started                                                          | No                                             |
| DMND0002676 | Modify the Proposed Early Mitigation Fee Discount and Preserve Revenue Towards Units At Or Below 50% AMI and Add Sunset Clause (Continued from February 23, 2016)                                               | That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause.                                                                                                                                                  | 2016-04-05   | 7                 | Kriss Worthington | Kriss Worthington                                        | HEALTH, HSG & COMMUNITY SVC    | Not Started                                                          | Yes                                            |
| PRJ0012410  | Non-Citizen Voting in Berkeley Elections Refer to Peace and Justice Commission                                                                                                                                  | Refer to the Peace and Justice Commission to consider preparation of an amendment to the Berkeley City Charter to be presented to the voters in Berkeley that would allow a non-citizen resident the right to vote in Berkeley city elections.                                                                                                                                                                                                                             | 2017-03-14   | 7                 |                   |                                                          | CITY MANAGER'S OFFICE          | Not Started                                                          | No                                             |
| PRJ0019700  | Refer the Transportation Commission to consider incentives for the public to use sustainable modes of transportation similar to Bologna, Italy                                                                  | Refer to the Transportation Commission to create incentives for members of the public to cycle, walk and take public transport as opposed to driving.                                                                                                                                                                                                                                                                                                                      |              | 7                 | Kriss Worthington | Sophie Hahn, Kate Harrison, Kriss Worthington            | Public Works                   | On hold                                                              | Information unavailable at time of preparation |
| DMND0002910 | Refer to the City Manager to add a condition to Zoning Board Approved permits to bring attention to the Pay Transparency policy to project applicants, and consider these Pay Transparency Ordinance amendments | That the Council refer to the City Manager to add a condition to Zoning Board Approved permits in order to bring attention to the Pay Transparency policy to project applicants, and consideration of amendments to the Pay Transparency Ordinance.                                                                                                                                                                                                                        | 2018-11-27   | 7                 |                   | Kriss Worthington, Jesse Arreguin                        | PLANNING & DEVELOPMENT         | Not Started                                                          | No                                             |
| DMND0002479 | Referral to the City Manager and the Housing Commission to Consider Creating a Dedicated Revenue Stream from Campus Area Projects to                                                                            | Refer to the City Manager and Housing Commission to consider in partnership with the proposed density bonus in the campus area and other policies directed at increasing student housing, creating a dedicated revenue stream to fund housing for homeless and extremely low income students using methods of identifying eligible students based on one or more of the                                                                                                    | 2018-01-30   | 7                 |                   | Kriss Worthington, Ben Bartlett                          | HEALTH, HSG & COMMUNITY SVC    | Not Started                                                          | No                                             |
| DMND0003849 | Referral: Electric Moped Ride-Share Franchise Agreement                                                                                                                                                         | Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.                                                                                     | 2020-02-11   | 7                 | Rigel Robinson    | Rigel Robinson, Ben Bartlett, Kate Harrison, Sophie Hahn | Public Works                   | Not Started                                                          | Information unavailable at time of preparation |
| PRJ0013155  | Expanding the Downtown Arts District                                                                                                                                                                            | 1. Request the Planning Commission examine expanding the boundaries of the current Downtown Arts District Overlay as well as the allowable active ground-floor uses.<br>2. Request the City Manager consider the Downtown Arts District as part of the update to the Berkeley Arts and Culture Plan.                                                                                                                                                                       | 2016-10-18   | 8                 | Lori Droste       | Lori Droste                                              | Office of Economic Development | Work in Progress                                                     | No                                             |
| PRJ0013067  | Potential Recreational Opportunities at Willard Park and Pool                                                                                                                                                   | Refer the issue of recreational opportunities in the vicinity of Willard Park to the City Manager, Parks and Waterfront Commission and the 2X2 Committee of the City Council and the Board of Education to determine the best course of action for increased recreational equity in South Berkeley, including but not limited to the re-opening of Willard Pool. Authorize staff to develop cost estimates for a minimal level of repairs to get Willard Pool operational. | 2017-03-14   | 8                 | Lori Droste       | Lori Droste                                              | Parks, Recreation & Waterfront | Work in Progress                                                     | No                                             |
| PRJ0012440  | Street Sweeping Improvement Plan                                                                                                                                                                                | Refer to the City Manager, Public Works commission, and Zero Waste commission to develop a new strategy to ensure that street sweeping is not obstructed by waste/recycling pick-up. In addition to being unsightly, without proper street sweeping,                                                                                                                                                                                                                       | 2018-03-27   | 8                 |                   | Lori Droste, Jesse Arreguin                              | Public Works                   | On hold, pending new financial                                       | Information unavailable at                     |
| PRJ0019780  | Traffic Circle Vegetation Maintenance Policy                                                                                                                                                                    | Refer to Parks and Waterfront Commission and the Transportation Commission to establish a city/community task force to: a) Evaluate the City's current traffic circle vegetation policy and b) Conduct a community led process to update that policy to ensure pedestrian/bicycle/vehicle safety and preserve community efforts to beautify traffic circles.                                                                                                               | 2018-09-25   | 8                 | Lori Droste       | Lori Droste, Ben Bartlett, Cheryl Davila, Jesse Arreguin | Parks Recreation & Waterfront  | Work in Progress (Parks and Waterfront Commission on a subcommittee) | Information unavailable at time of preparation |
| PRJ0013090  | Multi-Departmental Homelessness Working Group                                                                                                                                                                   | 1. Establish a Multi-Departmental Homelessness Working Group (modeled after the City Sustainability Working Group)<br>2. Initiate a public process to develop a comprehensive plan to address homelessness in Berkeley, taking into consideration all of the ideas put forward by the Homeless Commission and Homeless Task Force, with the goal of creating more transitional and permanent housing for our city homeless population.                                     | 2016-03-29   | Mayor             | Jesse Arreguin    | Jesse Arreguin                                           | CITY MANAGER'S OFFICE          | Work in Progress                                                     | Information unavailable at time of preparation |



