



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, March 21, 2018
7:00 PM

North Berkeley Senior Center
1901 Hearst Ave / MLK Jr. Way

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

PRELIMINARY MATTERS

1. **Roll Call:** Pinto, Prakash, appointed by Councilmember Maio, District 1
Martinot, Steve, appointed by Councilmember Davila, District 2
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3
Mary Kay Lacey, appointed by Councilmember Harrison, District 4
Beach, Benjamin, appointed by, Councilmember Hahn, District 5
Kapla, Robb William, for Councilmember Wengraf, District 6
Fong, Benjamin, appointed by Councilmember Worthington, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, Vice Chair, appointed by Mayor Arreguin
2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: April 18, 2018.**
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** Approval of Draft Minutes from the meeting on February 21, 2018.

8. Future Agenda Items and Other Planning-Related Events: None.

AGENDA ITEMS: All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 9. Action:** **1050 Parker Street Parcels Rezone and General Plan Amendment**
Recommendation: Cancel public hearing to be re-noticed for April 18, 2018
- 10. Action:** **Public Hearing: Density Bonus**
Recommendation: Hold public hearing and consider the modifications of Inclusionary Housing chapter (BMC 23C.12) and adopt new Density Bonus chapter (BMC 23C.14).
Written Materials: Attached.
Web Information: N/A.
Continued From: 2/21/2018.
- 11. Discussion:** **Urban Agriculture**
Recommendation: Discuss and give direction on staff's recommended approach to Urban Agriculture regulations.
Written Materials: Attached.
Web Information: N/A.
Continued From: 10/7/2017.

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items: None.

Communications:

- 2018-03-21 – Edward Moore, Proposed Local Legislation Regarding Density Bonuses, Item 9
- 2018-03-21 – Nathan Dahl, Community Gardens Levels of Discretion Table, Item 10
- 2018-03-21 – Cynthia Tate Elliott, Correction of Letter to Planning Commission, R-1A
- 2018-03-21 – Charles Pappas, Pardon Me Revised Cannabis Action

Late Communications: (Received after the packet deadline):

- 2018-03-21 – Christina Oatfield, SELC, Support Berkeley Urban Agriculture
- 2018-03-21 – Berkeley Community Garden Collaborative, Community Gardens and Structures
- 2018-03-21 – EBMUD, Briefing Invitation April 5, 2018

Late Communications: (Received and distributed at the meeting):

- 2018-03-21 – Amir Wright, Berkeley Student Housing Now Alternative Proposal
- 2018-03-21 – Kelly Hammargren, Affordable Housing and Density Bonus

ADJOURNMENT**Meeting Procedures****Public Testimony Guidelines:**

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

Consent Calendar Guidelines:

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

Procedures for Correspondence to the Commissioners:

- To have materials included in the packet, the latest they can be submitted to the Commission Secretary is close of business (5:00 p.m.), on Tuesday, eight (8) days prior to the meeting date.
- To submit late materials for Staff to distribute at the Planning Commission meeting, those materials must be received by the Planning Commission Secretary, by 12:00 p.m. (noon), the day before the Planning Commission meeting.
- Members of the public may submit written comments at the Planning Commission meeting. To submit correspondence at the meeting, please provide 15 copies, and submit to the Planning Commission Secretary before the start time of the meeting.
- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Written comments/materials should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records 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.

Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

Note: *If you object to a project or to any City action* or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **February 21, 2018**

3 The meeting was called to order at 7:03 p.m.

4 **Location:** North Berkeley Senior Center, Berkeley, CA

5 **Commissioners Present:** Steve Martinot, Benjamin Beach, Robb William Kapla, Mary Kay
6 Lacey, Christine Schildt, Jeff Vincent, Rob Wrenn, Prakash Pinto, Sarah O'Farrell (substitute for
7 Benjamin Fong).

8 **Commissioners Absent:** Benjamin Fong (excused).

9 **Staff Present:** Alex Amoroso, Elizabeth Greene, Alene Pearson, Steve Buckley, and Sydney
10 Stephenson.

11 **ORDER OF AGENDA:** No changes.

12 **CONSENT CALENDAR:** None.

13 **PUBLIC COMMENT PERIOD:** None.

14 **PLANNING STAFF REPORT:** Commissioner Poschman resigned from the Planning
15 Commission last week. Next Planning Commission meeting is on March 21st which will include
16 the public hearing on Density Bonus ordinance, the continued public hearing of 1050 Parker,
17 and community gardens.

18 **COMMUNICATIONS IN PACKET:**

- 19 • 2018-02-21 – Staff, Save the Date Flyer for Adeline Corridor Open House and
20 Workshops
- 21 • 2018-02-21 – Charles Pappas, Cannabis facilitation Planning Commission (includes 2
22 attachments)

23
24 **LATE COMMUNICATIONS** (Received after the Packet deadline):

- 25 • 2018-02-21 – Alfred Twu, Planning Commission input on potential Deconstruction
26 Ordinance
- 27 • 2018-02-21 – Charles Pappas, Expanding Cannabis Info MM/MULI Zones
- 28 • 2018-02-21 – Charles Pappas, Zoning Ordinance Cannabis Regulations Input Summary

29 **LATE COMMUNICATIONS** (Received and distributed at the meeting):

- 30 • 2018-02-21 – Sarah O’Farrell, Amendment to Cannabis regulations
- 31 • 2018-02-21 – Carl Bolster (Green Team), Proposed changes to BMC regarding
- 32 Delivery-only cannabis businesses
- 33 • 2018-02-21 – Andreas Cluver, Building and Construction Trade Council of Alameda
- 34 County, Letter regarding Density Bonus ordinance

35 **CHAIR REPORT:** No Chair Report was provided.

36 **COMMITTEE REPORT:** No Report.

37 **7. APPROVAL OF MINUTES:**

38 Motion/Second/Carried (RK/RW) to approve the Planning Commission Meeting Minutes from
39 February 7, 2018 with amendments to Commissioner Fong’s motion on Item 9. Ayes: Lacey,
40 Beach, Martinot, Schildt, Kapla, Vincent, Wrenn, Pinto, O’Farrell. Noes: None. Abstain: None.
41 Absent: None. (9-0-0-0)

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43 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** The flyer for the
44 Adeline Community Open House and Workshops is provided in this packet.

45 **AGENDA ITEMS**

46 **9. Action: Public Hearing: Zoning Ordinance Cannabis Regulations**

47 Staff briefly presented the staff report on the proposed cannabis regulations including the
48 use types, location of cannabis businesses, quotas, buffers, and levels of discretion.

49 Public Comments: 11 speakers.

50 Motion/Second/Carried (RK/RW) to close public hearing. Ayes: Lacey, Beach, Martinot,
51 Schildt, Kapla, Wrenn. Noes: Vincent, Pinto, O’Farrell. Abstain: None. Absent: None. (6-3-0-
52 0)

53 The Planning Commission (PC) addressed each Zoning Ordinance topic laid out in the staff
54 report. The Commission agreed on staff’s recommendation for locations of cannabis
55 businesses within the Zoning districts. The PC agreed with staff’s recommendation for
56 cannabis use types, but discussed the possible options to allow existing non-cannabis
57 nurseries to sell cannabis plants, for example, incidental sales of clones and seeds. The PC
58 also agreed on staff’s recommendations for quotas, buffers, and levels of discretion.
59 However, the Commission discussed different options for equitable and geographical
60 distribution and concentration of adult-use and medicinal retailers. And they requested that
61 the Council refer back to the Planning Commission to discuss this issue. The Commission
62 passed the following motions.

63 Motion/Second/Carried (RW/MKL) to recommend staff’s proposal for cannabis businesses
64 locations to Council. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn, Vincent, Pinto,
65 O’Farrell. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

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Motion/Second/Carried (RW/BB) to recommend staff’s recommendation for use types, and suggest to Council to refer back to the Planning Commission to allow incidental cannabis sales of clones and seeds at existing ornamental nurseries. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn, Vincent, Pinto, O’Farrell. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (CS/RW) to recommend staff’s proposals on quotas (with at total of 18 storefront retailers and up to 12 adult use retailers), buffers, and levels of discretion. Request Council to refer back to Planning Commission consideration of alternate methods of concentration and/or distribution of adult use and medical retailers including consideration of buffer between cannabis retailers, levels of discretion, and quotas. Ayes: Lacey, Beach, Schildt, Kapla, Wrenn, Vincent, Pinto, O’Farrell. Noes: Martinot. Abstain: None. Absent: None. (8-1-0-0)

80 **10. Discussion: Local Density Bonus**

81 Staff presented the staff report on the proposed Density Bonus ordinance including the
82 related referrals, and the three phases for examining Berkeley’s Density Bonus practice. The
83 Commission discussed the proposed Density Bonus ordinance approach. Staff clarified that
84 the Phase 3 (develop Density Standards) are currently a simultaneous effort by city staff
85 working with a consultant. The Commission expressed concern about adopting a new
86 Density Bonus chapter that includes the alternative incentives (exceeding State Density
87 Bonus Law of 35% and providing payment in-lieu of on-site affordable housing). The PC
88 decided to not move forward with alternative incentives, related to Phase 2 of Density Bonus,
89 until a legal opinion on suggested policies could be provided by the City Attorney. Thus, the
90 Commission requested from staff to bring back draft Density Bonus ordinance language
91 without the alternative incentives to the Public Hearing. The Commission also discussed the
92 possibility of including labor pay provisions in the Density Bonus ordinance.

93 Public Comment: 2 speakers.

94 **The meeting was adjourned at 10:19 pm**

95 **Commissioners in attendance: 9 of 9**

96 **Members in the public in attendance: 23**

97 **Public Speakers: 13 speakers**

98 **Length of the meeting: 3 hour and 16 minutes**



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 21, 2018

TO: Members of the Planning Commission

FROM: Steve Buckley, Land Use Planning Manager
Alene Pearson, Associate Planner

SUBJECT: Public Hearing on Density Bonus Ordinance Amendments

SUMMARY

On December 6, 2017 and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing and Community Benefits provided input and direction on an approach and potential amendments aimed at improving Berkeley's Density Bonus regulations. The subcommittee supported a three-phased approach Density Bonus that consisted of the following:

1. Create a Density Bonus Ordinance that codifies existing practice.
2. Respond to Density Bonus referrals that provide more affordable housing.
3. Develop numeric density standards for all zoning districts.

Staff developed Zoning Ordinance language to support Phase 1 and Phase 2 for Planning Commission consideration on February 21, 2018. Planning Commission discussed these changes and requested a March 21, 2018 Public Hearing on Zoning Ordinance amendments related to Phase 1 of Density Bonus (*see Attachment 1: Public Hearing Notice on Density Bonus Ordinance*). The Planning Commission decided to not move forward with amendments related to Phase 2 of Density Bonus until staff could provide additional information on referral-related provisions

BACKGROUND

State Density Bonus Law (SDBL)¹, initially adopted in 1976, creates incentives for developers to include affordable housing within their projects by granting increased density and relief from local regulations via concessions and waivers of development standards. Density Bonus of up to 35% is mandated by the State and is based on the percentage of affordable units provided at various income levels. All cities and counties are required to adopt an ordinance specifying how they will comply with SDBL.

¹ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV

Berkeley's Zoning Ordinance currently includes outdated references to SDBL and Density Bonus language is located in the Inclusionary Housing Requirements Chapter (Section 23C.12.050) of the Zoning Ordinance. Over the past two years, City Council referred a number of items to the Planning Commission that would create a more robust Density Bonus program. See Attachment 2 (*February 21, 2018 Staff Report on Density Bonus Zoning Ordinance Amendments*) for information on specific referrals.

On Feb 21, 2018, Planning Commission considered draft Zoning Ordinance amendments that would:

- Create a standalone Density Bonus Chapter;
- Reference SDBL; and
- Comply with SDBL.

Draft amendments also included a Special Provisions section that addressed requests for 1) Density Bonus in exceedance of the 35% required by SDBL; and 2) the ability to provide payment for off-site affordable housing units in lieu of providing on-site affordable housing units. Per request of the Planning Commission, the Special Provisions have been left out of Zoning Ordinance amendments for the Public Hearing. Staff will return to Planning Commission at a future date to discuss options for Phase 2 of Density Bonus.

PROPOSED AMENDMENTS

Draft Zoning Ordinance amendments can be found in Attachment 3 (*Zoning Ordinance Amendments to Repeal of Section 23C.12.050: State California Density Bonus Requirements*), Attachment 4 (*Zoning Ordinance Amendments to Adopt Chapter 23C.14: Density Bonuses*) and Attachment 5 (*Updates to Attachment 4*). Amendments create a standalone Density Bonus Chapter in the Zoning Ordinance and remove Density Bonus language that is currently located in the Inclusionary Housing Requirements Chapter. More specifically, the proposed amendments do the following:

1. Repeal Section 23C.12.050 (State of California Density Bonus Requirements):

In 2005 the City of Berkeley added Section 23C.12.050 (State of California Density Bonus Requirements) to the Inclusionary Housing Requirements (Chapter 23C.12) because projects subject to the Inclusionary Housing Requirements concurrently capture benefits from SDBL. Since 2005, Density Bonus has grown in complexity and scope and should be removed from the Inclusionary Housing Requirements Chapter.