## Attachment 1 - Referrals Marked for Removal

| Number      | Name                                                                                                                                                                    | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Meeting Date | Referral District | Referral Member | Sponsor                                                    | Lead City Department                   | Status           | Funded?                                        |
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| PRJ0016267  | Referral Responses: Managing Recreational Vehicle (RV) Parking                                                                                                          | The City of Berkeley seeks to implement all laws and ordinances in a fair and humane manner.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 2019-03-26   | Mayor             |                 | Jesse Arreguin, Rashi Kesarwani, Sophie Hahn               | CITY MANAGER'S OFFICE                  | Work in Progress | No                                             |
| PRJ0019058  | Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing                                                         | To that end, we refer to the City Manager for consideration the following guidelines to help ensure enforcement of revised RV Refer to the Housing Advisory Commission, the Measure O Bond Oversight Committee, and the Homeless Services Panel of Experts to consider the proposed Housing for a Diverse, Equitable and Creative Berkeley framework (the "Framework") and return comments for consideration at a Special Meeting of the City Council in September, to inform a final version the City Council will adopt to govern Berkeley's affordable housing policies, programs and projects through 2030.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 2019-07-16   | Mayor             |                 | Jesse Arreguin, Sophie Hahn, Kate Harrison, Rigel Robinson | Health, Housing and Community Services | Not Started      | Information unavailable at time of preparation |
| PRJ0012433  | Amending BMC Chapter 9.04: Tax Rate for Non-Medical Cannabis Businesses                                                                                                 | 2) refer to the Community Health Commission to study the health effects of cannabis and possible funding recommendations for allocating the tax revenue;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 2018-02-13   | Mayor             |                 | Jesse Arreguin                                             | HEALTH, HSG & COMMUNITY SVC            | Not Started      | No                                             |
| DMND0002677 | Creation of 311 Mobile Application                                                                                                                                      | Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 2016-04-26   | Mayor             | Jesse Arreguin  | Jesse Arreguin                                             | Information Technology                 | Not Started      | No                                             |
| PRJ0013100  | Mandatory Green Stormwater Infrastructure in New Developments                                                                                                           | Refer to the City Manager and Planning and Community Environmental Advisory Commissions to develop an ordinance requiring large residential developments of 100 units or more or commercial developments that result in 5,000 square feet of new or replaced impervious surface, to incorporate Green Stormwater Infrastructure (GSI) and water conservation features into new projects.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 2015-09-15   | Mayor             | Jesse Arreguin  | Jesse Arreguin                                             | PLANNING & DEVELOPMENT                 | Work in Progress | No                                             |
| DMND0002665 | Prohibit Sales of Tobacco Products to Persons Under the Age of 21                                                                                                       | Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2015-09-15   | Mayor             | Jesse Arreguin  | Jesse Arreguin                                             | HEALTH, HSG & COMMUNITY SVC            | Not Started      | No                                             |
| PRJ0013099  | Housing Accountability Act                                                                                                                                              | Refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion: 1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable "objective general plan and zoning standards" that would establish known maximum densities. This could be done across the board or for specified districts. 2. Devise and adopt "objective, identified written public health or safety standards" applicable to new housing development projects. 3. Adopt "design review standards that are part of 'applicable, objective general plan and zoning standards and criteria'. 4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often | 2017-07-11   | Mayor             | Jesse Arreguin  | Jesse Arreguin                                             | PLANNING & DEVELOPMENT                 | Work in Progress | Information unavailable at time of preparation |
| DMND0003928 | Refer to the City Manager the review and redesign of the RPP program.                                                                                                   | Refer to the City Manager the review and redesign of the RPP program.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 2021-01-26   | Mayor             | Mayor, Droste   |                                                            | Public Works                           | Work in Progress | Information unavailable at time of preparation |
| PRJ0013093  | Permit Service Center Improvements                                                                                                                                      | Refer to the City Manager to include in current efforts to improve the Land Use Permitting process the following proposals to increase the efficiency and outreach of the Permit Service Center, making the permitting process easier for staff and applicants alike. Specific proposals to consider include: 1. Website improvements for tracking of permits, calculating permit fees, and applying online; 2. Case Managers for coordinated intake of permit applications and materials; 3. Informational materials including an improved user guide and infographics modeled after BizGrid; 4. Customer service improvements at the Center                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2016-07-19   | Mayor             | Jesse Arreguin  | Jesse Arreguin                                             | PLANNING & DEVELOPMENT                 | Work in Progress | Staff time                                     |
| DMND0003927 | Refer to the City Manager and appropriate commissions updates to the TDM program to reflect evolving mobility and disability needs, including electric mobility options | Refer to the City Manager and appropriate commissions updates to the TDM program to reflect evolving mobility and disability needs, including electric mobility options                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 2021-01-26   | Mayor             | Mayor, Droste   |                                                            | PLANNING & DEVELOPMENT                 | Not Started      | Staff time                                     |
| DMND0002675 | Prioritize Installation of Bicycle Lane on Fulton Street                                                                                                                | Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 2016-03-15   | Mayor             | Jesse Arreguin  | Jesse Arreguin                                             | Public Works                           | Not Started      | Information unavailable at                     |