Berkeley's Density Bonus language -- currently found in Section 23C.12.050 -- explicitly lists Density Bonus percentages and affordable housing requirements from 2005. These values are no longer valid, as the SDBL has been amended multiple times to respond to implementation challenges, legal rulings and new legislation. Thus it is necessary to repeal this section.

2. Adopt Chapter 23C.14 (Density Bonus):

Chapter 23C.14 will replace Section 23C.12.050 and will:

- Create a baseline Density Bonus ordinance that is organized logically and is easy to read and understand. SDBL is complex. Creating an ordinance that is easy to understand will reduce complications for applicants.
- Reference compliance with SDBL in order to maintain flexibility as State law evolves. Section 23C.12.050 hardcoded State regulations and became obsolete as SDBL was amended. The proposed amendments refer to Government Code Section 65915, thereby allowing Berkeley's Density Bonus ordinance to remain in compliance as SDBL regulations change over time.
- Refer to Administrative Regulations that document Berkeley's method for base project calculation. Berkeley uses base project calculations to determine level of Density Bonus because certain zoning districts do not have numerical density standards. Administrative Regulations, maintained by the Planning Department, document the base calculation method.

DISCUSSION

In this section, staff has provided two recommended actions for Planning Commission consideration. Staff has provided the reasoning and mechanics for each recommendation.

1. Repeal Section 23C.12.050 (State of California Density Bonus Requirements)

Reason: Density bonus requirements do not need to be included in the Inclusionary Housing Ordinance because the City is adopting a stand-alone Density Bonus chapter. Information related to Density Bonus -- including explicit cross-references to SDBL -- will be centralized in the Density Bonus chapter. This action will remove redundancy created by the next recommendation (Adopt Chapter 23C.14) and will remove obsolete references to SDBL.

Mechanics: Repeal redlined language in Attachment 3.

Recommendation: Repeal Section 23C.12.050

2. Adopt Chapter 23C.14 (Density Bonus)

Reason: SDBL allows local governments to adopt Density Bonus ordinances that comply with the State's minimum requirements. The local jurisdiction may also decide to offer Density Bonuses above and beyond what's allowed under SDBL in exchange for locally focused and derived benefits. The City of Berkeley's Density Bonus chapter mirrors the language included in SDBL and references Administrative Regulations which document base project calculation methodology. A place-holder "Special Provisions" section was added to the Chapter to accommodate future amendments that potentially go above and beyond SDBL.

Mechanics: Adopt Chapter 23C.14 (Density Bonus) to Sub-Title 23C, as provided in Attachments 4 and 5.

Recommendation: Adopt Chapter 23C.14

CONCLUSION:

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, and provide final direction on draft Density Bonus Zoning Ordinance amendments through a vote of the Planning Commission.

ATTACHMENTS

1. Public Hearing Notice on Density Bonus
2. February 21, 2018 Staff Report on Density Bonus Zoning Ordinance Amendments
3. Zoning Ordinance Amendments to Repeal of Section 23C.12.050: State California Density Bonus Requirements
4. Zoning Ordinance Amendments to Adopt Chapter 23C.14: Density Bonuses
5. Updates to Attachment 4



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

MARCH 21, 2018

Consider a Density Bonus Ordinance that Complies with State Density Bonus Law: Modify Existing City of Berkeley Ordinances to Repeal Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt Chapter 23C.14 (Density Bonus)

The Planning Commission, of the City of Berkeley, will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, March 21, 2018**, at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION: The proposed amendments to the City's Zoning Ordinance (Title 23): 1. Remove outdated State Density Bonus Law (SDBL) references from the Inclusionary Housing Requirements (Chapter 23C.12), and, 2. Create a Density Bonus Ordinance (Chapter 23C.14) that is in compliance with SDBL and codifies current practices.

Full text of Density Bonus Ordinance amendments can be found on the Planning Commission's homepage:

https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx.

Changes to be considered are summarized as follows:

- Repeal Section 23C.12.050 (State of California Density Bonus Requirements)
Berkeley's Density Bonus language, currently found in Section 23C.12.050, explicitly lists Density Bonus percentages and affordable housing requirements from SDBL adopted in 2005. These values are no longer valid, as the SDBL has since been amended multiple times.
- Adopt Chapter 23C.14 (Density Bonus)
Proposed Chapter 23C.14 will:
 1. Create a Density Bonus Ordinance that is organized logically and is easy to read and understand.
 2. Reference compliance with SDBL in order to maintain flexibility as State law evolves.
 3. Refer to Administrative Regulations that document Berkeley's method for base project calculation.

LOCATION: Citywide

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), in that the proposed amendment does not have the potential for causing a significant effect on the environment and is not subject to CEQA review.

PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments concerning this project should be directed to:

Planning Commission
Alex Amoroso, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

Fax: (510) 981-7520
E-mail: aamoroso@cityofberkeley.info

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5x11 inches.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

FURTHER INFORMATION

Questions should be directed to **Alex Amoroso**, at (510) 981-7520, or aamoroso@cityofberkeley.info. Past and future agendas are also available on the Internet at: www.ci.berkeley.ca.us.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: February 21, 2018

TO: Members of the Planning Commission

FROM: Steve Buckley, Land Use Planning Manager
Alene Pearson, Associate Planner

SUBJECT: Density Bonus Ordinance Amendments

INTRODUCTION

The City Council has asked the Planning Commission to consider changes and updates to Density Bonus through a number of Reweighted Range Voting (RRV) referrals and Housing Action Plan items. In response, Planning Commission's subcommittee on Affordable Housing and Community Benefits analyzed referrals and suggested staff approach Density Bonus in three phases:

1. Create a Density Bonus ordinance that codifies existing practice.
2. Respond to referrals that can be addressed by modifications to existing Density Bonus program.
3. Develop numeric density standards for all zoning districts.

Following the above framework, this report and associated recommendations pertain only to Phase 1 and Phase 2 actions. This report does not address Phase 3.

BACKGROUND

State Density Bonus Law (SDBL)¹, initially adopted in 1976, creates incentives for developers to include affordable housing within their projects by granting increased density and relief from local regulations via concessions and waivers. Density Bonus of up to 35% is mandated by the State and is based on the percentage of affordable units provided at various income levels. All cities and counties are required to adopt an ordinance specifying how they will comply with SDBL. Berkeley's Zoning Ordinance includes Density Bonus language and grants Density Bonus in compliance with SDBL.

City Council has referred six items to the Planning Commission that relate to Density Bonus (*see Attachment 1 – Six Density Bonus Referrals*). Although some of these

¹ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV

referrals are focused on specific zoning districts, our analysis identifies a set of broad goals for improvements to the City's Density Bonus program. The goals are as follows:

1. Increase density in the form of more units;
2. Increase height in the form of additional floors;
3. Provide more affordable housing;
4. Allow applicants to pay for off-site qualifying units in lieu of providing on-site units;
and
5. Establish numeric density standards for all zoning districts.

In the context of these goals, the Planning Commission's subcommittee on Affordable Housing and Community Benefits examined Berkeley's Density Bonus practice and suggested a three-phased approach to achieve broad-ranging goals. Phase 1 establishes a foundation to build upon. Phase 2 directly addresses goals 1 through 4. Phase 3 focuses on goal 5. More specifically:

Phase 1: Create a new, stand-alone Density Bonus ordinance that codifies existing practice and can be used as a baseline for future modifications to the Density Bonus program.

Phase 2: Respond to requests in referrals that can be addressed by modifications to existing Density Bonus program.

Phase 3: Develop numeric density standards for all zoning districts.

Staff has developed proposed draft Zoning Ordinance amendments that address Phase 1 and Phase 2 Density Bonus work (*see Attachment 2: Zoning Ordinance Amendment to Repeal of Section 23C.12.050: State California Density Bonus Requirements and Attachment 3: Zoning Ordinance Amendment to Adopt Chapter 23C.14: Density Bonuses*). Note that although proposed draft Zoning Ordinance amendments do not include district-specific regulations, they do create a framework that logically accommodates future modifications and enhancements that could include district-specific language. The Subcommittee on Affordable Housing and Community Benefits has done a preliminary review of draft amendments and directed staff to present them to the Planning Commission for discussion.

PROPOSED AMENDMENTS

In order to implement Phase 1 and Phase 2 Density Bonus actions, the proposed draft Zoning Ordinance amendments will:

1. Repeal Section 23C.12.050 (State of California Density Bonus Requirements):

In 2005 the City of Berkeley added Section 23C.12.050 (State of California Density Bonus Requirements) to the Inclusionary Housing Requirements (Chapter 23C.12) because projects subject to the Inclusionary Housing Requirements concurrently capture benefits from SDBL. Since 2005, Density Bonus has grown in complexity and scope and should be removed from the Inclusionary Housing Requirements Chapter.

Berkeley's Density Bonus language -- currently found in Section 23C.12.050 -- explicitly lists Density Bonus percentages and affordable housing requirements from 2005. These values are no longer valid, as the SDBL has been amended multiple times to respond to implementation challenges, legal rulings and new legislation. This section of code needs to be repealed.

2. Adopt Chapter 23C.14 (Density Bonuses):

Chapter 23C.14 will replace Section 23C.12.050 and will:

- Create a baseline Density Bonus ordinance that is organized logically and is easy to read and understand. SDBL is complex. Creating an ordinance that is easy to understand will reduce complications for applicants.
- Reference compliance with SDBL in order to maintain flexibility as State law evolves. Section 23C.12.050 hardcoded State regulations and became obsolete as SDBL was amended. The proposed amendments refer to Government Code Section 65915, thereby allowing Berkeley's Density Bonus ordinance to remain in compliance as SDBL regulations change over time.
- Refer to Administrative Regulations that document Berkeley's method for base project calculation (*see Attachment 4: Administrative Regulations*). Berkeley uses base project calculations to determine level of Density Bonus because certain zoning districts do not have numerical density standards. Administrative Regulations, maintained by the Planning Department, document the base calculation method. Administrative Regulations are shared with Planning Commission and approved by Zoning Adjustments Board.

Chapter 23C.14 includes the following Special Provisions:

- Offer an option for developers utilizing Density Bonus to make a payment towards building off-site affordable housing units in lieu of providing on-site affordable housing units. The city would need to conduct a study to inform setting an appropriate per unit "construction cost" formula or amount. The exact formula or amount will not be codified in 23C.14, but would instead be determined through a separate action by the City Council after a study is complete.
- Provide developers the option of receiving an additional 15% Density Bonus (up to 50% total) in exchange for providing additional qualifying units. Qualifying units could be provided either on-site or off-site through payment of the fee described above. Calculation of the additional Density Bonus would follow the formula established in SDBL (*see Attachment 5 -- Density Bonus Chart*).

DISCUSSION

Details of the draft Zoning Ordinance amendments are presented below. For each amendment, staff has provided the reasoning, mechanics, and recommendation for change.

1. Delete Density Bonus Section in the Inclusionary Housing Ordinance

Reason: Density bonus requirements do not need to be included in the Inclusionary Housing Ordinance because the City is adopting an updated Density Bonus chapter. Information related to Density Bonus -- including explicit cross-references to SDBL -- will be centralized in the Density Bonus chapter.

Mechanics: Remove language identified in Attachment 2 (*Zoning Ordinance Amendment to Repeal of Section 23C.12.050: State California Density Bonus Requirements*).

Recommendation: This change would be necessary to align with the proposed Density Bonus chapter and remove redundancy.

2. Adopt Chapter 23C.14 (Density Bonuses)

Reason: SDBL allows local governments to adopt Density Bonus ordinances that comply with the State's minimum requirements. The local jurisdiction may also decide to offer Density Bonuses above and beyond what's allowed under SDBL in exchange for locally focused and derived benefits. The City of Berkeley's Density Bonus chapter mirrors the language included in SDBL and references Administrative Regulations which document base project calculation methodology. Draft Zoning Ordinance amendments also include the following Special Provisions as requested by Phase 2 referrals:

- Allows developers to "opt out" of building on-site affordable residential units in order to achieve a Density Bonus of up to 35%.
- Allows developers to request an additional 15% Density Bonus (up to 50% total) in exchange for providing additional affordable housing units or fees.

Mechanics: Add Chapter 23C.14 (Density Bonuses) to Sub-Title 23C, as provided in Attachment 3 (*Zoning Ordinance Amendment to Adopt Chapter 23C.14: Density Bonuses*). The Density Bonus chapter will implement (and be consistent with) SDBL. The in lieu payment option for off-site qualifying units will be contingent upon completion of a study that determines a sufficient amount to provide same level of affordable housing development as State Density Bonus Law.

Recommendation: Adopt amendment adding Chapter 23C.14 (Density Bonuses).

The following questions are for Planning Commission's consideration based on the information provided in this report and on Planning Commission's discussion:

1. ***Do you have feedback on the proposed three-phased approach to Density Bonus referrals?***
2. ***Do you have feedback on the proposed draft Density Bonus Zoning Ordinance amendments?***

3. *Will Planning Commission set a public hearing on March 21, 2018 to discuss recommended actions related to Density Bonus referrals?*

CONCLUSION

Draft Zoning Ordinance amendments proposed in this report initiate work on six City Council referrals related to Density Bonus and Housing Action Plan items. As explained above, the goals of the referrals broadly overlap and this report presents a three-phased approach to accomplish desired work. More specifically, proposed draft Zoning Ordinance amendments allow for additional density, additional height, more affordable housing, a payment option for off-site affordable units in lieu of on-site affordable units, and a robust Density Bonus program that can be built upon to meet the evolving needs of residents and reflect requests of City Council. Also, note that City Council will set the amount of the in lieu payment by resolution, as has been done with the Affordable Housing Mitigation Fee and other City fees.

This staff report provides background and recommendations necessary to begin implementation of Density Bonus related referrals. City Council expects Planning Commission to take action on the proposed Zoning Ordinance Amendments after holding a public hearing and discussing the recommendations provided.

ATTACHMENTS

1. Six Density Bonus Referrals
2. Zoning Ordinance Amendment to Repeal of Section 23C.12.050: State California Density Bonus Requirements
3. Zoning Ordinance Amendment to Adopt Chapter 23C.14: Density Bonuses
4. Administrative Regulations
5. Density Bonus Chart

1 **Chapter 23C.12**
2 **INCLUSIONARY HOUSING REQUIREMENTS***

3 Sections:

- 4 [23C.12.010](#) Purpose
5 [23C.12.020](#) Applicability of Regulations
6 [23C.12.030](#) General Inclusionary Requirement: 20% of Units
7 [23C.12.035](#) Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project
8 [23C.12.040](#) Requirements Applicable to all Inclusionary Units
9 ~~[23C.12.050](#) State of California Density Bonus Requirements~~
10 [23C.12.060](#) Inclusionary Unit Requirements for Rental Housing Projects
11 [23C.12.070](#) Inclusionary Unit Requirements for Ownership Projects*
12 [23C.12.080](#) Special Requirements for Avenues Plan Area
13 [23C.12.090](#) Administrative Regulations*
14 [23C.12.100](#) Fees

15 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D,
16 and [23C.12.090](#) for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
17 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
18 Ordinance 6,920-N.S., adopted on May 23, 2006.

19 **23C.12.010 Purpose**

20 The purpose of this chapter is to promote achievement of the City Housing Element goals for developing
21 affordable housing for Households with incomes below the median, as defined in this chapter, or, in the case of
22 Limited Equity Cooperatives, households with incomes below 120% of the median income by requiring the
23 inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as projects.
24 (Ord. 6478-NS § 4 (part), 1999)

25 **23C.12.020 Applicability of Regulations**

26 A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

- 27 1. Residential housing projects for the construction of five or more Dwelling Units;
- 28 2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units
29 are added to an existing one to four unit property, which has been developed after August 14, 1986, and

30 the resulting number of units totals five or more. All Units in such a property are subject to the
31 requirements of this chapter;

32 3. Residential housing projects proposed on lots whose size and zoning designation is such to allow
33 construction of five or more Dwelling Units.

34 B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential
35 Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income
36 inclusionary provisions set forth in Section [23E.20.080](#).

37 C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which
38 prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

39 **23C.12.030 General Inclusionary Requirement: 20% of Units**

40 A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units
41 within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least
42 51% of their units as Inclusionary Units.

43 B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be
44 paid as an in-lieu fee.

45 C. For the purpose of determining the median income levels for Households under this chapter, the City shall
46 use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City
47 from the most recent U.S. Census. (Ord. 6478-NS § 4 (part), 1999)

48 **23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units**
49 **within a Project**

50 A. Applicability. As an alternative to providing inclusionary units required in an ownership project, the
51 applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of
52 providing units that are not required to be provided at below market prices pursuant to Government Code
53 Section [65915](#).

54 B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

55 C. Amount of Fee.

- 56 1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted
57 sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
- 58 2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to
59 which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the
60 difference between the actual sales price for each unit, and the sales price that would have been
61 permitted had that unit been an inclusionary unit. The percentage shall be determined using the
62 following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit
63 divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.
- 64 3. This fee shall only be applicable to units in a project that are counted in determining the required
65 number of inclusionary units in a project and shall not be applicable to any units provided as a density
66 bonus.
- 67 4. In the event that the City Manager makes a determination that an actual sales price does not reflect
68 the fair market value of a unit, the City Manager shall propose an alternate price based on the fair
69 market value of the unit. In the event that the developer and the City Manager cannot agree on a fair
70 market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the
71 appraised value shall be used as the market value.

72 D. Calculation of Inclusionary Sales Price.

- 73 1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this
74 section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as
75 of the closing date of the sale of the unit, with the exception that if the developer has already been
76 authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance
77 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale
78 price for the purposes of this section shall be the price permitted under that ordinance.
- 79 2. Area median income (AMI) shall be calculated in accordance with the affordability regulations
80 established by the City Manager pursuant to Section [23C.12.090](#).

- 81 E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the
82 closing date of the sale of a unit as a condition of said closing.

83 F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all
84 required Permits have already been issued, as long as no units on those projects to which this section would
85 apply have been sold. (Ord. 6946-NS § 1, 2006)

86 **23C.12.040 Requirements Applicable to all Inclusionary Units**

87 A. All Inclusionary Units other than those in Limited Equity Cooperatives shall be sold to the City or its
88 designee or to Low Income, Lower Income or Very Low Income Households or shall be rented to Households
89 of similar incomes. Units in Limited Equity Cooperatives shall be sold or rented to Households whose gross
90 incomes do not exceed 120% of the Oakland PMSA median.

91 B. The applicant shall execute a written agreement with the City indicating the number, type, location,
92 approximate size and construction schedule of all Dwelling Units and other information as required for
93 determining compliance with this chapter.

94 C. All Inclusionary Units in a project and phases of a project shall be constructed concurrently with, or prior
95 to, the construction of non-inclusionary units.

96 D. All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and
97 contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be
98 comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish
99 quality.

100 E. In projects where the calculation of the inclusionary requirement results in a fraction of a unit, such a
101 fraction shall be paid in the form of an in-lieu fee to the City.

102 1. The in-lieu fee shall be the fractional value of the difference between development cost (excluding
103 marketing costs and profit) and actual sales price for the average comparable unit in projects, where
104 Government Code Section [65915](#) does not apply, and the difference between affordable cost for an
105 appropriately-sized household and the fractional value of the average comparable actual sales price for
106 the fraction of the unit in projects where Government Code Section [65915](#) does apply to require a
107 Density Bonus or equivalent incentive.;

108 2. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development
109 corporation), to provide, construct or promote the creation or retention of low income housing in the City.
110 The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and
111 Appeals Board for review and approval.

112 F. Where the applicant demonstrates, and Staff concurs, that the direct construction and financing costs of
113 the Inclusionary Units, excluding marketing cost and profit (and also excluding land costs if a Density Bonus or
114 equivalent incentive is provided), exceed the selling prices allowed for Inclusionary Units by this chapter, the
115 Board may approve one or more of the following measures to reduce costs or increase profitability:

- 116 1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such
117 units conform to applicable building and housing codes;
- 118 2. An increase in the number of bedrooms in the Inclusionary Units;
- 119 3. In a home ownership project, construction of rental units in a number required to meet the
120 inclusionary provisions of this chapter applicable to rental housing projects;
- 121 4. Waiving of the in-lieu participation fees for fractions of units. (Ord. 6676-NS § 2, 2002; Ord. 6478-NS
122 § 4 (part), 1999)

123 **~~23C.12.050 State of California Density Bonus Requirements~~**

124 ~~A.—The City shall grant a density increase of at least 25% over the otherwise allowable maximum residential~~
125 ~~density permitted by this Ordinance and the General Plan in effect when the application for the development~~
126 ~~was determined to be complete, and at least one of the concessions or incentives set forth in Government~~
127 ~~Code Section 65915(h); unless the decision maker makes a written finding that the additional concession or~~
128 ~~incentive is not required in order to provide for affordable housing costs as defined in Health and Safety Code~~
129 ~~Section 50052.5, or for rents for the targeted units to be set as specified in Government Code~~
130 ~~Section 65915(c); or the City shall provide other incentives of equivalent financial value based on the land cost~~
131 ~~per Dwelling Unit; if an applicant agrees, or proposes, to construct at least one of the following three~~
132 ~~alternatives to comply with Density Bonus requirements:~~

133 ~~1.—Twenty percent of the total units of a housing development for lower income Households, as defined~~
134 ~~in Health and Safety Code Section 50079.5; or~~

135 ~~2.—Ten percent of the total units of a housing development for very low income Households, as defined~~
136 ~~in Health and Safety Code Section 50105; or~~

137 ~~3.—Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined~~
138 ~~in Civil Code Section 51.3.~~

139 ~~B.—For purposes of this chapter, the Density Bonus shall not be included when determining the number of~~
140 ~~housing units which is equal to 10% or 20% of the total. The Density Bonus shall apply to housing~~
141 ~~developments consisting of five or more Dwelling Units.~~

142 ~~C.—The use of a Density Bonus is preferred over other types of concessions or incentives. Incentives may~~
143 ~~include, but are not limited to, fee deferments and waivers, granting of Variances, relaxation of otherwise~~
144 ~~applicable Permit conditions and provision of government benefits.~~

145 ~~D.—If the Density Bonus or equivalent incentive granted is above 25%, the applicant shall agree to a cost~~
146 ~~certification process. (Ord. 6848 NS § 3 (part), 2005; Ord. 6478 NS § 4 (part), 1999)~~

147 **23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects**

148 A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.

149 B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an
150 appropriate-sized Household whose income is 81% of the Oakland PMSA median.

151 C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price
152 that is affordable to Low or Lower Income Households, provided that the City can make available rental
153 subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an
154 uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at
155 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices
156 shall be affordable to Households at 81% income of the Oakland PMSA median.

157 D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall
158 be affordable to a Household with income that is 60% of the Oakland PMSA median.

159 E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household's
160 Gross Income.

161 1. Gross Household Income and utility allowance shall be calculated according to the guidelines used
162 by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program;

163 2. For purposes of calculating rent, appropriate Household size shall be determined by using the
164 schedule contained in the administrative regulations developed for this chapter.

165 F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this
166 section for the life of the building.

167 G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of
168 the appropriate Household size for the unit. For purposes of occupancy, the appropriate Household size
169 standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future
170 equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the
171 eligible Households referred by the City.

172 H. The owner shall provide the City with data on vacancies and other information required to insure the long-
173 term affordability of the Inclusionary Units by eligible Households. (Ord. 6478-NS § 4 (part), 1999)

174 **23C.12.070 Inclusionary Unit Requirements for Ownership Projects***

175 A. Inclusionary Units in ownership projects shall be sold as set forth below:

176 1. Inclusionary Units in ownership projects shall be sold at a price that is affordable to an appropriate-
177 sized Household whose income is no more than 80% of the area median income reported for the
178 Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the
179 affordable sales price. Appropriate sizes of household and the ratio of income to sales price for
180 affordable units shall be defined by City Manager regulation;

181 2. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing
182 vouchers, and who are known to be interested in participating in the Section 8 homeownership program,
183 or other equivalent program(s) of the City of Berkeley, which are in effect at the time said units are
184 offered for sale by the developer.

185 B. The applicant for a project other than a Limited Equity housing Cooperative shall be required to give right-
186 of-first-refusal to purchase any or all new Inclusionary Units to the City or a City-designated agency or
187 organization for a period of not less than 60 days as evidenced by issuance of a Certificate of Occupancy.

188 C. Should the City choose not to exercise its right-of-first-refusal, it shall provide the applicant or owner with a
189 purchaser or with a list of eligible purchasers within a period of not less than 60 days. If the list is not provided,
190 the applicant may select a Low Income purchaser of his or her choice as long as the City verifies income
191 eligibility and the unit is sold at an affordable price as described in this chapter. The City shall maintain a list of
192 eligible Low Income Households and review the assets and incomes of prospective purchasers of the
193 Inclusionary Units on a project by project basis and refer potential purchasers to the applicant or owner.

194 1. All purchasers of Inclusionary Units shall be first-time home buyers from Low, Lower or Very Low
195 Income Households. Purchasers shall also be required to occupy the unit except that such requirement
196 may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower or
197 Very Low Income Household at a rent affordable by such Households;

198 2. Eligible City Residents will have first preference for Inclusionary Units; second preference will be
199 given to eligible persons employed in the City. Other preferences and priorities may also be established
200 administratively, with Planning Commission review, to help meet the City's Housing Element goals;

201 3. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions
202 applicable to ownership of Inclusionary Units as specified in this chapter and shall provide purchasers
203 with a Declaration of Restrictions applicable to ownership of Inclusionary Units as specified in this
204 chapter;

205 4. Purchasers of Inclusionary Units in Limited Equity Cooperatives at time of first occupancy shall be
206 first time home buyers with Gross Incomes no greater than 120 percent of the Oakland PMSA median.
207 Subsequent purchasers of Inclusionary Units in Limited Equity Cooperatives shall be first time home
208 buyers whose yearly Gross Income is no more than 44 percent of the cost of a unit at the time of sale,
209 provided that such income shall be no more than 110 percent of the Oakland PMSA median.

210 D. All Inclusionary Units developed under this chapter except for those in Limited Equity Cooperatives shall
211 be subject to the resale restrictions set forth below.