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| Number      | Name                                                                                                                                                                                                          | Description                                                                                                                                                                                                                                                                                                                                                                                                                          | Meeting Date | Referral District | Referral Member | Sponsor                                               | Lead City Department        | Status           | Funded? | Additional Context/Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| PRJ0013213  | Adding Threat of Displacement of a Berkeley Resident to the Current Income Qualification Guidelines Which Would Place an Applicant in Priority Status for BMR (Below Market Rate) Units [Housing Action Plan] | Refer to the City Manager adding to income qualification the status of pending displacement of a Berkeley resident or family, for priority eligibility for BMR units.                                                                                                                                                                                                                                                                | 2017-06-13   | 1                 |                 | Linda Maio, Kate Harrison, Hahn, Ben Bartlett         | HEALTH, HSG & COMMUNITY SVC | Work in Progress | No      | Staff are currently working on a response to this referral, and the questions asked here, with the City's Partnership for the Bay's Future Policy Fellow and the City Attorney's Office. The Housing Trust Fund and BMR programs have separate State/Federal requirements that may affect the applicability of preferences differently for each program. State/Federal Fair Housing laws, in particular, may affect how preferences are applied to the BMR program, and staff are exploring this subject now with the CAO. Staff's report for the Council's consideration will include quantifiers for displacement and the threat of displacement if they are found to be compatible with State/Federal law. This is anticipated to come to Council in early 2022. |
| DMND0002537 | Enable Internal Renovation of a Residence That Does Not Increase the Footprint As an AUP if the Building is an Historic Non-Conforming Use in the Percent of Lot Coverage                                     | Refer to the Planning Commission to enable an AUP for the renovation of an existing residence, rather than a Use Permit, in the following circumstances: 1. The renovation does not increase the percentage of lot coverage; 2. The residence is an pre-existing non-conforming use in the percentage of lot coverage; 3. The renovation does not appear to create an intensification of use; 4. No change to the building envelope. | 2018-02-27   | 1                 |                 | Linda Maio, Susan Wengraf, Lori Droste, Kate Harrison | PLANNING & DEVELOPMENT      | Not Started      | No      | No, this is not related to ADU law or any new state legislation that we're aware of. It's a relatively simple policy change that we can address either through the Housing Element Update or through ZORP Phase 2.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| Number      | Name                                                                                                                                                      | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Meeting Date | Referral District | Referral Member              | Sponsor                                                     | Lead City Department                   | Status           | Funded?                       | Additional Context/ Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| DMND0002887 | Encouraging Long-Term Tenant Stability                                                                                                                    | Facilitate the ability of long-term tenants to purchase their residence by referring to the City Manager to amend BMC 21.28.080 as it pertains to the Affordable Housing Mitigation fee as follows: If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.                                                                                                         | 2018-11-27   | 1                 |                              | Linda Maio, Lori Droste, Kate Harrison, Sophie Hahn         | PLANNING & DEVELOPMENT                 | Work in Progress | Yes                           | The referenced fee is the affordable housing mitigation fee associated with condo conversions (rather than the Affordable Housing Mitigation Fee associated with new housing development), which is not limited to buildings of five or more units. Work on this referral is currently underway as part of the development of a unified affordable housing ordinance.                                                                                                                                                                                                                                                                                                                               |
| PRJ0020542  | Open Doors Initiative: City Worker and First Time Affordable Homebuyer Program                                                                            | That the City Council refer the City Manager and Housing Advisory Committee to explore mechanisms to support homeownership by City of Berkeley employees and further refer to City Manager to prepare a report detailing available first-time homeownership and low-income homeowner programs that might be available for implementation in the City of Berkeley. Analysis to include the new Self-Help Housing Program and the provisions of AB 101.                                                                                                                                                                                                                                 | 2019-09-10   | 3                 | Bartlett, Robinson, Arreguin |                                                             | Health, Housing and Community Services | Not Started      | No                            | Yes. The Missing Middle report calls for "Evaluating methods for promoting first time home ownership of these units (e.g., Open Doors Initiative) and/or providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed." This encompasses the charge of the listed referral.                                                                                                                                                                                                                                                                                                                                                               |
| DMND0003936 | Budget Referral: Establish Parking Benefit Districts in the Adeline Corridor and Gilman District and Refer Funding to the Fiscal Year 2022 Budget Process | Refer to the City Manager to establish Parking Benefit Districts (PBDs) in the (1) Adeline Corridor and (2) Gilman District in order to finance and support neighborhood improvements--such as landscaping; enhanced lighting; security ambassadors; enhanced street sweeping and sidewalk cleaning; bike, pedestrian, micromobility, and public transit infrastructure; marketing and promotion of the commercial areas, and other potential enhancements to be determined -- in South and West Berkeley.<br><br>Further, refer to the Fiscal Year 2022 budget process \$75,000 for city staff to seek consulting services to assist in the formation and establishment of the PBDs. | 2021-03-23   | 3                 |                              | Ben Bartlett, Rashi Kesarwani, Jesse Arreguin, Terry Taplin | Office of Economic Development         | Work in Progress | Yes \$75,000 Fiscal Year 2022 | Since June 2021, the Office of Economic Development (OED) (with the assistance of an U.C. Berkeley City Planning graduate student) has researched case studies and reported best practices related to establishing parking districts in California. The report recommends a path forward for implementing two parking Business Improvement Districts (BIDs) in Berkeley, in the Lorin and Gilman commercial districts. Next steps include possibly securing the help of a paid consultant, to meet with relevant City departments, conduct relevant stakeholder outreach, and to craft ordinances (for council review and approval) to establish two new BIDs (including Public Hearing materials). |

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| Number     | Name                                      | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Meeting Date | Referral District | Referral Member | Sponsor                                   | Lead City Department      | Status      | Funded? | Additional Context/Information                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| PRJ0019647 | Accessory Dwelling Unit Ordinance Updates | <p>Action: M/S/Carried (Hahn/Wengraf) to adopt the item as written in Supplemental Reports Packet #1 and including the following changes.</p> <ul style="list-style-type: none"> <li>Remove the language regarding view protections.</li> <li>Add new #9 on hillside heights measurements where no previous structure exists.</li> <li>Add "and any other solutions" to #5 regarding parking.</li> <li>Include the referral from Item 15 with this referral.</li> </ul> <p>01/14/21 (SM for DB)<br/>                     Restricted allowances due to state law. Solution may be incorporated into Safe Passages.</p>                                                                                    | 2018-09-13   | 5                 | Sophie Hahn     | Sophie Hahn, Susan Wengraf, Kate Harrison | FIRE & EMERGENCY SERVICES | Not Started | No      | Superseded by State action which prohibited local jurisdictions from requiring off-street parking in locations that are within a certain specified distance of public transit. Accessory Dwelling Unit issues are currently being reviewed by multiple departments and there is a scheduled follow-up for the October 12 City Council Meeting. For the aforementioned reasons, staff concur that it is now moot.                                                              |
| PRJ0012447 | Accessory Dwelling Unit Ordinance Updates | <p>Refer to the Planning Commission to consider additional elements for Berkeley's Accessory Dwelling Unit Ordinance (BMC 23C.24), on an expedited basis, and refer to the Disaster and Fire Safety Commission bullet point #5, relating to potential obstruction of emergency vehicles, and request that their recommendations be sent directly to the Planning Commission to inform the Planning Commission's review and recommendations. Amendments: Remove the language regarding view protections; Add new #9 on hillside heights measurements where no previous structure exists; Add "and any other solutions" to #5 regarding parking; Include the referral from Item 15 with this referral.</p> | 2018-09-13   | 5                 | Sophie Hahn     | Sophie Hahn, Susan Wengraf, Kate Harrison | FIRE & EMERGENCY SERVICES | Not Started | No      | This referral was to the Planning Commission and, to date, staff have been unable to determine the exact nature of the Disaster and Fire Safety Commission's recommendation was, and thus can't determine what the recommendation's status may be. Nonetheless, Accessory Dwelling Unit issues are currently being reviewed by multiple departments and there is a scheduled follow-up for the October 12 City Council Meeting. Staff believe that this item now may be moot. |