212 1. Home ownership Inclusionary Units offered for sale or sold under the requirements of this chapter
213 shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or
214 subsequent purchasers from the date of the owner's notification to the City of intent to sell. The resale
215 price of the unit shall not exceed the original price and customary closing costs, except to allow for the
216 lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by
217 the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA or of the
218 increase as measured in household income guidelines published annually by the U.S. Department of
219 Housing and Urban Development (or its successor agencies) for the Oakland PMSA;

220 2. This resale formula shall supercede and replace the earlier resale formula in deed restrictions
221 executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006. The
222 City of Berkeley, or its designee, shall notify each such owner of this change to the resale formula

223 contained in their deed restriction within 60 days of adoption of this section. All other terms and
224 conditions of these deed restrictions shall remain in effect;

225 3. If the City does not act on its right-of-first-refusal, the same procedure for new Inclusionary Units
226 shall be used for selection of a purchaser.

227 E. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary
228 consideration be allowed, other than customary real estate commissions if the services of a licensed real estate
229 agent are employed.

230 F. The City or its designee may monitor resale of Inclusionary Units in Limited Equity Cooperatives. The City
231 or its designee shall monitor the resale of ownership Inclusionary Units. The owners of any Inclusionary Units
232 shall attach, lawfully reference in the Grant Deed conveying title of any such inclusionary ownership unit, and
233 record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions
234 imposed pursuant to this chapter. Violators of any of the terms thereof may be prosecuted by the City. (Ord.
235 6920-NS § 1-2 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

236 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and
237 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
238 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
239 Ordinance 6,920-N.S., adopted on May 23, 2006.

240 **23C.12.080 Special Requirements for Avenues Plan Area**

241 A. The City Council finds and determines that:

242 1. The Avenues Plan process identified a number of regional and Berkeley-specific barriers to housing
243 development;

244 2. Among the Berkeley-specific barriers were high land prices; lengthy, difficult and uncertain permit
245 processes; and insufficient financing, especially for affordable housing projects;

246 3. The Avenues Plan area represents a core area of the City where it is particularly appropriate to
247 encourage housing development because of the area's generally good access to workplaces, transit
248 service, senior services and retail stores;

- 249 4. The policy to encourage housing in this area is reflected in a number of documents, including, but
 250 not limited to, the City’s Housing Element of the Master Plan, the Concept Plan for the General Plan
 251 revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan and the University
 252 Avenue statement of planning of goals;
- 253 5. Despite the City’s support for housing in this area, new housing development here has been limited
 254 and this has hindered revitalization of the area;
- 255 6. As part of a multi-pronged experimental strategy to create incentives to encourage housing
 256 development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set
 257 forth in this section is appropriate;
- 258 7. These changes will also assist the buyer of below market rate Inclusionary Units, by allowing
 259 him/her to gain greater appreciation on his or her investments (market conditions permitting), making the
 260 investment more similar to conventional home ownership, while retaining the long term affordability of
 261 Inclusionary Units;
- 262 8. The changes will also encourage the construction of larger, family-sized units rather than the smaller
 263 units which have generally been built in multi-family developments;
- 264 9. These changes in inclusionary zoning will be followed by mechanisms to make more financing
 265 available and changes in zoning standards and permit processes;
- 266 10. The success of these changes will be reviewed annually, until the five year time period of the
 267 Avenues Plan experiment expires July 1, 2000.
- 268 B. This section applies on the streets and the addresses listed in the Table below. The area of applicability
 269 consists of the entire C-2 District and portions of the C-1, C-SA, C-W, C-N, R-2A, R-3 and R-4 Districts as
 270 indicated in the Table. Within this area, the provisions of this section supersede any inconsistent provisions of
 271 this chapter.

Table 23C.12.080	
Avenues Plan Area: Street and Address Range	
Street	Addresses
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
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
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

272 C. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in
 273 consultation with other relevant Commissions, shall re-examine its effectiveness. At that time the Commission
 274 may initiate modifications to, or an extension of, this section.

275 D. For purposes of this section, the following definitions apply:

276 1. Project means the total number of housing units planned to be built on a single lot or on a grouping
 277 of contiguous, commonly owned or controlled lots, regardless of whether those units are all built
 278 simultaneously;

279 2. Affordable family-sized unit means a unit which:

- 280 a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or
 281 more;
- 282 b. Contains at least two lawful bedrooms;
- 283 c. Contains at least as many bathrooms as the corresponding two bedroom market rate units;
 284 and
- 285 d. Is sold at a price that is affordable to an appropriate sized Household whose income is no
 286 more than 80 percent of the metropolitan area median as reported by the Department of Housing
 287 and Urban Development (HUD).

288 E. Except as provided in this chapter, the number of Inclusionary Units required are as set forth in the
 289 following table:

Total Number of Units Built	Number of Inclusionary Units Required
10-14	1
15-19	2
Each additional multiple of 5 units	1 additional

290 F. For every five units which the applicant can demonstrate with bona fide sales documents have been sold
 291 at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of
 292 metropolitan area median, the applicant shall be released of the obligation to provide one Inclusionary Unit.

293 G. For every ten affordable family-sized units, the applicant shall be released of the obligation to provide one
 294 Inclusionary Unit sold at a price at or below that affordable to an appropriate sized Household with an income
 295 of 100 percent of metropolitan area median.

296 H. Within the area of applicability for that portion of a project wherein both the Inclusionary and the non-
 297 inclusionary Units contain at least as many bathrooms as the corresponding two bedroom market rate units,
 298 only ten percent of units are required to be Inclusionary.

299 I. The first Inclusionary Unit in projects with units for sale shall be sold at a price that is affordable to an
 300 appropriate sized Household whose income is no more than 80 percent of the Oakland PMSA median as
 301 reported by HUD. Except as otherwise provided in Section [23C.12.080](#).D.2.d above, the second Inclusionary
 302 Unit shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than

303 100 percent of the PMSA median and subsequent Inclusionary Units shall be sold alternately at these price
304 levels.

305 J. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year
306 housing cost (including homeowners' association dues, if any) for a Household of appropriate size with an
307 income at the targeted level shall not exceed 33 percent of income. This cost shall be calculated assuming that
308 the buyer makes a ten percent down payment, which shall not be considered a portion of the cost. The housing
309 cost shall be calculated for each project at the time the condominium association budget is approved by the
310 Department of Real Estate and shall not be changed subsequent to that time for that project, regardless of
311 future changes in cost.

312 K. The resale price of Inclusionary Units within the Avenues Plan Area may increase at the rate of increase of
313 the Consumer Price Index for All Urban Consumers (CPI-U) applicable to the metropolitan area. (Ord. 6478-NS
314 § 4 (part), 1999)

315 **23C.12.090 Administrative Regulations***

316 A. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter,
317 including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering
318 into recorded agreements with applicants and taking other appropriate steps necessary to assure that the
319 required low income and very low income Dwelling Units are provided and occupied by Low Income
320 Households. (Ord. 6920-NS § 3 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

321 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and
322 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
323 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
324 Ordinance 6,920-N.S., adopted on May 23, 2006.

325 **23C.12.100 Fees**

326 The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 6887-NS § 1,
327 2005)

328

Chapter 23C.14 Density Bonus

23C.14.010	Purpose
23C.14.020	Definitions
23C.14.030	Application Requirements
23C.14.040	Density Bonus Calculations and Procedures
23C.14.050	Waivers and Reductions
23C.14.060	Incentives and Concessions
23C.14.070	Qualifying Units
23C.14.080	Special Provisions
23C.14.090	Regulatory Agreements

23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) 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.
- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in subdivision (k) thereof.

- 46 F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales
47 price as set forth in Section 65915 in order to receive a Density Bonus and/or
48 Waivers and Reductions and/or Incentives and Concessions.
49
- 50 G. "Section 65915" means California Government Code Section 65915, as it may be
51 amended from time to time.
52
- 53 H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in
54 Section 65915 and in particular in subdivision (e) thereof, and means any and all
55 changes to or exemptions from physical lot development standards that are required
56 to avoid precluding the construction of a Housing Development with Density Bonus
57 Units, as set forth in Section 65915(e).
58

59 **23C.14.030 Application Requirements**
60

61 In addition to any other information required by this Title, an application for a Density
62 Bonus must include the following information:
63

- 64 A. How the proposed project will satisfy the eligibility requirements of Section 65915;
65
- 66 B. For those districts without density standards, a density bonus schematic as set forth
67 in the administrative regulations;
68
- 69 C. The proposed size of the Density Bonus pursuant to Section 23C.14.040;
70
- 71 D. Any Waivers and Reductions that are sought under Section 65915(e) that would be
72 required to accommodate the Housing Development including the Density Bonus
73 Units.
74
- 75 E. Any Incentives and Concessions that are sought under Section 65915(d); and
76
- 77 F. An applicant may elect in writing to receive a Density Bonus that is less
78 than that mandated by Section 65915, including a Density Bonus of 0
79 (zero). In such cases, the applicant will retain their entitlement to Incentives
80 and Concessions.
81

82 **23C.14.040 Density Bonus Calculations and Procedures**
83

- 84 A. Density Bonuses must be calculated as set forth in Section 65915 and
85 pursuant to the Administrative Regulations.
86
- 87 B. Density Bonus requests must accompany Housing Development
88 applications and will be decided upon by the highest governing body.
89

90 **23C.14.050 Waivers and Reductions**
91

- 92 A. For purposes of this Chapter, the number of Waivers and Reductions are counted as
93 follows:
94
- 95 1. Any Waiver and Reduction that would otherwise require discretionary approval
96 by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot
97 development standard, such as height or setbacks, or any single quantitative lot
98 development standard, such as parking or open space, counts as one.
99
 - 100 2. A proposed Waiver and Reduction that would involve exceedance of a single
101 physical lot development standard counts as a one even if that exceedance
102 would otherwise require more than one Permit (e.g., extra height may require
103 Permits for height, FAR, and/or number of stories but would count as one Waiver
104 or Reduction for height).
105
 - 106 3. Where it is ambiguous as to whether a proposed Waiver and Reduction involves
107 one or more dimensional or quantitative lot development standards, the stricter
108 interpretation shall apply as determined by the Zoning Officer.
109
- 110 B. In determining whether it can make the finding set forth in Section 65915(d)(1), the
111 City will base its determination and any finding on a comparison of the project
112 including the Density Bonus and requested Waiver and Reduction to the Base
113 Project.
114
- 115 C. The City is not required to deny a proposed Waiver and Reduction solely because it
116 is able to make a finding under Section 65915(d)(1).
117
- 118 D. Unless denied under Section 65915, Waivers and Reductions will be exempt from
119 discretionary review or Permits under this Title, other than design review.
120

121 **23C.14.060 Incentives and Concessions**

122
123 Incentives and concessions must be justified based on the financial needs of the
124 project, including reduced costs and increased revenue, to provide for the affordable
125 housing costs of the qualifying units and for the project overall.
126

127 **23C.14.070 Qualifying Units**

128
129 Qualifying Units must be reasonably dispersed throughout the Housing Development,
130 be of the same size and contain, on average, the same number of bedrooms as the
131 non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units
132 in terms of design, use, appearance, materials and finish quality. In determining whether
133 dispersal of Qualifying Units is reasonable, the Zoning Adjustments Board may consider
134 special benefits provided by, as well as special constraints on, the project.
135

136 **23C.14.080 Special Provisions**

137

138 In addition to requirements set forth in Section 65915 and this Chapter, the following
139 Special Provisions apply to Density Bonuses in the City of Berkeley. Special Provisions
140 are considered Incentives and Concessions may be requested at the discretion of the
141 applicant.

142
143 A. [placeholder]

144
145 B. [placeholder]

146
147 C. In addition to other required findings, Special Provisions may be awarded only when
148 the City finds that the Density Bonus project complies with the purposes of the
149 district in which the project is located.

150
151 **23C.14.090 Regulatory Agreements**

152
153 Prior to issuance of a Certificate of Occupancy for a Housing Development that has
154 received a Density Bonus, the applicant must enter into a regulatory agreement in a
155 form provided by the City that implements Section 65915 and this Chapter.

156
157

Chapter 23C.14 Density Bonus

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67 in the administrative regulations;
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- 69 C. The proposed size of the Density Bonus pursuant to Section 23C.14.040;
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- 71 D. Any Waivers and Reductions that are sought under Section 65915(e) that would be
72 required to accommodate the Housing Development including the Density Bonus
73 Units.
74
- 75 E. Any Incentives and Concessions that are sought under Section 65915(d);
76
- 77 F. Any requested additional bonus units under Section 65915(n);
78
- 79 G. Any requested parking reductions under Section 65915(p); and
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- 81 H. An applicant may elect in writing to receive a Density Bonus that is less
82 than that mandated by Section 65915, including a Density Bonus of 0
83 (zero). In such cases, the applicant will retain their entitlement to Incentives
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108 or Reduction for height).

109

110 3. Where it is ambiguous as to whether a proposed Waiver and Reduction involves
111 one or more dimensional or quantitative lot development standards, the stricter
112 interpretation shall apply as determined by the Zoning Officer.

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115 City will base its determination and any finding on a comparison of the project
116 including the Density Bonus and requested Waiver and Reduction to the Base
117 Project.

118

119 C. The City is not required to deny a proposed Waiver and Reduction solely because it
120 is able to make a finding under Section 65915(d)(1).

121

122 D. Unless denied under Section 65915, Waivers and Reductions will be exempt from
123 discretionary review or Permits under this Title, other than design review.

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143 Special Provisions apply to Density Bonuses in the City of Berkeley. Special Provisions
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152 the City finds that the Density Bonus project complies with the purposes of the
153 district in which the project is located.

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155 **23C.14.090 Regulatory Agreements**

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158 received a Density Bonus, the applicant must enter into a regulatory agreement in a
159 form provided by the City that implements Section 65915 and this Chapter.

160

161



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 21, 2018
TO: Members of the Planning Commission
FROM: Sydney Stephenson, Assistant Planner
SUBJECT: Urban Agriculture Zoning Regulations

BACKGROUND

On October 4, 2017, staff presented two Council referrals regarding Urban Agriculture and Community Gardens to the Planning Commission (PC). See Attachment 1 and 2 for the Council referrals and Link 1 for the prior PC staff report. Prior to the October meeting, staff met with the Ecology Center and the Berkeley Community Gardening Collaborative to discuss the referrals. The two organizations provided staff with their own recommended approach to these referrals.

INTRODUCTION

At previous Planning Commission meetings (October 4, 2017 and September 7, 2016), the Council referrals were presented as informational items with staff research on Urban Agriculture and Community Gardens. The goal of this meeting is to move forward with these Urban Agriculture and Community referrals by beginning to develop Zoning Ordinance regulations.

From the discussion with the organizations and additional research, two important issues arise: 1) lack of an Urban Agriculture use and definition in the Zoning Ordinance, and 2) differing levels of intensity within Urban Agriculture. To address these issues, staff recommends combining the two referrals by creating a new use category of Urban Agriculture with different levels of intensity. This approach will fold Community Gardens into the Urban Agriculture use.

The following Discussion section describes the four steps to enact Urban Agriculture regulations:

- 1) Create a definition for Urban Agriculture;
- 2) Develop a new chapter with specific requirements for the new use;
- 3) Modify the uses permitted tables in each district; and
- 4) Allow an exception to the Administrative Use Permit requirement for accessory buildings and structures on vacant lots.

Currently, all Residential districts allow limited sales of “non-processed edibles” (i.e. fruit, vegetables, eggs) per Berkeley Municipal Code (BMC) Section 23C.20.010.B, *Exempted Accessory Uses*. Since properties with main residential buildings are already allowed to have limited sales of produce, staff anticipates Urban Agriculture uses on vacant parcels.

Since Urban Agriculture uses are expected to locate on vacant parcels, the level of intensity of these uses could affect neighbors and adjacent properties. Staff identified that different levels of intensity of urban agriculture could create two potential community impacts: noise and parking. Noise impacts would include noise from residents working on the land, customer visits, and group classes. Parking impacts would include similar sources of noise impacts, increased parked cars while community members are working on the land, during retail sales, and group classes.

Staff recommends setting thresholds and levels of discretion to address the potential impacts of urban agriculture on vacant parcels. The recommended thresholds and levels of discretion are presented in the Discussion section below, including land-related thresholds and activity-related thresholds.

DISCUSSION

Mechanics of Urban Agriculture in the Zoning Ordinance

As listed above, staff has identified four steps to implement Urban Agriculture as a new land use, including creating a definition for Urban Agriculture; developing a new chapter with specific requirements for the new use; modifying the uses permitted tables in each district; and allowing an exception to the Administrative Use Permit requirement for accessory buildings and structures on vacant lots. Attachment 3 consolidates information and presents the Zoning districts where Urban Agriculture would be permitted and the levels of discretion for the intensity level of the Urban Agriculture use.

Topics not addressed in Urban Agriculture

The proposed direction for the Urban Agriculture use does not address the keeping of domestic animals and vectors. While staff is not recommending amending existing policy at this time regarding the keeping of animals, it is important to not what is currently allowed in the Code (See BMC Chapter 10.12, Keeping, Care and Control of Animals). Existing ordinances allow residents to raise rabbits, domestic fowl, cows, pigs and goats. In addition, regulations regarding vectors are not included in the staff’s recommendations because the Berkeley Vector Control program, as well as, the Alameda County Vector Control Service District provide services and regulations for vector control.

Definition (added to BMC Chapter 23F.04)

In response to the two Council referrals, staff recommends creating a new use, Urban Agriculture. There is no definition for farms, community gardens, or any use related urban agriculture in the Zoning Ordinance (BMC Chapter 23F.04). Thus, a new definition for Urban Agriculture is needed.

The two Council referrals proposed one short definition, and one longer definition that listed our specific crops like fruits, vegetables and flowers. In addition, the organizations staff met with provided a proposed definition. After reviewing all definitions and additional research, staff recommends the following definition for Urban Agriculture:

Urban Agriculture: the production of food or horticultural crops¹ for harvest, sale, and/or donation, not including cannabis cultivation.

New chapter – BMC 23C.26 Urban Agriculture

As mentioned previously, staff determined that the new Urban Agriculture use would need regulations related to this use in order to control potential impacts, similarly to Exempted Accessory Uses, Home Occupations, and Cannabis Uses (all within BMC Sub-Title 23C). Thus, staff recommends creating a new chapter within Sub-Title 23C called Urban Agriculture (BMC 23C.26). This new chapter will include the specific regulations and thresholds for the Urban Agriculture use. Staff recommends structuring the chapter similarly to the Home Occupations chapter (BMC 23C.16).

Staff determined that different intensity levels of the use would have different affects and compatibility in each district. For example, small community gardens are anticipated to be more compatible in low-density residential districts because they have less potential impacts than large-scale farms. Thus, staff recommends separating the Urban Agriculture use by level of intensity into two subcategories:

- **Low-Intensity Urban Agriculture (LIUA)** meets all of the base thresholds. The base thresholds that differentiate between LIUA and HIUA are discussed in the *Thresholds and Levels of Discretion* section below, including land-related and activity-related thresholds. The base thresholds will minimize potential impacts from this use, thus LIUA requires lower levels of discretion. An example of LIUA is a community garden that meets all the base thresholds and requirements for LIUA.
- **High-Intensity Urban Agriculture (HIUA)** does not meet one of the base thresholds for LIUA. The higher intensity of the use will create more potential impacts and should require higher levels of discretion to provide opportunities for community input. An example of HIUA is a large-scale, high-production urban farm, that does not meet the thresholds of LIUA

Modify Uses Permitted Tables in each district

Every land use that is permitted in the City of Berkeley are listed in each Zoning district's *Uses Permitted Table*. Thus, since Urban Agriculture is a new use, it will need to be added to each district's *Uses Permitted Table*.

¹ Staff used the short version of the Urban Agriculture definition because the [Encyclopedia Britannica](#), defines Horticulture as: "the branch of plant agriculture dealing with garden crops, generally fruits, vegetables, and ornamental plants."

Staff recommends that LIUA and HIUA uses are permitted in all zoning districts except ES-R. Urban Agriculture will not be permitted in the ES-R District (Environmental Safety-Residential District) because this area is environmentally sensitive to fire and earthquake hazards due to its steep slopes, inadequate water pressure, and proximity to the Hayward Fault and vegetated wildlands. Thus, it is important to limit this area only to uses that are necessary to serve housing and access needs.

Both types of Urban Agriculture (LIUA and HIUA) will be governed by different levels of discretion subject to the base thresholds described later in this report. Attachment 3 presents each Zoning District and the level of discretion for both LIUA and HIUA.

Exception for Accessory Buildings and Structures on Vacant Parcels

As mentioned previously, staff expects Urban Agriculture to locate on vacant parcels (without main buildings). Thus, staff also expects accessory buildings and structures to be constructed for Urban Agriculture. Currently, *Uses Permitted Table* for each Zoning district includes language requiring an Administrative Use Permit (AUP) for accessory buildings and structures located on vacant parcels. Thus, staff recommends amending this language to provide an exception to Urban Agriculture. The accessory buildings or structures must comply with the Accessory Buildings and Structures chapter (BMC Chapter 23D.08) as well. In addition, staff recommends establishing a maximum lot coverage for accessory buildings and structures associated with Urban Agriculture uses, as discussed later in this report.

Thresholds and Levels of Discretion

LIUA and HIUA are anticipated to occur on vacant lots and the levels of intensity would create potential impacts on the community. To control these uses in the district and feed into the *Uses Permitted Tables*, thresholds and levels of discretion are necessary.

As discussed above, the type of urban agriculture (LIUA or HIUA) is determined using land-related and activity-related thresholds, including: parcel size, lot coverage, hours of operation, retail sales, incidental uses (group class instructions). These are base thresholds for LIUA, if the urban agriculture use exceeds any of the thresholds listed below then the use is categorized as HIUA. An Urban Agriculture use that exceeds the base thresholds will create a more intensive use, leading to greater potential impacts. Thus, staff recommends a higher level of discretion for HIUA to provide an opportunity for community input.

Land Thresholds

- **Parcel Size:** Staff believes that the size of the parcel will contribute to the potential impacts. Therefore, staff recommends using parcel size to distinguish between LIUA and HIUA. The average residential parcel size in Berkeley is 5,000 sq. ft. Thus, staff recommends permitting LIUA on parcels that do not exceed 5,000 sq. ft. A parcel larger than 5,000 sq. ft. would allow for a larger and more intensive

Urban Agriculture use and should require a level of discretion that provides community input.

- **Lot Coverage:** As mentioned previously, staff recommends allowing accessory buildings and structures for Urban Agriculture uses with a Zoning Certificate if the structures comply with BMC Chapter 23D.08 (Accessory Buildings and Structures). All Residential districts include a maximum lot coverage requirement which includes accessory buildings and structures. The average lot coverage requirement in these districts is 40%. Urban Agriculture uses are expected to be on vacant parcels, and staff believes since the primary use will be producing crops and food outdoors, 40% lot coverage is too high. Staff recommends reducing maximum lot coverage to 10% for accessory buildings and structures on Urban Agriculture parcels.

Activity Thresholds

- **Hours of Operation:** The *Exempted Accessory Uses* chapter allows hours of operation from 8am to 8pm, seven days a week. Thus, staff recommends following the same direction and permit the same hours of operations for LIUA. It is important to note that activities during the hours of operation would include on-site gardening, educational classes, and retail sales of the produce.
- **Retail Sales:** Staff expects the Urban Agriculture use to include retail sales or donation of the produce. Currently, chapter allows limited sales or donations of Non-Processed Edibles. Thus, staff recommends allowing retail sales and/or donations of LIUA if BMC Section 23C.20.010.B (*Exempted Accessory Uses*) requirements are met. The requirements for the sales and/or donations of Non-Processed Edibles include the number of customer visits per day, time of sale, and the type of product that can be sold.
- **Incidental Uses:** Staff met with community gardens organizations (mentioned in the Background section of this report) and discussed the activities at existing community gardens, including educational classes. Therefore, staff anticipates Urban Agriculture uses to include incidental uses like Group Class Instruction. Group Class Instruction would have the same potential impacts as listed previously in this report. Thus, staff recommends limiting LIUA with Group Class Instruction sessions to two times per week with a maximum of 15 participants to limit the potential noise and parking impacts.

Levels of Discretion

All land uses in the Zoning Ordinance have levels of discretion that are appropriate for each Zoning district. These levels of discretion are used to control potential impacts to the surrounding community.

As mentioned previously, Urban Agriculture on vacant residential parcels could have unreceptive effects to the community, including noise and parking. Knowing that

Urban Agriculture could potentially impact neighbors and surrounding properties, staff recommends higher levels of discretion in low-intensity (lower density) residential districts. See Attachment 3 for the levels of discretion for LIUA and HIUA in each Zoning district. In districts R-1, R-1A, R-2, R-2A, and R-3, an Administrative Use Permit (AUP) would be required for LIUA and a Use Permit with a Public Hearing (UP(PH)) would be required for HIUA. In districts R-4, R-5, R-S, and R-SMU a Zoning Certificate (ZC) would be required for a LIUA and an AUP for HIUA. In all commercial and manufacturing districts a ZC would be required for a LIUA and an AUP for HIUA.

NEXT STEPS

The following questions are for Planning Commission's consideration based on the information provided in this report and on Planning Commission's discussion:

1. Does the proposed definition of Urban Agriculture encompass the intent of the two Council referrals? If not, what is your recommendation?
2. Do you agree with the approach to separate Urban Agriculture into two levels of intensity (LIUA and HIUA)? If not, what is your recommended approach?
3. Do you agree that the proposed base thresholds and levels of discretion would control potential community impacts? If not, are there additional thresholds or different levels of discretions for LIUA and HIUA that should be considered?