## Attachment 2 - Responses to Councilmember Questions

| Number      | Name                                                                                                                          | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Meeting Date | Referral District | Referral Member | Sponsor                                                  | Lead City Department           | Status           | Funded?               | Additional Context/ Information                                                                                                                       |
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| PRJ0013204  | Immediate Measures to Address Fire Safety and Prevention [Non-RRV Prioritization Process]                                     | Refer to the City Manager to study and evaluate, in consultation with relevant Commissions, the following fire safety and prevention measures on a priority basis. After study and evaluation, implement or, where additional resources may be required, recommend implementation and sources of funding. 1. Complete the Berkeley Fire Department's comprehensive Evacuation Plan and publicize evacuation routes and protocols on a priority basis. 2. Increase outreach efforts to sign up residents for the Alameda County Emergency Alert program. 3. Review and update the City's existing Fire Safety ordinances, including BMC 12.50 Fire Inspection Program. 4. Consider implementation of a siren warning system, similar to Oakland's Emergency Siren system. 5. Review and, as necessary, strengthen coordination and communication with Oakland, East Bay Regional Parks (EBRP), Alameda County, Contra Costa and other neighboring Fire Department and emergency response service providers. 6. Expand programs and practices to reduce fire hazards and fuel loads and ensure clearance for utility lines on both public and private property as outlined in the report. 01/14/21 - Programs to be funded by FF (SM for DB). | 2018-01-30   | 5                 |                 | Sophie Hahn, Susan Wengraf, Kate Harrison                | FIRE & EMERGENCY SERVICES      | Work in Progress | Yes                   | Initial work is completed and all six projects are well on their way. Most importantly funding has been secured through Measure FF.                   |
| DMND0002500 | Solano Avenue Economic Development Study                                                                                      | Refer to the City Manager to undertake a comprehensive study of the Solano Avenue Commercial District, to provide baseline information for future strategic planning and business development and initiatives that will result in increased tax revenues for the City of Berkeley, and to report to the Council on a priority basis, at an upcoming worksession.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 2017-04-25   | 5                 | Sophie Hahn     | Sophie Hahn                                              | Office of Economic Development | Not Started      | Yes (previous budget) | See memo <i>Solano Avenue Economic Conditions</i> (2017) that responds to this referral. This item can be considered completed and may be removed.    |
| PRJ0012427  | Referral to the City Manager and Parks and Waterfront Commission to Create a Policy to Establish a Commemorative Tree Program | Refer to the City Manager and the Parks and Waterfront Commission the creation of a policy establishing a Commemorative Tree Program, similar to the City's Park Bench Donation Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 2017-10-17   | 5                 |                 | Sophie Hahn, Kate Harrison, Susan Wengraf, Cheryl Davila | Parks, Recreation & Waterfront | Work in Progress | Partial               | The Commission, after careful consideration, including consultation with other municipalities, advised against pursuing a commemorative tree program. |

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| Number      | Name                                                                                                                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Meeting Date | Referral District | Referral Member           | Sponsor                                 | Lead City Department        | Status           | Funded?                                        | Additional Context/ Information                                                                                                                                                                                                                                                                                                                                                                                                              |
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| DMND0002913 | Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (Beer/Wine in M Dist)           | Refer to staff and the Planning Commission to consider amendments related to beer and wine sales in the M District.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 2018-12-04   | 5                 | Hahn, Planning Commission |                                         | PLANNING & DEVELOPMENT      | Not Started      | No                                             | The Planning and Development Department does not currently have staff capacity to launch this project.                                                                                                                                                                                                                                                                                                                                       |
| DMND0002595 | Creation and Adoption of a Transit Streets Cooperative Agreement with the Alameda-Contra Costa (AC) Transit District | Refer to the City Manager the Creation and Adoption of a Transit Streets Cooperative Agreement with the Alameda-Contra Costa (AC) Transit District.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 2017-04-04   | 5                 |                           | Sophie Hahn                             | Public Works                | On hold          | Information unavailable at time of preparation | On hold pending staff capacity at AC Transit and the City. This is likely to be initiated in fiscal 2024 following completion of current joint efforts such as the Southside Complete Streets and bus lanes for Dana and Durant Streets, as well as transit access enhancements on San Pablo Avenue as part of the Alameda CTC San Pablo Corridor Improvement projects spanning multiple jurisdictions in Alameda and Contra Costa Counties. |
| DMND0002824 | Referral to the City Manager and Planning Commission: Update BMC Chapter 22.16 Development Agreement Procedures      | Refer to the City Manager and Planning Commission to review and update the Berkeley Municipal Code Chapter 22.16 Development Agreement Procedures to create a streamlined process that maximizes community benefits and conforms to State law.                                                                                                                                                                                                                                                                                                                                                                                                                                      | 2018-10-30   | 5                 |                           | Sophie Hahn, Lori Droste, Kate Harrison | PLANNING & DEVELOPMENT      | Not Started      | No                                             | The Planning and Development Department does not currently have staff capacity to launch this project.                                                                                                                                                                                                                                                                                                                                       |
| PRJ0027891  | Referral: Commission Low-Income Stipend Reform                                                                       | Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider:<br>1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data.<br>2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage to correspond to compensation for 2.5 hours of work. | 2020-12-01   | 7                 |                           | Rigel Robinson                          | City Clerk                  | Work in Progress | Yes                                            | 100% Complete                                                                                                                                                                                                                                                                                                                                                                                                                                |
| PRJ0012396  | Cigarette and Tobacco Litter Ordinance; Referral to Community Health Commission                                      | Referral to the Community Health Commission to establish an ordinance that would diminish pollution from cigarettes waste similarly to San Francisco's Cigarette Abatement Fee Ordinance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2016-03-08   | 7                 | Kriss Worthington         |                                         | HEALTH, HSG & COMMUNITY SVC | Work in Progress | No                                             | HHCS concurs with closing. Notes: M/S/C (Stein/Chen) Motion to support the recommendation to Council from the Community Environmental Advisory Commission regarding the pilot project to address cigarette butt litter and smoking in commercial zones. (6/23/16).                                                                                                                                                                           |

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| Number      | Name                                                                                                                                            | Description                                                                                                                                                                                                                                                                                                                                                                                                                          | Meeting Date | Referral District | Referral Member   | Sponsor                                                       | Lead City Department           | Status           | Funded?                                        | Additional Context/ Information                                                                                                                                                                                                                                                                                                                                                                                                     |
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| PRJ0019767  | Referral to the Civic Arts Commission to create interactive family-friendly art attractions                                                     | Refer to the Civic Arts Commission to create interactive family-friendly art attractions in the City of Berkeley.                                                                                                                                                                                                                                                                                                                    | 2018-10-30   | 7                 | Kriss Worthington | Kriss Worthington, Ben Bartlett                               | Office of Economic Development | Completed        | No                                             | The installed wildflower benches at the recently re-opened San Pablo park playground are a great example of family-friendly, functional art that has been implemented in response to this 2018 referral. This item can be considered completed and removed.                                                                                                                                                                         |
| PRJ0030946  | Refer the City Manager to Improve the Current Tree Ordinance and Seek Funding Opportunities to Plant More Trees in the City                     | That the Council refer the City Manager to improve the current tree ordinance to protect more trees, develop policy on street tree/hardscape conflicts, encourage more community initiative and participation in the maintenance and care of our street trees and seek potential funding opportunities to plant more trees in Berkeley and funds to maintain new and existing trees on public property.                              | 2018-11-27   | 7                 |                   | Kriss Worthington, Kate Harrison, Cheryl Davila               | Parks, Recreation & Waterfront | Work in Progress | Partial                                        | We are in the process of seeking funding. To date, we've received a \$750,000 grant, which will enable us to address the referral's request to encourage more community initiative and participation in the maintenance and care of our street trees. Additionally, we are in the process of applying for two other grants.                                                                                                         |
| DMND0002949 | City Manager Short-Term Referral: To Change Telegraph Avenue Parking Signs to Allow Parking All                                                 | That the Council refer to the City Manager to eliminate the no parking signs on Telegraph Avenue between Bancroft and Dwight.                                                                                                                                                                                                                                                                                                        | 2018-11-13   | 7                 |                   | Kriss Worthington                                             | Public Works                   | Not Started      | Information unavailable at time of preparation | A work order has been issued to modify signs to indicate that in addition to morning loading and 9 am to 6 pm meter hours already posted, parking is allowed at all other times.                                                                                                                                                                                                                                                    |
| PRJ0020060  | Referral to the Transportation Commission: Explore Possibilities for Initiating Equitable Exchange with Transportation Network Companies (TNCs) | Request that the Transportation Commission initiate research into an effective means of equitable exchange with TNCs. In order to compensate the City of Berkeley for traffic congestion, air pollution, and infrastructure damage, the Council recommends that TNCs participate in the payment of taxes and the exchange of data. Recommendation revised to add the proposed ballot measure item in Supplemental Reports Packet #2. | 2018-11-27   | 7                 | Kriss Worthington | Kriss Worthington, Jesse Arreguin, Sophie Hahn, Cheryl Davila | Public Works                   | On hold          | Information unavailable at time of preparation | Berkeley voters approved Measure GG in November 2020 to tax TNC's 50 cents per private trip and 25 cents per pooled trip, substantially addressing the intent of this item. However, the data exchange element is not addressed in the measure. Staff would like Council direction on whether that element of the original referral should still be pursued by the merged Transportation and Public Works Commission in the future. |
| DMND0003734 | Referral: Report on Public Realm Pedestrianization Opportunities [Transportation Commission]                                                    | Refer to the Transportation Commission to generate a report on potential public realm pedestrianization opportunities in Berkeley.                                                                                                                                                                                                                                                                                                   | 2019-04-30   | 7                 | Rigel Robinson    | Rigel Robinson, Sophie Hahn                                   | Public Works                   | On hold          | Information unavailable at time of preparation | The two items are duplicates. One will be deleted. Please note that the item is on hold--while it's in the Transportation Commission's docket, it is not part of this year's Transportation Commission plan.                                                                                                                                                                                                                        |
| PRJ0019832  | Report on Public Realm Pedestrianization Opportunities                                                                                          | Refer to the Transportation Commission to generate a report on potential public realm pedestrianization opportunities in Berkeley.                                                                                                                                                                                                                                                                                                   | 2019-04-30   | 7                 | Rigel Robinson    | Rigel Robinson, Sophie Hahn, Ben Bartlett                     | Public Works                   | Not Started      | Information unavailable at time of preparation | The two items are duplicates. One will be deleted. Please note that the item is on hold--while it's in the Transportation Commission's docket, it is not part of this year's Transportation Commission plan.                                                                                                                                                                                                                        |

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| Number      | Name                                                                                                                           | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Meeting Date | Referral District | Referral Member | Sponsor                                                      | Lead City Department   | Status           | Funded? | Additional Context/Information                                                                                                                                                                                                                                                                                                                                                      |
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| DMND0003859 | Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106                                           | 1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance and;<br>2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.                                                                                                                                                                                             | 2020-03-10   | Mayor             |                 | Jesse Arreguin, Cheryl Davila, Kate Harrison, Ben Bartlett   | CITY MANAGER'S OFFICE  | Work in Progress | Yes     | The Rent Board, City Manager's Office, the Health Housing & Community Services Department, and the City Attorney's Office developed and agreed to an Administrative Regulation (A.R) and a Memorandum of Understanding (MOU) and the work is happening. Staff will bring the MOU to City Council in November 2021 for adoption. There is also a contract in place with Just Cities. |
| PRJ0028365  | Non-Criminal Options for Enforcement of Sidewalk Regulations                                                                   | Refer to the City Manager the development of non-criminal options for the enforcement of Berkeley laws and regulations related to use of public space that: Reduce, delay or, if possible, eliminate criminal penalties; Offer positive alternatives; and Ensure that the City has effective tools for enforcement of laws and regulations. While ensuring effective enforcement, options should delay or avoid pursuing infractions and misdemeanors and provide options to cure violations through positive actions such as mandated and verified community service, education, or participation in social service programs.                                                                                                                                                                                                                                                                                                                                                                                            | 2018-10-16   | Mayor             |                 | Jess Arreguin, Sophie Hahn, Linda Maio, Susan Wengraf        | CITY MANAGER'S OFFICE  | Work in Progress | No      | Staff currently seeks to gain compliance through non-criminal options and generally succeeds. All of the recent actions have been achieved without any arrests. Creating a broader program for community services or a referral pathway via research is not feasible at this time unless staff pause enforcement and redirect staff time.                                           |
| DMND0003741 | Development of the West Berkeley Service Center, 1900 6th Street, for Senior Housing with Supportive Services. [Parts a and b] | State the intent of the City Council that the West Berkeley Service Center property, 1900 6th Street, will be used for senior housing with on-site services consistent with Age Friendly Berkeley Plan recommendations, maximizing the number of affordable units. The Berkeley Way Project, 2012 Berkeley Way, is the City's top affordable housing priority. The West Berkeley Service Center, as a City-owned property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to initiate the process of developing senior housing at the West Berkeley Service Center:<br>a. Refer to the City Manager to conduct a basic analysis of the development potential for the West Berkeley Service Center site including build-out scenarios for a three-, four-, five-, six- and seven-story building at the site, using Mixed-Use Residential | 2019-05-28   | Mayor             | Jesse Arreguin  | Jesse Arreguin, Rashi Kesarwani, Susan Wengraf, Ben Bartlett | PLANNING & DEVELOPMENT | Not Started      | No      | The Planning and Development Department does not currently have staff capacity to launch this project.                                                                                                                                                                                                                                                                              |





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Harrison  
 Subject: Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

RECOMMENDATION

Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Reliable and low-cost shared mobility is necessary to reach the city's equity and climate goals. Fundamental social interactions and services, including but not limited to education, healthcare, commerce, socializing, recreation, and entertainment, require the conveyance of humans from one location to another. Berkeley is equipped with a robust, relatively low-cost, low-carbon, and unionized public bus transit system (AC Transit), connecting to many urban hubs through a larger system of regional public transit infrastructure. AC Transit also provides Berkeley with a ready-made means of accelerating its carbon emissions reduction strategy through mode shifting away from passenger vehicles. Even when powered by diesel, bus trips are significantly less carbon-intensive than gasoline-powered passenger vehicles; even greater climate benefits will be realized as zero-emission busses come on line.

The City has an opportunity to increase use of busses, particularly amongst those that do not commonly ride the bus, by working with AC Transit leadership to pilot fareless Sunday bus trips originating in Berkeley. Berkeley fully subsidizes passenger vehicle parking on Sundays and transit should not be placed at a disadvantage.