ATTACHMENTS

1. Urban Agriculture Council Referral – November 29, 2016
2. Community Garden Zoning Council Referral – May 10, 2016
3. Urban Agriculture Levels of Discretion Table

LINKS

1. [October 4, 2017 Planning Commission Staff Report](#)



Jesse Arreguín
City Councilmember, District 4

CONSENT CALENDAR
November 29, 2016

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Urban Agriculture Package

RECOMMENDATIONS

Refer to the Planning Commission to develop regulations to facilitate urban agriculture, taking into consideration the following concepts:

1. Designate “urban agriculture” as a primary and incidental use category and define as, “the production of food or horticultural crops for harvest, sale, and/or donation, not including cannabis”.
2. Add urban agriculture as an Outdoor Use in all Commercial zones.
3. Permit urban agriculture on unoccupied lots in residential zones.
4. Consider whether to permit urban agriculture in lots in the Hillside Overlay, and whether to permit urban agriculture on lots of a certain slope or requiring a geotechnical study.
5. Define rooftop gardens and develop requirements that comply with existing building codes.
6. Permit accessory uses, including sheds, greenhouses, trellises, pergolas and fences on occupied and vacant lots used for urban agriculture.
7. Permit group class instruction, community gatherings, and sales as an accessory use in commercial and residential zones and establish conditions for these uses in residential zones based on the requirements in Section 23C.20.010 (B), Sales of Non-Processed Edibles.
8. Permit sales of “value-added” products or processed food products to be sold on site during the sales of non-processed edibles or plants, in compliance with the State of California Homemade Food Act.
9. Consider the levels of discretion (permits required) for these various uses.

BACKGROUND

The popularity of urban agriculture has grown rapidly in recent years. To meet this renewed interest, cities across the country have developed policies to support and encourage a variety of uses. From residential and community gardens, to urban farms,

urban agriculture is not only providing healthy food to communities, but it is also developing into a mature business sector that helps local economies thrive. In 2014, U.S. local food sales totaled at least \$12 billion, up from \$5 billion in 2008, with experts anticipating that value hitting \$20 billion by 2019. The expansion of urban agriculture is also driving the growth of green jobs and increasing entrepreneurship.

Urban agriculture also improves the environment by reducing the distance food must travel to our plates, which in turn reduces greenhouse gas (GHG) emissions, something the people of Berkeley care about deeply. In 2006, Berkeley voters overwhelmingly endorsed Measure G, making it a goal for our City to reach an 80% reduction in GHG emissions by 2050. In 2009, the Climate Action Plan (CAP) reiterated this sentiment in its Vision for 2050 and asserted that an important way to meet this goal would be to locally produce the majority of food consumed in Berkeley. The CAP states that, "In response to crises like climate change, Peak Oil, health disparities, a shaky economy, and the loss of greenfields and farmland due to suburban sprawl, the City and its partners must do more to build a resilient and sustainable local food system". Policy C of Goal 2 in the Sustainable Transportation and Land Use section recommends "supporting efforts to build a more complete and local food production and distribution systems".

In July of 2012, the Berkeley City Council amended the Zoning Ordinance to exempt the limited sales of "non-processed edibles" (i.e. fresh produce, eggs) in residential districts. The amendment created guidelines for the sale of produce and homegrown goods, and made urban agriculture and limited sales on occupied lots an exempt zoning use. It also enabled small-scale Community Supported Agriculture (CSA) in residential areas. While this legislation was an important first step, it did not cover Berkeley's commercial districts, nor did it permit urban agriculture in unoccupied residential lots. Currently, urban agriculture is only allowed in three zoning districts, Residential, Manufacturing (M), and Mixed Manufacturing (MM) Districts, and is prohibited in all other areas.

The lack of definitions or permitted uses for either "urban agriculture" or "community garden" has made existing urban farms and community gardens in most zones technically illegal. On May 10, 2016, the City Council passed an item on consent referring to the Planning commission to: 1) define community gardens in the Zoning Ordinance, and 2) permit group class instruction, gatherings, and sales as exempt accessory uses. However, a definition of urban agriculture and uses, and permit guidelines by zone are still needed.

Urban agriculture is a valuable asset for our City because it helps strengthen the health and social fabric of communities while creating economic opportunities for farmers and neighborhoods. To increase these opportunities and improve the environment by meeting our GHG emission reduction goals, we must update our Zoning Ordinance to include the following on urban agriculture:

Use Designation and Definition

Designating urban agriculture as a primary and incidental use category in every zone is an important foundational step to support a diversity of uses, food security, and our local economy. Similar to San Francisco, Sacramento, and Oakland, we should designate urban agriculture a use category defined as, *“the production of food or horticultural crops for harvest, sale, and/or donation, not including cannabis”*.

Urban Agriculture in Commercial Zones

By expanding uses to Commercial zones we can maximize urban agriculture opportunities in Berkeley, getting closer to Policy C, Goal 2 of the Climate Action Plan – a more complete and local food production and distribution system. As part of this referral the Planning Commission will consider the appropriate levels of discretion for these uses.

While there are no set standards for urban agriculture soils at either the Federal or State levels, the Federal Environmental Protection Agency has set a lead level of 400ppm that is widely accepted for soils. Agencies like the California Department of Health and the Berkeley Unified School District adhere to this standard as well. While testing is commonly not required, it is recommended, as is following the Starting Your Own Urban Garden guidelines set forth by the Community Environmental Advisory Commission in March, 2015.

Urban Agriculture on Unoccupied Lots in Residential Zones

Urban agriculture and limited sales on occupied lots in residential zones are currently exempt zoning uses. However, these exemptions do not apply to unoccupied residential lots. Permitting urban agriculture on residential unoccupied lots will remove existing barriers and make it easier for non-profit organizations, schools, or community groups to more easily start a garden.

Due to concerns over the potential for landslides and proximity to the Hayward Fault, the Planning Commission should consider whether to permit urban agriculture on unoccupied lots in the Hillside Overlay zone and whether to require a geotechnical study. An alternative approach suggested by the Planning Director is to allow urban agriculture on hillside lots of a certain slope.

Rooftop Gardens

Rooftop gardens are an excellent way to increase urban agriculture in a city while reducing building energy usage and improving habitat corridors. Cities across the country like New York, Portland, and San Francisco have embraced this use. In addition, the Climate Action Plan explicitly points out that we should, “encourage and provide guidelines consistent with the building code for buildings to incorporate rooftop gardens that can be used for food production.” There are two types of rooftop gardens:

- **Extensive Green Roof:** Plants are grown directly on the roof in four to six feet of substrate, covering most, if not all, of the surface. Water retention and insulation are the main goals of this type of rooftop garden. Since these typically involve minimal traffic and maintenance, they are considered “unoccupied” and are often treated as Alternative Roofing Surfaces for the purposes of most regulations.
- **Intensive Green Roof:** Larger plants are grown as ornamentals or edibles. Because these gardens require more substantial planting depths, as well as regular maintenance, the rooftops on which they are sited are considered “occupied” and will be subject to more stringent regulations. Since there is little precedent and no specific mention of roof gardens in the planning and building codes, these setups will mostly be treated as Roof Decks.

Expansion of Exempt Accessory Uses

Although the City Council passed an item on May 10, 2016 that permitted group class instruction, gatherings, and sales as exempt accessory uses, this only applies to community gardens. By expanding these accessory uses to all urban agriculture uses and including accessory structures like sheds, trellises and greenhouses, which all currently require additional permits, we can continue to support local food production by reducing permitting cost and time barriers. As part of this referral the Planning Commission will consider the appropriate levels of discretion for these uses.

Sales in Commercial Zone and Value-Added Products

Similar to what was put forth in Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts), if a lot is being used for urban agriculture, incidental sales of goods manufactured on site should be an exempt accessory use requiring only a zoning certificate.

In 2013, Assembly Bill 1616, the California Homemade Food Act was signed into law. The bill allows individuals to prepare and/or package certain non-potentially hazardous foods in private-home kitchens, referred to as “cottage food operations” (CFOs). As part of the act, a two-tier operator registration and permitting system was created. Class A CFOs are those that sell prepared foods directly to the public on-site or at a community event. This tier must submit a registration application and self-certification checklist for approval. Class B CFOs are those that sell prepared foods either indirectly through restaurants and stores or both directly to the public as well as indirectly. This tier must submit a permit application and be inspected prior to being approved. All CFOs must be registered or permitted by their local or county environmental health agency before they can begin business.

Referral to Planning Commission: Urban Agriculture

CONSENT CALENDAR
November 29, 2016

If an individual or organization is in compliance with the Homemade Food Act, a registered or permitted CFO, and is meeting all the requirements within the BMC regarding hours and visitors for on-site sales in their zone, they should be able to sell value-added or prepared products along with unprocessed foods, such as produce or plants.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

Increasing the opportunities for urban agriculture will create more green space, increase access to fresh produce, bolster the local economy, and potentially reduce greenhouse gas emissions from food transport, which would help us meet Vision 2050 and Climate Action Plan goals.

CONTACT PERSON

Jesse Arreguín, Councilmember, District 4 510-981-7140



Jesse Arreguín
City Councilmember, District 4

ACTION CALENDAR
May 10, 2016

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Referral to Planning Commission: Community Garden Zoning

RECOMMENDATIONS

Refer to the Planning Commission the following amendments to the Zoning Ordinance to define Community Gardens and permit them in all zoning districts:

1. Add the following language to Section 23F.04.010 (Definitions) to define Community Gardens as a new zoning use:

Community Garden: Any piece of land, public or private, that is maintained by a group of individuals in the community that is used for the cultivation of fruits, vegetables, plants, flowers, herbs or ornamental plants, and may be used for educational purposes, group class instruction or community gatherings. Community gardens may produce food for individual consumption, donation, trade or limited seasonal sales as an exempt accessory activity subject to certain limitations. Community gardens may also have accessory structures including, but not limited to tool sheds, greenhouses, pergolas and trellises by right with a Zoning Certificate.

2. Establish community gardens and accessory structures including, but not limited to tool sheds, greenhouses, pergolas and trellises as a “by right” use in all zoning districts requiring only a Zoning Certificate.
3. Permit group class instruction, community gatherings, and sales as an exempt accessory use subject to limitations on the number of persons, hours, similar to the requirements set forth in BMC Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts).

Referral to Planning Commission: Community Garden Zoning

ACTION CALENDAR
May 10, 2016

BACKGROUND

Community gardens have been an important part of our city's urban life for decades. Going as far back as World War II when residents cultivated "victory gardens" to grow food during the war-time economy, Berkeley has nurtured a number of community gardens over the years, providing recreation and locally grown organic food. There are currently over thirty community gardens throughout the city, six of which are operated on public land and overseen by the Parks, Recreation and Waterfront Department in partnership with the Berkeley Community Gardening Collaborative.

While Berkeley has allowed community gardens on public and private land, currently they are not a permitted zoning use. This makes existing community gardens a non-conforming use, and creates barriers for the formation of new gardens. In addition, many of the accessory uses that community gardens need such as group class instruction, sales of produce or plants and accessory structures, require separate zoning permits. These separate permits cost time and money for non-profit, volunteer-run community gardens.

The 2002 General Plan recognized the growing need for additional community gardening sites, and stated in Policy OS-8 that we must "*encourage and support community gardens as important open space resources that build communities and provide a local food source.*" The 2009 Berkeley Climate Action Plan (CAP) went a step further and strongly advocated for community gardens as a way to encourage the consumption of local food in order to strengthen local food security, and reduce food miles and fossil fuel consumption. Additionally, the CAP aimed to support existing community gardens as well as neighborhood initiatives to launch additional community gardens.

In July 2012, the Berkeley City Council amended the zoning ordinance to exempt the sales of "non-processed edibles" (i.e. fresh produce, eggs) in residential districts. This was in response to strong community support for reducing permitting barriers to urban farming. While this legislation was an important step, it did not cover Berkeley's commercial and manufacturing districts. Currently, urban agriculture is only allowed in one zoning district, the Manufacturing (M) District in West Berkeley and prohibited in all other areas. The lack of a permitted use for either "urban agriculture" or "community gardens" has made existing community gardens technically illegal because they do not have the proper permits.

Referral to Planning Commission: Community Garden Zoning

ACTION CALENDAR
May 10, 2016

The cost of starting a community garden varies depending on size, complexity and materials. According to the Ecology Center's Community Garden Handbook, materials alone - including water hookup, mulch, storage, fence, etc. - can add up to more than \$23,000. This estimate does not include securing the necessary permits, which can cost thousands of dollars and take several months. Easing the permitting cost by changing the use to "by right" with a Zoning Certificate would remove a huge barrier for potential gardening groups, schools and non-profit organizations, reducing the cost and time needed to start a community garden. Doing so can also help address existing "food deserts" in our city, parts of our community that do not have easy access to fresh local produce.

Community gardens are a valuable asset for our city because they increase access to healthy, affordable, culturally appropriate food for the people of Berkeley. They encourage urban agriculture, the preservation of open space, habitat restoration and the cultivation of community. The proposed amendments will make it possible for Berkeley's growing community garden network to flourish.

FINANCIAL IMPLICATIONS

Staff time to draft zoning amendments. Community Gardens would be exempt from zoning review and therefore would not result in fiscal impacts on the Land Use Planning Division.

ENVIRONMENTAL SUSTAINABILITY

Permitting community gardens by right will advance General Plan and Climate Action goals, and may encourage people to convert vacant land to agricultural use. Additional agricultural uses would create more green space, increase access to fresh produce, and potentially reduce greenhouse gas emissions from food transport.

CONTACT PERSON

Jesse Arreguín, Councilmember, District 4 510-981-7140

36b. Companion Report: Healthy Default Beverages with Children’s Meals

From: City Manager

Recommendation: Direct the City Manager to develop specific ordinance language, prepared in consultation with the City Attorney’s Office that requires food vendors who offer children’s meals to provide healthy default beverages, and a cost estimate for implementation for Council’s consideration.