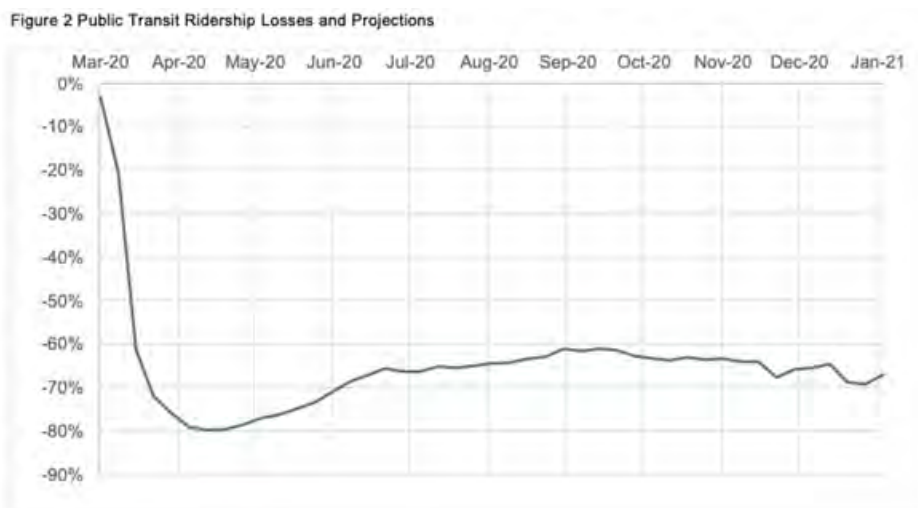
This proposal follows AC Transit's successful promotion of the American Rescue Plan Act (ARPA) funded 'Fare-Free Fridays' program during September 2021, and would support public transportation and local businesses which have faced steep declines in utilization and patrons amidst the COVID-19 pandemic. The details of the program are part of ongoing discussions and coordination with Alameda-Contra Costa Transit District (AC Transit) staff and leadership.

AC Transit busses reduce air pollution, frequent key urban locations, are relatively accessible to disabled persons, observe COVID-19 safety protocols, support commerce, and are outfitted with bicycle storage.

The federal government has empowered Berkeley to transfer ARPA funds to local agencies such as AC Transit. It is in the public interest for the City of Berkeley to support AC Transit and the Berkeley community by exploring and funding increased accessibility and utilization of public transit amidst the COVID-19 pandemic and the climate emergency through a year-long pilot of free Sunday bus rides.

**BACKGROUND**

According to data from the National Transit Database, monthly public transit ridership is 65% lower than before the pandemic.<sup>1</sup> Because of the COVID-19 pandemic, public transit has been forced to reduce its hours and accessibility, and many people shifted to driving personal vehicles as their main mode of transportation. Even as schools and businesses begin to reopen following increased vaccination and masking policies, public transit ridership remains extremely low.



Source: APTA Ridership Trends Dashboard powered by Transit, January 2021.<sup>2</sup>

<sup>1</sup>“The Impact of the COVID-19 Pandemic on Public Transit Funding Needs in the U.S.” Evidence-Based Practice (EBP), January 2021, <https://www.apta.com/research-technical-resources/research-reports/the-impact-of-the-covid-19-pandemic-on-public-transit-funding-needs-in-the-u-s/>.

<sup>2</sup> <https://transitapp.com/APTA>.

More generally, transit ridership in the U.S. has been steadily declining since 2014.<sup>3</sup> The COVID crisis both demands and provides an opportunity for bringing the community back to public transport systems. Implementing free public transit on Sundays can help change the trajectory of Berkeley's ridership levels.

A pilot free transit program will have a positive environmental impact. We are facing a grave climate emergency, requiring municipalities to rapidly transition to a zero-carbon economy by 2030.<sup>4</sup> Berkeley has struggled to rein in its transportation emissions, which as of 2018 accounted for 59% of greenhouse gas emissions and only fell 6% below 2000 levels.<sup>5</sup>

Even when powered by diesel fuel, public bus transit trips are significantly less carbon intensive than passenger vehicle miles, and will continue to fall each year as AC Transit completes its Zero Emissions Bus Rollout Plan by 2040 with 100 percent of all transit new bus purchases being zero emissions by 2029.<sup>6</sup> According to national data from 2010, a single occupancy vehicle trip generates 0.96 pounds of carbon dioxide per passenger mile whereas a bus generates only 0.18 when fully occupied and 0.64 at average occupancy, representing a 33 to 81% decrease in carbon intensity per mile.<sup>7</sup>

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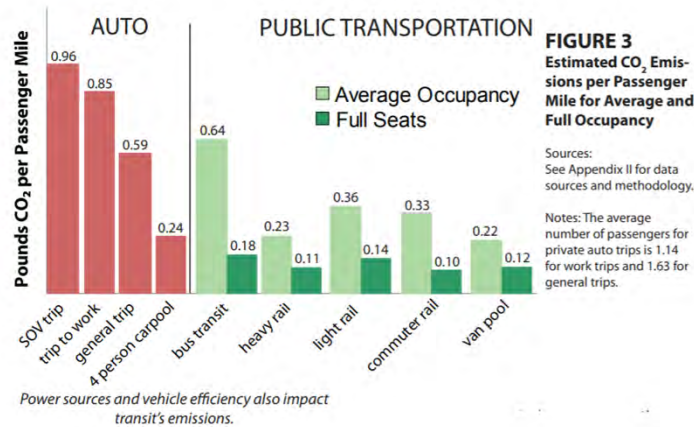
<sup>3</sup> National Academies of Sciences, Engineering, and Medicine 2020. Analysis of Recent Public Transit Ridership Trends. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25635>.

<sup>4</sup> The City of Berkeley has historically shown its commitment to tackling climate change through the 2006 Berkeley ballot Measure G, 2009 Climate Action Plan, and the 2018 Climate Emergency Declaration. See also, "Endorsing the Declaration of a Climate Emergency", Resolution No. 68,486-N.S., June 2018 [https://www.cityofberkeley.info/uploadedFiles/Council\\_2/Level\\_3\\_-\\_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf](https://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf)

<sup>5</sup> 2020 Climate Action Plan and Resilience Update, Office of Energy and Sustainability, July 21, 2020, [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Special\\_Item\\_05\\_Climate\\_Action\\_Plan\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx).

<sup>6</sup> Zero-Emissions Bus Rollout Plan, AC Transit, Version 1, 2021, [https://www.actransit.org/sites/default/files/2021-03/AC%20Transit%20ZEB%20Rollout%20Plan\\_06102020.pdf](https://www.actransit.org/sites/default/files/2021-03/AC%20Transit%20ZEB%20Rollout%20Plan_06102020.pdf).

<sup>7</sup> Public Transportation's Role in Responding to Climate Change, U.S. Dept. of Transportation, January 2010, <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PublicTransportationsRoleInRespondingToClimateChange2010.pdf>.