Financial Implications: See report

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400

Action: Item 36b moved to Consent Calendar. Revised to include the direction that the commission recommendation be used as guidance for staff and that the process be complaint driven.

Council Action Items

37. Referral to Planning Commission: Community Garden Zoning

From: Councilmember Arreguin

Recommendation: Refer to the Planning Commission the following amendments to the Zoning Ordinance to define Community Gardens and permit them in all zoning districts: 1. Add language to Section 23F.04.010 (Definitions) to define Community Gardens as a new zoning use. 2. Establish community gardens and accessory structures including, but not limited to tool sheds, greenhouses, pergolas and trellises as a “by right” use in all zoning districts requiring only a Zoning Certificate. 3. Permit group class instruction, community gatherings, and sales as an exempt accessory use subject to limitations on the number of persons, hours, similar to the requirements set forth in BMC Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts).

Financial Implications: Staff time

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: Moved to Consent Calendar. Revised to include requests to consider limiting the size of the accessory structure, requiring and AUP, and impacts of Measure L.

Urban Agriculture Levels of Discretion Table

	Levels of Discretion	
	LIUA*	HIUA**
R-1	AUP	UP(PH)
R-1A	AUP	UP(PH)
R-2	AUP	UP(PH)
R-2A	AUP	UP(PH)
R-3	AUP	UP(PH)
R-4	ZC	AUP
R-5	ZC	AUP
R-S	ZC	AUP
R-SMU	ZC	AUP
C-1	ZC	AUP
C-N	ZC	AUP
C-E	ZC	AUP
C-NS	ZC	AUP
C-SA	ZC	AUP
C-T	ZC	AUP
C-SO	ZC	AUP
C-W	ZC	AUP
C-DMU	ZC	AUP
M	ZC	AUP
MM	ZC	AUP
MU-LI	ZC	AUP
MU-R	ZC	AUP
ES-R	Prohibited	Prohibited

* LIUA = Low-Intensity Urban Agriculture

** HIUA = High-Intensity Urban Agriculture

EDWARD C. MOORE
ATTORNEY AT LAW¹

2436 Ninth Street
Berkeley, California 94710

Tele: (510) 531-7272
E-mail: ecmoorelaw@gmail.com

February 26, 2018

Ahrima Brown
City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

**Transmitted by e-mail
Attorney@CityofBerkeley.info**

RE: Proposed Local Legislation Regarding Density Bonuses (proposed
BMC Ch. 23C.14).

Dear City Attorney Brown:

Congratulations on your recent appointment as city attorney.

We don't know each other. Allow me a moment to introduce myself. Licensed to practice law in 1972, I was a general practitioner. Among other things I've been a longtime proponent of the waterfront in Berkeley and Albany as a cultural landscape eligible for listing on the National Register of Historic Places. For the past 10 years I have participated in Berkeley city planning public processes (e.g., as a critic of Mayor Bates' West Berkeley Project; as a critic of a national-laboratory campus at the waterfront; as a critic of a height variance for 740 Heinz Avenue; as a supporter of Harold Way and downtown development but critical of Berkeley's approach to Community Benefits; and as a critic of allowing developers awarded a density bonus to "double dip" when calculating the number of in-lieu housing units required to avoid affordable-housing mitigation fees).

By my reading the draft of BMC section 23C.14.080A presented to the planning commission on February 21, 2018, violates two explicit provisions of Government Code section 65915:

1. The applicant awarded a state density bonus must construct a housing development that "*will contain*" and make available for 55 years the qualifying units giving rise to the density bonus. (Gov. Code § 65915, subd. (b)(1) and (c)(1), *italic emphasis added*.) To allow applicants to

¹Voluntarily inactive as of March 1, 2010. Minor editorial correction 2/28/18.

avoid providing qualifying units by making in-lieu payments to the Housing Trust Fund (see draft BMC 23C.14.080A, Special Provisions) violates the state law's inclusionary requirement that qualifying units be constructed within the housing development awarded a density bonus.

2. The proposal to characterize in-lieu payments as a development "incentive" (see draft BMC23C.14.080) violates state law because any incentive or concession granted an applicant for a state density bonus must be *consistent with* the applicable requirements of the Density Bonus Law (Gov. Code, § 65915, subd. (b)(1)). A local "incentive" that relieves applicants from the obligation to construct and make available for 55 years qualifying units in the housing development giving rise to the state density bonus is inconsistent with state law.

When I cautioned against this proposal at the February 7th planning commission meeting, City Councilperson Kris Worthington, a strong proponent of the Student Housing Initiative under discussion, went out of his way to privately assure me *your office* has approved the proposed legislation. Given the obviousness of the proposal's conflicts with state law, I am confident Worthington doesn't understand state law and misunderstands whatever your office told him. But if I'm the one in error, I'd like to know why.

I am not alone in wanting a written analysis of the lawfulness of the "Special Provisions" currently in the draft of BMC section 23C.14.080. Several planning commissioners at their February 21st meeting requested staff to ask your office for an opinion letter. There is no good reason why your office's analysis of this controversial policy proposal should not be made public.

Please ask whoever will handle this matter to contact me at an early convenience. I'd like to gain a sense of what direction your office will take to avoid wasting anyone's valuable time. Thank you for your anticipated attention and constructive response to these concerns.

Very truly yours,
ECM
EDWARD C. MOORE

CC: stbuckley@CityofBerkeley.info
aamoroso@CityofBerkeley.info

Community Gardens

Approvals and Levels of Descretion

* Create Definition for Community agrdens in 23.F

* Create reduced or free cost AUP process for Community Garden AUPs.

<u>Residential Zones</u>	
<u>By-Right with ZC</u>	<u>Approved with Reduced Rate AUP</u>
Establishment of CG on parcel up to 10,000 sq. ft. in residential districts. Includes activities and storgae outside of a buiding.	Establishment of CG on parcel larger than 10,000 sq. ft. in residential districts.
Retail sales of products grown on site in residential zones when in accordance with Exempted Accessory Uses 23C.20.010.B	Retail sales of products grown on site in residential zones when <u>Not</u> in accordance with Exempted Accessory Uses 23C.20.010.B
Accessory Building and Structures when in accordance with Lot Development Standards (23D.04), Accessory Buildings and Structures Height, Setback and Length requirements in (23D.08) and Uses Permitted (.030). *Note - Accessory buildings and structures can be built without existence of a "Main Building" on site. Accessory structures including but not limited to: trellises, storage sheds, chicken coops, rain water retention catchment systems, and Photovoltaic Systems applicable to other health and safety codes.	Accessory Building and Structures when <u>Not</u> in accordance with Lot Development Standards (23D.04), Accessory Buildings and Structures Height, Setback and Length requirements in (23D.08) and Uses Permitted (.030) *Note - Accessory buildings and structures can be built without existence of a "Main Building" on site. Accessory structures including but not limited to: trellises, storage sheds, chicken coops, rain water retention catchment systems, and Photovoltaic Systems applicable to other health and safety codes.
Group Class Instruction - Including but not limited to student visits, demonstrations, workshops and classes relating to gardening or sustainability practices. Up to 15 participants no more than 3 times per week.	Group Class Instruction - Including but not limited to student visits, demonstrations, workshops and classes relating to gardening or sustainability practices. When classes are either in excess of 15 participants or more frequent than 3 times per week.

<u>Non-Residential Zones</u>	
<u>By-Right with ZC</u>	<u>Approved with Reduced Rate AUP</u>

<p>Establishment of CG on parcel up to 20,000 sq. ft. in non-reidential districts. Includes activities and storgae outside of a buiding.</p>	<p>Establishment of CG on parcel larger than 20,000 sq. ft. in non-reidential districts.</p>
<p>Retail sales of products grown or manufactured on site in non-residential zones when in accordance with Permitted Uses (.030) and Use Limitations (.060) of District.</p>	<p>Retail sales of products grown or manufactured on site in non-residential zones when <u>Not</u> in accordance with Permitted Uses (.030) and Use Limitations (.060) of District.</p>
<p>Accessory Building and Structures when in accordance with Lot Development Standards (23E.04) and Uses Permitted (.030) Accessory structures including but not limited to: trellises, storage sheds, chicken coops, rain water retention catchment systems, and Photovoltaic Systems applicable to other health and safety codes.</p>	<p>Accessory Building and Structures when <u>Not</u> in accordance with Lot Development Standards (23E.04) and Uses Permitted (.030) Accessory structures including but not limited to: trellises, storage sheds, chicken coops, rain water retention catchment systems, and Photovoltaic Systems applicable to other health and safety codes.</p>
<p>Group Class Instruction - Including but not limited to student visits, demonstrations, workshops and classes relating to gardening or sustainability practices. No limit on Class size or frequency.</p>	

1 of 3

3/10/2018

Dear Planning Commissioners,

Please note that the names of Julia Goodman and Michael Hall, residing at 2021 10th Street, were added to the attached letter dated 10/10/17 in error. This letter is a correction of that error. Julia Goodman and Michael Hall are not in support of the West Berkeley Neighbors for Family Housing position regarding the R1-A issue. The attached letter does not represent their stance on the R1-A issue.

On behalf of the West Berkeley Neighbors for Family Housing:

Cynthia Tate Elliott, 2119 8th Street

2 of 3

10/10/17

Dear Planning Commissioners,

We are the West Berkeley Neighbors for Family Housing, a group of homeowners in the R-1A zoning district that oppose the potentially drastic R-1A downzoning measures currently being debated by the Planning Commission.

It is our opinion that this process has not been adequately publicized and that the majority of R-1A residents do not support the excessively prohibitive zoning proposals submitted by the so-called "Friends of R-1A". We have therefore organized to educate our fellow R-1A neighbors and advocate for equitable, sensible zoning policy. Reducing the height of rear units from three to one stories, as suggested by the "Friends of R-1A", combined with additional setback requirements and existing off-street parking requirements would in many cases make it cost prohibitive to construct *any* type of new rear unit on R-1A lots and therefore stop production of desperately needed new housing.

Furthermore, much of the new development in Berkeley has produced studio and 1 bedroom units not suitable for starting and raising a family. West Berkeley and the R-1A district specifically is the perfect area to allow construction of family-sized housing so that Berkeley continues to be a place where young families can form and grow. Under zoning guidelines that increase setbacks and limit height to one story the largest rear unit that could possibly be constructed is likely a 1 bedroom ~800 sq. ft. accessory dwelling unit type building inappropriate for a family of 3+ people. Such abrupt and drastic changes as those proposed by the "Friends of R-1A" would thus exacerbate the family housing crisis and drastically change the character of our neighborhood by excluding new families that want to join our community. We believe such outcomes are inconsistent with Berkeley values.

In conclusion, we strongly urge you to adopt zoning standards similar to current standards that allow West Berkeley to continue to be a place suitable for families to live and grow.

Sincerely yours,

On behalf of the West Berkeley Neighbors for Family Housing:

Johanna Hernandez and Dan Mitchell 1626 10th Street

William Witort 1623 9th Street

Barbara Bridgewater 1626 9th Street

Albert Bridgewater 1645 6th Street

Troy Dangerfield 1629 6th Street

Robert Ford 2115 8th Street

Kit and Ahni Robinson 2123 8th Street

Thomas Turman 1718 9th Street

Cynthia Tate Elliott 2119 8th Street

Alex Garcia Rubio 939 Allston Way
Jeffrey Deason and Ericka Weissinger 1011 Channing Way
Julia Goodman and Michael Hall 2021 10th Street
Joseph Coleman, Jessica Lee, Skip Coleman 2214 9th Street
Zebulon Karpinski 2310 10th Street
Claudis Banks 1411 10th Street
Matthew Wesley Edell and Louisa Harbage-Edell 2128 7th Street
Rinzing and Tashi Namling 2124 8th Street
Christopher Dang and Elizabeth Lee 927 Allston Way
Willie L. Middleton 1415 10th Street
Jaq Lucas 1001 Channing Way
Erin Rhoades 1140 Page Street
Nicole Ferrara 1151 Page Street
Marshall Taylor 1475 10th Street
Jacqueline Erbe and Andrew Talbot 1614 9th Street
Alex Sharenko 2110 Acton Street
Verdrie McCord III 945 Acton Street
Michele Jabbari 1616 Tenth St

r1aowners@gmail.com

From: Charles Pappas [<mailto:nberkhills@sbcglobal.net>]
Sent: Thursday, February 22, 2018 11:46 AM
To: Amoroso, Alexander <AAmoroso@cityofberkeley.info>
Cc: Greene, Elizabeth <EGreene@cityofberkeley.info>; Molly Dooley Jones <mollydooleyjones@gmail.com>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Elgstrand, Stefan <SElgstrand@cityofberkeley.info>; Wengraf, Susan <SWengraf@cityofberkeley.info>; Worthington, Kriss <KWorthington@cityofberkeley.info>; Manager, C <CManager@cityofberkeley.info>; City Attorney's Office <attorney@cityofberkeley.info>; Harrison, Kate <KHarrison@cityofberkeley.info>; Tara Roth <odusanya@uwm.edu>
Subject: Pardon Me Revised #9 Action Zoning Ordinance Cannabis Regulations Planning Comm-2/21/18

re: **Public Hearing: Zoning Ordinance Cannabis Regulations Hold public hearing and consider Zoning Ordinance amendments related to Cannabis regulations. 2/21/2018**

Dear Alex, Planning Commissioners,
Please pardon my interruption during last night's meeting, but thank you for listening to my few sentences objecting to uninformed commission discussion and motions. Also, I appreciated Alex and Elizabeth clarifying your quota motion ("10, *or more*").