Source: Public Transportation’s Role in Responding to Climate Change, 2010.<sup>8</sup>

Scientists and researchers have warned that recovery and “stimulus” funds distributed by governments in the wake of the COVID-19 pandemic must be expended on climate mitigation efforts in order to meet the extremely small carbon budgets agreed to as part of the 2015 Paris Agreement to limit global warming to “well below” 2 degrees.<sup>9</sup>

Across the nation cities are taking action through the implementation of free transit systems. The goal of these transit services is affordable mobility for all, whether through free bus systems, shuttles, railways, etc. In particular the establishment of pilot programs and COVID-19 recovery efforts across the country have demonstrated the need for a push to free public transit. In March 2021, Connecticut Governor Ned Lamont directed CTtransit to provide free, statewide bus service to the public every weekend in order to combat the economic losses incurred during the ongoing pandemic.<sup>10</sup> Similarly, thanks to the leadership of grassroots movements and Supervisor Dean Preston, during the pandemic the San Francisco Mayor agreed to adopt free transit for youth under 19 years old across MUNI for a minimum of one year.<sup>11</sup> Programs such as this aim to not only boost ridership but also to increase the accessibility of transportation to youth, low-income commuters, and

<sup>8</sup> *Id.*

<sup>9</sup> H. Damon Matthews, and Kasia Tokarska, “New Research Suggests 1.5C Climate Target Will Be out of Reach without Greener COVID-19 Recovery Plans.” *The Conversation*, 10 Aug. 2021, [theconversation.com/new-research-suggests-1-5c-climate-target-will-be-out-of-reach-without-greener-covid-19-recovery-plans-151527](https://theconversation.com/new-research-suggests-1-5c-climate-target-will-be-out-of-reach-without-greener-covid-19-recovery-plans-151527).

<sup>10</sup> “Governor Lamont Implements Free Weekend Bus Service During Summer Months in Connecticut as Part of Ongoing COVID-19 Recovery Efforts”, State of Connecticut, March 2021 <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Implements-Free-Weekend-Bus-Service-During-Summer-Months>

<sup>11</sup> Mayor London Breed and Supervisor Myrna Melgar Announce Expansion of Free Muni for All Youth Program, Monday, July 12, 2021, <https://sfmayor.org/article/mayor-london-breed-and-supervisor-myrna-melgar-announce-expansion-free-muni-all-youth>.

seniors with disabilities. Before the pandemic, Lawrence Massachusetts launched a two-year free bus transit pilot program daily on its three primary bus routes in September 2019 and saw an impressive 24% increase in ridership. Other cities have seen an increase as high as 60%. Similar experiments are underway in Kansas City, Olympia Washington, and Boston. According to the New York Times, 100 cities worldwide provide free public transit.<sup>12</sup>

According to a Health Affairs study, certain groups, including “women, young adults (those ages 25–29), Black workers, and low-income workers,” disproportionately rely on public transportation for commuting and mobility, and public transportation has clear benefits for public health and health equity. At the same time “[l]ack of access to public transportation can disproportionately harm older people and people with disabilities... [and] can also contribute to existing racial and economic disparities by decreasing mobility and forcing individuals to depend on costly car ownership.”<sup>13</sup>

Currently, U.C. Berkeley students and Berkeley City employees enjoy unlimited AC Transit EasyPasses, incentivizing ridership on public transit.

Notably, the City of Berkeley does not charge for parking on Sundays, which encourages use of single-occupancy vehicles. Offering free public transit within Berkeley on Sundays can stimulate positive and COVID-safe social interactions by providing access to local businesses, open space and other public venues. It is also good for the economy. Figure ES-2 suggests that transport policies which make alternative modes of transportation such as public transit more accessible strongly correlate with enhanced commercial activity.<sup>14</sup>

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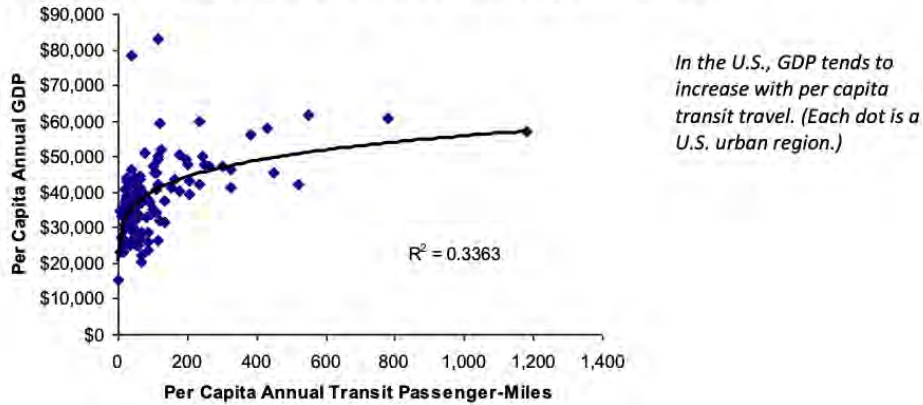
<sup>12</sup> Barry, Ellen, and Greta Rybus, “Should Public Transit Be Free? More Cities Say, Why Not?” The New York Times, The New York Times, 14 Jan. 2020, [www.nytimes.com/2020/01/14/us/free-public-transit.html](http://www.nytimes.com/2020/01/14/us/free-public-transit.html).

<sup>13</sup> Public Transportation in the US: A Driver of Health and Equity, Wendy Heaps, Erin Abramsohn, Elizabeth Skillen, July 29, 2021, <https://www.healthaffairs.org/doi/10.1377/hpb20210630.810356/full/>.

<sup>14</sup> In a study conducted by the American Public Transport Association, researchers examined three cities: Silicon Beach, CA; Austin, TX; and Durham, NC, to analyze the impact of increased public transportation on local economic growth. The study found that “public transportation investments will yield a 2 to 1 return while helping to generate income for local businesses, its workers and their neighborhoods” APTA also stated that “87% of trips on transit directly benefit the local economy”. “Public Transportation Supports Knowledge and Innovation Districts”, American Public Transportation Association <https://www.apta.com/research-technical-resources/research-reports/public-transit-knowledge/>; “2021 PUBLIC TRANSPORTATION FACT BOOK”, American Public Transportation Association, 2021

<https://www.apta.com/wp-content/uploads/APTA-2021-Fact-Book.pdf>.

**Figure ES-2 Per Capita GDP and Transit Ridership (VTPI 2009)**



Source: "Evaluating Transportation Economic Development Impacts", 2018 <sup>15</sup>

The City also receives sales and business license revenue from such commerce. However, consistent with its climate goals, the City’s aim in expanding transit *must not* be to increase economic growth for growth’s sake, but to enhance community access to the provision of basic human needs.

Supporting AC Transit operations also means supporting an “essential” and unionized transit workforce as well as the local maintenance and local manufacturing/assembly of busses.