It was disappointing that your motions and decisions last night were based on staff presentation, input, recommendations without sufficient (practically speaking, zero) Cannabis commission information and perspective. Below I have pasted the late item hand out which Alex was kind enough to include in your packet.

For some reason, the progress of improving the cannabis situation in Berkeley has been and still is impeded, generally speaking, by solutions in search of problems! The facts are: since 2002, only three local (not locally owned!) retail cannabis outlets; since 2010 Measure T, no additional dispensary, no cultivation licensing selection process; since 2015 dispensary application process, no additional new dispensary opened yet; currently, while the mayor and Rep Nancy Skinner attend 6 am opening Berkeley dispensary legal sales (January 1), dozens of underground delivery only "dispensaries" wait (over a year) for regulation and licensing, along with cultivators, existing cannabis businesses, nurseries, micro businesses, cottage private collective co-ops.

Down the road to sensible cannabis regulations implementing the will of the local electorate, I can only hope our elected officials and appointed commissioners move forward, instead of clinging fearfully to a woeful status quo...

Thanks for your attention and consideration.

Respectfully, Charley Pappas

Summary, -Our commissions, staff & elected officials

-Resolve & move forward: with new cannabis regulations for the sake of Berkeley patients, consumers, citizens, electorate, and community.

-Incorporate, include: all possible local existing cannabis operations, certainly statewide as well.

-Planning Commission possible zoning considerations: cultivation (M-zone expansion), cannabis businesses (retail/non-retail); nurseries; micro business; cottage; private collective coops

-Lack of progress: past attempts in Berkeley not improved a long existing stagnant status quo, e.g. 15 year 3 dispensary limit, poorly enacted new dispensary process, lack of cultivation permitting, nursery/delivery only dispensaries absence of ordinance, license permitting, unclear existing cannabis business status

-Progress now: sharing and listening, input, expression; in accordance with an informed public

-Commissioners: sensible review; previous successful absence of comment; when needed productive Council recommendations.

Objections/ Comments/Input

-Discussion/regulation- Bad idea, *delivery only dispensaries not locate, ground floor unit with street frontage!?! Good idea*, *could locate in M-prefixed district, ancillary use to another cannabis business, to co-locate with manufacturing, distribution or cultivation uses. Would allow integrated microbusinesses as permitted by State law, and would not significantly impact space available in manufacturing districts.*

-Quotas- In a nutshell, regarding cannabis issues in Berkeley for over 15 years, I have not yet met a reasonable quota I liked, usually for sake of council delay/preserving status quo. An exception- 6 only large (22k sq ft) cultivation areas, providing at least 58k sq ft smaller cultivation. **Rather, overly restrictive quotas could limit competition and prevent new businesses from locating in Berkeley, than there is much uncertainty about the impact that cannabis businesses will have in communities. Quotas would allow the City to add businesses slowly (!?!) and to evaluate impacts** (since when?) before allowing additional businesses.

-Levels of Discretion-Ok where appropriate (some buffer zones), **better** less restrictive encouraging inclusion existing businesses (some underground) for/regulation taxation in the legalization era.

-Selection Process and Equity Considerations- Staff, options selection process to Cannabis Commission & City Council- include, incorporate equity. Equity- have at least 40% owner equity candidate, either low-income threshold/been arrested, incarceration for cannabis-related, non-violent crimes. Selection- relatively fast & inexpensive, quotas/buffers modified depending on Council chosen process. Generally agreed, with caveat, possible deferring- cannabis commissioners can be more informed than staff, Council, & Planning Commission.

-Commercial Cannabis Regulations and Licensing- Mayor to Council, July 25 2017, Prohibit City from issuing new dispensary licenses until January 1, 2020, ascertain demand. Hard to find reasoning- only 3 existing, this March 3 years from application process, September 2 years since last applicants chosen!

-Additional- Cannabis issues needing attention: cultivation licensing selection (a lack of permits after a time period will necessitate M-zone expansion), discussion; nursery ordinance, zoning licensing selection; likewise delivery only dispensaries; and microbusiness, private collective, cooperative decisions.

Conclusion- Too often witnessed belabored cannabis political discussions lacking perspective & correct information vs hypothetical situations, solutions seeking problems. Future positive accomplishments with inclusive interaction and ideas.



Legal education, research, advice, and advocacy for just and resilient economies.
1428 Franklin St. | Oakland, CA 94612 | www.theSELC.org

Christina Oatfield, Policy Director
(415) 828-5627 | christina@theselc.org

March 19, 2018

TO: City of Berkeley Planning Commission, via email to: aamoroso@cityofberkeley.info
RE: Council Referral Regarding Community Gardens

Dear Berkeley Planning Commission Members,

On behalf of the Sustainable Economies Law Center (SELC), I am writing to urge you to pass a zoning ordinance legalizing community gardens in non-residential zones in Berkeley. I wrote to the Planning Commission in September 2016 in support of adoption of a comprehensive community gardens and urban agriculture ordinance. I hope that adoption of an urban agriculture ordinance will not be further delayed. The proposal from Mayor Arreguin's office should not be considered controversial since many other Bay Area cities have already adopted similar ordinances, and the concept of growing fresh produce locally is very popular in Berkeley. Numerous community gardens already exist in Berkeley despite legal clearance in the zoning code. A revised zoning code will help protect existing community gardens that offer a source of fresh food and education about sustainable agriculture to Berkeley residents, among other benefits.

We urge you to create an ordinance that clearly allows community gardens and urban farms to regularly sell fresh produce and to sell "value added" food products made from produce grown in the garden, such as jams, dried herb blends, and other such foods. This should be allowed "by right" in all zones to avoid unnecessary bureaucratic burdens and costs for community gardens, which are often volunteer-driven. Sales of produce and value added food products can be a terrific opportunity for fundraising, engaging the broader community, and increasing access to fresh, local food. Sales of produce or value added goods should not create a substantial negative impact on the surrounding neighborhood in terms of noise or traffic because community gardens in urban areas such as Berkeley are by nature very limited in size due to small lot sizes and high land value, and therefore the volumes of sales even during peak harvest season tend to be very low. Additionally, we urge you to allow reasonable accessory structures at community gardens, such as tool sheds and greenhouses.

Our organization is committed to providing legal advice and resources to community gardens in Berkeley through our Resilient Communities Legal Cafe and through our free online legal resources on topics such as food safety, zoning, nonprofit status, and more. We hope you will advance zoning ordinance amendments to support community gardens.

Sincerely,

A handwritten signature in black ink that reads "Christina Oatfield". The signature is written in a cursive, flowing style.

Christina Oatfield, Policy Director

Provided by Berkeley Community Garden Collaborative
March 20, 2018

City Planning Department Request for Square Footage and Number of Structures

Bancroft Garden—1308 Bancroft Way—Coordinator Steve Moros —smoros.cgartist@gmail.com

*Square Feet---1.5 acres=43,560 sq. feet

Structures 550 sq. ft.

Karl Linn Garden—Peralta at Hopkins St.—Coordinators--Mary R. —maryrossllynch@gmail.com-- Karen Fracetto-- kltkf@gmail.com

*Square Feet---6,700 sq. feet

Structures---94 sq. ft.

Northside – 1349 Northside Ave. Coordinator – Micelle Squitieri – msquitieri55@gmail.com

*Square Feet

Structures

Ohlone – Hearst at McGee St. Coordinator – Durwood Wiggins – durwoodwiggins@gmail.com

*Square Feet 4,435 sq. ft.

Structures---77.5 sq. ft.

Peralta – 1400 Peralta Ave. Coordinator – Rita Pettit – ritapettit96@yahoo.com

*Square Feet---27,917

Structures---309 sq. ft.

*Source Alameda County Assessor's Office

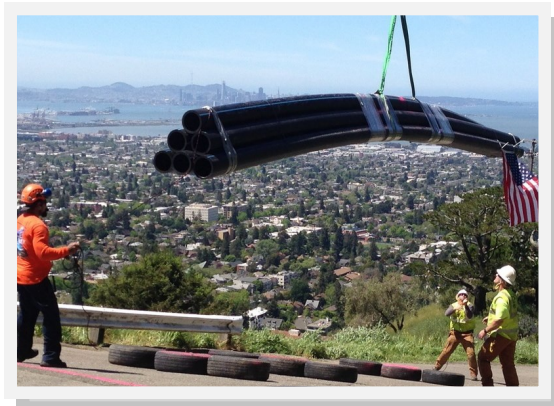


You are invited to an EBMUD Briefing
Thursday, April 5, 2018 11:30 AM to 1:30 PM
The David Brower Center
2150 Allston Way, Berkeley, in the Tamalpais Room

Greetings,

Community leaders and elected officials from the cities of Albany, Berkeley, Emeryville, El Cerrito, Kensington and Oakland are invited to attend an update on our vital water & wastewater system, water supply infrastructure projects, and environmental and financial stewardship.

Informal networking and a light lunch will begin at 11:30 AM with presentations and discussion to follow at 12:00 PM.



Agenda

11:30 AM	Networking/Lunch	
12:00 PM	Welcome	Director Andy Katz Self-introductions and other remarks
12:15 PM	Update	EBMUD water supply Water & wastewater infrastructure Budget and rates overview Customer programs
1:00 PM	Conclusion	Q&A and discussion Closing and thanks



Please RSVP by Thursday, March 29
Lori Taylor, Community Affairs
lori.taylor@ebmud.com or 510-287-7208

EBMUD has a proud history of providing high-quality drinking water for 1.4 million customers in Alameda and Contra Costa counties. The District's wastewater treatment system serves 685,000 customers

Photos: Top-Panoramic Way helicopter pipeline delivery 4/2017, Bottom -Wildcat Pipeline valve installation on Bancroft Way 12/2017

**TO LEARN MORE ABOUT OUR WATER SUPPLY:
VISIT EBMUD.COM OR
FOLLOW US ON TWITTER AND FACEBOOK: @EBMUD**

Good evening Planning Commissioners,

I understand that Planning staff and Planning Commissioners have an immense workload and a lengthy work plan. Under the existing work plan, it may take months or even years to completely evaluate and implement the many Student Housing proposals.

As the individual who introduced the original proposal, I am willing to accept the following compromise; one that has been supported by several other students:

We propose a controlled pilot plan--taking place over a set time period of 3 years with a limited and clearly outlined number of projects.

During this time period, notwithstanding what is outlined in the current Zoning Ordinance, there would be a limited number of exceptions allowed beyond existing zoning standards within the C-T, R-SMU, and R-S and R-3 area located between Bancroft to Dwight and between College and Fulton. I am proposing the following:

Allow 4 projects that convert commercial space to residential space.

Allow 4 new projects to allow ground floors on any street to be converted into residential use except on Telegraph Avenue.

Allow up to 2 tall buildings up to 12 stories

Allow 6 projects to include a 20-foot height increase in order to increase the availability of student housing

In light of the current Student Housing crisis and the anticipated delays with permanent solutions, we are suggesting that rather than waiting for changing permanent policy, we adopt a temporary pilot project that will occur concurrently with discussion on long-term changes to the Zoning Ordinance. Because this language would only allow a small number of exceptions in the campus area, instead of permanently changing laws, I am hopeful that it might be adopted more speedily.

Thank you for considering this compromise,

Amir Wright

Late Communications
Planning Commission

MAR 21 2018

RECEIVED
at Meeting

StoneFire Penthouse 2 Bedroom 2 Bath \$6720, Parker Place move-in today 1 Bedroom \$3525

Apartment Rentals In Berkeley

Throughout Berkeley there are tons of apartments for rent. A big thing to consider when looking for apartments is to find the apartment that best fits your needs. After all, you will be living there for at least six months to a year, so you should feel happy and safe where you live. Some of the reasons you might decide you want to live off-campus include things like getting the chance to live with your friends, having the ability to go swimming on the weekends without leaving your complex and having the luxury of having a quiet place to study on weekends. While all of this might sound nice, not all of the apartments in this area are like this. Some apartments might be further away from UCB, while others lack basic amenities that you need to succeed as a student at UCB.

Home Rentals In Berkeley

The idea of living in a house might be something college

No Availability

Below are rent ranges for similar nearby apartments.

Beds	Average Size	Lowest	Typical	Premium
Studio	497-512 Sq Ft	\$1,650	\$2,533	\$3,750
1 Bed	631-634 Sq Ft	\$1,900	\$2,793	\$4,063
2 Beds	816-827 Sq Ft	\$2,100	\$4,065	\$10,654
3 Beds	1079-1089 Sq Ft	\$3,195	\$4,663	\$6,095
4 Beds	1409 Sq Ft	\$7,250	-	-



About Stonefire Berkeley **Late Communications Planning Commission**

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Stonefire Berkeley is ready to be your home. This apartment community is located on Milvia St. in Berkeley. From amenities to floor plan options, the leasing team is available to assist you in finding your perfect apartment. Be sure to come for a visit to see the current floorplan options. It's time to find your next place. Contact or stop by the Stonefire Berkeley leasing office to check the current floorplan availability today.