Ahead of submission of this item, Councilmember Harrison’s office and AC Transit have discussed some potential preliminary logistical and fiscal aspects of launching such a pilot program, as well as discussed strategies to prioritize increasing transit ridership. Fortunately, AC Transit received significant funding from the Coronavirus Aid, Relief, and Economic Security (CARES) and ARPA to help stabilize massive fare losses, but ultimately these funds are temporary.

Meanwhile, the City of Berkeley has received approximately \$66 million over two years from the American Rescue Plan Act. It must expend these funds no later than December, 2024. Section 603(c)(3) of the American Rescue Plan Act allows local governments to transfer funds to other agencies such as AC Transit to assist with the recovery from the COVID-19 pandemic and to improve equity measures including access to transportation:

“TRANSFER AUTHORITY. — A metropolitan city... receiving a payment from funds made available under this section may transfer funds to ... a public benefit corporation involved in

<sup>15</sup> “Evaluating Transportation Economic Development Impacts”, Victoria Transport Policy Institute, 2018 [https://vtpi.org/econ\\_dev.pdf](https://vtpi.org/econ_dev.pdf)

the transportation of passengers or cargo, or a special-purpose unit of State or local government.”<sup>16</sup>

The City of Berkeley is considered a metropolitan city and AC Transit likely qualifies as a special-purpose unit of local government.<sup>17</sup> Alternatively, the Council could fund the program through excess equity. While the Transportation Network Company tax may provide funding in subsequent years, the Council has already indicated support in this first year for using these funds for priority protected bikeways and quick-build transit projects.<sup>18</sup> AC Transit leadership has repeatedly expressed the significance of Berkeley’s interest in funding such quick-build improvements.

It is in the public interest to allocate General Funds towards the AC Transit pilot program in order to boost ridership rates, expand access to local goods and services, and to reduce transportation-based carbon emissions. This item proposes an allocation of \$500,000 to support this program and to support possible increased demand resulting from COVID-19 recovery efforts or demand stimulated as a result of this pilot. Implementation of any Berkeley pilot would be subject to approval by the AC Transit Board.

A successful pilot initiative could inspire potential subsequent efforts to expand free transit on a more permanent and frequent basis and thereby further reduce emissions and expand mobility equity.

#### FINANCIAL IMPLICATIONS

The item would have a net \$500,000 impact on the General Fund.

#### ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is a necessary step to meet the goals of the Climate Action Plan and Climate Emergency Declaration.

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<sup>16</sup> American Rescue Plan Act, U.S. Congress, January 3, 2021, <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

<sup>17</sup> 41 CFR § 105-50.001-4 Special-purpose unit of local government. Special-purpose unit of local government means any special district, public-purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district.

<sup>18</sup> Budget Referral: Allocate Transportation Network Companies User’s Tax Proceeds and other General Fund Revenues to Support Tier 1 Protected Bicycle Lanes, Crossings, Demonstration Paving Projects, and/or Quick-build Public Transit Projects Under the Street Repair Program, Councilmember Harrison, March 9, 2021, [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-09\\_Supp\\_1\\_Reports\\_Item\\_21\\_Rev\\_Harrison\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Supp_1_Reports_Item_21_Rev_Harrison_pdf.aspx).

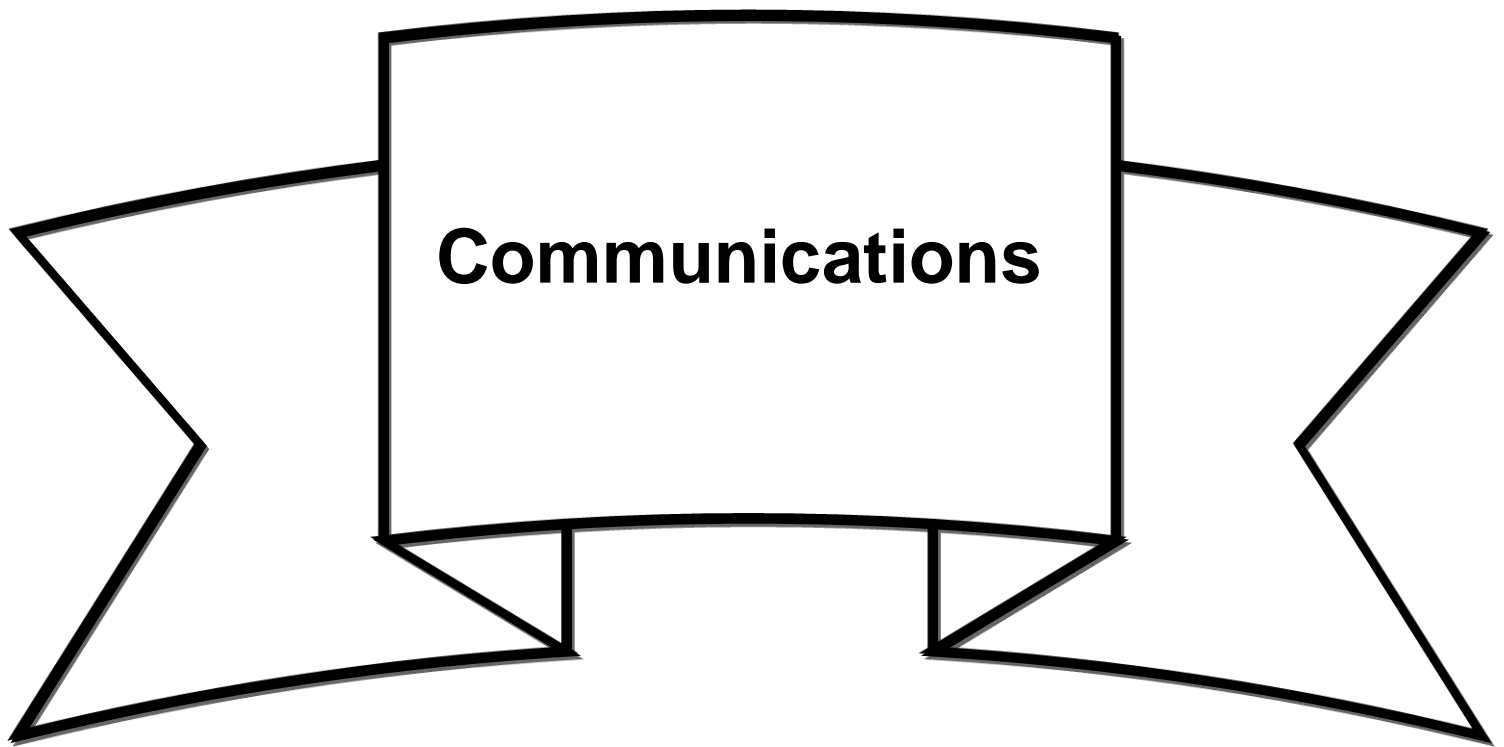
Budget Referral: Allocate General Fund Revenues to Support Pilot  
Program Offering Free AC Transit on Sundays in Berkeley

ACTION CALENDAR  
October 12, 2021

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140





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